

PLANNING COMMISSION REPORT

Regular Agenda -- Public Hearing Item

PC Staff Report
08/24/2009

ITEM NO. 6: TEXT AMENDMENT TO CHAPTER 20 DEVELOPMENT CODE (SDM)

TA-7-20-09: Consider an amendment to Sections 20-501, 20-1310, 20-1311, and 20-1703 of the City of Lawrence Land Development Code to revise standards related to Adaptive Reuse of Designated Historic Property, Written Interpretations, and Appeals of Administrative Decisions. Initiated by the Planning Commission on July 20, 2009.

RECOMMENDATION: Staff recommends that the Planning Commission forward a recommendation for approval of the proposed amendments to Sections 20-501, 20-1310, 20-1311, and 20-1703 of the City of Lawrence Land Development Code to the City Commission.

Reason for Request: The Planning Commission initiated this amendment on July 20, 2009 in order to clarify the various types of appeals and their effect on land use applications processed through the public hearing process and to correct an error related to processing applications under the Adaptive Reuse of Designated Historic Properties.

RELEVANT GOLDEN FACTOR:

- Conformance with the Comprehensive Land Use Plan is the relevant factor that applies to this request. Adoption of new regulatory tools, one of which is the zoning regulations, is an implementation step in Chapter 13 of *Horizon 2020*, the City/County Comprehensive Land Use Plan.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- No written comments received to date.
- Staff has met with LAN representatives and Chamber members to generally discuss a number of different text amendments in process.

KEY POINTS

- These amendments stem from recent recognition that these code sections need to be reviewed to determine their impact to applications considered by the Planning Commission.

OVERVIEW OF PROPOSED AMENDMENT

This amendment revises three concepts in the Land Development Code (four different code sections).

1. Adaptive Reuse of Designated Historic Properties – the code is proposed to be revised to correct a clear error. Section 20-501(8) requires, “After the appropriate approvals have been granted, the Special Use application shall be scheduled for public hearing before the Historic Resources Commission.” The “appropriate approvals” in this case refers to approvals noted in Section 20-501(6), which states, “prior to public hearing of an application for a Special Use

for Adaptive Reuse by the Planning Commission, an application shall first be reviewed and approved by the Lawrence Historic Resources Commission and, when applicable, the State Historic Preservation Officer.” 20-501(8) should be revised to replace Historic Resources Commission with Planning Commission. The former code included the correct version of this process and it appears that a change was inadvertently made with the adoption of the 2006 Land Development Code.

This amendment includes a revision that would require mailed notice of the Historic Resources Commission’s consideration of the Adaptive Reuse request, a requirement that does not exist at this time.

Staff also proposes to revise the definition of Adaptive Reuse of Designated Historic Property to better align with the language found in Section 20-501, which states that a structure or property within an Historic District is eligible for this land use classification.

2. Written Interpretations – Staff proposes to clarify that staff reports to the various committees and governing bodies staffed by the Planning Office shall not be considered written interpretations. Staff reports simply provide information on how a request complies with the code. While staff reports convey code standards to various commissions and committees, they are not intended to be a vehicle by which a code interpretation is made. Staff reports typically do not include a full analysis of a specific code standard or what justification staff used to interpret a code section; the reports simply state what code is being employed in the circumstance. When a request for a written interpretation is made, staff fully analyzes the code and prepares an interpretation grounded in sound planning theory, historical context, and the code itself. It is only after this full analysis and written determination that an appeal can or should be eligible to be brought before the Board of Zoning Appeals.
3. Appeals of Administrative Orders, Requirements, Decisions, or Determinations – Staff finds it necessary to clarify that staff reports and the process used by the Planning Commission to review applications considered by them are not eligible to be appealed to the BZA. There have been instances in the past where a person believed to be aggrieved has attempted to appeal a staff report or a finding in the staff report. In these instances, a staff report is not an administrative decision. A staff report simply provides information and opinion on how a request complies with the code and does not put forth any order, requirement, decision, or determination to anyone or for any application. The intent of the Development Code language, and the language in the state statutes on which it is based, appears to imply that the public hearing process through the Planning Commission is not appealable since other appeal avenues exists to appeal such decisions.

Examples of orders, requirements, decisions, and determinations that are completed administratively and would be appealable to the BZA include the following:

- Denying or revoking a building permit
- Issuing a Stop Work order on a building permit
- Issuing an order to comply with a site plan or any other Development Code standard
- A determination made on a zoning compliance request (liquor license or auto dealership for example)
- A decision on certain types of administratively reviewed and approved application types – floodplain development permit for example

Examples of actions that are not appealable to the BZA include the following:

- Any decision, recommendation or process action taken by the Planning Commission or any other advisory body to the City Commission staffed by the Planning Office (CCH, Building Code Advisory Boards, Historic Resources Commission, etc.)
- Staff reports provided to the advisory boards.
- Decisions and actions of the City Commission
- Staff reports provided to the City Commission
- Any action or decision outside of the scope of the Land Development Code

CONFORMANCE WITH *HORIZON 2020*

Horizon 2020 does not speak directly to these amendments, as they are meant to clarify existing regulations and standards. However, the plan does support Adaptive Reuse of historic structures:

"The Plan encourages the identification, protection and adaptive reuse of the wide diversity of historic buildings, structures, sites and archeological sites that can be found in Lawrence and Douglas County."

CRITERIA FOR REVIEW & DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

- 1) Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and**

Staff Response: The proposed amendments correct a typographical error in Section 20-501 and clarify standards and regulations related to what qualifies for code interpretations and appeals to administrative decisions. These clarifications are needed to insure that applications being processed through the public hearing process can not be stayed while an appeal to a staff report is filed. Staff has argued in the past that a party can not appeal information in a staff report and this language clarifies this position.

- 2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).**

Staff Response: Conformance with the Comprehensive Land Use Plan is the relevant factor that applies to this request. Adoption of new regulatory tools, one of which is the zoning regulations, is an implementation step in Chapter 13 of *Horizon 2020*, the City/County Comprehensive Land Use Plan.

PROPOSED LANGUAGE:

See Attached.

Attachments: Proposed Language