

**EXCERPT MINUTES OF THE APRIL 2, 2015 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION HEARING**

**Case No.: CON2015-00011** – Joshua Price requests a County Conditional Use to permit an accessory apartment on RR Rural Residential zoned property on property described as:

Beginning 629.45 feet South of the Northwest corner of the Northwest Quarter; thence Northeasterly 1956.01 feet; thence Southeasterly 50 feet; thence South 365.46 feet; thence West 1941.42 feet; thence North 96.8 feet to beginning except the West 50 feet for road Section 11, Township 28 South, Range 4 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas

**BACKGROUND:** The applicant requests a Conditional Use for an “accessory apartment” on unplatted property zoned Rural Residential (RR). The site is located on the northeast corner of South 343<sup>rd</sup> Street and West 32<sup>nd</sup> Street South (3300 South 343<sup>rd</sup> Street West). The property is currently developed with a single-family residence, a number of accessory buildings and a variety of animal enclosures located on 11.55 acres. The applicant proposes to convert an existing structure, shown on the eastern side of the applicant’s site plan that is attached to a structure identified as the “garden store kitchen” into an accessory apartment. Access to the site is via South 343<sup>rd</sup> Street West, which is unpaved. Based upon the submitted site plan, the site’s existing driveway has been or can be extended to provide vehicular access to the proposed apartment. The principal structure located on the site appears to be a single-wide manufactured home with cream or beige colored vinyl or metal siding. The exterior of the proposed accessory apartment is unpainted galvanized metal or aluminum. The site utilizes on-site sanitary sewer and water well. The application area has an existing hedgerow located on a small portion of the southern property line abutting West 32<sup>nd</sup> Street South, which is also unpaved.

The applicant’s site plan is not drawn to scale and does not provide any dimension control relative to the proposed accessory apartment’s specific location. A comparison of a 2011 aerial (the latest to which staff has access) indicates the structure proposed to house the accessory apartment was built after 2011.

All properties abutting or adjoining the application area are zoned RR. The property located immediately north of the site contains railroad tracks. North of the railroad tracks is a 16-acre pasture. North of the pasture is a single-family residence. Property (7.3 acres) located to the east is developed with a site-built single-family residence. Property (multiple lots containing between eight and 9.9-acres) located to the south of the site, across West 32<sup>nd</sup> Street South, are developed with a mix of manufactured and site-built single-family residences. Some of the homes located south of the site front to the east onto South 339<sup>th</sup> Street West while some front west onto South 343<sup>rd</sup> Street West. Land (7.4 acres) located west of the site, across South 343<sup>rd</sup> Street West, is developed with a manufactured home.

The Wichita-Sedgwick County Unified Zoning Code (“UZC”) defines an “accessory apartment” (Article II, Section II-B.1.b) as a dwelling unit that may be wholly within, or may be detached from a principal single-family dwelling unit. Accessory apartments are also subject to supplementary use regulation Article III, Section III-D.6.a (1) a maximum of one accessory

apartment may be allowed on the same lot as a single-family dwelling unit that may be within the main building, within an accessory building or constructed as an accessory apartment; (2) the appearance of an accessory apartment shall be compatible with the main dwelling unit and with the character of the neighborhood; (3) the accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling unit, and the ownership shall not be divided or sold as a condominium and (4) the water and sewer service provided to the accessory apartment shall not be provided as separate service from the main dwelling. Electric, gas, telephone and cable television utility service may be provided as separate utility services.

With respect to the applicant's current proposal, the existing structure is not in compliance with Supplementary Use Regulations Article III, Section III-D.6.a(2) and (4). Section III-D.6.a(2) requires the appearance of the accessory apartment to be compatible with the main dwelling unit and with the character of the neighborhood. As noted above, the exterior of the proposed accessory structure is unfinished metal or aluminum while the exterior of the principal structure is cream or beige vinyl. Staff has been advised that because the proposed accessory apartment is attached to the "garden store kitchen" in which food is proposed to be prepared, including the processing of chicken, the "garden store kitchen" and the accessory apartment will need to be connected to a separate on-site sanitary sewer system. Article V, Section V-D.6 allows modifications to the Supplementary Use Regulation requirements by the governing body. Waivers for these two requirements will be needed.

The RR zoning district property development standards call for a minimum rear setback of 25 feet for principal structures; however, accessory structure rear building setback (Sec. III-D.7.e(1)) shall be at least ten feet from the centerline of any platted or dedicated alley, and if no alley exists, then five feet from the rear lot line. Accessory structures may not utilize more than one-half of any required rear yard, and shall not exceed 60 percent of the allowable height limit for the zoning district unless the accessory structure conforms to principal structure setback requirements. The RR district has a 20-foot interior side yard setback requirement; accessory structures may be located within three feet of a side lot line if located on the rear half of the property. The front yard setback is 30 feet. The UZC parking standards require one off-street parking space per single-family residence and one per accessory apartment. The fire department requires a 20-foot wide rock or paved driveway; however, there is not requirement that the parking space be next to the apartment or that there be a driveway to the proposed apartment.

**CASE HISTORY:** The RR zoning was applied in 1985 when the county adopted county wide zoning.

**ADJACENT ZONING AND LAND USE:**

North: RR; railroad track, farmland and single-family residence  
South: RR; site-built and manufactured homes on large lots  
East: RR; site-built single-family residence on a large lot  
West: RR; a manufactured home on a large lot

**PUBLIC SERVICES:** The site utilizes on-site water and sanitary sewer services. South 343<sup>rd</sup> Street West is unpaved and has approximately 98 feet of right-of-way. West 32<sup>nd</sup> Street South is unpaved and has approximately 70 feet of right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts this site as a rural area. Rural areas are land located outside of urban growth areas and permits uses that are no more offensive than those agricultural uses commonly found in Sedgwick County.

**RECOMMENDATION:** The surrounding area is overwhelmingly rural with large tracts of farmland/farmsteads or large-lot single-family residences. The application area has 11.5 acres which is more than enough room to accommodate the accessory apartment and the existing principal structure. Based on information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use permits one single-family accessory apartment on the site. The site shall be developed and maintained in general conformance with the approved site plan and in conformance with all applicable regulations, including but not limited to: local zoning, including Article III, Section III-D.6.a(1) and (3); building, fire and utility regulations or codes. Article III, Section III-D.6.a(2) and (4) are waived.
2. The applicant shall submit a revised site plan that includes dimension control and abutting roadways. The applicant shall also submit a photograph or elevation drawing of the approved accessory apartment. The appearance of the accessory apartment shall be maintained in substantial compliance with that approved by the planning commission or governing body. Modifications to the accessory apartment may be made with the concurrence of the Zoning Administrator provided the improvements are consistent with the spirit and intent of the accessory apartment regulations.
3. 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.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All properties abutting or adjoining the application area are zoned RR. The property located immediately north of the site contains railroad tracks. North of the railroad tracks is a 16-acre pasture. North of the pasture is a single-family residence. Property (7.3 acres) located to the east is developed with a site-built single-family residence. Property (multiple lots containing between eight and 9.9-acres) located to the south of the site, across West 32<sup>nd</sup> Street South, are developed with a mix of manufactured and site-built single-family residences. Some of the homes located south of the site front to the east onto South 339<sup>th</sup> Street West while some front west onto South 343<sup>rd</sup> Street West. Land (7.4 acres) located west of the site, across South 343<sup>rd</sup> Street West, is developed with a manufactured home.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned RR that primarily permits large-lot single-family residences and agriculture. The site could continue to be used as a single-family residential site and have economic value without approval of the application.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval should minimize anticipated impacts.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably represent a hardship upon the property owner with respect to providing additional housing on the property.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as a rural area. Rural areas are land located outside of urban growth areas and permits uses that are no more offensive than those agricultural uses commonly found in Sedgwick County.
6. Impact of the proposed development on community facilities: None identified.

**DALE MILLER**, Planning Staff presented the Staff Report.

**FOSTER** said he can't determine the parking requirement from the site plan. He also asked if rendering chickens on site would require different zoning.

**MILLER** commented that the applicant is required to provide one parking space for the accessory apartment which can be located at the main house or at another location. He said they site has plenty of room to do that. He said he understands that the applicant raises chickens on site and processes and sells them. He said County Code is requiring the applicant to have a separate sewer solution because the accessory apartment is attached to the kitchen. He said the apartment will be connected to a separate system rather than the one that serves the house. He added that the accessory apartment has a metal exterior and Code also requires that the exterior be the same as the principle structure. He said this application will need to go to the County Commission to have those two items waived; namely, the separate sewer solution and having a exterior that is different from the principle structure.

**FOSTER** clarified that the application can proceed as Rural Residential zoning.

**MILLER** replied yes, this is considered an agricultural use.

**LARRY OXINDINE, 3341 SOUTH 339<sup>TH</sup> STREET WEST** said he lives two properties to the south of this location. He said he understood that you had to have a minimum of 4.5 acres for private sewage (lagoon). He said this will be two private lagoons within that same amount of acreage.

**MILLER** said he understands that you need 4.5 acres for a lagoon; however, if you are using a septic system the minimum lot size is based on the length of the lateral field that it takes to serve the facility.

**OXINDINE** said he understands that no permits or inspections have been pulled on this property and all the outbuildings have been built without permits or inspections. He said the Commission is considering allowing several variances on a condition that is only this far along because no permits were pulled properly. He said it is like awarding someone usage without proper process. He referred to the Supplementary Use Regulations for an accessory apartment, which says that permits will not be issued unless the applicant is in compliance with the Regulations. He said this would be a variance against two of the requirements under those Regulations. He asked the Commission to follow the rules and regulations and not allow the variance. He said there have been all kinds of additions built on the property without any permitting and he questions whether any of those structures meet Code. He added that the storm drainage across the property has also been changed; he's sure without permit or design. He concluded by asking that the application be looked at a lot closer. He said a good aerial view of this location would reveal that it is an eyesore. He said the site is a mess with structures and building materials scattered across the property.

**BARNEY E. WALSH, 3342 SOUTH 339<sup>TH</sup> STREET WEST** said he also lives two houses down from this location. He said he would like a definition of "accessory apartment".

**MILLER** said the UZC allows an accessory apartment with the approval of a conditional use on a site that only allows one principle structure. He said with a conditional use permit, an applicant can have an additional structure that is referred to as an "accessory apartment".

**WALSH** said commercial or industrial use of this property is totally inappropriate because it is located in the middle of nowhere. He said he feels this type of use should be located in the town of Cheney itself rather than a residential area. He said when they received the public hearing notice they thought it was for an apartment complex so they had numerous concerns about traffic and other items.

**BERNADETTE WALSH, 3342 SOUTH 339<sup>TH</sup> STREET WEST** commented that the first gentleman who spoke is correct in that the applicant has been building on the property and they have not seen any inspectors or appraisers monitoring construction. She said there are all kinds of animals out there also; it is an eyesore and the lot smells because the applicant is using animal droppings for fertilizer. She said when they received the public hearing notice they thought it was for multi-family housing. She said they are worried about their property values. She said she also believes that the location needs to be looked at. She said this area is mostly scrub land and there are no street lights, sewers, curbs or fire hydrants.

**J. JOHNSON** asked if the Planning Commission had control over any of the issues brought up by the three speakers.

**MILLER** responded that the Planning Department doesn't have any control over items such as building permits and any Code violations, which is governed by MABCD. He clarified that the Code does allow for waiver of the two items covered by the Supplemental Use Regulations. He added that the Cheney Planning Commission recommended approval of the application. He said at that meeting the applicant indicated that this accessory apartment was for his parents to live in.

**TERRY CHARD, 227 MARSHALL** said he and his wife would be moving into the accessory structure as soon as it was ready that his son wanted to take care of them in their old age.

**FOSTER** asked about any non-conforming uses on the site and if staff comments were enough to cover possible future improvements. He also said he felt the site plan should address drainage.

**KELLY DIXON, MABCD STAFF** said he had not reviewed staff comments but added that this is an agricultural use and drainage issues are usually handled through the platting process. He said for a lot this small and for agricultural usage they don't usually look at drainage. He said they would review drainage if this was located in or near the Flood Plain.

**FOSTER** asked what assurances the Planning Commission has that the accessory structure will be built up to Code.

**DIXON** commented that staff has conducted a preliminary inspection and is awaiting the outcome of this hearing. He added that several structures on the site have been permitted and inspected "after the fact."

**RICHARDSON** clarified that the two issues requiring County Commission approval were the sewage and building exterior. He asked staff if the Planning Commission had any say on those issues.

**MILLER** said the Planning Commission can make any recommendation they feel is appropriate.

**MOTION:** To send the application to the County Commission with no recommendation.

**J. JOHNSON** moved, **B. JOHNSON** seconded the motion and later withdrew his second. **DAILEY** seconded the motion.

**ROBERT PARNACOTT, ASSISTANT COUNTY COUNSELOR** said the Unified Zoning Code provides that the Planning Commission will hold a public hearing and approve, approve with modifications or deny applications for conditional uses. He said doing nothing really wasn't a choice and added that no recommendation by the Planning Commission would be treated more or less as a denial and could be appealed to the County Commission. He said the Commission should choose one of the three actions he listed.

**J. JOHNSON** withdrew his motion.

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **WARREN** seconded the motion.

**KLAUSMEYER** said there were two separate issues. One was the conditional use for an accessory apartment and the other sounded like an issue for the health department. He said having been raised on a farm that sold turkeys and having a brother who owns a dairy farm, he knows there are a lot of health inspections. He said he wanted to assure the audience that the Planning Commission was voting on the accessory apartment, not on what has already occurred at the location.

**FOSTER** clarified that the motion and staff comments did not include the requested waivers.

**MILLER** indicated staff recommendation did include the requested waivers on sewage and the building exterior.

The **MOTION** carried (8-1). **FOSTER** – No.