

Memorandum

City of Lawrence

Planning & Development Services

TO: Lawrence-Douglas County Metropolitan Planning Commission

FROM: Joe Rexwinkle, Planning Staff

CC: Scott McCullough, Planning & Development Services Director
Sheila Stogsdill, Assistant Planning Director

Date: April 10, 2008

RE: Item 12: Proposed Mixed Use District – Specific Changes to Final Draft

Staff Recommendation

Staff recommends that the Planning Commission forward a recommendation for approval of TA-04-05-07, to create a mixed use zoning district, as revised, to the City Commission for approval.

On February 27, 2008, the Planning Commission voted 5-2 to defer the amendments to *Horizon 2020* and the Development Code until April and directed staff to make three specific revisions to the draft Development Code language. The specific changes requested were as follows:

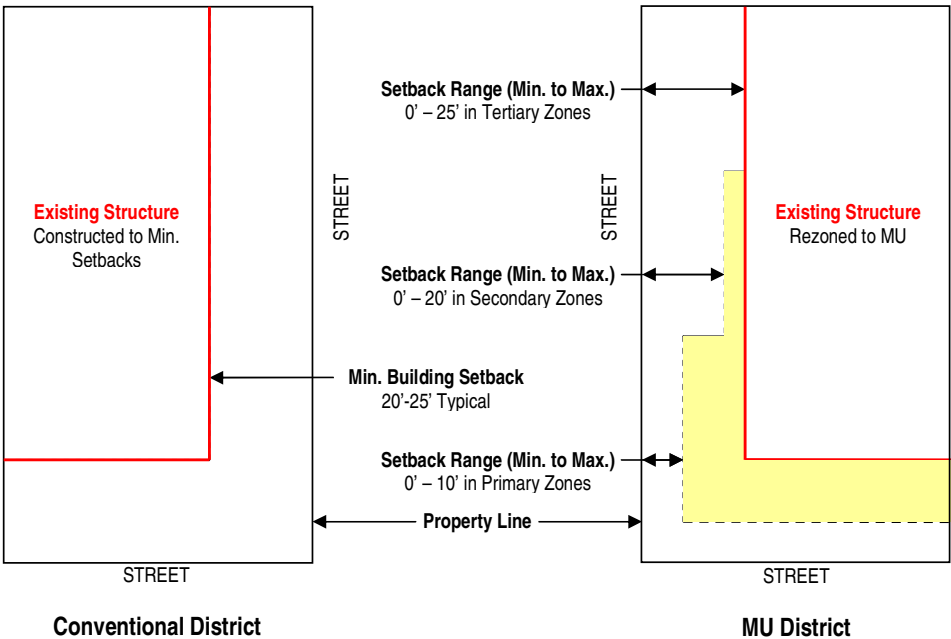
- 1) To revise Section 20-223(b)(1) as follows: "Within one-quarter mile of a Designated Transit ~~Stop~~ Route; and
- 2) To revise Section 20-223(b)(3) to provide a cross-reference to the downtown boundaries as described in Chapter 6 of *Horizon 2020*; and
- 3) To revise Section 20-403 to require a Special Use Permit for Brewpub uses in the MU District;

The previous draft language presented to the Planning Commission in February has been revised to incorporate the above-referenced changes and the previous draft of Articles 2 and 4 have been revised and attached for reference. Due to the requested change in terminology (see #1 above), an additional revision has been made to the defined term in Articles 11 and 17 to ensure consistency. This revision eliminates the term "Designated Transit Stop" and replaces it with "Designated Transit Route" and a new definition. The definition references both KU on Wheels and the Lawrence Transit System routes and is shown below. Route maps for both the Lawrence Transit System and KU on Wheels are attached.

<i>Designated Transit Stop</i>	<i>Any permanent bus stop shelter identified on the route map published by the Lawrence Transit System.</i>
<i>Designated Transit Route</i>	<i>Any bus route identified on the route map published by the Lawrence Transit System or KU on Wheels transit system.</i>

Consideration of Public Comment

The Commission also directed staff to consider the public comment received regarding the potential that existing structures, once rezoned to the MU District may be made nonconforming, particularly with regard to building setbacks. The MU District prescribes form standards applicable to building orientation, such as a minimum to maximum setback range. The concept of maximum setbacks is a break from convention because conventional zoning districts typically prescribe minimum setbacks whereas the MU District prescribes maximum setbacks in order to encourage development that is pedestrian-oriented with buildings constructed closer to the street and/or sidewalk. Since much of Lawrence’s existing development was constructed under conventional zoning regulations with minimum setbacks applied, it’s possible that existing structures proposed to be rezoned to MU may be made nonconforming as a result. An example is provided below which demonstrates the potential nonconformity (shaded area) resulting from an existing structure being rezoned to MU.



This resulting nonconforming situation is not unique to the MU District. For instance, a structure constructed to the minimum setbacks of an industrial district would be made nonconforming if rezoned to any commercial district because all industrial districts have

greater minimum setback requirements than any commercial district. There are also slight differences in the minimum setbacks amongst the various commercial districts. For instance, a structure constructed to the minimum setbacks of the CN2 or CO District (20 feet) would become nonconforming if rezoned to CC, CR or CS.

Proposal Received from Public

Staff met with a member of the public to discuss concerns related to an existing structure which is a candidate to be rezoned to MU. If rezoned, the structure may be made nonconforming and a representative of the potential applicant suggested the following language be added to the Section 20-223(f) of the final draft, as shown below:

(f) Development Standards

All new development or redevelopment constituting a [Major Development Project](#) shall comply with the General Development Standards for Mixed Use Districts (Sec. 20-1108). Structures, buildings and development existing at the time of rezoning to the Mixed Use District shall be allowed to remain. ~~An existing structure, even if destroyed by fire or nature shall be allowed to be reconstructed as it existed prior to being rezoned to the MU District.~~ The intensification of the use of property in the MU District that increases the off-street parking requirements shall not constitute a [Major Development Project](#).

Deleted: until a [Major Development Project](#) is requested

The representative for the applicant suggested that the revision proposed above would relieve the landowner from potential complications when refinancing the subject property.

Nonconforming Structure Provisions of the Development Code (Sec. 20-1503)

Section 20-1503 of the Development Code contains detailed provisions pertaining to nonconforming structures, regardless of zoning district.

- *Alternations or Expansions of Existing Nonconforming Structures (Sec. 20-1503(b))*

A nonconforming structure may be expanded so long as the expansion does not increase the extent of the nonconformity. Since the MU District contains a setback range with a maximum setback, a structural expansion would not constitute a violation and in fact, such an expansion may bring the structure into conformance if the expansion extends into the required setback range.
- *Abandonment or Voluntary Destruction (Sec. 20-1503(e)(1))*

In such cases, a nonconforming structure may lose nonconforming status and be reconstructed in conformance with the development standards of the applicable zoning district when:

 - 2) The owner intends to discontinue all uses in the structure;
 - 3) The structure is vacant for 12 or more months and the owner has not expressed a concerted effort to maintain a use;
 - 4) A demolition permit has been applied for;
 - 5) All equipment and furnishings have been removed from the structure and have not been replaced within 90 days unless facts show that the owner intends to resume the use;

- 6) A building permit has been obtained to reconstruct a damaged nonconforming structure within 12 months.
- *Damage or Destruction of a Nonconforming Structure (Sec. 20-1503(e)(2))*
A nonconforming structure may lose nonconforming status if it is damaged to the extent of more than 60% of its fair market value. If such occurs, the structure must be reconstructed in conformance with the development standards of the applicable zoning district.

The nonconforming structure provisions permit existing structures to remain and to be altered or expanded without being required to come into conformance of the standards of the MU District. These provisions also permit the change in use of the structure, so long as the structure does not remain vacant for more than a year. These provisions provide as much security and assurance to owners of MU-zoned property as they do owners of any other zoning district.

Other Potential Remedies in Nonconforming Situations

- *Board of Zoning Appeals*
As with a nonconforming structure in any other zoning district, the owner of a nonconforming structure in the MU District may seek a variance from the Board of Zoning Appeals to approve the existing conditions.
- *Designation of Development Zones*
An additional remedy is for the owner to consider carefully where they opt to designate development zones on the subject property. As can be seen in the figure provided in this memo, an existing structure may not be nonconforming in every development zone because each development zone prescribes different maximum setbacks.
- *Owner's Choice*
The owner is choosing to rezone her/his property to MU and is thus subjecting it to the standards of the district. Some owners may choose to apply to rezone to the MU District because the wide latitude of uses permitted in the district. The district is intended to permit this wide variety of uses in exchange for development which meets desirable form standards that promote walkability, transit use and efficient use of existing infrastructure among other things.

Staff Response to Suggested Proposal

The suggested proposal would be unique to the MU District and would negate the provisions pertaining to nonconforming structures of the Development Code and would require that the structure be reconstructed in conformance with the standards of the district only if the owner voluntarily redevelops the property. In staff's opinion, existing structures which may be made nonconforming as a result of being rezoned to MU should not be treated differently than existing nonconforming structures in other zoning districts.

Staff suggests the following language change to the Section 20-223(f) of the previous draft:

(f) Development Standards

~~Development~~ constituting a ~~Major Development Project~~ shall comply with the General Development Standards for Mixed Use Districts (Sec. 20-1108). **Any structure(s) which existed prior to being rezoned to the Mixed Use District may become nonconforming with regard to the Development Standards of Sec. 20-1108. Such structures, if involuntarily damaged or destroyed may be reconstructed as they existed if and only if the conditions of Section 20-1503(e)(2) are satisfied.** The following situations are exempt from the Development Standards of Section 20-1108:

- 1) Structures which existed prior to being rezoned to the Mixed Use District shall be allowed to remain **as developed**, ~~until such structure is proposed to be demolished and redeveloped;~~
- 2) The intensification of the use of property in the MU District that increases the off-street parking requirements shall not constitute a ~~Major Development Project~~.

Deleted: All new development or redevelopment

Deleted: Structures, buildings and development existing at the time of rezoning

Deleted: until a Major Development Project is requested

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The proposed language change (reflected in revised Article 2 attached) requires that all development constituting a Major Development Project shall be required to be constructed in conformance with the development standards of the MU District, unless specifically exempted. The exemptions proposed permit existing structures to remain as is and clearly state that such structures shall not be considered nonconforming and shall not be required to become conforming with the development standards until they are demolished and redeveloped.

Staff Recommendation

Staff recommends that the Planning Commission forward a recommendation for approval of TA-04-05-07, to create a mixed use zoning district, as revised, to the City Commission.

Attachments

- KU on Wheels Route Map
- Lawrence Transit System Route Map
- Revised Article 2 of Final Draft Language
- Revised Article 4 of Final Draft Language