
PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

PC Staff Report
02/23/11

ITEM NO. 3: RM24 to CN1; .27 ACRES; 313 E 8TH ST (MKM)

Z-12-16-10: Consider a request to rezone approximately .27 acres from RM24 (Multi-Dwelling Residential) to CN1 (Inner Neighborhood Commercial), located at 313 E. 8th Street. Submitted by John Flanders for R&B Holdings LC, property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning request for .27 acres from RM24 (Multi-Dwelling Residential) District to the CN1 (Inner Neighborhood Commercial) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report and with the following conditions:

1. Historic Resource Commission's approval of the rezoning.
2. The use category of *Financial, Insurance and Real Estate Office* shall be removed from the list of permitted uses.

Applicant's reason for request:

"The requested zoning change from RM24 to CN1 will allow the Landowner, its Tenants, and the General Public to enjoy the social and economic gains that come from expanding the possible uses of this commercial property to include more than automotive services. In discussions with the East Lawrence neighborhood Association (ELNA), for example, some of the ideas put forth for possible tenant uses included: a neighborhood convenience store, an art studio/gallery, and a coffee shop or restaurant. The long-standing commercial use of this property has been strictly limited to automotive services. A commercial zoning of CN1 would permit additional and beneficial commercial uses for this property. We believe a rezoning would be a win-win-win for: the neighborhood, the tenant/business owner, and the property owner."

ATTACHMENTS:

Attachment A: Letter of support for conditional zoning from East Lawrence Neighborhood Association.

Attachment B: Section 20-1502 of the Development Code: Nonconforming Uses.

Attachment C: 1981 Planning Director's confirmation of nonconforming use of property

Attachment D: Applicant's future plans for the property.

KEY POINTS

- The current use is a non-conforming use per Section 20-1502(a). The subject property was zoned for commercial uses in 1966 when the commercial use was developed. The property has since been rezoned to the RM24 District and the commercial use is now nonconforming.
- The rezoning to the CN1 District will not resolve the nonconforming status of the use, as the existing use is not permitted in the CN1 District; however, when the use of the property changes, it will be possible to change to a conforming commercial use.

- In some of the applicant's responses in this report, the applicant mentions approval and restrictions the City placed on the property in 1981 for the commercial use. This reference is to a letter from Garner Stoll, Director of Planning at that time, which confirms that the use is a nonconforming use and explains the type of uses the property can be used for. Section 20-1502 of the Development Code contains regulations for nonconforming uses and is included with this report as Attachment B.

GOLDEN FACTORS TO CONSIDER

CHARACTER OF THE AREA

- The subject property is located in an area of mixed uses. The surrounding area, while zoned RM24 for multi-dwelling residences, is currently developed primarily with single-dwelling residences, and commercial zonings and uses are located within 500 ft of the subject property in all directions.

CONFORMANCE WITH *HORIZON 2020*

- The proposed rezoning request from RM24 to CN1 is consistent with land use recommendations found in *Horizon 2020*.

ASSOCIATED CASES/OTHER ACTION REQUIRED

ASSOCIATED CASES

- B-12-14-10; variance from the maximum building square footage permitted in the CN1 District of 3000 sq ft to permit the existing structure of 3290 sq ft. The variance was approved by the Board of Zoning Appeals at their February 3, 2011 meeting.

OTHER ACTION REQUIRED

- Historic Resource Commission approval of rezoning requests.
- City Commission approval of zoning request and publication of zoning ordinance.

PRIOR TO CHANGE OF USE OR OTHER DEVELOPMENT

- Submittal of site plan to the Planning Office if any physical alterations to the site or a change of use are proposed.
- Historic Resource Commission approval is needed for any physical changes.
- A building permit shall be obtained from Development Services prior to structural changes.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- East Lawrence Neighborhood Association provided a letter of support for conditional rezoning. This is included with this staff report as Attachment A.

GENERAL INFORMATION

Current Zoning and Land Use: RM24 (Multi-Dwelling Residential) District; auto detail company.

Surrounding Zoning and Land Use: RM24 (Multi-Dwelling Residential) District in all directions; detached dwellings.

I. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

"Applicant has studied the overall goals of the Comprehensive Plan, Horizon 2020, and believes that the proposed zoning change for the subject property meets these goals in many ways. First it meets the objective of the General Goal because it will allow the Landowner, its Tenants, and the General Public to enjoy the social and economic gains that come from expanding the possible uses of this commercial property to include more than automotive services. In discussions with the East Lawrence Neighborhood Association (ELNA) for example, some of the ideas put forth for possible tenant uses included: a neighborhood convenience store, an art studio/gallery, and a coffee shop or restaurant. The long-standing commercial use of this property has been strictly limited to automotive services. A commercial zoning of CN1 would permit additional and beneficial commercial uses for this property. We believe a rezoning would be a win-win-win for; the neighborhood, the tenant/business owner, and the property owner.

Excerpted from Horizon 2020, General Goal:

The overall community goal for planning is to provide, within the range of democratic and constitutional processes, for the optimum in public health, safety, convenience, general social and physical environment and individual opportunities for all the residents of the community, regardless of racial, ethnic, social or economic origin. It is the goal of the planning process to achieve a maximum of individual freedom, but public welfare must prevail. It is the intent to meet and safeguard individual rights and vested interests in a manner which will create the minimum disruption in individual freedoms and life values.

Applicant also believes that this proposed zoning change meets the goals set forth in Chapter Six of Horizon 2020 because the building, although currently zoned RM24, has had continuous commercial use since it was built in 1965. Rezoning from RM24 to CN1 will not only increase the possible commercial uses for this property in ways that will benefit the local East Lawrence neighborhood, but it will also provide benefits to the greater community of Douglas county by strengthening downtown Lawrence per the nodal, infill, and improvement of community image goals set forth in Chapter Six. The highest and best use of this commercial property is probably not going to be an automotive shop. While the neighbors have fond memories of how the T.I.R.E. Shop served the neighborhood in the past, they also acknowledge that the neighborhood has evolved. The current limited commercial use permitted is likely not the highest and best use for the property.

Excerpted from Chapter Six – Commercial Land Use

The Plan's goal is to strengthen and reinforce the role and function of existing commercial areas within Lawrence and Douglas County and promote economically sound and architecturally attractive new commercial development and redevelopment in selected locations.

STRATEGIES: COMMERCIAL DEVELOPMENT

The principal strategies for the development and maintenance of commercial land use areas are:

- *Support downtown Lawrence as the Regional Retail/Commercial/Office/Cultural Center with associated residential uses through the careful analysis of the number, scale, and location of other mixed-use commercial/retail developments in the community. Downtown Lawrence is the cultural and historical center for the community and shall be actively maintained through implementation of the adopted design guidelines that regulate the architectural and urban design character of this regional center.*
- *Establish and maintain a system of commercial development nodes at selected intersections which provide for the anticipated neighborhood, community and regional commercial development needs of the community throughout the planning period.*
- *Require commercial development to occur in 'nodes', by avoiding continuous lineal and shallow lot depth commercial development along the city's street corridors and Douglas county roads.*
- *Encourage infill development and/or redevelopment of existing commercial areas with an emphasis on Downtown Lawrence and existing commercial gateways. Sensitivity in the form of site layout and design considerations shall be given to important architectural or historical elements in the review of development proposals.*
- *Improve the overall community image through development of site layout and accessibility plans that are compatible with the community's commercial and retail areas.*

Applicant also believes that a zoning change to CN1 will increase the probability that this building, and the businesses that will occupy it, will create increased economic value in the community by creating new jobs (current tenant is a one-man shop), enhancing the tax base (current business is quite small in revenues and taxes generated), and by improving the quality of life in the East Lawrence neighborhood as a successful commercial enterprise.

Excerpted from Chapter 12 of *Horizon 2020*:

According to the International Economic Development Council, the definition of economic development is creating wealth in a community through job creation, job retention, quality of life improvement and tax base enhancement."

END OF APPLICANT'S RESPONSE

STAFF ANALYSIS

The following statements are recommendations from *Horizon 2020* regarding Inner Neighborhood Commercial Centers. Staff comments follow in *italics*.

- *Horizon 2020* notes that an Inner Neighborhood Commercial Center is typically an existing commercial area within an established neighborhood. (page 6-6, *Horizon 2020*)

While the subject property is not specifically identified as an existing neighborhood commercial center, this could be due to the fact that the property is not zoned for commercial uses.

- The Comprehensive Plan does not support increasing the size or number of new Commercial Centers, however small, new inner-neighborhood centers are possible and/or anticipated as part of an overall new planned neighborhoods.
- *Horizon 2020* does not specifically indicate the location of new Inner-Neighborhood Commercial Centers due to their unique situations. (page 6-19)

This development is not a part of a new neighborhood, and is not a new commercial use. The proposal is to match the zoning of the property to its historical (since 1966) commercial use, while allowing less intense commercial uses.

- A new Inner-Neighborhood Commercial Center shall have no gas pumps, drive-thru or drive-up facilities. The Center shall be located on a local, collector or arterial street. Inner-Neighborhood commercial Center uses may include book stores, dry cleaning services, food stores, beauty salons, etc.

The current use is not a permitted use in the Inner-Neighborhood Commercial Center, but the CN1 Zoning would make it possible for an inner-neighborhood commercial use to be installed when the building is no longer leased to the current tenant.

- New Inner-Neighborhood Commercial Centers shall be designed as an integrated part of the surrounding neighborhood so that appearance of the commercial area does not detract from the character of the neighborhood.

The current commercial use is located within a residential style structure (Figure 1). The applicant indicated they had no plans to change the structure with any future change in use. The property is also located within the environs of the North Rhode Island Historic District so any change to the structure would require the approval of the Historic Resource Commission.

Staff Finding -- The rezoning request conforms with *Horizon 2020* recommendations related to new Inner Neighborhood Commercial Centers.

II. ZONING AND USE OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

The property is located within an area that is zoned for multi-dwelling residences at a density of 24 dwelling units per acre (RM24 District). This residential district contains primarily single-family residences. Commercial Zoning is located in close proximity to the subject property. CS (Commercial Strip) Zoning located on Connecticut Street to the northwest contains various retail shops. The downtown commercial district (CD) is located approximately 1 1/2 blocks to the west and commercial zoning and uses are located on the south side of the block along 9th Street. (Figure 2)

Staff Finding -- The immediately surrounding properties are zoned and used for residences, while commercial zoning and uses are interspersed with the residential uses within the general area.

III. CHARACTER OF THE NEIGHBORHOOD

Applicant's response:

"East Lawrence is an interesting, somewhat eclectic combination of historic and newer properties, which unites a very cohesive residential community with a vibrant and long-standing commercial community. The East Lawrence Neighborhood Association represents a clear, unified vision that's been created by the residents and business owners in the neighborhood."

The businesses are quite diverse, ranging from art centers to law firms, and corner restaurants to printing companies. The greater Lawrence, and Douglas County, communities seem to embrace this diversity and welcome the new businesses as well as the long-time legacy businesses. The architecture of the residential community is as diverse as the architecture of the commercial buildings and business community. There are many Historic structures in this neighborhood, and the neighborhood falls within a Historic District. In summary, we believe that it's a distinct neighborhood that really likes its identity and wishes to preserve and protect it."

Staff Finding -- The neighborhood is predominately residential with a mix of commercial and industrial uses.

IV. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

The property is located within the East Lawrence Neighborhood. The East Lawrence Revitalization Plan (ELRP), adopted by the City Commission on November 21, 2000, provides goals and recommendations for the revitalization of this area.

The plan recognizes that there is interconnectivity between commercial and residential uses and notes "The commercial/residential relationship is important not only for maintaining economic viability, but for defining the physical character of the neighborhood." (Page 3, ELRP)

One goal identified in the vision statement on Page 10 of the plan is to "Protect and strengthen the viability of neighborhood businesses."

Staff Finding -- The proposed rezoning would maintain the commercial/residential interconnectivity which has been in existence since 1966 while allowing the commercial use to change to a more neighborhood friendly use when the current tenant vacates the building.

V. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant's Response:

"The fact that the subject property has been in continuous use for commercial purposes (specifically for automotive services under a non-conforming conditional use permitted by the City of Lawrence in 1981) is clear evidence that the property is commercially viable for such use. The physical structure and position of the building on the property provide good access from both East 8th Street and New York Street. There is good parking on the property also.

However, the structures on the property are completely unsuitable for use as actually zoned (RM24) today. There is a small office on the north side of the building, and the rest of the structure would be considered garage/workshop and storage space."

The applicant references a conditional use permit the City approved in 1981. The applicant is referring to the letter from the Planning Director which verified that the commercial use was a

nonconforming use regulated under the nonconforming section of the Code. The property is currently developed with a commercial structure that is residential in character. (Figure 1)

The property is zoned RM24, which permits 24 dwelling units per acre. The subject property contains .27 acres; therefore, a multi-dwelling structure with a maximum of 6 dwelling units would be possible. It is possible that this building could be converted to a multi-dwelling structure.

Staff Finding -- The property as zoned would permit a multi-dwelling structure with a maximum of 6 dwelling units; however, the existing building is not designed as a multi-dwelling structure. The use of the property for a multi-dwelling structure would require revisions to the structure, but the property itself is suited to residential uses.

VI. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's Response:

"The subject property has not been vacant more than a few weeks in almost 30 years. It has been occupied by the same tenant since December of 2009. Prior to that it was occupied by long-term tenant The T.I.R.E. Company until poor health forced the owner to retire."

Staff Finding – Prior to the 1960s, the property was zoned for, and developed with, residential use. The property was developed with commercial uses in the 1960s and has been used commercially since that time.

VII. EXTENT TO WHICH APPROVING THE REZONING WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Applicant's response:

"Applicant does not believe that a zoning change to CN1 will have any detrimental effects on nearby properties. To the contrary, the opinions voiced by some neighbors suggested that the current zoning allows the property to be developed into multi-family housing that could potentially create parking problems and generate undesirable noise and activities in the neighborhood. Newer, multi-family units in East Lawrence have attracted student partygoers and there have been instances of 'disruptions to the neighborhood's peace and quiet' as a result. This perspective was something we hadn't considered prior to talking with the neighborhood representatives. Their opinion is that a commercial use for the property is preferable over a multi-family residential use."

"We met with and listened carefully to representatives from ELNA and came away from our discussions convinced that the East Lawrence neighborhood will be best served by a commercial use for the property rather than a residential use."

The rezoning request would allow the existing structure to continue to be used in a commercial fashion, but would permit other commercial uses. While the CN1 Zoning District does not permit the current auto oriented use but it would remain a nonconforming use. The rezoning would allow other commercial uses which are more compatible with the neighborhood to locate on the property.

Staff Finding – The change in zoning would not detrimentally affect nearby properties and provides the opportunity for a less intensive and more neighborhood friendly commercial use to locate here.

VIII.THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF THE DENIAL OF THE APPLICATION

Applicant's Response:

"Applicant believes that the East Lawrence neighborhood will gain from this zoning change in several important ways:

- Rezoning to CN1 from RM24 will prohibit the development of multi-family dwellings on this property, thereby reducing the potential for on-street parking congestion, increased traffic, and undesirable noise from tenants. Some neighbors have expressed concern that a redevelopment of this property into multi-family might attract off campus partygoers who could potentially negatively impact the neighborhood.*
- Allowing expanded commercial uses for the building will increase the economic potential for new job creation, increased tax revenues, and will benefit the neighborhood by providing new commercial space for businesses that are pulled into the neighborhood by existing consumer demand for various goods and services.*
- CN1 will increase the probability that the existing structures will be improved or replaced at some point to allow the property to achieve its highest and best commercial use. We have kept the property in good repair and it is cosmetically consistent with the neighborhood today. Improving the economic viability of the property will provide the funds that will be necessary for future capital improvements and/or redevelopment.*

Applicant believes that a denial of this application for rezoning would cause the owners to continue to be restricted to using or leasing the building solely for automotive business purposes per the restrictions issued by the City of Lawrence in July of 1981. Applicant/landowner believes that the highest and best use of this property is probably not automotive services, and intends to actively explore new and better uses that benefit the neighborhood, the larger Lawrence and Douglas County community, and ourselves if the rezoning to CN1 is approved."

Evaluation of these criteria includes weighing the benefits to the public versus the hardship to the individual landowner if the rezoning request were denied. Benefits are measured based on the anticipated impacts of the rezoning request on the public health, safety and welfare. If the rezoning request were not approved, the commercial use would remain a nonconforming use and the new uses would be restricted to similar or less intense uses if the change occurred before the current tenant vacated the premises or to a similar use if the change occurred after the tenant vacated. Approval of the rezoning request would not remove the nonconforming status of the existing building but would provide additional alternative commercial uses when the current tenant vacates the premises. The East Lawrence Neighborhood Association provided a letter, Attachment A, in which they support this rezoning and the continuation of commercial uses on this property, with the exception of pay-day loan or similar loan

operations. The letter indicated that the neighborhood would prefer the commercial uses permitted in the CN1 District to multi-dwelling uses on this property.

Staff Finding – Approval of this rezoning request would benefit the general public by opening the property to other commercial uses which would be more compatible with the neighborhood. Denial of the rezoning request would require the continued the use of the property as an auto-oriented use or redevelopment as a multi-dwelling residence, which the neighborhood association is opposed to.

IX. PROFESSIONAL STAFF RECOMMENDATION

Staff Review

The rezoning request is in compliance with the goals of the East Lawrence Revitalization Plan and is supported by the East Lawrence Neighborhood Association with the condition that pay-day loan type operations be prohibited. The rezoning would not remove the nonconforming status of the use at this time but would provide other options for the future use of this property. If the rezoning is approved, it should be conditioned to prohibit the pay-day type loan use the East Lawrence Neighborhood Association is concerned with. The Historic Resource Commission (HRC) considered this rezoning request at their January meeting, but deferred it to their February 17 meeting and requested that the applicant provide a plan for the future use of the property. This plan is included with this report as Attachment D. Staff's recommendation for approval of this rezoning is contingent upon HRC approval.

Staff Finding – Contingent upon the Historic Resource Commission approval of the rezoning request and based on the rezoning requests general compliance with the recommendations in *Horizon 2020* and the *East Lawrence Neighborhood Revitalization Plan*, and support from the neighborhood association, staff recommends approval of the rezoning request with the condition noted below:

1. The use category of *Financial, Insurance and Real Estate Office* would be removed from the list of permitted uses.



Figure 1. The residential character of the commercial structure.



Figure 2. Uses in the area. Subject property is outlined. Commercially zoned properties are shaded.

East Lawrence Neighborhood Association

P.O. Box 442393
Lawrence, KS 66044
eastlawrence@yahoo.com



December 13, 2009

City of Lawrence Planning Division
ATTN: Mary Miller AICP
6 East 6th Street
Lawrence, KS 66044

Re: 313 E. 8th Street

To the Lawrence City Planning Staff:

The East Lawrence Neighborhood Association would like to go on record in support of the zoning change associated with the project proposed for 313 E. 8th Street. We see that moving to a CN1 designation is much more desirable than the RM24 that it currently has and that a CN1 is more consistent with the uses of the property. However, we do have a concern over one use that CN-1 allows. We don't think that a payday loan, title loan or car title loan type of venture is a positive use in our neighborhood. This use is allowed as a part of the Financial, Insurance and Real Estate category. We would not object to any type of office use except the predatory aforementioned uses. ELNA has been firm in our stance against this type of business locating in our neighborhood. As I'm sure you are aware, payday, etc., loans are targeted at low-income people, especially older people who have disabilities. Most borrowers must roll their loans over each month and incur rising fees and heavy debt. Congress is currently investigating these business practices so that there may be better regulation ahead. In a similar rezoning case at 1245 Connecticut this use was conditionally excluded; therefore we request that this use be conditionally excluded in this instance, also.

Please feel free to contact me if you have any questions. Thank you for your consideration of this request.

Sincerely,

Phil Collison
East Lawrence Neighborhood Association
E-mail: phil@collison.com

CC: John Flanders
Deron Belt
Heather Coates

- (2) Nothing in this article will be construed to prevent [Structures](#) from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

(3) Change of Tenancy or Ownership

Nonconformity status runs with the land and is not affected by changes of tenancy, Ownership, or management.

20-1502 NONCONFORMING USES

(a) Definition

A nonconforming use is a land use that was legally established, but that is no longer allowed by the use regulations of the [Zoning District](#) in which it is located.

(b) Expansion

(1) When and How Allowed

A nonconforming use may not be expanded except as follows:

- (i) expansions that eliminate or reduce the nonconforming aspects of the situation are allowed;
- (ii) expansions into a part of a [Building](#) or other [Structure](#) that was lawfully and manifestly designed or arranged for this use may be approved by the City Commission, if reviewed and approved in accordance with the Special Use procedures of Sec. 20-1306; and
- (iii) expansions that are necessary and incidental to the existing nonconforming use may be approved by the City Commission if reviewed and approved in accordance with the Special Use procedures of Section 20-1306.

(2) Standards and Limitations

Nonconforming use expansions are subject to the following limitations.

- (i) Nonconforming use expansion in residential Districts may be allowed only when the expansion:
 - a. does not increase the number of [Dwelling Units](#);
 - b. does not exceed 50% of the [Floor Area](#) of the original use;
 - c. complies with all [Setback](#) and [Height](#) standards of the [Base District](#); and
 - d. complies with all off-street parking and loading requirements.
- (ii) Nonconforming use expansion in nonresidential Districts may be allowed only when the expansion:
 - a. does not exceed 25% of the [Floor Area](#) of the original use;
 - b. does not encroach into a residential [Zoning District](#);

- c. complies with all applicable [Setback](#) and [Height](#) standards of the [Base District](#); and
 - d. complies with all off-street parking and loading requirements.
- (iii) With the approval of the Board of Zoning Appeals, an expansion under this section may exceed 25% of the [Floor Area](#) of the original use but may not exceed 50% of the [Floor Area](#) of the original use. In reviewing and making decisions on a proposed expansion of a nonconforming use that will exceed 25% of the [Floor Area](#) of the original use, the Board of Zoning Appeals shall consider at least the following factors:
- a. that the expansion request arises from conditions that are unique to the property in question and not ordinarily found in the same [Zoning District](#) and are not created by action(s) of the property [Owner](#) or applicant;
 - b. that granting the expansion request would not adversely affect the rights of adjacent property [Owners](#) or residents;
 - c. that strict application of the provisions of this chapter would constitute [Unnecessary Hardship](#) upon the property [Owner](#) requesting the expansion;
 - d. that the expansion request desired would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare;
 - e. that granting the request would not be opposed to the general spirit and intent of this chapter; and
 - f. the recommendation of the City's professional staff.

(3) Change of Use

- (i) A nonconforming use may not be changed to any use other than a use allowed in the [Zoning District](#) in which it is located, except as provided in paragraph (ii), below.
- (ii) A nonconforming use may be changed to another similar or less intensive use if reviewed and approved by the [Planning Director](#) upon a finding that the new use is no more intensive in character than the original nonconforming use. The following additional rules apply:
 - a. A nonconforming residential use may not be changed to another nonconforming residential use that would increase the number of [Dwelling Units](#) on the site.
 - b. A nonconforming nonresidential use being changed to a residential use shall comply with the minimum [Lot Area](#) and [Density](#) standards of the [Base District](#).

(4) Moving

A nonconforming use may not be moved in whole or in part to another location on the [Lot](#) or [Parcel](#) unless the movement or relocation eliminates or decreases the extent of nonconformity.

(c) Loss of Nonconformity Status

- (1) Once a nonconforming use is abandoned, the use's nonconforming status is lost and any subsequent use of the property shall comply with the regulations of the [Zoning District](#) in which it is located. A nonconforming use will be considered abandoned when any of the following occurs:
 - (i) the intent of the [Owner](#) to discontinue the use is apparent;
 - (ii) with respect to any use other than a [Detached single-Dwelling](#) residential use, the use has been discontinued for a period of 12 months or more and no concerted effort has been undertaken by the [Owner](#) to continue the use;
 - (iii) a demolition permit has been applied for;
 - (iv) the characteristic equipment and furnishings associated with the nonconforming use have been removed from the [Premises](#) and have not been replaced by similar equipment within 90 days, unless other facts show intention to resume the nonconforming use;
 - (v) the nonconforming use has been replaced by a conforming use;
 - (vi) the nonconforming use has been changed to another use in accordance with Section (b)(3); or
 - (vii) a [Building](#) Permit to reconstruct a damaged nonconforming use in accordance with Section 20-1502(c)(4) has not been secured within 12 months of the date of occurrence of that damage or construction has not been diligently pursued.
- (2) When a [Building](#) or [Structure](#), the use of which does not conform to the provisions of this Development Code, is damaged to the extent of more than 60% of its fair market value, the use may not be restored, except in conformity with the regulations of the [Base District](#) and any applicable [Overlay District](#).
- (3) The exception to the above paragraph is that a detached [Detached Dwelling Structure](#), when registered as a nonconforming use, is permitted to be rebuilt, unless it is located within the [Floodway](#) or [Regulatory Floodway](#). Nonconforming [Detached Dwelling Structures](#) cannot be rebuilt to a greater [Density](#) than existed before the damage. Rebuilding shall only be allowed if off-street parking and [Setback](#) requirements of the current [Zoning District](#) are met. Reconstruction must be commenced within 12 months of the time the damage occurred.
- (4) A [Building](#) Permit to reconstruct a damaged [Structure](#) pursuant to (2) shall be obtained within 12 months of the date of occurrence of the

damage or demolition, and once issued, construction shall be diligently pursued.

(d) Discontinuance of Nonconforming Open Uses of Land

A nonconforming commercial or industrial [Open Use of Land](#) shall be discontinued, including the removal of all above-surface improvements and [Structures](#) accessory to the [Open Use of Land](#), but not to the permitted uses, by November 1, 2008. Any [Open Use of Land](#) that becomes nonconforming because of subsequent amendments to this Development Code shall also be discontinued on the same basis within 3 years of the [Effective Date](#) of the amendment that renders the use nonconforming.

(e) Accessory Uses and Structures

A use or [Structure](#), accessory to a principal nonconforming use or [Structure](#), may not be continued after the [Principal Use](#) or [Structure](#) has been abandoned, unless the use or [Structure](#) is also an [Accessory Use](#) or [Structure](#) to the [Principal Uses](#) permitted in the [Base District](#) and any applicable [Overlay District](#).

20-1503 NONCONFORMING STRUCTURES

(a) Definition

A nonconforming [Structure](#) is any [Building](#) or [Structure](#) that was legally established, but no longer complies with the [Density](#) and Dimensional Standards of this Development Code; provided, however, that where a previously conforming [Structure](#) no longer conforms with the regulations of this Development Code solely as a result of a governmental taking or acquisition for right-of-way, [Easement](#) or other governmental use, the failure to conform created by the taking or acquisition shall not constitute a nonconformity. Nonconforming [Structures](#) may remain, subject to the regulations of this section.

(b) Structural Alterations

[Structural Alterations](#), including enlargements, are permitted if the [Structural Alteration](#) does not increase the extent of nonconformity.

- (1) When a [Structure](#) is nonconforming because it encroaches into a required side or Rear [Setback](#), this provision will be interpreted as allowing other portions of the [Structure](#) to be expanded out to the extent of the existing encroachment, as long as there is no greater encroachment into a required [Setback](#).
- (2) When a [Structure](#) is nonconforming because it encroaches into a required Front [Setback](#), this provision will be interpreted as prohibiting other portions of the [Structure](#) from being expanded out to the extent of the existing encroachment.

(c) Use

A nonconforming [Structure](#) may be used for any use allowed in the [Base District](#) and any applicable [Overlay District](#).

(d) Moving

A nonconforming [Structure](#) may be moved in whole or in part to another location on the subject [Parcel](#) only if the movement or relocation decreases or eliminates the noncompliance.



City of Lawrence KANSAS

BUFORD M. WATSON, JR., CITY MANAGER

CITY OFFICES 6 EAST 6th
BOX 708 66044 913-841-7722

CITY COMMISSION

MAYOR

MARCI FRANCISCO

COMMISSIONERS

DONALD BINNS

BARKLEY CLARK

TOM GLEASON

NANCY SHONTZ

July 28, 1981

Mrs. Beverly Kennedy
Kennedy Glass Company
730 New Jersey Street
Lawrence, Kansas 66044

RE: 801 New York Street
Lot 45 on New York Street in the Original Townsite
of the City of Lawrence, Kansas

Dear Mrs. Kennedy:

The above referenced property is presently zoned RM-2 (Multiple-Family Residential). It has been a legal non-conforming use since the area-wide rezoning that occurred in East Lawrence in 1975.

It was the former site of the Apex Glass Company and most recently an accessory storage building for your business. This type of use is listed in Use Group 13, Automotive Services; Retail Sales; Other; of the City Zoning Ordinance.

The proposed use of the property as an automotive tire and muffler repair shop is also listed in Use Group 13 of the Zoning Ordinance. Therefore, it can be considered as a similar use to the original non-conforming use. Any expansion of the non-conforming use, including outside storage, however, would need special review by the City Commission before it could occur.

If I can be of any further assistance, please do not hesitate to call.

Sincerely,

Garner Stoll
Director of Planning

GS/ed

cc: Gene Shaughnessy

February 3, 2011

Historic Resources Commission
City of Lawrence
6 East 6th Street
P.O. Box 708
Lawrence, KS 66044

RE: DR-12-149-10; 313 East 8th Street

Dear HRC Members:

Pursuant to your request for additional information regarding plans for the building located at 313 East 8th Street, I am writing on behalf of its owner, R&B Holdings, LC, a Kansas Limited Liability Company, whose members are: Linda and Forrest Harrell (Lawrence, KS) and Luann and John Flanders (Park City, UT).

The historic uses of this building have been addressed in our application documents for both the variance requests and the zoning change request. We believe it came into existence in 1965 as a home for Apex Glass Company and subsequently became an accessory building (auto glass) for Kennedy Glass before it was leased to the TIRE Company.

The non-conforming use that is permitted today is for automotive services. We are seeking a zoning change from RM24 to CN1 so we, as owners, can lease the building to other less intensive commercial tenants. Our plans for this building are to:

- Continue to maintain and operate the building and grounds in a manner that is accretive to the neighborhood via compatible commercial uses
- Secure the zoning that allows us to lease the building to different types of commercial tenants rather than continuing leasing only to automotive tenants
- Secure the CN1 zoning to ameliorate the concerns of ELNA regarding the potential for future residential development on this property per the RM24 zoning rights
- Lease the building to businesses that are good neighbors, low intensity, and beneficial to the community

While the potential for redevelopment of this property under either the existing RM24 zoning or new CN1 zoning is recognized, we have no plans to redevelop the property. Nor do we have any plans to make any changes to the exterior appearance of the building or its size or shape.

Any future redevelopment would come before the HRC and the Planning Commission in the due course of the planning and approval processes for such redevelopment. Any use or design that might be deemed incompatible with the neighborhood or non-compliant with any city codes or guidelines would be dealt with by the appropriate regulatory bodies and the East Lawrence Neighborhood Association if and when it is ever proposed.

Our plan for the building is to own and operate it as a commercial income property.

We became owners of this property by inheritance. We are not speculative purchasers or developers of this property, nor are we seeking speculative zoning. Mrs. Beverly Kennedy, long-time East Lawrence businesswoman and former owner of Kennedy Glass, gifted portions of this property to her two daughters, Luann Flanders and Linda Harrell, approximately two decades ago, and the remainder ownership interest was distributed to her daughters by her trust upon her death.

Our request for a zoning change is to legally recognize the long-standing commercial use of our property and to have the opportunity to legally lease the building to neighborhood compatible, non-automotive commercial tenants.

Thank you for your consideration in this matter, and if I may be of any assistance in clarifying anything in this letter or anything in our request applications, please call me at 435.513.1328 or email me at flandolini@hotmail.com.

Very truly yours,

John H. Flanders,
Managing Member, R&B Holdings, LC