

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

March 20, 2003

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 20, 2003 at 1:00 P.M. in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Kerry Coulter, Vice-Chair; Ron Marnell; Elizabeth Bishop; Jerry Michaelis; Jerry McGinty; Morris K. Dunlap; John McKay, Jr.; Ray Warren; Don Anderson; Bill Johnson; Frank Garofalo. James Barfield; David Wells; Bud Hentzen, Chair; were not present. Staff members present were: Dale Miller, Secretary; Donna Goltry, Assistant Secretary; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Dave Barber, Land Use Supervisor; and Rose Simmering, Recording Secretary.

1. **Case No.: DR2001-03** – Request Briefing on McAdams Neighborhood Revitalization Plan and Establishment of Public Hearing Date

In late 2000, a coalition of private/public stakeholders called the 21st Century Coalition for Neighborhood Revitalization was formed with the goal of eliminating all substandard housing within the McAdams neighborhood by the year 2020. The Community Development Committee was formed as a subcommittee of the Coalition with the task of developing a revitalization plan for the McAdams Neighborhood. The planning area was defined as 17th Street on the north; Hydraulic to Central on the east; Central Avenue on the south; and Mosley on the west.

The Committee feels that they have developed a draft plan for the revitalization of the McAdams neighborhood that has broad-based neighborhood support, support from the two active neighborhood associations, and support from City and County officials. The Plan is now ready for review by the whole of the MAPC, prior to the setting of a public hearing date. Presentations of the draft Plan will be made to DAB I and the Park and Recreation Board prior to the MAPC public hearing date.

The following is a summary of the McAdams Neighborhood Revitalization Plan:

- A vision statement that anticipates by the year 2020:
 1. The elimination of all substandard housing;
 2. A safe and attractive family neighborhood with a predominance of single family housing stock;
 3. An increase in the current population by approximately 445 people;
 4. A strong neighborhood organization;
 5. Residential and commercial infill/redevelopment; and,
 6. Neighborhood beautification initiatives.
- A strategic approach that addresses six neighborhood plan issues: neighborhood image and appearance; housing; community infrastructure and facilities; economic development; neighborhood safety; and, community capacity.
- Ten neighborhood plan goals to address the six neighborhood planning issues.
- Thirty-nine detailed action plans to implement the ten neighborhood planning goals.
- A future land use redevelopment concept to improve the physical character and desirability of the neighborhood.

Staff recommends that the MAPC indicate support for the draft McAdams Neighborhood Revitalization Plan dated March 2003, and schedule a public hearing pursuant to State Statute to receive formal public comment and consider adoption of the Plan as an amendment to the Wichita-Sedgwick County Comprehensive Plan.

HANNAH MCANN, 7429 Galloway, Wichita, KS 67212 I am the Executive Director for Habitat for Humanity. Several years ago Habitat developed a program called the 21st Century challenge in which affiliates in their service area would develop a coalition within the community to address the situation of substandard and poverty housing. Wichita Habitat for Humanity was chosen as one of 10 affiliates to pilot this program. We are authorized by Habitat International to put together a program to revitalize an area by the year 2020. We have chosen the McAdams neighborhood working with a coalition of 25 members. We will work with the McAdams neighborhood to accomplish their goals and their objectives and build that community and neighborhood.

JAMES ARBERTHA, 1628 N. Erie, Executive Director of POWER CDC We have a lot of momentum built up in the McAdams area, and I have become so excited personally to the point whereas, I expect to come back the McAdams area where I raised four kids and build my home there.

GAROFALO I have a question on the housing portion on page 2. In one sentence we say, "Twenty-seven percent (189) of the housing units in the McAdams plan area were listed as vacant in 2000". The next sentence says, "January 2001 surveyed 474 homes classifying 66 homes as vacant and 25 homes as dilapidated". That is a big difference, can you explain that? Are those figures correct?

BARBER The 21st Century Coalition survey done in 2001 was a windshield survey which surveyed 474 homes in the plan area. The 2000 Census identified the (189) homes. Regardless, there is a problem with housing in this neighborhood, no matter which survey or Census numbers you use.

GAROFALO Rezone like Delano?

BARBER It would be like Delano in the sense that it would be voluntarily, but I don't think it is as complicated as Delano was. We are not looking at an overlay district, we are not looking at design guidelines. We are just looking at whether or not the base zoning in the neighborhood needs to be down zoned to something a little more appropriate to what the vision of this plan would be. Any down zoning would be done on a voluntary basis.

ANDERSON The part that bothers me is that we have been talking for 25 years about doing something here. I think the problem is that we have always left it to the neighborhood and why can't we do an urban renewal and provide financing from the City and also help finance some of this housing that is dilapidated and vacate and resale it so that it can be redeveloped. Why haven't we considered something like that?

BARBER James Arbertha has asked the same questions.

ANDERSON All you have to do is look downtown and why can't some of the money go to other neighborhoods that need it? Tear down the houses that need torn down and start over.

MCKAY I think this is a step in the right direction. I would like to congratulate James Arbertha and his group. You listed potential people that helped in the front of this Plan and WBA is not listed. How come that is not in there?

ALBERTHA They may not be listed, but they are potential partners. Real soon we will need Mr. Anderson and the rest of this Boards support with the City and the leaders to get the financing that we need.

ANDERSON There is a lot of opportunity by the City Council and the staff to find a way to finance this thing. The City has done it in the past and they do it downtown now.

WARREN Look at the parks, how is that done? Going west over to Waco, they have the same types of problems.

BARBER That area is part of the Midtown Neighborhood Plan. It has a very different situation as well. The McAdams area has a neighborhood association working with Habitat for Humanity and with James Arbertha's group.

MARNELL The Advance Plan Committee did meet with the group to discuss this plan. The neighborhood does look like it has a lot of parkland, but needs a younger park for the little children. I think this is a good plan.

GAROFALO On the blue memo sheet, you mention that there were additional meetings in January, and the committee had some minor modifications of the plan. What was that?

BARBER People didn't like the word "Gateway" so we changed the wording to "Entryway". The term "stored front" was changed to "Field Office". We also added a policy to deal with historic site issues.

MICHAELIS I was at the Advance Plan meeting as well, and these people have kept this down into something that can be accomplished. I think this is a great plan as well.

ANDERSON I think it is a great plan as well. My comments are addressed to the financing and how it is accomplished and staff needs to look at City funds.

MOTION: To have the Public hearing for the McAdams Neighborhood on 4-24-03.

MCKAY moved, **BISHOP** seconded the motion, and it carried (11-0).

2. Approval of MAPC meeting minutes March 6, 2003.

MOTION: That the minutes for March 6, 2003 be approved.

MARNELL moved, **MCKAY** seconded the motion, and it carried (11-0).

3. Consideration of Subdivision Committee Recommendations

3-1. SUB2003-13 – One-Step Final Plat – POWER C.D.C. THIRD ADDITION, located on the north side of 26th Street North, west of Grove Street.

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.

- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. *The drainage plan is approved.*
- D. The applicant shall guarantee the paving of the proposed interior streets in addition to 26th St. North and the west half of Madison.
- E. **Traffic Engineering** has requested complete access control to 27th Street.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- H. The **City Fire Department/GIS** needs to comment on the plat's street names. *The street names are approved.*
- I. On the final plat tracing, the MAPC signature block needs to reference "Bernard A. Hentzen, Chair".
- J. **City Environmental Health** has requested that a restrictive covenant be recorded that prohibits the use of water wells on the site for any purpose.
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (11-0).

3-2. SUB2003-14 – One-Step Final Plat –HARRIS ELEMENTARY ADDITION, located east of Woodlawn, north of Central.

- A. Municipal services are available to serve the site. **City Engineering** needs to comment on the need for guarantees or easements. **No guarantees or easements are needed.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- E. **The Applicant has platted 20-ft building setbacks which will be revised to the Zoning Code standard of 25 feet for the SF-5, Single-Family District.**
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (11-0).

Item 4-1 and 4-2 may be taken in one motion, unless there are questions or comments.

4-1. VAC2003-03 Request to Vacate a Portion of a Drainage Easement Dedicated by Separate Instrument.

OWNER/APPLICANT: Alfred & Janet Staab

AGENT: PEC c/o Rob Hartman

LEGAL DESCRIPTION: Commencing at the northeast corner of Lot 44, Block 3, Forest Lakes, an addition to Wichita, Sedgwick County, Kansas, thence bearing S87degrees26'34"W a distance of 24.94-feet; thence bearing S02degrees33'26"E a distance of 6.00-feet to the point of beginning; thence S02degrees33'26" a distance of 1.50-feet; thence bearing N02degrees33'26"W a distance of 1.50-feet; thence bearing N87degrees26'34"E a distance of 26.00-feet to the point of beginning.

LOCATION: Generally located northwest of the 29th Street – Ridge Road intersection.

REASON FOR REQUEST: Existing home/garage encroaches into drainage-utility easement dedicated by separate instrument.

CURRENT ZONING: Subject property and all adjacent properties are zoned SF-5 Single-Family Residential.

The applicant is requesting that a 1.5-foot wide (x) 26-foot long portion of a 7.5-foot wide drainage-utility easement dedicated by separate instrument (Film 1941, page 1931, recorded 07-14-1999) be vacated. The easement runs parallel to the north property line of Lot 44, Block 3, Forest Lakes Addition, 3253 Forest Lakes. The encroachment into the easement was found after the attached garage was built. Approximately 3-inches of the garage foundation and 18-inches of roof overhang encroach into the easement. The Forest Lakes Addition was recorded 04-20-1993.

There is a storm water line in the easement. Storm Water Management recommends vacation of the easement only where there is an encroachment into it; see exhibit A and legal description. There are no water or sewer in the easement. Water is in the ROW and the sewer is in the platted 20-foot easement that runs parallel to the east property line. There are no future plans for water or sewer to go into this easement.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities, Planning Staff recommends approval to vacate only that portion of the 7.5-foot utility easement, dedicated by separate instrument, as described in the legal description.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time February 27, 2003, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the easement dedicated by separate instrument described in the petition should be approved subject to the following conditions:
1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 2. All improvements shall be according to City Standards.
 3. Vacate only the 1.5-foot (x) 26-foot section of the easement as given in the legal description.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate only the 1.5-foot (x) 26-foot section of the easement as given in the legal description.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WARREN moved, **JOHNSON** seconded the motion, and it carried (8-0). (**MCKAY, MARNELL, and BISHOP** out of room).

4-2. VAC2003-04 Request to Vacate a Platted Easement and an Easement Dedicated by Separate Instrument.

OWNER/APPLICANT: William R King

Green Lantern Inc., c/o Brain Richardson

AGENT:

A & M Consultants Inc., c/o Tim Austin

LEGAL DESCRIPTION:

The 8-ft utility easement (1/2 of the platted 16-ft easement) as recorded on the west side of Lot 1, Blk A, LR Jones 3rd Addition and The 6-ft utility easement as recorded on Film 1530, Page 318 on the west side of Lot 1, Blk A, LR Jones 3rd Addition and The 6-ft utility easement as recorded on Film 1485, Page 771 on the Lot 1, Blk A, LR Jones 3rd Addition

LOCATION:

Generally located northwest of the 21st Street North – Maize Road intersection.

REASON FOR REQUEST:

Develop the property.

CURRENT ZONING:

Subject property and properties to the east, west and south are zoned "LC" Limited Commercial. Property to the north is zoned "GC" General Commercial

The applicant is requesting consideration for the vacation The 8-ft utility easement (1/2 of the platted 16-ft easement) as recorded on the west side of Lot 1, Blk A, LR Jones 3rd Addition and the 6-foot easements as dedicated by separate instrument on Lot 1, Blk A, LR Jones 3rd Addition and recorded on Film 1485, Page 771 (recorded 10-31-1994) and Film 1530, Page 318 (recorded 01-14-95). The LR Jones 3rd Addition was recorded with the Register of Deeds 07-8-1966. The applicant proposes to develop the property.

There is sewer in the easement(s) proposed for vacation. Southwestern Bell has a line running parallel to the east property line of Parcels 1 & 2, Kliewer Addition, which abut the western side of Lot 1, Blk A, LR Jones 3rd Addition. Southwestern Bell has a facility for utility on Parcel 1 (the north parcel). There is a private water line in the easement(s) proposed for vacation. The applicant owns Lot 1, Blk A, LR Jones 3rd Addition and Parcel 2 Kliewer Addition.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities, Planning Staff recommends approval to vacate the portions of the platted 8-foot utility easement (1/2 of the platted 16-ft easement) and the two 6-ft easements dedicated by separate instruments as described in the legal description with conditions. These proposed vacations will stop at their point of intersection with platted easement on the north end of the properties and any other easements dedicated by separate instrument.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time February 27, 2003, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted easement and the easements dedicated by separate instruments and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted easement and the easements dedicated by separate instruments described in the petition should be approved subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Abandon the sewer to City Standards as approved by the Public Works Department.
4. Retain the easements as temporary easements until utilities are removed or relocated.
5. Provide new easements as needed for relocated utilities.
6. The applicant needs to provide the Planning Department with any other agreements to vacate from any Utility Company that has utilities in the three easements that are proposed for vacation.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Abandon the sewer to City Standards as approved by the Public Works Department.
4. Retain the easements as temporary easements until utilities are removed or relocated.

5. Provide new easements as needed for relocated utilities.
6. The applicant needs to provide the Planning Department with any other agreements to vacate from any Utility Company that has utilities in the three easements that are proposed for vacation.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WARREN moved, **JOHNSON** seconded the motion, and it carried (8-0). (**MCKAY, MARNELL, and BISHOP** out of room).

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5. **Case No.: CON2003-04** – Jesse R. Andrews, II and Glenna R. Andrews (owner); Gene Williams Construction (agent) request a Conditional Use for an accessory apartment on property described as;

Lot 17, Block 3, Replat of Block 3 Edgewood Addition to Wichita, Kansas, Sedgwick County, Kansas.
Generally located Southeast of Mt. Vernon and Oliver.

BACKGROUND: The applicant is requesting a "Conditional Use" to allow an accessory apartment for a parent on the rear of Lot 17, Replat of Block 3, Edgewood Addition. The property is located on the south side of Mt. Vernon between Gramar Drive and Pinecrest Avenue, approximately three blocks east of Oliver, and is zoned "SF-5" Single-family residential.

The applicant is requesting to add an accessory apartment as part of a detached garage under construction in the backyard. The existing single-family brick veneer house is located in the front portion of the lot along Mt. Vernon Road. The lot is relatively deep, averaging 240 feet in depth. This allows sufficient space for an accessory structure in the rear yard. However, ground floor building coverage of the three-bay garage and accessory apartment would be approximately 1,800 square feet, which is significantly larger than the main structure. Proposed building construction is a pole barn with a metal skin. The site plan shows a paved area east of the garage door openings and at the front of the property near Mt. Vernon, but does not indicate a continuous paved drive connecting these paved areas.

An accessory apartment is defined as a dwelling unit that may be wholly within or detached from a principal single-family dwelling unit. A dwelling unit includes provisions for sleeping, cooking, eating and sanitation. A Conditional Use permit is required for an accessory apartment in the "SF-5" zoning district. As per the Unified Zoning Code, the "Conditional Use" requirements for accessory apartments stipulate the following:

- (a) a maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling;
- (b) the appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood;
- (c) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium; and
- (d) water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

The surrounding area is single-family residential in character, consisting of brick veneer homes, and typically with varying widths of lap siding in the gabled ends of the roof and on additions or detached garages. There are a few duplexes located in the block to the east of the application area.

CASE HISTORY: Lot 17, Replat of Block 3 Edgewood Addition was recorded November 7, 1950.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"	Single-family residential
SOUTH:	"SF-5"	Single-family residential
EAST:	"SF-5"; "TF-3"	Single-family residential, duplexes
WEST:	"SF-5"	Single-family residential

PUBLIC SERVICES: Mt. Vernon Road is a four-lane arterial street. Traffic volumes (ADTs) at Mt. Vernon and Oliver were approximately 9,500 in 2002, and projected to increase to 13,500 in 2030. No traffic improvements are planned for this segment of Mt. Vernon. Sewer and water are available.

CONFORMANCE TO PLANS/POLICIES: The 2001 Sedgwick County Development Guide Land Use Guide of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* designates this area as "low density residential".

The policies of the Unified Zoning Code allow one accessory apartment to be associated with a principle dwelling as a "Conditional Use" if the proposed use is compatible with the principle dwelling, is in character with the surrounding

residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling hook-up.

RECOMMENDATION: As proposed, the requested "Conditional Use" does not comply with the policy guidelines of the Unified Zoning Code for an accessory apartment. The proposed garage/apartment is over 150 percent of the size of the main dwelling. It would overwhelm the principle dwelling and is larger than other accessory structures in the neighborhood. The metal exterior is not in character with the main dwelling or with other houses in the neighborhood, which are almost all brick veneer structures with lap siding on the gabled ends of the roofs. Many houses have additions and these typically use lap siding as the principle material. The only metal structures typically found in the neighborhood are small tool sheds. It is suggested that an accessory apartment would be appropriate for the application area if the structure were redesigned to be compatible with the neighborhood in terms of scale and materials.

Based upon these factors and information available prior to the public hearing, Staff recommends that the request, as presented, be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is mostly single-family residential. All the surrounding area is zoned "SF-5" Single-family except the block to the east, which is zoned "TF-3" Two family. However, 55 percent of this block is developed with single-family dwellings instead of duplexes. All the dwellings, including the single-family and duplex units are brick structures with lap siding on the gabled ends of the roofs and employ lap siding for most additions.
2. The suitability of the subject property for the uses to which it has been restricted: Continued use of the lot for single-family residential use is a suitable use and is the typical use in the vicinity. A detached garage could be added to the rear of the lot so long as it meets setback and building code requirements.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the "Conditional Use" as requested will detrimentally affect the neighborhood by allowing an out-of-scale detached structure that is significantly larger than the principle structure on the lot and by allowing metal as an exterior building material, which is not typical of dwellings, additions, or detached garages located in the vicinity.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The 2001 Sedgwick County Development Guide Land Use Guide of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this area as "low density residential". The proposed accessory apartment is part of an accessory structure that is not in scale with the principle dwelling and not in character with the development of the neighborhood.
5. Impact of the proposed development on community facilities: The applicants' request should have a minimal impact on community facilities.

If after closing the public hearing the MAPC finds the request appropriate, the MAPC motion to approve will need to include findings of fact regarding the Unified Zone Code Review Criteria that support approval and planning staff recommends that approval be subject to the following conditions:

1. The accessory apartment shall be subject to all requirements of Section III-D.6.a (attached) of the Unified Zoning Code.
2. The site plan shall be revised, and shall add the following required site plan items: legal description, indicate existing features not shown on the plan submitted (including fences, utilities above or below ground, drainage patterns), required zoning setbacks and easements, all paved areas on the lot (including type of pavement), surrounding structures (including showing the edges of houses on surrounding lots), and any modifications proposed to existing structures or features not shown on the submitted plan.
3. The applicant shall obtain all applicable permits, including but not limited to: building, health, and zoning, and all improvements shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
4. Construction of improvements shall be completed within one year of approval by the appropriate governing body.
5. 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 VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

DONNA GOLTRY, Planning staff, presented the staff report.

MCKAY One of the main reason staff opposed this is because of the exterior material?

GOLTRY That is correct. And, they did not meet the other four criteria.

MCKAY What if the applicant did the thing in brick? Would that change staff's recommendation?

GOLTRY It would be a partial solution to the incompatibility. You can tell from the slides that there are also size and placement issues.

MCKAY You made a comment that these restrictive covenants were in place when these were built. They didn't have restrictive covenants back in the late 1950's. You said the people got the garage building permit?

GOLTRY The permit said it was a garage permit.

WARREN The plan that I am looking at, is this a home plus a lot of storage?

GOLTRY Shows the slides.

JOHNSON Basically the only reason they are here is, because they could build a garage, but it is the accessory apartment?

GOLTRY Right. The apartment will be 800 to 850 square feet. The house and the apartment will be about the same size.

JOHNSON Is that the problem?

GOLTRY We have done accessory apartments before where the accessory apartment was virtually the same size as the principal dwelling.

BISHOP In other words, if the exterior materials were more compatible with the neighborhood, would that size of building, where the garage doors are, and the height be allowable in a neighborhood with just a garage permit?

GOLTRY Yes, it is not as tall as the Unified Zoning Code permits.

DUNLAP Of the four neighbor's opposed to this application, where are they in location of this accessory apartment?

GOLTRY One neighbor was next door who was in favor, and one who was opposed was in the back yard.

MCKAY The construction for this building, which was permitted for garage only, is a different type of construction than one that is going to be made for an apartment. But, I would think Central Inspection ought to come up and tell us if they are going to make him change, or do something, before I say yes or no for this type of use. Because, if it is a garage permit, and they are wanting to change it now to a Conditional Use; I think we are getting the cart before the horse. Central Inspection ought to say if you are going to put an apartment there now and the construction is what you say it is and it has to be different, something is going to have to be done. I agree, that is a pole-barn in my opinion.

GOLTRY I will say that the OCI Inspector had said that the concrete floor is separate from the poles. That in the pole barn construction, or post frame, it is because they (the poles and the concrete floor) are separated; that it is not considered to be the way that normally is required to construct residential dwellings.

GAROFALO I would agree with McKay. If this structure was approved for a garage, then it would be okay. But we need to see what OCI says about making part of it an apartment.

MICHAELIS I would like to hear from the applicant.

WARREN I am going to disagree with Mr. McKay. This concept of construction, I will call it Morton, and they do build residential units (this way), and they do build commercial units, and they are approved from OCI.

MCKAY I want to hear from OCI because the permit is for a garage and not for an apartment.

JESSE R. ANDREWS, 1525 E. Mt. Vernon I am sharing my time with my agent that is building this for me, and some of the technical things that he has to show may make it better for him to go first. And then I would like to have a statement also.

GLEN WILLIAMS, with WILLIAMS CONSTRUCTION, 1615 W. Maple Wichita, KS 67213, Builder This is post frame construction. When I went to pull the permit for this building the initial permit was pulled with a listing of mother-in-law house on it. At that point, we were sent upstairs to Planning Department because OCI said that normally the City prompts this sort of thing, but there was something else that the applicant needed to do. They were sure what it was because the last permit that they had issued on one of these was about five years ago. So I went to the Planning Department and talked to Jess McNeely, who was sent overseas, and we explained to him what the owners wanted to do. We told him about the construction of the building; also the material that was going to be used on the building. That is how the applicant received the application for the variance for this to be a mother-in-law house. At that point I was sent back to OCI, and they downgraded the permit to a garage because the gentlemen's material had already been dropped off, was in his yard, and we were ready to start construction. So they downgraded the permit to a garage so that we could go ahead

and build it while the application was going through the process. That is the reason why the current permit says garage; the initial permit says mother-in-law house.

WARREN Those door openings--they look like maybe they are 10 foot high?

WILLIAMS Yes, those are nine-foot openings--they are at that height. They are 8' X 9'.

WARREN There will be no commercial use back there?

WILLIAMS No.

WARREN This will be an apartment?

WILLIAMS Yes.

ANDERSON When you pulled that permit, how far along were you on that construction? So OCI gave you the approval to do that, and they knew what you were doing?

WILLIAMS We hadn't started. They knew we were starting on a mother-in-law house when a permit was issued for us to go ahead and build it as a garage. Once the application was approved for a mother-in-law house, then they would just switch the permit back over to the original one that they had issued.

ANDERSON Did you ask OCI what is a mother-in-law house?

WILLIAMS I didn't ask OCI that question. I have built them before and have attached them to the house. The mother-in-law house is designated for a single-family permit and the depth of this lot is what enabled him to build a building that is this size, and still be in the boundaries of OCI.

DUNLAP Did you say that one of the reasons that the permit went through as a garage permit was because the material was already on the ground at the site? I know you said that you hadn't started construction, but the material was already there?

WILLIAMS No, when we pulled the permit the materials were not already there, but they were on the way when I pulled the permit. His building had been purchased and was being manufactured.

BISHOP In other words, OCI gave you a permit and you had filed the full plan with OCI at the time you got the permit. So they gave you a permit to build something you did not have the proper zoning for?

WILLIAMS Correct.

MILLER I think this is one of those deals where OCI is trying to be helpful, and it is a case where no good deed goes unpunished. That by converting it and saying that it is a garage, then they could have issued the permit for the garage because it wouldn't need a Conditional Use. It is the accessory apartment that triggers the Conditional Use.

BISHOP But the plan shows the apartment.

WILLIAMS Let me say something in defense of Central Inspection. There is one difference between this being used as a garage versus residential. The difference is that in a residential dwelling it requires a continuous footing according to Code. That would be the only difference that we have between this building versus one that we would build for residential use. Because this building can also be built for residential use, but these columns are already in the ground. That is something that we weren't aware of when the permit was pulled, and I think that is the reason why the Inspector came out, and the Conditional Use permit had already been started, that he had questions about. Over in the area that will be used for the mother-in-law house, it does not have a continuous footing on it. Since we have found that out, we have done some research, and we have asked OCI in order for this to pass because this structure is about 70% built already, in order for this to get finished, for us to be able to go in and put in the continuous footing that they require. That is the only difference between the two.

ANDREWS Some of the details left out of the staff report are what I want to talk about with you today. The building is a single story building. The reason we need the CU is that my mother is having trouble getting up and down the stairs. She is living in our house now. This would make it easier for her, and this is something we wanted to give her, some privacy. I would like continue my hobby in the garage; I am an artist. We have tried to blend with the neighborhood when we picked this color. We are willing to change the look to blend in better with the neighborhood, as we stated last night at the DAB meeting. We enjoy the neighborhood, and we don't want to be a problem here.

MCKAY You are showing pavement to the side of the house, then hard surface in front of the building. What is going to be in between the two hard surfaces?

ANDREWS Until we could afford it, we were going to use a dry asphalt, held in place with railroad ties.

KURT SCHROEDER, OCI What happened here is that we had a permit for a garage, and that is all we have. That is a different type of construction for a dwelling than for a storage garage. There is always the possibility that he could get an engineered design to fix anything, as long as it will withstand the wind-loads and other loads that are required for residential construction. But by the simple Code book, he would have to have continuous footings. Plus the framing for the residential structure, there will be some issues there too, in terms of bracing on the corner panels, wind-loadings, and things like that. It is a little different for a house as opposed to a garage.

WARREN So he is going to have to comply with some Codes?

SCHROEDER Yes, we think he will have to do some substantial changes on that dwelling portion of this building, unless an engineer could come up with the some fixes, and he could engineer it that way.

BISHOP Mr. Schroeder, Mr. Williams explained that the when he pulled the permit, he was told to go to the zoning and was told to do the Conditional Use application process and that was started. Then he went back to OCI and told them that they started that process, and the garage and material were on the way. There was a permit granted at that time for the garage with the understanding to go ahead and get started. Then the permit would be changed.

SCHROEDER I did talk to the Inspector on the radio before I was called to this meeting. I am not able to answer that question at this time.

JOHNSON Kurt, the loading requirements on this, whether it is a garage or whatever it is, this has got to be an engineered structure that has to meet the wind-load that is required by the City?

SCHROEDER Yes.

JOHNSON You guys have a stamped drawing that it meets those?

SCHROEDER We don't have a stamped drawing at this time. We don't require that (stamped drawings) for one and two family construction. Usually what most people do, they go by the minimum requirements of the International Residential Code. But this can't meet those.

GAROFALO I am at a loss. If the changes that are required for residential, if that was done, then this structure would be approved by OCI?

SCHROEDER From a construction standpoint, but it still has to meet zoning. I haven't seen the building and if they can meet the minimum Code or have an engineered design so that it will meet the dwelling code requirement, we would accept that and inspect for compliance with that.

MCKAY Give us some kind of idea, I know it doesn't have continuous footing and wind bracing on the corners, it doesn't look like that would be difficult to do in either case. Why have an engineer to engineer something if you came in and put the continuous footing and the wind bracing on the corners himself.

SCHROEDER He can do that. If he can go back and retrofit this thing to meet the minimum Code standards of the IRC, certainly we would accept that. The option is if he doesn't want to do that, then he would have to design around that to make it meet standards.

WARREN We are getting hung up on the size of the building, the style of the building, and Code requirements. We should not be getting into that. It is already there. This application is can I use it now for an accessory use? I see no reason, if the building can stand it. I see no reason to deny. Obviously he is going to have to meet Code standards and that is not our problem.

MILLER If you follow that logic, it tells everyone to go build whatever you want to build and do it without approval, because when we come here, then we are going to approve it because you already have it done. There are specified standards for accessory apartments, and he does not comply with that.

ANDERSON The inspector should have caught this already before we got this far.

WARREN What I think you are objecting to Dale, is the size of it, the tin, the style. That is going to be there whether we approve this application or not.

MILLER I understand that. However, I am concerned about the issue that, if it is there, somehow we are obligated to approve it because it is already there. But the definition for accessory structure means, "A use or structure that is subordinate to and serves a principal use or structure; is subordinate in purpose to the principal use or structure served; contributes to the comfort, convenience or necessity or occupants of the principal use or structure served; and is located on the same zoning lot as the principal use."

I would agree you have the latitude to define "subordinate to" however you want to. I am concerned that if we go with the rationale that it is here, and we need to go ahead and approve it, that bothers me. But, if it is because you think it fits in with the neighborhood, and that the Use is appropriate.

COULTER Anyone to speak in favor or opposed to this Item?

JOHNSON I would like to have Mr. Williams come back. Are there engineering drawings on this?

WILLIAMS I have stamped plans from engineering and I have the original permit.

JOHNSON You may have what you need if you have a set of stamped drawings. The footing, the bracing, if he has a set of drawings stamped by a Kansas Engineer, would OCI inspector approve that?

SCHROEDER We want the minimum standards.

MARNELL If this building was just completed as a garage and this application came in to convert the north end to an apartment, what would you have done then?

GOLTRY It would have been the same recommendation.

MARNELL This is the cart before the horse.

GOLTRY We are bound to go by the Unified Zoning Code and the Comprehensive Plan when we bring the recommendation to you. That is the role of staff. Should you determine you want to do differently, you can do so. We have recommended three or four conditions that you might include.

BISHOP If it is used as a residence as they plan, and his mother doesn't use it, would it be able to be rented?

GOLTRY Yes. It cannot be sold as a two-family structure though.

MOTION: To approve, understanding that the accessory apartment meets the City standards or Engineering standards and some additional treatment done to the apartment of brick wainscot or lap siding to that portion of it that is used as the accessory apartment so that it does tie into the neighborhood that the applicant has agreed to do. I will make as part of the motion that it will be for immediate family use only and the conditions on pages 4 and 5 of the staff report.

JOHNSON moved, **GAROFALO** seconded the motion, and it carried (11-0).

MCKAY On your motion, are you going to let the mother-in-law or only family live here and then rent to whomever they want?

JOHNSON If it is built this way I am not just saying it will be a mother-in-law house.

WARREN I would support a motion that would include that provision that this would be for immediate family member only.

BISHOP Let me ask if that has been included as part of the motion?

JOHNSON Yes, I will make that as part of the motion that it will be for immediate family only.

BISHOP I believe I could support the motion with that added in there. We are beginning to see a lot of these built as a garage, and I think we should address this.

DUNLAP I wouldn't want to live next to it, and I think OCI and the Planning Department need to get together before they give a mother-in-law permit and then a garage permit later.

KNABEL Are the conditions on pages 4 and 5 to be included from the staff report?

JOHNSON Yes, I agree with these.

GAROFALO Yes, that is fine.

BISHOP The motion does include the condition that the applicant will make it look more like the neighborhood?

MARNELL You made that on the apartment portion of the building?

JOHNSON Yes.

MOTION CARRIES: (11-0).

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6. **Case No.: CON2003-05** – H.I. White Corporation, c/o Howard I. White, Jr. (owner/lessor); Roozail Haidari, and Erkan Kececi (lessee); Sandy Roberts (agent) request a Conditional Use for vehicle and equipment sales, outdoor, on property zoned "LC" Limited Commercial on property described as;

The South 100 feet of Lot 1 and vacated alley on the West except the south 100 feet of the East 20 feet thereof and except the East 11 feet of the North 69 feet thereof, Block G and the South 100 feet of the West 9 feet of the East 20 feet of Lot 1, Block G, Maplewood Addition to Wichita, Sedgwick County, Kansas. Generally located North of Pawnee and west of Hillside.

BACKGROUND: The applicant is requesting a Conditional Use to allow outdoor vehicle and equipment sales on a 0.29-acre platted tract located north of Pawnee and west of Hillside. The subject property is zoned "LC" Limited Commercial and is developed with a commercial building and a paved parking area. Outdoor vehicle and equipment sales may be permitted with a Conditional Use in the "LC" Limited Commercial zoning district.

The character of the neighborhood is that of local serving commercial uses clustered near the intersection of Pawnee and Hillside. The zoning of the properties to the south, east, and west is "LC" Limited Commercial. A convenience store is located to the east. Other nearby commercial uses consist of a restaurant, retail shops, a pet shop, and automotive repair. Beyond the commercial uses clustered at the intersection, the area is developed with single-family housing although the zoning includes "B" Multi-family, "MF-29" Multi-family, and "TF-3" Two-family as well as "SF-5" Single-family.

The applicant submitted the attached site plan showing the proposed use of the southern 100 feet of the property as a vehicle sales lot. The site plan limits the vehicle sales lot to the southern 100 feet of the property. The northern 69 feet would remain as undeveloped open space. The site plan shows a 1,300 square foot sales office and approximately 9,000 square feet of vehicle display and storage area. The site plan shows five employee/customer parking spaces, which meets the Unified Zoning Code parking requirement. A landscaped street yard is provided along Pawnee and the western property line. A six-foot high screening fence is shown on the northern edge of the Conditional Use. The site plan does not designate new trees along this fence for a landscape buffer, but relies on the existing trees in the open space to the north. The site plan does not specifically identify the location and height of lights, the location and method of screening of the trash receptacle, or proposed signage. The site plan shows a shared drive opening with the convenience store to the east and a drive on the west end of the site.

CASE HISTORY: The subject property includes the southern 100 feet of Lot 1 and a strip of Lot 2, Block G, Maplewood Addition, recorded June 28, 1951, together with the vacated alley to the west.

ADJACENT ZONING AND LAND USE:

NORTH:	"TF-3"; "B"	Single-family residential
SOUTH:	"LC"	Retail, automotive repair, restaurant
EAST:	"LC"	Convenience store, pawn shop
WEST:	"LC"; "MF-29"	Single-family residential

PUBLIC SERVICES: This subject property has access to Pawnee, a four-lane arterial street with current traffic volumes of approximately 23,300 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on Pawnee will remain essentially the same. This segment of Pawnee is shown as a five-lane arterial on the 2030 Transportation Plan and is scheduled on the Wichita Capital Improvements Program to be widened to a five-lane arterial street in 2008. The proposed development would generate less than 100 trips in the peak hour; therefore, the City's Access Management Policy indicates that the applicant does not need to prepare a traffic impact analysis. Municipal water and sewer services are currently provided to the subject property.

CONFORMANCE TO PLANS/POLICIES: The Commercial Locational Guidelines recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. The subject property does not meet the Commercial Locational Guidelines. Vehicle sales is not an established use in the area. An application for a "GC" General Commercial zoning for vehicle sales was rejected on the northeast corner of Hillside and Pawnee (ZON2001-00003 denied by Wichita City Council on July 10, 2001). The Wichita Residential Area Enhancement Strategy of the Comprehensive Plan identifies the subject property as being located within a Revitalization Area. The Comprehensive Plan indicates that Revitalization Areas are experiencing decline and need stabilization to increase the neighborhood's attractiveness for private investment in residential properties. Intensifying commercial uses in the area, as proposed by the applicant, is contrary to the neighborhood revitalization strategies in the Comprehensive Plan.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be DENIED.

The staff's recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the neighborhood is that of a local serving commercial cluster with low-density residential uses located behind the commercial businesses. Most of the property at the intersection of Pawnee and Hillside is zoned "LC" Limited Commercial. A variety of residential zoning exists in the vicinity ("SF-5", "TF-3", "MF-29", and "B") but most of the residential area is occupied with single-family development. Also, the adjoining property to the west is zoned "LC" but developed with single-family residences. Vehicle sales is not an established use in the area, and vehicle sales uses most

commonly locate in areas where commercial properties are more regional serving. The proposed vehicle sales lot is not consistent with the zoning, uses, or character of the area.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The property is suitable for the commercial uses to which it has been restricted. Vehicle sales may be permitted in the "LC" district if the property is located along Kellogg, in the CBD fringe, or in a area where vehicle sales is an established use; however, the subject property does not meet these criteria and should remain zoned for local serving commercial businesses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Vehicle sales represents an intensification of the commercial uses in the area. Allowing one commercial use to intensify in an area typically leads to nearby properties also requesting approval for more intense commercial uses. Over time, the intensification of commercial uses in a local serving commercial area tends to have detrimental impacts on surrounding residential uses since the nearby businesses no longer serve primarily neighborhood residents. Commercial intensification leads to an increase in commercial traffic from outside the neighborhood, a decrease in neighborhood identity, and a general decline in the desirability of the nearby residential neighborhood.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Commercial Locational Guidelines recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. The subject property does not meet the Commercial Locational Guidelines because the subject property is not along Kellogg, near the central business district, or is an established use in the area. A recent (2001) case requesting an intensification of zoning ("GC") to allow a vehicle sales lot was denied by the Wichita City Council. The Wichita Residential Area Enhancement Strategy of the Comprehensive Plan identifies the subject property as being located within a Revitalization Area. The Comprehensive Plan indicates that Revitalization Areas are experiencing decline and need stabilization to increase the neighborhood's attractiveness for private investment in residential properties. Intensifying commercial uses in the area, as proposed by the applicant, is contrary to the neighborhood revitalization strategies in the Comprehensive Plan.

If after closing the public hearing the MAPC finds the request appropriate, the MAPC motion to approve will need to include findings of fact regarding the Unified Zone Code Review Criteria that support approval and planning staff recommends that approval be subject to the following conditions:

1. All requirements of Section III.D.6.x. of the Unified Zoning Code shall be met.
2. The applicant shall dedicate by separate instrument a 10-foot contingent sidewalk and utility easement along Pawnee and an agreement to allow cross-lot access for the property to the west within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. Parking spaces for employees and customers shall be marked and designated for employees and customers and shall not be used for display of vehicles for sale, unless the vehicle is driven by an employee. The vehicle sales lot shall not be used in conjunction with any use not directly related to such a business unless sufficient parking spaces for such a business are provided per a site plan approved by the Planning Director.
4. The applicant shall submit a landscape plan for approval by the Planning Director that meets all landscaped street yard and landscape buffer requirements of the Landscape Ordinance.
5. 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 before the vehicle sales lot becomes operational.
6. The applicant shall obtain all permits necessary to make the required site and landscaping improvements, and all improvements shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
7. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
8. 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.

DONNA GOLTRY, Planning Staff presented staff report.

MCKAY Donna, go back to the aerial. You made a comment about the city turning down an application. Where was that at?

GOLTRY Shows on slides. (Northeast corner of the intersection)

JOHNSON That was a pawn shop and then they ended up screening the area or something?

GOLTRY They did that anyway.

JOHNSON On the southeast corner of the intersection there, isn't that a repair shop or transmission shop?

GOLTRY Yes. Regarding the pawn shop case, they asked for GC zoning, rather than LC with a Conditional Use, on the pawn shop case.

JOHNSON Isn't there a transmission shop on the southeast corner there?

GOLTRY Yes.

WARREN On the southeast corner, there wasn't an equipment sales? I thought it was storage for that pawn shop?

GOLTRY He wanted to sell cars also. That is why he requested the "GC".

WARREN He said he wasn't going sell, he was going to store them.

MICHAELIS His application was to sell.

WARREN I was opposed to the application because it was dead storage. That is when cars get ugly, when they sit there for months and months.

MICHAELIS If I remember right, what he wanted to do was because, if a car was held in pawn for a certain time, to avoid that, he wanted to be able to sell them and get rid of them.

WARREN He told us he had to hold them a certain number of months to comply with statutory law. We could see old dusty cars out there that didn't move for months at a time, and I don't think it passed this Board.

BISHOP Donna, would you go back to the photo of the lot. Do you know if those cars are for sale?

GOLTRY That's what I was told last night.

BISHOP It is already being used as a car lot?

GAROFALO In the DAB minutes, it says there is a question about a fire station?

GOLTRY Someone brought up that they thought there was going to be a fire station constructed on the southeast corner.

SANDY ROBERTS AGENT FOR APPLICANT, 667 Oakforest Lane, Derby, KS 67037 They have a repair service in the old Texeco station there. As you can see, they don't put numbers on them, but they have been parking cars there with the obvious purpose of selling them. All I can say is that if this use is approved, this property will be improved. There will be landscaping added. Screening will be added around the building and in general the property will be improved if this use is approved.

COULTER Questions of the applicant. Anyone in the audience wanting to speak for or against this?

MARNELL I'd like to vote in favor of this depending on the motion. I was in favor of the applicant that had the pawn shop arrangement. Based on looking at the area, and that anyone who goes to the area and looks at that transmission shop, it is a real eyesore. I would like staff to look at the Comprehensive Plan language on the transportation section of it. That we look at the language for car lots somehow not as neighborhood serving, which puts them off in this odd category.

MILLER That is on our list to take a look at in the Comprehensive Plan.

MICHAELIS I would like to second the motion.

MOTION: To approve the application and I would like to put in there something about what the applicant said that they will do screening requirements, a site plan approved by the Planning Director, etc.

MICHAELIS moved, **WARREN** seconded the motion.

MILLER If he has residential zoning adjacent to him, then he would have to screen from that. He will have to do the landscaping.

GOLTRY They have proposed screening. They didn't have specific trees in the buffer area and some other things listed on page 2 of the staff report shown on the site plan. These are relatively minor things missing from the site plan, the location of light fixtures, screening of trash receptacles, or proposed signage.

SUBSTITUTE MOTION: To DENY the application based on the findings listed by staff.

BISHOP moved, **MCGINTY** seconded the motion.

SUBSTITUTE MOTION: Fails vote 3-8. (**BISHOP, MCGINTY, GAROFALO** in favor to DENY).

FIRST MOTION: carries vote 8-3. (**BISHOP, MCGINTY, GAROFALO** opposed).

7. **Case No.: ZON2003-07** – Xin Bao Liu (owners) request a Zone change from “NO” Neighborhood Office to “SF-5” Single-family Residential on property described as;

Lot 16, Block C Westview Addition Sedgwick County, Kansas. Generally located South of Douglas on the west side of Ridge Road.

BACKGROUND: The applicant is requesting “SF-5” Single Family Residential zoning on Lot 16, Block C, Westview Addition, 109 South Ridge. The site is located on the west side of Ridge Road, one lot south of Douglas Avenue. The property is currently zoned “NO” Neighborhood Office with P-O Protective Overlay #101; ZON2001-41. ZON2001-41, was approved by the MAPC at their 07-19-2001 meeting and then approved by the WCC at their 08-14-2001 meeting. The owners of the site at that time intended to redevelop the property as an office, and move to a different home. Ownership of the site has changed and the current owners request the “SF-5” zoning to obtain conventional mortgage financing. The current owners intend to use the site/structure as single-family residential.

The site is located in an area of single-family residential, 4-plexes and apartments. The exceptions are two lots (these two lots are part of eight lots in the block, on the west side of Ridge Road, all the same size; 0.44 acres) in the same block of the site. The lot abutting the north side of the site is zoned “GO” General Office and is an insurance office. This lot was zoned “BB” office in 1983. Three lots south of the site is a lot zoned “NO”, which is being used as an office. This lot’s zoning was changed from “SF-5” to “NO” in 2000.

There have been no changes to the single-family structure as a result of ZON2001-41. There have been no improvements made on the site as a result of ZON2001-41. There is no record of dedication of an additional 2feet to the utility easement, which was a condition of ZON2001-41.

CASE HISTORY: The Westview Addition was recorded with the Register of Deeds on May 16, 1952. The site’s zoning was changed from “SF-5” to “NO” with a protective overlay in 08-14-2001; ZON2001-41 with P-O#101.

ADJACENT ZONING AND LAND USE:

NORTH: “GO;” “SF-5”, “MF-18”	office, single-family, 4-plexes, apartments
SOUTH: “SF-5;” “NO”, “LC”	single-family, office, retail
EAST: “SF-5”	single-family, apartments
WEST: “SF-5”	single-family

PUBLIC SERVICES: The property is located along Ridge Road, a four-lane arterial. Douglas Avenue at this location is a residential street, which does not go past Ridge to the east and extends for a block to the west. There are no traffic counts at this intersection. There are traffic counts (ADTs) for the Maple Street and Ridge Road intersection, which is approximately 1,000-feet south of the site. ADT’s on the north side of the intersection are 26,080, 22,478 on the south side, 21,286 on the east side and 20,330 on the west side of the intersection. No street projects are included in the C.I.P. The property has one drive entrance onto Ridge Road. The existing half-width right-of-way for Ridge is 50 feet. Water and sewer are on site.

CONFORMANCE TO PLANS/POLICIES: The “Wichita Land Use Guide” of the *2001 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this property as “high density residential.” The proposed zoning to “SF-5” would match the single-family residence on the site. The locational guidelines for low density residential include separation from adverse surrounding land uses, such as major industrial and commercial areas and not being located directly onto arterial streets. The site is surrounded by low density, moderate density and high density residential, with the exception of the northern abutting “GO” zoning on a residential sized lot; the site is not located by adverse land uses. It is located directly onto an arterial street, as are the other low density/single-family residences on this side of Ridge Road. Single-Family residential development is permitted by right in all residential districts in the City of Wichita and Sedgwick County.

RECOMMENDATION: The former owner requested and received “NO” zoning on this site less than 2-years ago, basing his request on two existing “GO” & “NO” zoned lots in the block and the site abutting an arterial. The “NO” zoning had a P-

O attached to it, which recognized the mixed residential character of the neighborhood. The site has not been able to develop as non-residential and the current request recognizes the mixed residential character of the neighborhood. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the dedication of an additional two-feet to the platted utility easement.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The neighborhood is a mix of single-family residential, 4-plexes and apartments. The exceptions are the lot abutting the site's north side, zoned "GO" and a site 3 lots south, zoned "NO". Both of these lots are developed as offices. The nearest commercial/non-residential cluster of development is at the Maple - Ridge Road intersection, at the other, south, end of this block.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be used for a neighborhood office, similar to the two lots in the block zoned "GO" and "NO". However, the site has failed to develop for "NO" uses and the single-family structure has remained unchanged. Conversion back to "SF-5" zoning is within the character of the neighborhood and the single-family structure is ready for that use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The property is vacant and the use of the single-family structure for single-family residential will have no detrimental effect on the neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. However single-family residential development is permitted by right within all residential zoning districts in the City of Wichita and Sedgwick County.
5. Impact of the proposed development on community facilities: Impact will be minimal.

BILL LONGNECKER, Planning Staff; The MAPC had approved the NO zoning with a PO on this property less than two years ago. Because of this, I am not going to go into a great amount of detail in this presentation. The previous case changed the SF-5 zoning to NO with a PO. The new owners of the property want to down zone it back to SF-5 zoning in order to obtain a conventional mortgage on the property. No significant changes have occurred in the neighborhood or to the house on the site since you first considered and recommended the change in zoning almost two years ago. Going through the slides, you can see the neighborhood is a mix of apartments, a few neighborhood offices that look like residences except for the signs and mostly single-family residences. Staff recommends the zoning change request. Are there any questions for Staff?

COULTER No questions for Staff? Is the applicant or his agent here?

RANDALL MADDEN, agent; The applicants have come to me to obtain conventional financing, which they have to have for refinancing of the house.

ELTON LOWRY, 127 S. Ridge, Wichita, KS 67209; My friend, this lady, and I are against this request. I live next door. There are two to three families living there now. Also, I have reason to believe they are using this house maybe to transport people into Wichita. The people living there, I can't communicate with them, and they take very little care of the house. One night, they came over and cut tree limbs off of our tree. They mow late at night when they can't see and they leave wedges of un-mowed grass in their yard. They have no trash dumpster. They want this zone change so more people can live there. I am opposed to this zone change.

MADDEN; As a residential mortgage lender, we can't lend to a property like this single-family property unless it is zoned for a single-family residence. The zoning has to match the use. The family living there now is large and includes the mother-in-law. To make sure that these people qualify, we have verified that all the people on this site are a family.

JOHNSON How long have they been here?

MADDEN They have been there one year.

ANDERSON Sounds like you have a code enforcement and law enforcement problem. What kind of result did you get?

LOWRY When they cut the limbs down and the law came out, the law couldn't understand them either. Because we didn't see them do it, the law said they couldn't do anything about it. I think there is a mother-in-law living there and other people who aren't family. There are loads of cars leaving there on Monday mornings. I have tried calling Code Enforcement, but without any results in regards to what I believe is illegal activity on the site. I believe there are two families there now.

MOTION: To approve subject to staff comments and conditions.

MARNELL moved, **MCKAY** seconded the motion, and it carried (11-0).

8. Request for MAPC approval to re-file within six-months instead of one year for a Wireless Communication Facility on Lot 1, Block A, Gump Addition, generally located south of Kellogg and east of Woodlawn, request from Ferris Consulting, c/o Greg Ferris.

SCOTT KNEBEL, Planning staff. There is no staff presentation; this is a request from the applicant.

BISHOP I have been contacted on this case, and I discussed it briefly, and the only part that was discussed was the application process.

FERRIS CONSULTING, Greg Ferris, agent for Cricket Communication and Nordyke Ventures. Some of you will remember this application. We made some changes here at the Planning Commission, and it went to the D.A.B. We withdrew the application before it went to the City Council. There was confusion that we would be able to re-file immediately, but we cannot. I will take full responsibility for that because I should have checked the Code myself. However, the Code is clear that you have discretion to allow us to apply for this case 6 months after it has been here if physical, economical, or land use change has taken place within the immediate vicinity, a significant zoning regulation text has been adopted, or when the application is for a different use than the original request. As I state in my letter:

1. There have been significant physical, economic, and land use changes in the immediate vicinity. The Kellogg construction has begun immediately adjacent to this property. Land that was single family is now part of a massive freeway. The formerly four-lane roadway is being constructed to a six-lane freeway with two lane access roads on each side.
2. The application is significantly different than the original request. The original request was for a monopole. The new request will be for a stealth flagpole. The Wireless Plan treats these two as different uses. The stealth flagpole is considered more restrictive than a monopole.

WARREN You say this did not go to City Council?

FERRIS No it was withdrawn. I talked to Scott, and we withdrew because we thought there was too much confusion on the application. We thought a new application that met all the issues that staff had raised was the best way to go.

WARREN We did consider this as a flagpole.

FERRIS You considered it as a monopole. During the hearing we discussed that, and made some changes to that. So you are correct the application was for an monopole, but what you approved was a flagpole.

WARREN Do you know what vote was here to approve?

FERRIS I believe that it was 11-2 in favor.

MARNELL Instead of withdrawing, could they have just deferred the City Council action?

MILLER If they had pulled the case prior to coming to Planning Commission then the time period would be different, but since it was heard by Planning Commission and a recommendation was made and it was pulled after that; that is what triggers this successive application clause.

MARNELL We defer things all the time. Does that not happen once they leave here?

KNEBEL They could have requested a deferral of the process and gone through the correction and provided additional information to the City Council, as opposed to withdrawing the application. That would have been an option.

MARNELL It seems like something we passed before, and that somehow withdrawing the application was similar to deferring.

KNEBEL They could have gone to the City Council and asked to come back to DAB and MAPC.

MICHAELIS If we did approve this, why do we need to approve this again? Is the applicant's explanation for why they don't feel like the one year should apply justifiable?

MILLER The reason that you need to consider the application is that they withdrew it. They terminated the application before City Council, so their the case was done. The rationale of the changes is really up to the MAPC whether things have changed enough is up to you to decide.

MICHAELIS What does staff feel?

MILLER There are a couple of things to look at. There is a land use change out there. We did hear the flagpole case. It went through here, and it was approved here; that is what you acted on. There have been several homes removed from the area.

MOTION: To Deny the request due to neighborhood opposition, the e-mails that we have here, and the fact that the time frame is not what it should be.

MICHAELIS moved, **BISHOP** seconded the motion.

JOHNSON Is anyone else to here speak?

WARREN The rationale behind the denial is neighborhood objection?

MICHAELIS No, to me it is an arbitrary thing of policy and procedure.

DUNLAP I don't see the difference. If we don't approve it now, we will hear it in 6 months. He will be back here anyway.

MCKAY Greg, why did you not go forward with this?

FERRIS I take full responsibility because I asked Scott, if we withdrew this if we could re-file it with the information that staff needed. I thought it became a cleaner case to withdraw and then re-file. We thought we wanted to clean things up. Then a couple of weeks later Scott said no you can't do it now; you have to wait a year.

WARREN If this was approved, when would you be able to bring this back to us?

FERRIS Within 30 days. It will be the same process. People who have opposition will be here.

BISHOP My question is about the process. If we agreed to your request, when would it go to the DAB? When does it go to MAPC?

FERRIS We filed the new case already, and if we don't get this approved, the case will be pulled.

BISHOP I have a couple of questions. If this Board approved your request, when would it go before the District Advisory Board? Which D.A.B. will hear this?

FERRIS I don't know what those hearing dates will be, but if this is not approved today, we will not pay the fee on the case I filed already and it will be moot.

SUBSTITUTE MOTION: To waive the yearly requirement because we are talking about a short period of time, and I know I remember this case because there was a lot of neighborhood opposition. When it was finally presented to us, I think some of the major opposition changed and was more supportive of this. I am surprised it didn't go to City Council, but since it didn't, I think a little bit different than if it would have gone to City Council and they denied it. Then I would say to wait a year. After listening to Dale, I can't see where it will set a precedent or anything like that if we change this particular one, and there was communication between the applicant and staff and there was some misunderstanding.

JOHNSON moved, **ANDERSON** seconded the motion, and it carried (8-3) **BISHOP, MICHAELIS, MCGINTY** opposed. Passage of substitute motion makes original motion moot.

BISHOP I am going to make my District Advisory Board speech I have to make almost every month now. I have two concerns about the application process and about this case. The MAPC will hear this in April, the District Advisory Board will hear it in May. I feel both District II and District III District Advisory Board boards should review this prior to coming to us because it falls so close to the line. We are beginning to hear these cases before District Advisory Board does.

FERRIS I agree it makes my life easier if we go to the District Advisory Board first because a lot of time we can work out some of those issues before it comes to MAPC.

MICHAELIS I understand what you are saying, Elizabeth. We can't penalize the applicant because the D.A.B.s don't want to meet more than once a month.

ANDERSON I have a question relative to the D.A.B. It seems to me that if it was a requirement that the D.A.B. make a judgment on all these cases prior to the time when this Board hears them, then that should be specific in that ordinance that establishes that Board. As long as that is not required by the City Council, it is good information to have, but it is not required by the Board.

MILLER What we will do on this case, we will advise the Council person for this district of the action of the Commission and if they want to call some special meeting they can do that. We will also send a notice to the District next door so they can be advised and come to the same District Advisory Board meeting. If they decide to have one early, we will take care of it that way.

MCKAY I think the D.A.B. is exactly what it is. It is not the D.A.B. of the Planning Commission. It is the D.A.B to the City Council people. They chair it. They control it, and if they don't like it, they can make a presentation to the City Council. The way the City Council works, if one of the City Council members of a certain District doesn't want it to go forward or wants it deferred, they normally go along with it. We give our time voluntarily twice a month and some of us four times a month, and for us to sit here and make a decision because the D.A.B. didn't like it, or didn't want to meet or whatever, has no bearing as far as I am concerned. That is a District Advisory Board to the City Council, and if they don't like the way it is being done then they need to make the change.

The Metropolitan Area Planning Department informally adjourned at 3:33 p.m.

State of Kansas)
Sedgwick County) ss

I, Dale Miller, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2003.

Dale Miller, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)