

March 2, 2011

TUBBS LAW FIRM

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City County Planning Office
Lawrence, Kansas

Mayor Amyx
City Hall, PO Box 708
Lawrence, KS 66044

RE Appeal of February 17, 2011 Historic Resources Commission decision to deny the demolition permit, parking variance and rezoning for the 711 Connecticut Project.

Dear Mayor Amyx:

We are requesting that the City approve the demolition of the two existing structure of 711 Connecticut Street.

This is an appeal of the HRC's finding that the proposed demolition of two existing structures and the development of the 711 Connecticut Project (the "Project"), would encroach upon, damage, and destroy the environs of the listed properties, which include the environs of Lawrence's Downtown Historic District and the North Rhode Island Street Historic Residential District, National Register of Historic Places and the Octavius W. McAllaster Residence, 724 Rhode Island, Lawrence Register of Historic Places (collectively the "Historic Properties"). See HRC letter of denial February 18, 2011.

Proposed Findings

On behalf of the owners, I propose that the City Commission make the following findings at their April 19, 2011 meeting:

The City Commission finds, based on a consideration of all relevant factors that there is no feasible and prudent alternative to the proposed demolition of the two existing structures and the development of the 711 Connecticut Project, as submitted by the applicant, and that the project includes all possible planning to minimize harm to the environs of Lawrence's Downtown Historic District and the North Rhode Island Street Historic Residential District, National Register of Historic Places and the Octavius W. McAllaster Residence, 724 Rhode Island, Lawrence Register of Historic Places resulting from the project.

We submit that such findings are based upon the relevant factors identified in K.S.A. 75-2724(a) and K.A.R. 118-3-1(e), discussed below.

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Analysis of Relevant Factors

Technical Issues

The proposed location of the Project is presently zoned for RM24 multifamily use.

The Project's goal is to help provide additional multi-family residential housing in the vicinity of the downtown area and specifically to provide one or two bedroom dwelling units which are in short supply in the City based on recent reports by the Lawrence Douglas County Housing Authority. The project is a redevelopment near the downtown area and should benefit from existing utilities in the area without major upgrade and connections.

Demolition

The structures to be demolished are **NOT "historic,"** as defined by K.A.R. 118-3-1(h), because neither structure is included on "the national register of historic places" or "the register of historic Kansas places." In addition, the structures are not included on the Lawrence Register of Historic Places. The main structure has had significant alterations and an addition that we believe has compromised its architectural integrity.

On August 10, 2010, the City Development Services Division condemned the main structure as **structurally unsafe and unfit for habitation** due to holes in the floor and foundation in addition to other defects. We agree with the findings of the Development Services staff concerning the condemnation of 711 Connecticut that the structure is structurally unsafe. We also agree with the **HRC staff recommendation that these structures should be demolished due to the current deteriorated state.** Since these reports, there has been major water damage to the entire south wall of the structure and we have retained a structural engineer to complete a second assessment of the structure due to the additional damage. We also would recommend that the City Commissioners complete a walkthrough inspection to see for themselves the extent and severity of the deterioration which requires removal of these structures. We will note that the HRC staff very rarely recommends demolition of structures as she has in this case.

"[S]taff is aware that because the structure has been allowed to deteriorate unabated for the last decade, the rehabilitation of the structure may result in replacement structures of new materials that visibly look like the historic structures. The question for staff and the HRC is have the structures in the environs achieved such a state of disrepair that their removal should be identified as "necessary." If the Commission determines the structures should be demolished, new compatible construction should be built. The applicant has included a replacement project in

the application materials. This project includes the construction of a new 3900 sf apartment building, rezoning the property to RM32, and a variance for required parking.” (see 02-17-2011 HRC Staff Report p. 9)

STAFF RECOMMENDATION

Demolition

“In accordance with the Standards and Guidelines for Evaluating the Effect of Projects on Environs, the standard of evaluation, staff recommends the Commission approve the demolition of the existing structures located at 711 Connecticut Street and make the determination that the proposed demolition does not encroach upon, damage, or destroy the environs of the listed historic property if a compatible replacement structure is constructed. This approval is based on the following findings and conditions:

1. The applicant will work with the Architectural Review Committee to reduce the size of the addition, refine architectural elements such as the porch, and reduce the amount of impervious surface and parking ;
2. The applicant will provide measured drawings of the structure before the demolition permit is released;
3. The applicant will board and secure the structure until demolition;
4. The applicant provide complete construction documents, with material notations to be reviewed and approved by the Historic Resources Administrator prior to release of the demolition permit and the building permit for new construction;
5. Any changes to the approved project will be submitted to the Historic Resources Commission prior to the commencement of any related work;
6. The property owner will allow staff access to the property to photo document the project before work commences, during construction, and upon completion of the project.

In accordance with Chapter 22 of the Code of the City of Lawrence, the standard of evaluation, staff recommends the Commission approve the proposed project and make the determination that the proposed project does not encroach upon, damage, or destroy listed historic properties and their environs with the following conditions:

1. The applicant will work with the Architectural Review Committee to reduce the size of the addition, refine architectural elements such as the porch, and reduce the amount of impervious surface and parking ;
2. The applicant will provide measured drawings of the structure before the demolition permit is released;
3. The applicant will board and secure the structure until demolition;
4. The applicant provide complete construction documents, with material notations to be reviewed and approved by the Historic Resources Administrator prior to release of the demolition permit and the building permit for new construction;
5. Any changes to the approved project will be submitted to the Historic

Resources Commission prior to the commencement of any related work;
6. The property owner will allow staff access to the property to photo document the project before work commences, during construction, and upon completion of the project.” (see 02-17-2011 HRC Staff Report p. 11-13)

“DR-12-146-10, Demolition and New Construction: The HRC determined that the project, as proposed, does not meet the established Standards and Guidelines for Evaluating the Effect of Projects on the Environs of a National Register of Historic Places property. Specifically, the HRC found the proposed project does not meet Standards # 1 and 4, and will encroach upon, damage or destroy the listed historic property and its environs. In addition, this project was evaluated under Section 22-505 of the Code of the City of Lawrence. In accordance with this evaluation, the HRC voted to approve the proposed project.” (See 02-18-2011 HRC letter of denial)

We find the HRC’s findings difficult to understand and inconsistent. On one hand, they approved the project under Section 22-205 of the Code of the City of Lawrence and on the other hand they denied the project under the state law –Certified Local Government Review. The HRC typically uses Standards and Guidelines for Evaluating the Effect of Projects on Environs. Chapter 22 and the guidelines are similar in scope and goals, that is, to promote historic preservation when possible. In this case, that goal is unreasonable and the polar opposite findings of the HRC reflect the inherent inconsistency with their decisions.

Design Issues

The size of the Project cannot be feasibly, prudently, or economically reduced beyond 4-5 dwelling units and the design of the Project includes all possible planning to minimize harm to the environs of the Historic Properties. First, there are a number of structures in the vicinity of the Project that are compatible with the size and scope of the proposed Project. Along Connecticut Street, traveling North you have the former Coca-Cola Bottling Plant. To the Northeast you have the Santa Fe Train Depot and a mansion is on the corner of 7th and New York in direct line of sight with the proposed Project. Immediately across the street and to the East, there is a large commercial structure which has the Habitat for Humanity Warehouse and Store, a large lighting store and a vacant store. The commercial structure has approximately 33 city provided off street parking spaces. To the South there are a number of duplexes on the block. Immediately to the North is a vacant lot and a church on the corner lot at 7th and Connecticut. To the West and rear of the Project is an alley which borders the North Rhode Island Historic District.

Rezoning

There is an application pending before the Planning Commission to rezone the property from RM24 to RM32. Under the current code, if the rezoning is approved we will be allowed to build up to 4 dwelling units. However, with approval of the pending RM32 text amendment we may be allowed to build up to 6 dwelling units. The reconsideration of the text amendment is scheduled for the March Planning Commission meeting.

Parking Variance

There is also an application pending before the Board of Zoning Appeals for a parking variance to reduce the required parking from 7 to 6 parking spaces. Nonetheless, we raise a question regarding the actual text language of the Development Code per Schedule A (Section 20-902) concerning Off-Street Parking. Schedule A states regarding minimum number of vehicles parking spaces required, **“1 per bedroom, + 1 per 10 units (visitors and guest)”**.

Additionally, we have been in discussions with other property owners in the area and expect an agreement for shared parking to be worked out to provide 1 additional parking space for use by the 711 Connecticut property if that becomes necessary in accordance with Section 20-909 of the Development Code.

Project's Relationship to the Community-Wide Plan

The Project will increase housing in the downtown area with some units possibly serving as affordable housing units which is consistent with Horizon 2020. If approved a new modern 6-plex will be built with 6-1 bedroom units which fits into the existing neighborhood fabric. This will increase the number of 1 bedroom units in the area which is consistent with promoting public health, safety and welfare as there is a shortage of such housing in the City. Smaller units seem to be a better fit for the neighborhood in that smaller units in an apartment project seem to fit better for the residential and apartment mix of the neighborhood. We are seeking tenants in need of 1 bedroom units that may need some assistance in terms of accessibility and or affordability. We believe that our goals for this project are consistent with the goals of Horizon 2020.

Economic Issues

No other use besides the Project and no reduction in the size of the Project is economically feasible. If square footage or number of bedrooms is reduced, the economics of the Project fail; thus, the size of the Project should not be reduced. Otherwise the costs involved outweigh the

economic benefits. The owners are proposing to invest significant funds in this area which needs additional investment to assist with infill developments such as this Project. Based on the cost opinion of the project architect money is better spent on a new structure vs. renovation of the existing building at 711 Connecticut. This is true whether the new project is a single family structure or a multi-family dwelling or something in between. (See 03-02-11 Construction costs memo from Paul Werner Architects)

Other steps to minimize harm to the Historic Properties

The owners are committed to working with the City, the neighbors and LPA as the owners requested that I attend the December 6, 2010 meeting with the ELNA prior to submitting the project. We allowed City Staff access to inspect the property on January 7, 2011 and on January 14, 2011 along with the LPA and ELNA representatives to conduct a walkthrough inspection along with City staff. The second walkthrough inspection by City staff was necessary to further confirm staff's findings and recommendation as outlined in the HRC Staff Report of February 15, 2011 which **recommended demolition of both structures.**

As state before, the structures located at 711 Connecticut to be demolished are **NOT** "historic," as defined by K.A.R. 118-3-1(h), because structures are not included on "the national register of historic places" or "the register of historic Kansas places." In addition, the structures are not included on the Lawrence Register of Historic Places.

We look forward to a favorable decision of the demolition permit and we believe this project will address a significant housing need in the City of Lawrence.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael L. Tubbs', with a stylized, sweeping flourish extending to the right.

Michael L. Tubbs, Esq.