

**STAFF REPORT – ZONING CASE
TOPEKA PLANNING DEPARTMENT**

PLANNING COMMISSION DATE: Monday, August 16, 2021

APPLICATION CASE: Z21/05 by: Fred Reust

REQUESTED ACTION: Zoning change from “O&I-2” Office and Institutional District TO “C-4” Commercial District

APPLICANT / PROPERTY OWNERS: John Kollhoff Kaw Valley Engineering / Fred R. Reust

STAFF: Bryson Risley – Planner

PROPERTY LOCATION / PARCEL ID: 1115 SW Wanamaker Rd / PID:0993204001038010

PARCEL SIZE: 0.51 acres

STAFF RECOMMENDATION: **APPROVAL** of reclassification from “O&I-2” Office and Institutional District TO “C-2” Commercial District.
(Applicant requested “C-4” Commercial District)

RECOMMENDED MOTION: Based on the findings and analysis in the staff report I move to recommend to the Governing Body **APPROVAL** of the request to reclassify the property from “O&I-2” Office and Institutional District TO “C-2” Commercial District.

PHOTOS: Looking NW from Wanamaker at existing structure:



Looking SW towards the property:



Looking NE toward the property :



PROJECT AND SITE INFORMATION

PROPOSED USE / SUMMARY:

Build and operate a restaurant with drive through service.

The use is classified as a “Restaurant, Drive through establishment” in TMC 18.60 and thus requires a minimum of “C-2” zoning. Restaurants are not allowed under the current “O&I-2” Office and Institutional zoning.

DEVELOPMENT / CASE HISTORY:

The site was developed in 1952 and constructed as a single family home. The site was annexed into the City in 1982 and was zoned "A" Single Family Dwelling District until 1985 when it was rezoned for Multiple Family Dwelling District.

Z85/12 – Rezoned from "A" Single Family Dwelling District to "E" Multiple Family Dwelling District in 1985. ("E" zoning converted to "O&I-2" in 1992 with the zoning code update that changed all use classifications See Title 18 prior to 9-23-2014.).

ZONING AND USE OF SURROUNDING PROPERTIES:

North: "C-2" Commercial District / Retail Store (Cox Communications)

South: "C-4" Commercial District use group / Vacant (adjoining parcel), Retail Merchandise, Outdoor Display; Multiple-tenant retail building, including family dining restaurants, home improvement building and supply, and retail sales/services.

West: "R-1" Single Family Dwelling district / Vacant land

East: "C-4" Commercial District use group / credit union (Azura)

DEVELOPMENT STANDARDS AND POLICIES

PURPOSE, USE STANDARDS:

Current "O&I-2" Zoning: This district is established to provide for a limited range of nonresidential and noncommercial uses such as general purpose office, professional, or administrative operations. The district shall not permit those uses and activities pertaining to retail product display, installation, service, repair, or maintenance unless specifically provided for within the chapter. Among others, an objective of this district is to provide for a transitional buffer between the districts of lesser and greater intensity; and to restrict the intensity of use to a low to moderate range and to encourage a compatible design with the adjacent use and development.

Uses Allowed in "O&I-2" Zoning District: Includes but is not limited to animal care and services, type I (medical and grooming care for common household pets); bank/financial institution (not including drive-through operation); funeral home, mortuary; office; and professional office. A range of other uses are permitted by conditional use permit.

Proposed "C-4" Zoning This district is established to provide for commercial uses and activities which are intended to serve as community or regional service areas. Uses and activities permitted are typically characterized by outdoor display, storage and/or sale of merchandise, by repair of motor vehicles, by outdoor commercial amusement and recreational activities, or by activities or operations conducted in buildings and structures not completely enclosed. The extent and range of activities permitted are highly intensive and therefore special attention must be directed toward buffering the negative aspects of these uses upon any residential use.

Uses Allowed in "C-4" District: Includes a very wide range of office and commercial activities, of which many are not allowed in the O&I-2 zoning classification. In comparison with C-2 zoning, auto service station type III (drive train, auto body), outdoor display of retail merchandise, and building construction contractor offices are allowed in C-4 districts but not allowed in C-2 districts.

Standards for Freestanding Signs: The C-4, I-1 and I-2 zoning classifications are the least restrictive of all the zoning classifications regarding the regulation of signs. One free-standing sign as high as 25 feet is allowed, with an increase in size by 40% and up to 30 feet in height for an increased sign setback.

In comparison, the maximum height of freestanding signs in C-2 Commercial districts is 15 feet, with an increase in size by 40% and up to 20 feet in height for increased sign setback.

Drive-through establishments, including restaurants, are allowed in either C-4 or C-2 but must comply with the specific use requirements in 18.225.010. The traffic engineer may require a Traffic Impact Analysis from the developer prior to approving a site plan or building permit.

DIMENSIONAL STANDARDS:

C-4 Zoning:
Front/Rear building setbacks: 25'
Side building setbacks: 10'
The maximum building coverage is 60%
No maximum building size.
Maximum building height: 70'

(C-2 Zoning: The same setbacks apply, but maximum building coverage is 50%.)

OFF-STREET PARKING:

Required off-street parking is determined by land use and not the zoning classification. Per TMC18.240.010 Off-Street Parking Regulations parking is required for "drive-through restaurant establishments" at a rate of 1 stall per 85 sf of (Net Floor Area) or 1/3 the occupant load, whichever is less, with at least 5 stacking spaces at the window. Such stacking spaces shall not be designed to impede pedestrian or vehicular circulation on the site or on any abutting street.

Off-street parking and circulation will be reviewed as part of Site Plan Review and parking and building permit applications.

OTHER DESIGN GUIDELINES AND CONSIDERATIONS:

Development is subject to the Landscape Requirements (TMC 18.235) and Non-residential Building Design Standards (TMC 18.275). Landscape regulations require a residential zone buffer along the west property line as it abuts a residential zoning district and use [TMC 18.235.060(d)].

SIGNAGE:

Signage will be permitted subject to Title 18 Division 2 Sign Code. With some exceptions, signs require a sign permit.

COMPREHENSIVE PLANS:

Land Use and Growth Management Plan 2040 (LUGMP): The property sits within an area identified for *Large Commercial* that has not developed in a “nodal” pattern, as designated by the Future Land Use Map (Map 3).

OTHER FACTORS

SUBDIVISION PLAT:

Lot 4, Vitt Acres

**FLOOD HAZARDS, STREAM
BUFFERS:**

The site includes areas designated “Zone AE Area of High Risk Area” (Floodway and 100 – year flood plain).

UTILITIES:

City water located parallel to the east property line.

City sanitary sewer is located along east side of SW Wanamaker Rd and along west property line of the site.

An open drain channel is located to the west of the site.

TRAFFIC:

A Traffic Impact Analysis is required for a restaurant with drive-through service unless waived by the City’s traffic engineer. Access standards apply on SW Wanamaker Road.

HISTORIC PROPERTIES:

Not applicable

NEIGHBORHOOD MEETING:

The applicant conducted a neighborhood information meeting on Tuesday, July 27, 2021 via Zoom. The applicant and his associates, and Planning staff attended the meeting. No others attended and to date staff have received no communications from the public regarding the case.

REVIEW COMMENTS BY CITY DEPARTMENTS AND EXTERNAL AGENCIES

PUBLIC WORKS/ENGINEERING:

Water and sanitary sewer connections will be reviewed at the time of Building Permit Application.

Requested they maintain access across properties to the north and south to enable driver to use other access points and access nearby signals for turning movements.

FIRE:

New development will be required to ensure adequate access and hydrants for effective emergency response and reviewed at the time of Building Permit Application.

DEVELOPMENT SERVICES:

Development Services will review construction plans when they are submitted for Site Plan Review and as a part of the application for the Building Permit.

KEY DATES

SUBMITTAL:	July 2, 2021
NEIGHBORHOOD INFORMATION MEETING:	July 27, 2021
LEGAL NOTICE PUBLICATION:	July 21, 2021
PROPERTY OWNER NOTICE:	July 23, 2021

STAFF ANALYSIS

As a zoning case Planning staff have reviewed the case relative to the required findings and conclusions in Topeka Municipal Code Section 18.245 (Findings and conclusions reflect the “golden factors” per Donald Golden v. City of Overland Park, 1978 Kansas Supreme Court).

CHARACTER OF NEIGHBORHOOD: The proposed zoning and land use are generally consistent with the character of the surrounding area. The immediate surrounding area is characterized by a variety of commercial uses, except to the west, which is currently undeveloped land zoned R-1. Commercial properties to the south are zoned C-4 and some include large building footprints. Lands to the east are zoned C-4 but largely consist of retail banking and office uses, and these uses transition to residential uses further east. The parcels to the north are zoned C-2 Commercial and consist of retail buildings and a Culvers quick service restaurant. The freestanding signs to the north, for which C-2 regulations apply, are more restrained than the signage to the south allowed under C-4 zoning.

Staff is recommending C-2 zoning for the subject property in part because of C-2 zoning’s limit on the height of signs to 15 feet but also because the small size of the site is more appropriate for C-2 uses, and the applicant’s intended use of the property, which does not require C-4 zoning.

THE ZONING AND USE OF PROPERTIES NEARBY: The proposed C-4 zoning matches the zoning to the south and east of the property, and C-2 or C-4 zoning of the subject property is a better fit than the current O&I-2 zoning. Most commercial and institutional uses allowed under O&I-2 uses are also allowed under both the C-2 and C-4 zoning classifications. The adjoining parcel to the north is zoned C-2 Commercial. Rezoning of the property to C-4 would allow a variety of retail uses to be developed on the site that are compatible with nearby properties along Wanamaker Road. However, the property might be too small to accommodate some C-4 uses, and some C-4 uses, such as auto body repair and car sales, while not likely to occur under current market conditions, have the potential for negative impacts. The applicant’s intended use of the property is allowed under either C-2 or C-4 zoning.

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: The subject property has remained zoned for office and institutional uses since zoned in 1998. The Shawnee County Appraiser’s Office still considers the site primarily a single family home with the Office space located in the basement, although the site seems to have functioned solely as a general office use in recent years.

CONFORMANCE TO COMPREHENSIVE PLAN: The subject property is located within a Regional Commercial Area as described by the Land Use and Growth Management Plan - 2040. The Regional Commercial category designates certain large commercial areas (Wanamaker) as areas that have not developed in the ideal “nodal” pattern, but provide

uses on a broader scale and mix than the other commercial centers and serve a population beyond the City, drawing from surrounding cities and counties.

The proposed rezoning of the subject property to “C-4” is in conformance to the Comprehensive Plan. Other “C” commercial zoning is also consistent with the Comprehensive Plan.

THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES OF WHICH IT HAS BEEN RESTRICTED:

The subject property was designed and built as a single family residence. Having later converted to a general office building, the existing building is suitable as zoned for O&I-2 Office and Institutional uses. O&I-2 zoning is intended provide for a limited range of nonresidential and noncommercial uses such as general purpose office, professional, or administrative operations. While the land is suitable for its O&I-2 zoning classification, the proposed restaurant with drive through service is not permitted and thus requires C-2, C-3, or C-4 zoning.

Due to the lots size and wide variety of acceptable uses with a C-4 zoning district, the lot may be better suited for C-2 zoning. The recently built, 4,000 square foot Culver’s restaurant with drive through service on a .94 acre parcel is one example; the 5,400 square strip shopping center on a .94 acre lot is another. Both of these parcels are located to the north of the site along Wanamaker Rd and are zoned C-2.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY

PROPERTIES: A rezoning of the property from O&I-2 Office and Institutional to C-4 Commercial is likely to have no substantial effect on the commercial properties north, south, and east of the subject property. Generally speaking, the “C-4” Commercial District allows uses with higher traffic generation and longer operating hours than a single family dwelling or office and Institutional building, which aligns with the neighboring land uses. Under the current O&I-2 zoning, activity is likely to be limited mainly to daytime hours.

“C-4” zoning also allows automobile-oriented uses such as automobile repair of an intensive nature, automobile sales, and stand-alone surface parking that may be incompatible with the adjacent commercial uses. The height of freestanding signs allowed under C-4 zoning is 40 percent greater than the height of such signs under C-2 zoning. The uses and signage allowed under C-4 zoning are not the preferred outcome for a highly visible, regional retail corridor such as Wanamaker Road.

Development under either C-4 or C-2 zoning will be required to satisfy all Site Plan Review and Landscape Plan requirements for new construction. The effects of commercial land uses to the residential zoned district to the west can be mitigated by setbacks, landscaping, and fencing.

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER’S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL

LANDOWNER: The proposed C-4 zoning allows a much broader range of uses, including uses of greater intensity, than what is allowed or may be permitted by conditional use permit under the current O&I-2 zoning. Denial of a zoning change to C-4 or C-2 Commercial zoning imposes a hardship upon the individual landowner to the extent development of the property is made difficult because of the lack of market demand for uses to which the property is restricted or for related economic factors. The property owner would continue to be responsible for property maintenance and taxes while the property remains underutilized, which may detract from the health of the Wanamaker commercial corridor.

AVAILABILITY OF PUBLIC SERVICES: Utilities are available to serve the property.

STAFF RECOMMENDATION:

RECOMMENDATION: Based on the above findings and analysis Planning Staff recommends **APPROVAL** of the zoning reclassification from “O&I-2” Office and Institutional District TO “C-2” Commercial District.

RECOMMENDED MOTION: Based on the findings and analysis in the staff report I move to recommend to the Governing Body **APPROVAL** of the request to reclassify the property from “O&I-2” Office and Institutional District TO “C-2” Commercial District.

Exhibits:

Aerial map
Zoning map
Future land use map
NIM Attendance
NIM Summary