

Memorandum

City of Lawrence

Planning & Development Services

TO: Historic Resources Commission

FROM: Scott McCullough, Director

CC: Lynne Braddock Zollner, Historic Resources Administrator

Date: For January 21, 2010 HRC Meeting

RE: Adaptive Reuse Development Code Revisions

The attached City of Lawrence Development Code language is provided for your review. Also provided are attachments related to the August 24, 2009 Planning Commission packet where the commission considered revisions to Sections 20-501 and 20-1703, Adaptive Reuse of Designated Historic Property, of the Development Code. The PC version intended to only clarify certain parts of the language and correct a simple error in language as the 2006 Development Code was adopted.

The Adaptive Reuse code standards permit the consideration of virtually any use in any zoning district, through the special use process, to facilitate the active renovation or restoration of a property. It can be viewed as one tool in the development toolbox to "save" historic properties where the underlying zoning district may not permit a certain use for the property.

This land development vehicle has been used only a few times and each time substantial public input was provided. The attached letter from James O'Malley dated August 24, 2009 does a fair job of summarizing the history and approvals of those properties that have used the code to reuse historic structures.

One of the main concerns of opponents of the PC version of the code language is the degree of flexibility in using this code section for historic structures and whether recent applications have not met the spirit and intent of the code to facilitate renovation or restoration of a property, but instead has been used as a vehicle to gain approval of a use that otherwise is not permitted in the underlying zoning district.

Currently the code *encourages* certain types of projects to use the Adaptive Reuse standards. The version before the HRC, revised from the PC version, takes into account the testimony provided at the August PC meeting to more substantially revise the substance of the code to make the guidelines actual *criteria* that must be met in order to be eligible to use this vehicle of the code. The new language would be narrower to thwart potential abuse of its use and to provide neighborhoods with expectations about

what qualifies as an Adaptive Reuse. The consequence of creating narrow criteria is potential missed opportunity to preserve historic structures that do not meet the criteria but that may be worthy of preservation.

The language and discussion of the substantive changes proposed will be presented to the HRC at the January meeting. Staff desires a recommendation from the HRC to forward to the PC for additional processing prior to submitting to the City Commission for consideration.

ADAPTIVE REUSE OF DESIGNATED HISTORIC PROPERTY

- (1) Special Use approval may be granted in any [Zoning District](#) for an Adaptive Reuse provided the property is **listed individually or as a contributing Structure to a historic district** ~~listed, as a Landmark or as part of an Historic District,~~ in one or more of the following: the Lawrence Register of Historic Places; the Register of Historic Kansas Places; or the National Register of Historic Places.
- (2) ~~Only Properties~~ **Only** properties that meet one or more of the following criteria are ~~encouraged~~ **eligible** to pursue Adaptive Reuse when such use can facilitate active renovation or restoration of the property:
 - (i) the property is located in a nonresidential [Zoning District](#);
 - (ii) the property, though located in a residential [Zoning District](#), was built for a non-**single-family** residential use that has been substantiated through archival records, tax records, City directories, or other physical evidence;
 - (iii) the [Structure](#) on the property, **regardless of Zoning District or historic use,** has a minimum of 4,000 square feet in living space. (Square footage shall include all finished living space excluding porches and garages).
- (3) Adaptive Reuse of a property shall not include a reduction in area or dimension of the existing [Front Yard](#) or Exterior [Side Yard](#);
- (4) Adaptive Reuse of a residentially-designed [Structure](#) shall maintain the residential quality and character of the property;
- (5) Adaptive Reuse of a [Building](#) shall maintain the architectural character of the historic property, as established by the [Historic Resources Commission](#), and the historic context within the neighborhood environs;
- (6) Prior to public hearing of an application for a Special Use for Adaptive Reuse by the [Planning Commission](#), ~~an~~ **the Special Use** application shall first be reviewed and approved **a recommendation made** by the Lawrence [Historic Resources Commission](#) **at a regular meeting of the Lawrence Historic Resources Commission** and, when applicable, the State Historic Preservation Officer. **Mailed notice of the Historic Resources Commission's meeting shall be provided pursuant to Section 20-1301(q)(3).**
- (7) In addition to the Special Use review procedures of Section 20-1306, the following criteria shall apply:
 - (i) conformance with the regulations for redevelopment established in Chapter 22 of the City Code, as determined by the Lawrence [Historic Resources Commission](#) when the project is on the Lawrence Register of Historic Places;
 - (ii) compliance with the Secretary of Interior Standards for Rehabilitation, as determined by the [Historic Resources Commission](#) and/or State Historic Preservation Officer, when a State or National Register property is involved; and,

- (iii) adherence to other criteria established in this Development Code, as appropriate to the use proposed, when so determined by the [Planning Director](#) or the Historic Resources Administrator.
- (8) After the appropriate approvals have recommendation has been made ~~granted~~ pursuant to Section 20-501(6), the Special Use application shall be scheduled for public hearing before the ~~Historic Resources~~ [Planning Commission](#).
- (9) The recommendations of the [Historic Resources Commission](#) and the [Planning Commission](#) will be forwarded to the City Commission for consideration.

20-1703 ADAPTIVE REUSE OF DESIGNATED HISTORIC PROPERTY

Conversion of a designated local, State or national historic landmark [Structure](#) listed individually or as a contributing [Structure](#) to a historic district in the National, State or local register to another specified use, with the intent of preserving the landmark listed [Structure](#).

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

**ITEM NO. 6 AMENDMENTS TO DEVELOPMENT CODE; ADAPTIVE REUSE OF
DESIGNATED HISTORIC PROPERTY (SDM)**

TA-7-20-09:

Consider Text Amendments to various sections of the City of Lawrence Land Development Code to (1) correct language regarding Adaptive Reuse of Designated Historic Property in section 20-501, and (2) revise language in sections 20-1310 and 20-1311.

STAFF PRESENTATION

Mr. Scott McCullough presented the item.

Commissioner Harris inquired about one of the requests from the League of Women Voters to add some time condition for the Planning Directors determination.

Mr. McCullough said he was comfortable with that and suggested a 30 day time period.

Commissioner Finkeldei asked when it talks about preserving the architectural character of a historic property does that mean inside and outside.

Mr. McCullough said as established by Historic Resources Commission.

Commissioner Harris inquired about the comment from the League of Women Voters regarding lack of appeal.

Mr. McCullough said he did not fully understand the comment and wasn't sure if they were mixing the two sections.

Commissioner Harris said she did not fully understand the comment either.

PUBLIC HEARING

Mr. David Carter, Vice President of the Old West Lawrence Association, commented on three specific aspects of the Code.

20-501(6) - He thanked them for adding the provision of mailed notification to neighbors.

20-501(2) - He felt the wording 'not necessary to meet criteria' makes criteria meaningless.

20-1311 - He urged the Commission to not change the appeals section.

Mr. McCullough said section 20-501(2) as written today does not require that those criteria be met. He thought the language was pulled in from the former code. Staff's point was to clarify to applicants or neighbors that those are not set criteria and that they do not have to be met for an Adaptive Reuse.

Ms. Karen Kressin, 626 Ohio Street, objected to relaxed standards for Adaptive Reuse. She felt the threshold size requirement should be clarified as mandatory and increased. She suggested 5,000-6,000 square feet, counting only the two traditional living floors 1st and 2nd. She felt that adaptive reuse should only be available to structures that need it and limited to prospective projects. She gave examples of when the Adaptive Reuse has been used.

Commissioner Finkeldei asked if the Adaptive Reuse has been used 3 times.

Ms. Kressin replied yes.

Commissioner Finkeldei asked if a historic church is turned into an apartment would that be an Adaptive Reuse.

Mr. McCullough said it could be a number of uses.

Mr. Jim O'Malley, 626 Ohio Street, said the proposed change to 20-501(2) would make a fundamentally flawed and poorly drafted ordinance worse. He felt it would allow more intense uses in residential neighborhoods. He felt that Adaptive Reuse should be limited to 'at risk' properties. He noted that among the goals of Horizon 2020 is preservation of existing residential neighborhoods and this amendment would contradict that role. If felt if the amendment is adopted Old West Lawrence and other historic districts won't really be zoned RS5 anymore, they'd be zoned whatever the City deems appropriate for each property and historic districts would be subject to spot zoning.

Commissioner Rasmussen asked if Mr. O'Malley if he felt a staff report should be appealable.

Mr. O'Malley said it refers to a determination by the Director and it is a matter for a court to decide what it means.

Mr. Dale Slusser, 627 Ohio Street, said he appreciated the change about notification. He expressed concern about 'broad' text. He did some research and found that Adaptive Reuse in residential neighborhoods is 'outside the norm.'

Mr. John Nitcher, 608 Louisiana Street, said he initially disagreed with staffs assessment but now he understands the reasoning. He said the language before the proposed amendment would allow an expansive reuse. This may be an opportunity for the city to correct a real flaw in the part of the ordinance. He suggested leaving the language as is but replace 'are encouraged to' to 'may.'

Mr. McCullough said to this point staff haven't sought Historic Resources Commission involvement because we haven't changed the content of the section but if we do then we can go to the Historic Resources Commission for their opinion.

Ms. Katie Nitcher, 608 Louisiana Street, said that the adaptive reuse should just be on the main floor and second floor, not basement or attic.

COMMISSION DISCUSSION

Commissioner Finkeldei suggested sending it to Historic Resources Commission. He said he wants a Code that protects historic properties without increasing intensity of use. He suggested looking at a tier system.

Commissioner Moore agreed that it should go to Historic Resources Commission for their thoughts on it.

Commissioner Harris agreed with keeping a threshold and not including the attic or basement. She did not like using this tool to increase density in residential neighborhoods. She inquired about appeals process.

Mr. McCullough said in general staff reports are not appealable to the Board of Zoning Appeals. Public hearings are an avenue to voice disagreement with staff reports.

Commissioner Rasmussen asked if staff gave thought to making criteria mandatory by design.

Mr. McCullough wanted to give the Code flexibility. The proposed language was meant to clarify that it is encouraged and not required.

Commissioner Harris said she was in favor of having more clear language because the way it is written now the criteria does not have any weight.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to defer indefinitely.

Motion carried 8-0, with Student Commissioner Shelton voting in the affirmative.

ADAPTIVE REUSE OF DESIGNATED HISTORIC PROPERTY

- (1) Special Use approval may be granted in any [Zoning District](#) for an Adaptive Reuse provided the property is listed, as a Landmark or as part of an Historic District, on one or more of the following: the Lawrence Register of Historic Places; the Register of Historic Kansas Places; or the National Register of Historic Places.
- (2) **While it is not necessary to meet the following criteria to request a Special Use Permit for an Adaptive Reuse,** ~~P~~properties that meet one or more of the following criteria are encouraged to pursue Adaptive Reuse when such use can facilitate active renovation or restoration of the property:
 - (i) the property is located in a nonresidential [Zoning District](#);
 - (ii) the property, though located in a residential [Zoning District](#), was built for a non-residential use that has been substantiated through archival records, tax records, City directories, or other physical evidence;
 - (iii) the [Structure](#) on the property has a minimum of 4,000 square feet in living space. (Square footage shall include all finished living space excluding porches and garages).
- (3) Adaptive Reuse of a property shall not include a reduction in area or dimension of the existing [Front Yard](#) or Exterior [Side Yard](#);
- (4) Adaptive Reuse of a residentially-designed [Structure](#) shall maintain the residential quality and character of the property;
- (5) Adaptive Reuse of a [Building](#) shall maintain the architectural character of the historic property, as established by the [Historic Resources Commission](#), and the historic context within the neighborhood environs;
- (6) 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](#) **at a regular meeting of the Lawrence Historic Resources Commission** and, when applicable, the State Historic Preservation Officer. **Mailed notice of the Historic Resources Commission's meeting shall be provided pursuant to Section 20-1301(q)(3). Any appeal of the Lawrence Historic Resources Commission's decision shall be decided by the City Commission prior to the public hearing of an application for a Special Use for Adaptive Reuse by the Planning Commission.**
- (7) In addition to the Special Use review procedures of Section 20-1306, the following criteria shall apply:
 - (i) conformance with the regulations for redevelopment established in Chapter 22 of the City Code, as determined by the Lawrence [Historic Resources Commission](#) when the project is on the Lawrence Register of Historic Places;
 - (ii) compliance with the Secretary of Interior Standards for Rehabilitation, as determined by the [Historic Resources Commission](#) and/or State Historic Preservation Officer, when a State or National Register property is involved; and,

- (iii) adherence to other criteria established in this Development Code, as appropriate to the use proposed, when so determined by the [Planning Director](#) or the Historic Resources Administrator.

- (8) After the appropriate approvals have been granted in Section 20-501(6), the Special Use application shall be scheduled for public hearing before the [Historic Resources Planning Commission](#).

20-1703 ADAPTIVE REUSE OF DESIGNATED HISTORIC PROPERTY

Conversion of a designated local, State or national historic landmark [Structure, or a structure or property that is part of an Historic District](#), to another specified use, with the intent of preserving the landmark [or structure or property within the Historic District](#).

20-1310 WRITTEN INTERPRETATIONS

(a) Application Filing

Applications for written interpretations of this Development Code shall be submitted to the [Planning Director](#).

(b) Planning Director's Review and Decision

Following receipt of a complete application for a written interpretation, the [Planning Director](#) shall: (1) review and evaluate the application for compliance with this Development Code and consistency with the [Comprehensive Plan](#) and any other relevant documents; (2) consult with other staff, as necessary; (3) request additional information or documentation, as necessary and (4) render a written interpretation.

(c) Form

The interpretation shall be provided to the applicant in writing and be filed in the official record of interpretations.

(d) Official Record of Interpretations

An official record of interpretations shall be kept on file by the [Planning Director](#). The record of interpretations shall be available for public inspection from the [Planning Director](#) during normal business hours.

(e) Appeals

Appeals of the [Planning Director's](#) written interpretation may be taken to the Board of Zoning Appeals in accordance with procedures of Section 20-1311. If the appeal results in a change of interpretation, the new interpretation shall be filed in the official record of interpretations maintained by the [Planning Director](#). **Staff review/reports required by the Development Code shall not be considered a written interpretation of the Development Code and are not appealable to the Board of Zoning Appeals.**

20-1311 APPEALS OF ADMINISTRATIVE ORDERS, REQUIREMENTS, DECISIONS, OR DETERMINATIONS

(a) Authority and Applicability

Unless specifically provided for otherwise in this Development Code, the Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Development Code. **Staff review/reports required by the Development Code and**

considered by the Planning Commission at a public hearing shall not be considered an order, requirement, decision or determination and shall not be appealable to the Board of Zoning Appeals. The Planning Commission is not an “administrative official” for purposes of this Development Code and the Board of Zoning Appeals shall have no jurisdiction to consider an appeal from any action, determination or failure to act by the Planning Commission. **Development Review Procedures of Article 13 of the Development Code are not administrative orders, requirements, decisions or determinations and the Board of Zoning Appeals shall have no jurisdiction to consider an appeal from any of the development review procedures.**

(b) Application Filing

Appeals of administrative decisions shall be filed with the Planning Director. The appeal shall be filed within 10 Working Days after the administrative official's **order, requirement, decision, or determination**. Appeals may be filed by any person aggrieved, or by any officer of the City, or any governmental agency or body affected by any decision of an administrative official.

(c) Effect of Filing

The filing of ~~an a complete~~ application for an appeal of administrative **order, requirement, decision, or determination** stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Board of Zoning Appeals, after the appeal is filed, that, because of facts stated in the certification that (a) a stay would cause immediate peril to life or property or (b) the situation appealed from is transitory in nature, and therefore, an appeal would seriously interfere with enforcement of this Development Code. In each instance, the official whose decision is being appealed shall place in the certificate facts to support the conclusion. In such case, proceedings will not be stayed other than by a restraining order, which may be granted by the Board of Zoning Appeals or by a court of record.

(d) Record of Administrative Decision

The official whose decision is being appealed shall transmit to the Board of Zoning Appeals all documents constituting the record upon which the action appealed is taken.

(e) Public Hearing Notice

Newspaper and mailed notice of the Board of Zoning Appeals' public hearing on the appeal shall be provided in accordance with Section 20-1301(q). A copy of the notice shall also be mailed to each party to the appeal and to the Planning Commission at least 20 days before the date of the hearing.

(f) Review and Decision

- (1) The Board of Zoning Appeals shall hold a public hearing on the appeal and, following the close of the public hearing, take final action based on the procedures and requirements of this section.
- (2) In exercising the appeal power, the Board of Zoning Appeals has all the powers of the official from whom the appeal is taken, and the Board of Zoning Appeals may reverse or affirm wholly or in part or may modify the decision being appealed.
- (3) If the Board of Zoning Appeals determines that it is necessary to obtain additional evidence to resolve the matter, it shall remand the appeal to

the official from whom the appeal is taken, with directions to obtain the needed evidence and to reconsider the decision in light of that evidence.

(g) Approval Criteria; Findings of Fact

The Board of Zoning Appeals may reverse an order, requirement, decision, or determination of any administrative official only when the Board of Zoning Appeals finds substantial, factual evidence in the official record of the application that the administrative official erred. The decision of the Board of Zoning Appeals shall be supported by written findings of fact prepared by the Board of Zoning Appeals.

(h) Filing and Mailing of Decision

Every decision or determination by the Board of Zoning Appeals shall be:

- (1) filed in the office of the City Clerk not more than seven (7) [Working Days](#) following the date of hearing; and
- (2) mailed to the applicant and all other parties who have made a written request for notification not more than seven [Working Days](#) following the date of the hearing.

(i) Date of Effect

Decisions on appeals become effective on the date the Board of Zoning Appeals makes its decision.

(j) Appeals

Within 30 days of the date of effect of the Board of Zoning Appeals' decision, any person aggrieved by such decision may maintain an action in District Court to determine the reasonableness of the final decision.

626 Ohio Street
Lawrence, KS 66044
Jan. 20, 2010

Historic Resources Commission
Lawrence, KS

Dear Commissioners:

I want to thank the Planning Staff for their efforts to improve the adaptive reuse ordinance. For the most part, the proposed amendments in the January staff report are a step in the right direction.

Requiring mailed notice to neighboring landowners of Historic Resources Commission review of adaptive reuse applications is a positive step. Neighbors should get actual notice of the earliest stage of review of proposed changes in the use of nearby properties that could lower their property values and quality of life.

Some of the proposed changes to subsection (2) are also positive.

The history of the adaptive reuse ordinance shows that subsection (2) (iii) was drafted to allow flexibility in the use of unusually large structures in historic districts—houses that are so large that they are difficult to use as single-family residences. It was intended to be an extraordinary remedy for extraordinary structures, and has only been applied to such structures. Only three adaptive reuse permits have been issued since the ordinance was adopted in 1993. All three are unusual structures:

- 1) 805 Ohio, aka the old Simmons Hospital, had more than 7,000 square feet and had been on the market for a long time without attracting a buyer. The adaptive reuse ordinance was applied to allow apartments.
- 2) 643-645 Tennessee had more than 6,000 square feet and had long been used as an apartment house. The adaptive reuse ordinance was applied to allow a Bed and Breakfast, arguably a *less* intensive use than its prior use as an apartment house.
- 3) The Castle Tea Room is another large, unique property that was already in non-residential use when the adaptive reuse ordinance was applied to allow additional restaurant and outdoor event use.

The current version of the ordinance provides that adaptive reuse is *encouraged* for structures with at least 4,000 square feet of living space in historic district. The current language leaves open the possibility that smaller structures are eligible for adaptive reuse even though it is not encouraged.

That interpretation of the ordinance would effectively eliminate single family residential zoning in the Old West Lawrence Historic District because any owner could seek adaptive reuse to put apartments, duplexes, B & Bs, and other uses in any house of any size in the district.

Making the 4,000 square foot minimum a requirement for eligibility for adaptive reuse would prevent widespread introduction of uses inconsistent with single family residential zoning in Old West Lawrence under the guise of adaptive reuse

However, the addition of the phrase “regardless of . . . historic use” to subsection (2)(iii) could be interpreted allow investors to expand the living space in a house to meet the 4,000 square foot threshold for adaptive reuse. For example, an investor could acquire a modest-sized two-story house with a 1,200 square foot footprint and 2,400 total square feet of living space, finish 1,600 square feet in the attic and basement, then say the house has 4,000 square feet and so is eligible for adaptive reuse.

There are many such houses in Old West Lawrence. The proposed language has the potential to riddle Old West Lawrence with apartments and duplexes. That is not the way to preserve historic Old West Lawrence—resident homeowners tend to take better care of their properties than do owners of investment properties. This loophole should be closed.

The adaptive reuse ordinance is intended to allow flexibility in the allowed uses of houses that are so large that it is a hardship to owners to use them as single family residences. Investors should not be allowed to create their own hardship and then seek adaptive reuse to remedy that hardship.

There are at least two simple ways to amend subsection (2) (iii) to avoid this problem:

- 1) Raise the minimum size to 6,000 square feet of above-grade living space.
- 2) Keep the 4,000 square foot minimum, but exclude basement and attic space from the definition of living space. That would be consistent with “gross living area,” one of the standard measures of living space for real estate appraisals.

Either alternative would limit the extraordinary remedy of adaptive reuse to unusually large structures like 805 Ohio and 643-645 Tennessee, in keeping with the intent of the adaptive reuse ordinance.

Yours truly,

James J. O'Malley

**Written Statement on Proposed Text Amendments
to Development Code Sections 20-501, 20-1311, and 20-1703**

SUBMITTED @
AUG. 24 PC MTG.

Submitted by James J. O'Malley
626 Ohio Street
Lawrence, Kansas
August 24, 2009

20-501(6)

The proposed change to 20-501(6) should be adopted.

Current Code language requires mailed notice to neighboring landowners of Historic Resources Commission review of adaptive reuse applications, albeit not very clearly. Moreover, due process requires that actual notice be given to neighboring landowners. Including all stakeholders in all stages of the adaptive reuse review process is good government, good sense, and protects neighboring landowners' due process rights.

20-501(2)

However, the proposed change to subsection (2) should be rejected. It makes a fundamentally flawed ordinance even worse.

The history of the ordinance makes clear that adaptive reuse was intended to apply to unusual, large houses whose size made them hard to use as single family homes. The ordinance has always been interpreted as applicable only to unusually large houses. (See the history of the adaptive reuse ordinance at the end of this statement.)

20-501 currently gives the Planning Director the power in historic districts to allow *any* use in houses with more than 4,000 square feet of living space, and to waive *any* use standards for such uses. 20-501 has no meaningful standards limiting that power.

The lack of standards and the unfettered discretion given to an unelected official denies due process to historic district residents, who cannot look to the Code to determine what uses might or might not be allowed on larger properties in their neighborhoods. The lack of standards could also subject the City to equal protection claims. Either way the City decides on an adaptive reuse application, it has no Code language with which to justify its decision.

By making size irrelevant for adaptive reuse, the proposed amendment works a radical and ill-advised change in the scope of the ordinance. Eliminating size as a threshold requirement would make the unconstitutional, unfettered, standardless discretion applicable to *any* property in a historic district.

The proposed change would make subsection (2) meaningless. If adaptive reuse is encouraged for some properties, but not others, logic dictates that it should be harder to get adaptive reuse for a property that is not in the "encouraged" category. If the proposed amendment is adopted, adaptive reuse would be equally available for encouraged and non-encouraged properties. That makes no sense. Standards are needed for both categories, and stricter standards are needed for non-encouraged properties.

Under the proposed amendment, the Director would effectively have the power to rezone historic districts one property at a time to allow duplexes, apartments, boarding houses --in other words, to put Old West Lawrence back into the shabby state it was in the 60s and 70s, when it was riddled with duplexes, apartments, and other nonconforming uses.

On my block, the 600 block of Ohio Street, there is one house that is shabby looking—and it is a grandfathered-in apartment house. That is hardly an unusual pattern. Homeowners tend to keep their properties up better than absentee landlords. Allowing more of such uses will not preserve older neighborhoods—it is likely to make them worse.

The proposed amendment would be contrary to the Comprehensive Plan. Horizon 2020 encourages preservation of the City's existing residential neighborhoods. (See pp. 5-1 and 5-14.) The proposed amendment would turn adaptive reuse into a tool to rezone historic residential neighborhoods one property at a time. That would also constitute spot zoning, which is viewed with disfavor by the courts.

Moreover, the proposed amendment would conflict with section 20-1501(b) of the Development Code, which states that the City's policy is to bring nonconforming uses into compliance with existing regulations over time. The proposed amendment would enable the creation of new nonconforming uses throughout the City's historic districts.

20-1703

The proposed change to the definition of adaptive reuse in 20-1763 should be rejected. That definition should remain unchanged. It is the scope of the adaptive reuse ordinance that should be amended, to restrict it to landmark properties. The proposed amendments make the adaptive reuse ordinance such a wild card in zoning that it should be restricted to unusually historic buildings of unusual size.

20-1311(a)

The proposed change to 20-1311(a) should be rejected because it would violate state law.

K.S.A. 12-759 provides that "any order, requirement, decision or determination made by an administrative official" in the enforcement of zoning is appealable to the Board of Zoning Appeals.

The statutory language is broad. It says "*any*" decision or determination. It does not exclude decisions or determinations made in connection with a matter reviewable by the planning commission. It is not limited to final orders or decisions. The state legislature knows how to draft a statute limiting appeals to specific types of decisions when it wants to. See K.S.A. 60-2102.

The proposed change would conflict with K.S.A. 12-759 by attempting to limit the kinds of decisions and determinations that are appealable to the BZA. Only the state legislature can do that.

20-1311(c)

The proposed change to 20-1311(c) should be rejected as bad policy. It would give the Planning Director the final say (short of going to court) on whether an appeal to the BZA stays

proceedings before the Planning Commission, by eliminating the BZA's current power to override the Director.

Allowing a matter that is on appeal to the BZA to continue before the HRC, Planning Commission, or City Commission makes no sense. If HRC, Planning Commission, or City Commission review of a project continued during the appeal, and the appeal was successful, all the time spent by the HRC, Planning Commission, or City Commission in reviewing the project would be wasted.

The BZA is a quasi-judicial body. Like a court, it should have the power to decide whether appeals to it stay the proceedings that are being appealed. The Planning Director is an administrative official, not a quasi-judicial body, and should not have that quasi-judicial power.

Note also that K.S.A. 12-759 states that in exercising its powers to hear and decide appeals, the BZA "shall have all the powers of the officer from whom the appeal is taken." This would include the power to decide whether the appeal stays Planning Commission review proceedings.

History of Lawrence's Adaptive Reuse Ordinance

Origins: 805 Ohio B & B Proposal

The City's adaptive reuse ordinance was drafted in 1992 when David Kimbrell sought permission to put a restaurant with seating for 38 and a 10-12 bedroom bed and breakfast and at 805 Tennessee, in the Old West Lawrence Historic District, which is zoned single family residential. The house was one of the largest in Lawrence, with more than 7,000 square feet. It was run down, though structurally sound.

Neighborhood concerns about the obvious incompatibility of the proposed use with the single family residential zoning of the neighborhood and the lack of standards in the draft ordinance delayed the project, and David Kimbrell dropped the proposal.

Unfortunately, the draft ordinance lived on, and was approved by the City Commission in January 1993.

See Group Plans Inn in Historic District, Lawrence Journal-World, June 9, 1992; City to Examine Code for Historic Homes, Lawrence Journal-World, July 3, 1992; City Retools Code on Uses for Historic Homes, Lawrence Journal-World, July 8, 1992; Developer Drops Plan for BB Inn, Lawrence Journal-World, July 8, 1992; Commission Seeks Public Comment on Taxi Vouchers, Lawrence Journal-World, Jan. 6, 1993 (all available on the Lawrence Journal-World's online archives).

My research indicates that only three adaptive reuse SUPS have been granted in the nearly 17 years since the ordinance was enacted. Applications for two others were filed, one in 2007, and one in 2009, but both were withdrawn after drawing significant neighborhood opposition.

641-645 Tennessee B & B

The ordinance was first applied in 1993 to allow a bed and breakfast at 641-645 Tennessee Street, also in Old West Lawrence. Although the area was zoned single family residential, the property had been used as an apartment house since 1936. There was no neighborhood

opposition to the proposal to change the use from apartments to a B & B, and it was approved unanimously by the City Commission.

See *Lawrence Journal-World*, May 21, 1993; Rural Rezoning Issue Heads to Planning Commission, *Lawrence Journal-World*, May 24, 1993; Planners, *Lawrence Journal-World*, May 27, 1993 (all available on the *Lawrence Journal-World*'s online archives).

It is important to note that the property was unique – a very large brick house that had been used as an apartment house for decades, plus an accessory structure also used as a dwelling.

Also, there is no longer any need to seek adaptive reuse to put a B & B in an RS-5 single family residential district. A regular SUP is all that is necessary.

Note also that the B & B went out of business in 1999, partly because B & B use put the house in a higher tax bracket. See A Lawrence Bed and Breakfast Is Closed After the Owner Grew Frustrated With Taxation and Regulations on the Enterprise, *Lawrence Journal-World*, Jan. 17, 1999.

805 Ohio, Part 2: Multiple Unit Dwelling

In 1994, Dan Riedemann requested an adaptive reuse of 805 Ohio to permit several apartments for up to ten years to help pay for restoration of the structure, which was deteriorating, as the house was vacant and had not sold after more than a year on the market.

Neighbors and City officials had the same concerns that had arisen over the previous adaptive reuse proposal for the property – the open-endedness of the adaptive reuse ordinance, and whether the proposed use was compatible with the single family residential zoning of the district.

The end result was that temporary rental units were allowed, subject to stringent, site-specific conditions. Owner occupancy was required, and the house was to revert to single-family use within 10 years. Annual progress reports and city inspections were required.

See Approval for Apartment, *Lawrence Journal-World*, June 16, 1994; Planners Say No to 805 Ohio, *Lawrence Journal-World*, June 23, 1994; Historic House Faces Uncertain Future, *Lawrence Journal-World*, July 17, 1994; Apartment Plan Approved for 805 Ohio, *Lawrence Journal-World*, July 20, 1994 (all available on the *Journal-World*'s online archive).

The time was later extended by the City Commission, and the apartments are still in use.

It is important to note that 805 Ohio is a truly unique structure that was house was huge,

- The house is huge. The *Journal-World* called it a “mammoth,” a “brick goliath,” and one of the biggest houses in the city, with more than 7,000 square feet.
- The house was vacant, had been on the market for approximately two years, and was deteriorating cosmetically, though not structurally.

At the Lawrence City Commission meeting on August 15, 2006, addressing the request to extend the permit for 805 Ohio, Mary Miller of the City's Planning Staff summarized the history of the adaptive reuse ordinance:

“Originally the City Commission was leery of the Adaptive Reuse UPR and felt that it might be a ‘loophole’ to achieve higher density without rezoning. There had been no Adaptive Reuse UPR’s since 805 Ohio. The UPR had not been seen as setting a precedent, due to stringent, site-specific conditions which were applied. Conditions were also recommended for this UPR which would make it site-specific and prevent it from setting a broad precedent.” (Meeting Minutes on City website.)

Castle Tea Room: Restaurant and Outside Events

The next adaptive reuse that was approved was for the Castle Tea Room on the 1300 block of Massachusetts Street in 2007. The owners sought permission to use the property as a private dining restaurant with outdoor events (such as wedding receptions, I assume). It was approved by the City Commission in June 2007. *Lawrence Journal-World*, June 16, 2007 available on the *Lawrence Journal-World*’s online archives).

It is important to note that like 805 Ohio and 641-645 Tennessee, the property is a very large, unique structure.

637 Tennessee: Accessory Dwelling Unit Application

In 2007, the new owner of 637 Tennessee (former Girls’ Achievement Place) sought adaptive reuse permission for an accessory dwelling unit. The area is zoned RS-5 Single Family Residential, and accessory dwelling units are not allowed in RS-5 districts.

Where accessory dwelling units are allowed, they must be for only one person, cannot be more than 940 square feet, and owner occupancy of the house is required.

The staff report recommended waiving *all* those requirements.

There were procedural irregularities in the review process and significant neighborhood opposition to the proposal. After the matter was deferred several times from the Planning Commission Agenda, the house was sold to buyers who didn’t care whether there was an accessory dwelling unit, and the issue became moot.

603 Tennessee: B & B Application

In 2009, the new owner of 603 Tennessee sought adaptive reuse for permission for a bed and breakfast. B & Bs are allowed in RS-5 districts through special use permits, subject to use specific standards in the Code. The staff report recommended approval of a B & B that was neither owner-occupied nor subject to state licensing, contrary to the use specific standards in the Code, on the ground that the adaptive reuse ordinance gives Planning “flexibility” in applying the Code.

The Adaptive Reuse application was withdrawn after neighboring landowners appealed the Code interpretation in the staff report and the administrative decision not to give neighboring landowners notice of the HRC hearing. An application for a regular SUP for a B & B that complied with Code was then filed.

League of Women Voters of Lawrence-Douglas County

P.O. Box 1072, Lawrence, Kansas 66044

August 23, 2009

Mr. Greg Moore, Chairman
Members
Lawrence-Douglas County Planning Commission
City Hall
Lawrence, Kansas 66044

RECEIVED

AUG 24 2009

City County Planning Office
Lawrence, Kansas

RE: ITEM NO. 6: TEXT AMENDMENT TO CHAPTER 20 DEVELOPMENT CODE, ADAPTIVE REUSE MODIFICATIONS.

Dear Chairman Moore and Planning Commissioners:

There are two current amendments to the Land Development Code Adaptive Reuse Special Use provisions that we believe need close examination as to the consequence of these changes before adopting these as they now read. The proposed amendment wording is in bold italics.

The first proposed change to Section **20-501** includes new wording at the beginning of this section **20-501(2)** which outlines qualifying criteria for Adaptive Reuse.

This first proposed amendment reads, "...*while it is not necessary to meet the following criteria to request a Special Use Permit for an Adaptive Reuse...*" followed by the existing four criteria.

Any one of these four existing criteria would have allowed property which is a Landmark in an Historical District that meets these criteria to qualify for an Adaptive Reuse. The proposed statement added as an amendment removes these as four limiting criteria by rendering them unnecessary.

In the same Adaptive Reuse sections is an already existing provision, **Section (20-501(7)(iii))**, which reads, "Adherence to other criteria established in this Development Code, as appropriate to the use proposed, when so determined by the Planning Director or the Historic Resources Administrator."

Effect of this proposed amendment. Both of these sections applied together, **(20-501(2) and 20-501(7)(iii))**, would appear to lift the existing Land Development Code regulations on landmark property in the Historic District, as determined by the Planning Director or Historic Resources Administrator.

The second amendment, a modification of the definition of Adaptive Reuse in **Article 17 TERMINOLOGY**, eliminates the landmark requirement by further expanding what characteristics would be required of property to allow it to qualify for Adaptive Reuse. [the wording changes are in italics] This reads as follows:

"20-1703 ADAPTIVE REUSE OF DESIGNATED HISTORIC PROPERTY. Conversion of a designated local, State or national historic landmark Structure *or a structure or property that is part of an Historic District*, to another specified use, with the intent of preserving the landmark *or structure or property within the Historic District.*"

The effect of these two amendments together: This proposed wording of these two amendments would permit any property, historic or not, including vacant land or existing structures, to qualify for Adaptive Reuse as long as they are located in an Historic District. The type of Adaptive Reuse can be what the Historic Resources Administrator approves and the Planning Director determines is appropriate, and with what restrictions, if any. This creates great uncertainty and could make Historic Districts an undesirable classification, with the opposite effect from that originally intended. We ask that you reconsider these amendments and/or add provisions that would be more restrictive so as to better define what is intended to be permitted in Historic Districts to qualify as Adaptive Reuses.

Sincerely yours,

Milton Scott
Vice President

Alan Black
Alan Black, Chairman
Land Use Committee

League of Women Voters of Lawrence-Douglas County

P.O. Box 1072, Lawrence, Kansas 66044

August 23, 2009

RECEIVED

AUG 24 2009

City County Planning Office
Lawrence, Kansas

Mr. Greg Moore, Chairman
Members
Lawrence-Douglas County Planning Commission
City Hall
Lawrence, Kansas 66044

RE: ITEM NO. 6: TEXT AMENDMENT TO CHAPTER 20 DEVELOPMENT CODE, MODIFICATION TO THE APPEALS SECTIONS 20-1310 AND 20-1311

Dear Chairman Moore and Planning Commissioners:

New importance of Written Interpretations.

These text amendments to Sections 20-1310 and 20-1311 clarify what can be appealed to the Board of Zoning Appeals (BZA) in terms of planning staff code interpretations. These wording changes make it clear that staff interpretations of the Subdivision Regulations and Zoning Code of the Lawrence Land Development Code (LDC), as they appear in staff reports and recommendations to the Planning Commission and City Commission, are not appealable to the BZA. [Amendments are in bold italics.]

This means that if questions arise as to staff interpretations, the only method to clarify such interpretations through the BZA is after the fact as a formal request to the Planning Director for a Written Interpretation. This provision, currently in the Land Development Code, **Section 20-1310**, has no listed time limit on how long it can take for the Planning Director to release his Written Interpretation. This situation could effectively result in Section 20-1310 not being applicable to staff interpretations of the LDC under any circumstances because of the lack of a time frame within which such interpretations must be released.

Lack of appeal to BZA for discontinuance of stays.

A second troubling aspect of this clarification of the Appeals sections is that in the event that the Planning Director determines that an appeal to the BZA of a Written Interpretation ***"would cause immediate peril to life or property or (b) the situation appealed from is transitory in nature, and therefore, an appeal would seriously interfere with enforcement of this Development Code..."*** A stay of further action until it is appealed to the BZA will not be enforced unless the Court reverses the discontinuance of the stay. What is being eliminated with this amendment is the ability of the BZA, as well as the Court, to reverse the discontinuance of the stay.

This current amendment regarding discontinued stays, combined with the lack of a time requirement within which the Written Interpretation must be written, effectively means that under these new circumstances a request for a Written Interpretation can essentially have no significance to any current Code provisions as they affect the administration of the Land Development Code. It could take years for a Written Interpretation to be adopted, with no need for haste, and once it is written it could be difficult to appeal.

We ask that you carefully consider the consequences of these amendments to Sections 20-1310 and 20-1311 before you adopt them as written here.

Thank you for considering these issues.

Sincerely yours,

Milton Scott
Vice President

Alan Black

Alan Black, Chairman
Land Use Committee