

PLANNING COMMISSION REPORT
Regular Agenda - Public Hearing Item

PC Staff Report
09/27/2017

ITEM NO. 1B REZONING FROM RS5 TO MU; 401 ELM ST (BJP)

Z-17-00322: Consider a request to rezone approximately 2500 sq ft from RS5 (Single-Dwelling Residential) District to MU (Mixed Use) District, located at 401 Elm St. Submitted by Margretta O. Farrar-de Vries, property owner of record. *Deferred by Planning Commission on 8/23/17.*

STAFF RECOMMENDATION: Staff recommends approval of the request to rezone approximately 2500 sq ft from RS5 (Single-Dwelling Residential) District to MU (Mixed Use) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Reason for Request: *"The building at 401 Elm Street needs to be rezoned to match its existing and historical uses, to retain both the existing upstairs apartment and downstairs woodworking shop, and to explore options for non-residential uses of the downstairs storefront space, reflecting the building's 19th century character. See Attachment B: Historical Profile."*

KEY POINTS

- This staff report assumes approval of the corresponding Text Amendment to permit limited nonresidential uses in the Tertiary Development Zone through the Special Use Permit approval process.

ASSOCIATED CASES/OTHER ACTION REQUIRED

The following items are also being considered by the Planning Commission at their September 27, 2017 meeting:

- **TA-17-00495:** A Text Amendment to the City of Lawrence Land Development Code to permit nonresidential uses and vertical mixed-use structures in the Tertiary Zone of the MU (Mixed Use) District. *Initiated by Planning Commission on 8/23/2017.*
- **SUP-17-00496:** A Special Use Permit for *Manufacturing & Production, Limited, and Retail, General and Non-Ground Floor Dwelling* uses at 401 Elm Street.

OTHER ACTION REQUIRED:

- City Commission approval of the Text Amendment and adoption/publication of ordinance.
- City Commission approval of the Rezoning and adoption/publication of ordinance.
- City Commission approval of the Special Use Permit and adoption/publication of ordinance.

PLANS AND STUDIES REQUIRED

- *Traffic Study* – Not required for rezoning
- *Downstream Sanitary Sewer Analysis* – Not required for rezoning
- *Drainage Study* – Not required for rezoning
- *Retail Market Study* – Not applicable to residential request

ATTACHMENTS

- The following attachments were provided by the applicant with the application:
 - Attachment A: Proposed Zoning District
 - Attachment B: Historical Profile
 - Attachment C: Horizon 2020
 - Attachment D: Neighborhood Support Letter

<ul style="list-style-type: none">○ Attachment E: Gain to Public Health, Safety, and Welfare Compared to Hardship to Landowner○ Attachment F: Concept Plan○ Attachment G: Location Map○ Attachment H: Images○ Attachment I: Communications received by staff
PUBLIC COMMENT RECEIVED PRIOR TO PRINTING <ul style="list-style-type: none">● Staff received a letter of support from the North Lawrence Improvement Association and a letter from a neighbor expressing concerns regarding future potential noise and parking issues. (Attachment I)

Project Summary:

The proposed request is for rezoning approximately 2,500 square feet from RS5 to MU (Mixed Use) District. The subject property contains a two-story structure, in which the first level contains a woodworking shop and a vacant non-building code compliant dwelling, and the second level contains an occupied dwelling. The RS5 District does not permit the *Manufacturing & Production, Limited* use (woodworking shop) or the *Duplex* use.

The woodworking shop was established in 1974 by the property owner's father, Mr. Devries, who also lived in the building. Because the woodworking shop was used solely by Mr. Devries, it was considered a Home Occupation. The shop is no longer used as a Home Occupation and therefore does not comply with the Code. The rezoning request was submitted by the property owner as a means to bring the woodworking shop into compliance.

The property owner is requesting the MU District because it is the only zoning district that would permit the *Manufacturing & Production, Limited* and the *Non-Ground Floor Dwelling* uses. The MU zoning would also permit the conversion of the first floor residential area into a nonresidential use.

Analysis of the Code revealed that rezoning the property to the MU District requires the property to be designated with a Tertiary Zone and, based on the surrounding residential uses, the Tertiary Zone would not accommodate the *Manufacturing & Production, Limited*, or retail uses. Given this information, at their August 23, 2017 meeting, the Planning Commission deferred the rezoning request, as well as, initiated a text amendment to the Development Code to permit nonresidential uses in the Tertiary Development Zone of the MU District. These two items, as well as a Special Use Permit application, will be considered by the Planning Commission at their September 27, 2017 meeting. This staff report assumes the approval of the text amendment to permit some nonresidential uses in the Tertiary Development Zone.

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response: *"See Attachment C".*

The following section of *Horizon 2020* relates to this rezoning request (staff comments are in italics):

Goal 3: Neighborhood Conservation

Policy 3.6: Promote Neighborhood Identity

"Preserve and enhance the visual and environmental character of existing neighborhoods." (Page 5-16)

Chapter 5 of Horizon 2020 (Residential Land Use) includes policies that encourage maintaining the existing character of neighborhoods and neighborhood identities. The subject property has contained several nonresidential uses since it was constructed in 1872 (per the Douglas County Appraiser's records). The woodworking shop was established on the property in 1974. The structure and the nonresidential uses that it has contained have been contributing factors to the character of the neighborhood for many decades. Furthermore, the North Lawrence neighborhood has a unique character due to the variety of land uses found within its boundaries. The neighborhood is an eclectic mix of land uses including low-density residential areas, small commercial businesses, and railroad and industrial uses that bisect the neighborhood. Maintaining a mixture of nonresidential and residential uses on the property preserves the character and identity of the neighborhood.

Policy 3.5: Minimize Encroachment of Nonresidential Uses

"Carefully consider and evaluate transition areas between different land uses with differing densities, building types and intensities of use to ensure compatibility of uses." (Page 5-16)

Properties zoned MU that are classified as a Tertiary Development Zone, as is the case with the subject property, require approval of a Special Use Permit (SUP) for development of nonresidential uses. The SUP can include conditions to help mitigate potential negative impacts to the surrounding area. For example, a SUP could dictate the hours of operation for nonresidential uses.

Goal 3: Criteria for Commercial Development

Policy 3.5: Criteria for Mixed-Use Districts

"Encourage preservation of areas that are mixed-use in nature" (Page 6-32)

Chapter 6 of the Comprehensive Plan includes policies for Mixed Use Districts and states that areas that are currently mixed use in nature should be preserved. The property has contained a mix of nonresidential and residential uses since 1920 when the 2nd floor was converted into an apartment.

Staff Finding – With approval of the related text amendment, the proposed request for MU zoning is consistent with Chapters 3 and 6 of the Comprehensive Plan.

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

Current Zoning and Land Use:

RS5 (Single-Dwelling Residential) District; *Non-Ground Floor Dwelling*, Home Occupation (woodworking shop), and unoccupied non-building code compliant dwelling on the first floor.

Proposed use: *Manufacturing & Production, Limited* (woodworking shop), and *Non-Ground Floor Dwelling*. The applicant indicated that the unoccupied residential area on the ground floor may potentially be developed with a *Retail, General* use (such as a grocery store) in the future.

Surrounding Zoning and Land Use:

RS5 (Single-Dwelling Residential) District to the south, east, and west; *Detached Dwellings* and *Neighborhood Institution* (Centenary United Methodist Church).

IG (General Industrial) District to the north; *Detached Dwellings*.

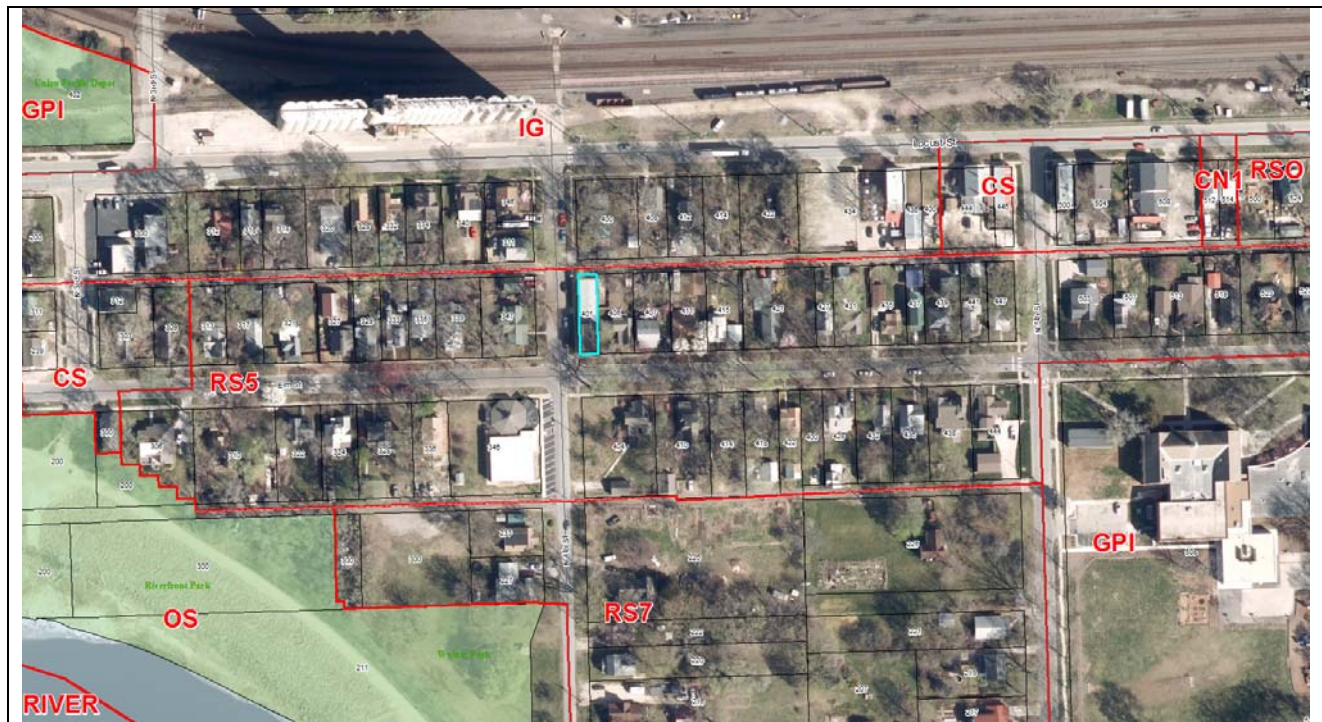


Figure 1a: The zoning of the surrounding area.



Figure 1b: The land use of the surrounding area. (Legend: = single-family, = multi-family, = duplex, = commercial, = Institutional)

Staff Finding – The properties west, east and south of the subject property are zoned RS5 and contain single-family residences. A neighborhood church is located at the southwest corner of N 4th Street and Elm Street. The zoning north of the subject property is IG District and it includes primarily single-family residences. One block from the property, on the north side of Locust Street, there is an active railroad and large agricultural silos.

3. CHARACTER OF THE NEIGHBORHOOD

Applicant's Response: *"North Lawrence is one of the oldest parts of town, with a mix of residential, commercial, and industrial areas. These areas are blended together, having grown organically over the last 150+ years. North Lawrence has a more "small town" atmosphere where neighbors watch out for each other, than other parts of Lawrence. Structurally, North Lawrence has very diverse architectural styles and land uses, almost a patchwork quilt of historic and modern homes and businesses."*

The immediate character of the area is most recognizable as residential with single-family homes on individual lots. The subject property is surrounded by detached dwellings and a neighborhood church is located southwest of the property. There are also industrial uses located one block north of the subject property that include an active railroad and agricultural silos. Other nonresidential land uses in the area include eating and drinking establishments along Locust Street (northeast of the property).

Staff Finding – The neighborhood contains a mixture of residential and nonresidential uses, but the area immediately surrounding the subject property is primarily single-family residential uses.

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

A neighborhood plan was completed for North Lawrence in 1981.

In Chapter 3 of the North Lawrence Neighborhood Plan, under Non-Residential Objectives, it states, "Provide for diverse and convenient non-residential facilities to serve neighborhood needs in such a way that low density residential areas of the neighborhood are not adversely affected." The rezoning request will accommodate the continued use of a woodworking shop that has existed on the site since 1974. The rezoning will also facilitate the redevelopment of the first floor dwelling unit with a retail use. The retail component will be a small, neighborhood-scale development with the intent of serving the needs of the area.

Under Land Use Objectives in Chapter 3, the plan also states, "lessen the impact of high and medium intensity land uses (primarily industrial and commercial) on low density residential areas." Through the Special Use Permit approval process, nonresidential uses permitted in the Tertiary Development Zone of the MU District would include conditions to mitigate potential negative impacts to the surrounding. This process will lessen the impact of the more intense uses.

Staff Finding – The proposed Mixed Use District is consistent with the North Lawrence Neighborhood Plan.

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

Applicant's Response: *"Currently, 25% (1000 sq ft) of the building is suited to "single family residence" which is the upstairs apartment. Of the remainder, 45% (1500 sq ft) of the building is currently an artisan workspace, with woodworking equipment. The additional 20% (750 sq ft)*

makes up the downstairs “store front” space, which faces Elm Street, and was originally built as a broom factory. These figures do not include the unfinished basement space.

The store front could contribute to the neighborhood in a variety of ways. It is typical for visitors to make independent recommendations for uses, especially of the downstairs store front space. Suggestions include a gallery or artist’s studio in addition to the maker space, small scale or specialty retail, coffee shop, and office.”

While the RS5 District does not permit the woodworking shop, the use has been in existence on the property for over 40 years. The use was considered a Home Occupation at that time because the property owner lived in the building and used the shop for his business. The use is no longer considered a Home Occupation because the shop is not used by an occupant of the building. Approval of the rezoning request would permit the woodworking shop to be utilized into compliance with the Development Code.

Approval of the rezoning request will also facilitate the reinvestment in the structure through the development of a retail use in the front of the building. The retail use will be small, neighborhood-scale size with the purpose of the serving the surrounding area.

The subject property has contained retail and manufacturing uses in the past. The first nonresidential use that the property contained was a broom manufacturing facility. This was established when the building was constructed in 1872, prior to the City’s adoption of zoning regulations. Another example of a nonresidential use that the property contained includes a neighborhood grocery store that existed on the site from 1920 to 1960.

Staff Finding – Given the retail and manufacturing history of the property, and the proposed development, the subject property is better suited for the MU District than the existing RS5 District.

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

Applicant’s Response: *“The entire property has been vacant for 7 months, and is only vacant now because the zoning does not match/allow the existing uses of the building. If the zoning is not corrected, 70% of the building could remain vacant indefinitely. The upstairs apartment is available to rent as the Planning Commission reviews this application, but the rest remains unoccupied until zoning allows appropriate use of the space and the space can be brought up to code for its proposed uses.”*

Staff Finding – According to the Douglas County Appraiser’s records, the building was constructed in 1872. Since its creation, the building has contained nonresidential uses. In 1920, the 2nd floor was converted to residential, and the building has been mixed use since that time.

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

Applicant’s Response: *“There will be no detrimental effect to nearby properties. Changing the zoning to match existing and historic uses of the building will have no impact, whereas denying this zoning change will result in the loss of a useful space and/or services that would benefit the neighborhood. See Attachment D: a letter of support from more than half of the owner-occupied homes within 200 feet of the building.”*

Staff received a few inquiries into the proposed rezoning and development of the property. The comments received were mostly positive, although concerns were provided in regards to potential noise and parking issues (Attachment I). Those comments were not specifically related to the uses proposed with the current Special Use Permit application (SUP-17-00496), but related to future concerns if/when the uses changed. MU zoning would permit a variety of other nonresidential uses that may have impacts to the surrounding property owners. The requirement of SUP approval for the nonresidential land uses permitted in the Tertiary Development Zone of the MU District will help to mitigate these potential impacts. Any new proposed nonresidential use would require approval of a SUP and public notice. The impacts of the proposed new use would be evaluated at that time, and conditions could be placed on the SUP to help alleviate the perceived impacts.

Staff Finding – Rezoning the property to the MU District will not detrimentally affect the surrounding area.

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

Applicant's Response: *"See Attachment E."*

Evaluation of this criterion includes weighing the benefits to the public versus the benefit of the owners of the subject property. Benefits are measured based on anticipated impacts of the rezoning request on the public health, safety, and welfare.

Under the existing RS5 zoning, the woodworking shop would only be permitted as a Home Occupation. This would require the property owner to sell or rent to individuals interested in both living in the building and using the woodworking shop. The property owner indicated that this would be a difficult scenario to achieve. More likely, if the rezoning request were denied, the equipment in the woodworking would need to be relocated to another site with appropriate zoning in order to be used. Moving the equipment could be difficult due to the size and height, and given the age, the equipment could be detrimentally affected if moved.

Currently under the RS5 zoning, only the 2nd floor living area is occupied. The ground level residence and woodworking shop have not been occupied since staff became aware of the land use violations. Because the *Duplex* use is not permitted in the RS5 District, the building would need to be converted to one dwelling unit in order for the entire structure to be occupied. The property owner may choose to maintain only the 2nd floor living area and keep the other spaces unoccupied. This could lead to a deterioration of the building. Approval of the rezoning request will allow continued use of the woodworking shop, as well as facilitate redevelopment of the street level building front with nonresidential uses. Along with the rezoning request, the property owner has also submitted a Special Use Permit application for retail in this space (the SUP also includes the woodworking shop; SUP-17-00496). Examples of the type of retail that may occupy the space include a small, neighborhood-scale grocery store, or an art studio. The addition of a retail use of this size could be a benefit to the neighborhood.

Staff Finding – If the rezoning request were denied, there would be little gain to the public and there would be a hardship to the property owner.

9. PROFESSIONAL STAFF RECOMMENDATION

In addition to the Findings of Fact required per Section 20-1303 regarding Zoning Map Amendments, specific location criteria must be considered when considering a request for the MU district.

Section 20-1108 states *"...To be eligible for rezoning to the Mixed Use District a site proposed for Mixed-Use Development shall be:*

- 1. Within one-quarter mile of a Designated Transit Route at the time the rezoning is initiated; and*
- 2. Near or adjacent to the intersection of Arterial streets as per the adopted Major Thoroughfares Map; or*
- 3. Within one-quarter of a mile of university campuses; or*
- 4. Within one-quarter of a mile of downtown, the boundaries of which are described in Chapter 6 of Horizon 2020; or*
- 5. Immediately adjacent to public parks or open space; or*
- 6. An existing nonresidential development proposed for redevelopment."*

There is a designated transit route located along Locust Street, which is within .25 mile of the subject property. Also, *Horizon 2020* defines the north boundary of downtown Lawrence as being the Kansas River. The subject property is within .25 mile of the river. Given that the subject property meets Criteria 1 and 4 listed above, it is eligible for MU zoning.

CONCLUSION

Staff recommends approval of the request to rezone approximately 2,500 square feet from RS5 District to MU District and to designate the entire property as a Tertiary Development Zone.