

Memorandum
City of Lawrence
Planning and Development Services Department

TO: David L. Corliss, City Manager
FROM: Planning Staff
CC: Cynthia Wagner, Assistant City Manager
Diane Stoddard, Assistant City Manager
Date: June 18, 2012
RE: Agenda Item 900 New Hampshire Street New Construction Appeal
of HRC Determination – DR-12-185-11

Please include the following item on the City Commission agenda for public hearing and consideration.

I. Item Description. At their meeting on April 30, 2012, the Historic Resources Commission (HRC) reviewed the proposed new construction project to be located at 900 New Hampshire Street and made the following determinations:

1. Approved (5-1) with conditions the Certificate of Appropriateness for the project;
2. Approved (4-2) with conditions the Downtown Design Guidelines review.
3. Denied State Law Review - Determined (5-1) that the proposed project would damage or encroach upon the listed properties in accordance with the Kansas Historic Preservation Act; and

The applicant is appealing the determination made by the HRC in accordance with the protective measures of the Kansas Historic Preservation Act (K.S.A. 75-2715-75-2725, as amended) that requires the review of projects for their effect on properties listed in the National Register of Historic Places and the Register of Historic Kansas Places. Specifically, the HRC reviewed the project using *the Standards and Guidelines for Evaluating the Effect of Projects on Environs* (see attached). The City of Lawrence has an agreement with the State Historic Preservation Officer for the Lawrence Historic Resources Commission to conduct these reviews at the local level.

The appeal is directly related to the HRC's determination on the proposed project presented to the HRC on April 30, 2012. The City Commission must consider the same project that the HRC reviewed and did not approve. If the applicant presents an alternative project to the City Commission, the City Commission action must be to refer the revised project to the HRC for review.

II. Project Description. The applicant is requesting to construct a five story, multi-use structure at 900 New Hampshire Street [Lots 70, 72, 74, 76, and 78 New Hampshire Street]. The proposed project is a multi-story mixed use building that includes two levels of underground parking, TownePlace Marriot extended stay hotel (90 units), a restaurant, and a ground floor retail space. The structure will be approximately 121,908 square feet with the hotel occupying part of the first floor, the second, third, and fourth floors. The restaurant will be located on the fifth floor. The proposed structure will be concrete and steel framed with materials that include stone, brick, and metal panels. The height of the structure at the corner of 9th and New Hampshire Streets will be 63'.

The proposed structure incorporates varying numbers of stories to address transitioning from New Hampshire Street and the commercial district to the North Rhode Island Street Residential Historic District. The height at the alley is 40' and the height at the Arts Center is 44'. Overhead doors are located on the north elevation to allow for access to the loading dock and the underground parking. Storefront systems are located on the north and west elevations. Ground floor fenestration also includes the entrance to the building and to the hotel lobby.

900 New Hampshire Street is currently a vacant lot and is not listed individually or as a contributing structure to any historic district but it is located in the environs of the following:

- (1) Lawrence's Downtown Historic District, National Register of Historic Places;
- (2) the North Rhode Island Street Residential Historic District, National Register of Historic Places;
- (3) the Shalor Eldridge House (945 Rhode Island Street), Register of Historic Kansas Places; and
- (4) the Social Service League (905 Rhode Island Street), Lawrence Register of Historic Places.

The property is also located in the Downtown Conservation Overlay District.

III. HRC Actions on April 30, 2012.

Certificate of Appropriateness

The HRC reviewed the project using the Criteria in Chapter 22 because the property is located in the environs of the Social Service League building (905 Rhode Island Street). The Social Service League building is a two story, stone structure with an 1888 addition. In 1947, a concrete block building was added to the property. The Social Service League property is located directly across the alley from the proposed project site. There is a presumption in Chapter 22 that a Certificate of Appropriateness will be issued for projects located in the environs of a listed property unless "the proposed construction or demolition would significantly encroach on, damage, or destroy the landmark or historic district." The HRC approved the Certificate of Appropriateness with the following conditions:

1. The applicant will work with the Social Service League to ensure that damage to the listed structure does not occur during construction.
2. The applicant will work with Architectural Review Committee (ARC) to finalize the design and materials of the structure.
3. The applicant provide complete construction documents with material notations to be reviewed and approved by the HRA prior to release of a building permit.
4. Any changes to the approved project will be submitted to the Historic Resources Administrator for review and approval prior to the commencement of any related work. If the HRA determines the changes are significant, they will be submitted to the Historic Resources Commission for review and approval prior to the commencement of any related work.

5. The property owner will allow staff access to the property to photo document the project before, during, and upon completion of the project.

State Preservation Law Review (K.S.A. 75-2715-75-2725, as amended)

The charge of the HRC when reviewing projects for compliance with the State law is limited. For this project, the HRC evaluated the project for its impact on the environs (context) of the listed properties. 900 New Hampshire Street is located in the environs of:

(1) Lawrence's Downtown Historic District, National Register of Historic Places; Lawrence's Downtown Historic District is not adjacent to the proposed project site but is approximately 230 feet from the proposed project site. The district is characterized by two story, two part commercial masonry structures that have a three part commercial storefront system at the ground level. Storefront widths are typically 25 to 50 feet and have a significant amount of glazing. The majority of structures in the district have no setback from the front property line and have party wall construction.

(2) the North Rhode Island Street Residential Historic District, National Register of Historic Places; The North Rhode Island Street Residential Historic District is located directly across the adjacent alley to the proposed project site. The district is characterized by one and two story frame and masonry structures located on lots 50' by 117'. The typical lot has front, rear, and side yard setbacks creating a green space surrounding the principal structure on the lot.

(3) the Shalor Eldridge House (945 Rhode Island Street), Register of Historic Kansas Places. The Shalor Eldridge House is listed individually in the Register of Historic Kansas Places and as a contributing structure to the North Rhode Island Street Residential Historic District. The proposed project site is approximately 300 feet from the Shalor Eldridge House. The Shalor Eldridge House's environs includes the new commercial construction in the 900 block of New Hampshire Street, the typical commercial structures of Lawrence's Downtown Historic District, as well as the residential characteristics of the North Rhode Island Street Residential Historic District.

The HRC must evaluate the existing environs for each property and, using *the Standards and Guidelines for Evaluating the Effect of Projects on Environs*, they must evaluate the project as described by the applicant.

At their meeting on April 30, 2012 the HRC found that the proposed project did not meet *the Standards and Guidelines for Evaluating the Effect of Projects on Environs*. Specifically, the HRC found that the proposed project does not meet the following standards:

2. *The environs of a property should be used as it has historically been used or allow the inclusion of new uses that require minimal change to the environs' distinctive materials, features, and spatial relationships.*

6. *New additions, exterior alterations, infill construction, or related new construction should not destroy character-defining features or spatial relationships that characterize the environs of a property. The new work shall be compatible with the historic materials, character-defining features, size, scale and proportion, and massing of the environs.*

The main items of concern for the HRC were the height, size, scale and massing of the proposed new structure. The HRC was of the opinion that the proposed project is too large for the proposed site. The proposed uses for the site were not an issue.

Downtown Design Guidelines

The HRC also reviewed the project using the Downtown Design Guidelines and determined that the project, as proposed, meets the overall intent of the Downtown Design Guidelines with the following conditions:

1. The applicant will work with Architectural Review Committee (ARC) to finalize the design and materials of the structure.
2. The applicant provide complete construction documents with material notations to be reviewed and approved by the HRA prior to release of a building permit.
3. Any changes to the approved project will be submitted to the Historic Resources Administrator for review and approval prior to the commencement of any related work. If the HRA determines the changes are significant, they will be submitted to the Historic Resources Commission for review and approval prior to the commencement of any related work.
4. The property owner will allow staff access to the property to photo document the project before, during, and upon completion of the project.

IV. Discussion.

Review of the project under State Preservation Law (K.S.A. 75-2715-75-2725, as amended)

The City Commission is ***not*** being asked to make a determination of whether the project will damage or encroach upon the environs of the listed properties. The determination that the project will damage or encroach upon the environs of the listed properties was made by the HRC and stands. Because the HRC has made this determination on behalf of the State Historic Preservation Officer, the project cannot proceed until the City Commission has made a determination, ***based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm*** to the listed properties.

The City Commission is required to hold a public hearing to determine if there is a feasible and prudent alternative to the proposed project. If the City Commission determines that no feasible and prudent alternative exists, the City Commission shall determine if all possible planning to minimize the harm to the listed properties associated with the project has been identified and undertaken.

Feasible and Prudent Alternative

According to the K.A.R. 118-3-1, "*Feasible and prudent alternative*" means an alternative solution that can be reasonable [sic] accomplished and that is sensible or realistic.

Factors that shall be considered when determining whether or not a feasible and prudent alternative exists include the following:

- (1) Technical issues;*
- (2) design issues;*
- (3) the project's relationship to the community-wide plan, if any; and*
- (4) economic issues.*

"Program includes all possible planning" means that the written evidence and materials submitted by the applicant clearly identify all alternative solutions that have been investigated, compare the differences among the alternative solutions and their effects, and describe mitigation measures proposed by the project proponent that address an adverse effect determination from the HRC.

Possible relevant factors for reviewing the project under K.S.A. 75-2724, as amended

- (1) *Character of the neighborhood:* The project site is located in the Downtown Commercial District (CD District) and is adjacent to an area of commercial uses in residential structures and a medium density residential district. The character of the neighborhood to the west, north and south of the property is commercial while the characteristics (building form and setbacks) of the neighborhood to the east are residential.
- (2) *Zoning:* The zoning for the site is CD (Downtown Commercial) District. The zoning directly to the east is predominantly CS (Commercial Strip) District with RM zoning to the southeast.
- (3) *Uses of nearby properties:* Community use of the Arts Center is to the south; commercial, office and residential uses are to the west; parking and office uses are to the north; and commercial and residential uses are to the east.
- (4) *Suitability of the property for the proposed use:* the proposed uses are appropriate for the commercial district and as a transition to the residential neighborhood.
- (5) *Extent to which the proposed use would detrimentally affect nearby property:* the intensity of uses on the site may have a detrimental effect to nearby residential property to the east in the addition of lighting and noise in comparison to the existing vacant lot. Some members of the public have commented that shadows created by the height of the proposed structure may also detrimentally affect the property directly across the alley to the east. The replacement of the long term vacant lot with a newly constructed lodging and retail facility is viewed positively from an economic enhancement aspect for the downtown district providing additional visitors and economic activity positively affecting the nearby commercial property.
- (6) *Length of time property has been vacant:* The property has been vacant since demolition of the blighted structures in preparation for the Downtown 2000 project. The continued vacant nature of the site for over a dozen years is not a desired planning or economic benefit to the neighborhood or community.
- (7) *Applicable plans:* The applicable planning document is the Downtown Urban Design Concept Plan, which is incorporated into the Downtown Design Guidelines. This plan promotes urban development patterns on Vermont and New Hampshire Streets that complements Massachusetts Street. It also defines a hierarchy of scale and massing that transitions from Massachusetts Street to Rhode Island Street.

(8) *Professional Staff recommendation:* In the professional staff report identified as HRC Packet Information 4-30-2012 Item No. 2, staff determined that the proposed project did not encroach upon, damage, or destroy the environs of the listed properties and recommended that the HRC approve the proposed project with the following amendments:

1. The applicant will work with Architectural Review Committee (ARC) to finalize the design and materials of the structure.
2. The applicant provide complete construction documents with material notations to be reviewed and approved by the HRA prior to release of a building permit.
3. Any changes to the approved project will be submitted to the Historic Resources Administrator for review and approval prior to the commencement of any related work. If the HRA determines the changes are significant, they will be submitted to the Historic Resources Commission for review and approval prior to the commencement of any related work.
4. The property owner will allow staff access to the property to photo document the project before, during, and upon completion of the project.

The above factors are not exclusive. There may be other relevant factors that the commission wishes to consider.

All Possible Planning

State law also requires the City Commission to make a determination that all possible planning has been done to minimize harm to the listed properties. Documentation to "identify all alternative solutions that have been investigated, compare the differences among the alternative solutions and their effects, and describe mitigation measures proposed by the project proponent that address an adverse effect determination from the HRC" has been provided in the form of the economic feasibility study, two previous project submittals, reviewing alternative uses for the property (apartment versus not including apartments), and proposed mitigation measures to address adverse effects on the Social Service League building. In addition, conditions of approval on the HRC approved Certificate of Appropriateness ensure mitigation of any adverse effect on the listed properties. Staff believes that all possible planning for the program has been achieved within the meaning of the law and regulations.

V. Staff Recommendation

Staff recommends that the City Commission hold a public hearing to determine whether there is no feasible and prudent alternative to the proposed project and to determine whether the program includes all possible planning to mitigate harm to listed properties. If the Commission determines that there is no feasible and prudent alternative, then staff is of the opinion that all possible planning has been undertaken to mitigate harm to the listed properties.

VI. Action Request.

1. Hold a public hearing.
2. Make a determination based on a consideration of all relevant factors that there *is/is not* a feasible and prudent alternative to the proposal.
3. Make a determination that the program *includes/does not include* all possible planning to minimize harm to the listed properties.