
PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
05/23/2018

ITEM NO. 7 TEXT AMENDMENT TO LAND DEVELOPMENT CODE; CONDITIONAL ZONING (SLD)

TA-18-00154: Consider a Text Amendment to the City of Lawrence Land Development Code, Article 13 to review and potentially remove conditional zoning. *Initiated by City Commission on 4/17/18.*

RECOMMENDATION: Staff recommends that the Planning Commission forward the proposed amendment, TA-18-00154, amending Article 13 of the Lawrence Land Development Code to the City Commission with a recommendation to retain the existing language with no changes.

Reason for Request: On March 20, 2018, the City Commission considered a rezoning request (Z-17-00689) which included conditions that eliminated certain uses in the IL zoning district. At that meeting, the Commission expressed disfavor in the use of conditional zoning and directed staff to review the use of this tool with the intent of removing conditional zoning from the Land Development Code.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- None received

ATTACHMENTS

- A. Memorandum from John Miller, April 14, 2009
- B. Communication from League Of Women Voters
- C. City Commission meeting minutes from March 28, 2006
- D. Map/table of existing conditional zoning
- E. Sample of conditional zoning applications
- F. Common zoning terms planners dictionary

BACKGROUND

Conditional zoning was included in the Land Development Code when it was adopted in 2006. Staff views conditional zoning as a legal and flexible tool that provides a means to approve appropriate developments while protecting the integrity of the surrounding area. Conditional zoning facilitates development while balancing conflicting needs. There has been past discussions about the legality and use of conditional zoning in Lawrence. Conditional zoning is not illegal under state law or by local code. See attachments listed above for more context.

For the purpose of this discussion, conditional zoning refers to conditions placed on conventional base zoning districts. That is to say, a rezoning or zoning request that is not for a special use permit, a planned development, or part of a site plan. The context of this analysis addresses the underlying uses associated with the specific zoning district being considered. Conditional zoning excludes previous Planned Development overlays that include restrictions or conditions to either the plan or the associated zoning district.

Frequently, conditions included in zoning applications are self-identified by an applicant as part of an application to be transparent about the intended use of the property.

ANALYSIS

Since 2006, the City of Lawrence has approved 35 zoning map amendments (rezoning) applications that include a condition or restriction. Common restrictions include limitations on maximum residential density or commercial retail square footage. Others prohibit or limit certain uses that are permitted by right in a specific district. In each case, the restriction was directly related to the context of the surrounding area with an intent to preserve the character of the area, to implement goals and policies of *Horizon 2020* or incorporated specific plans, or provide additional public processes such as City Commission review and approval of a site plan. An example of conditional zoning requiring an extraordinary approval occurs in the Inverness Park Plan Area. Property located at 3905 Clinton Parkway and 4300 W. 24th Place require City Commission approval of any site plan. This condition was established through the neighborhood planning process and implemented in the rezoning applications providing additional notice to the neighborhood of any development application.

Conditional zoning differs from spot zoning in that conditions imposed on the zoning are intended to mitigate adverse impacts that can be reasonably expected to occur without imposing such conditions on an otherwise appropriate land use development project. Conditions must be reasonable and further the public health, safety, and welfare of the community. Conversely, **spot zoning** is illegal because it unfairly gives preference to one property or individual over another; it is inconsistent with the community's comprehensive plan; and does not further a community or neighborhood goal or policy.

When reviewing any rezoning application there is a unique set of facts associated with that specific property. The analysis of the rezoning includes the assessment of specific criteria (findings of fact) through a regimented process. It is through adherence to this process that spot zoning is prevented. Disregard of these findings and process would result in spot zoning.

In the situation where conditional zoning is used to eliminate certain uses in a proposed district and as an alternative, a city may consider revising the base zoning district in question through a text amendment to modify the permitted uses. This has the result of diluting the base zoning districts making them indistinguishable from each other in their governing of area, height, use of buildings or land, and other regulations relating to development. The City Commission disfavored the use of conditional zoning to address uses; however, removing this tool from the zoning toolbox would also eliminate the ability to condition density, intensity, and processes when zoning occurs.

Challenges

Conditional zoning poses a unique challenge to administering the zoning code. Each ordinance describes the restrictions or conditions that pertain to that area. The City of Lawrence response to this challenge has been to apply GIS technology to show the difference between conventional zoning and conditional zoning on an interactive map, providing a direct link to the ordinance containing the specific condition. While not a perfect system, staff and applicants have encountered few problems since the implementation of this tracking system in 2006.

OVERVIEW OF PROPOSED AMENDMENT

This section of the report includes the existing and revised conditional zoning language for consideration. There are two sections of the Land Development Code that are key to the foundation of this land use entitlement tool. Section 20-1301 provides general provisions for all processes and application processors governed by the Land Development Code. Section 20-1301 provides authority to place conditions on site plans, Special Use Permits and other applications, and such authority is vital to mitigate identified issues that arise as such applications are processed. Section 20-1303 is specific to zoning map amendments (rezoning applications). Any change to specific text should be constrained to only address rezoning applications if appropriate.

Affected Section: Article 13 Development Review Procedures

- 20-1301 General *[this section applies to all procedures of the Land Development Code]*
- 20-1303 Zoning Map Amendments (Rezoning)

Existing Language 20-1301	Revised Language 20-1301
<p>(a) Action by Review Bodies</p> <p>(1) Review bodies may take any action that is consistent with:</p> <ul style="list-style-type: none"> (i) the regulations of this Article; (ii) the City’s adopted Development Policy; (iii) any by-laws that may apply to the review body; and (iv) the notice that was given. <p>(2) The review body’s action may include recommending approval of the application, recommending approval with modifications or conditions, or recommending disapproval of the application.</p> <p>(3) The review body may recommend conditions, modifications or amendments if the effect of the condition, modification or amendment is to allow a less intensive use or Zoning District than indicated in the application, reduce the impact of the development, or reduce the amount of land area included in the application.</p> <p>(4) The review body may recommend that the application be approved conditionally upon the execution of a development agreement acceptable to the City Attorney and/or compliance with the Access Management Standards and the Community Design Manual adopted by the City Commission from time to time.</p> <p>(5) Review bodies may not recommend a greater Density of development; a more intensive use or a more intensive Zoning District than was indicated in the public notice.</p> <p>(6) Review bodies are not required to recommend approval of the maximum Density or intensity of use allowed.</p>	<p>(a) Action by Review Bodies</p> <p>(1) Review bodies may take any action that is consistent with:</p> <ul style="list-style-type: none"> (i) the regulations of this Article; (ii) the City’s adopted Development Policy; (iii) any by-laws that may apply to the review body; and (iv) the notice that was given. <p>(2) The review body’s action may include recommending approval of the application, recommending approval with modifications or conditions, except that it may not recommend modifications or conditions for rezoning applications, or recommending disapproval of the application.</p> <p>(3) The review body may recommend conditions, modifications or amendments if the effect of the condition, modification or amendment is to allow a less intensive use or Zoning District than indicated in the application, reduce the impact of the development, or reduce the amount of land area included in the application.</p> <p>(4) The review body may recommend that the application be approved conditionally, except that it may not recommend modifications or conditions for rezoning applications, upon the execution of a development agreement acceptable to the City Attorney and/or compliance with the Access Management Standards and the Community Design Manual adopted by the City Commission from time to time.</p> <p>(5) The review body may not recommend a greater Density of development; a more intensive use or a more intensive Zoning District than was indicated in the public notice.</p> <p>(6) The review bodies are not required to recommend approval of the maximum Density or intensity of use allowed.</p>
<p>(j) Action by Decision-Making Bodies</p> <p>(2) The decision-making body’s action may include approving the application, approving the application with modifications or conditions, or denying the application. A denial of application may be accompanied with a remand to the review body, if any, for further consideration.</p> <p>(3) The decision-making body may impose conditions on the application or allow modifications or amendments if the effect of the condition, modification or amendment is to allow a less intensive use or Zoning District than indicated in the application or to reduce the impact of the development or to reduce the amount of land area included in the application.</p>	<p>(j) Action by Decision-Making Bodies</p> <p>(2) The decision-making body’s action may include approving the application, approving the application with modifications or conditions, except that it may not recommend modifications or conditions for rezoning applications, or denying the application. A denial of application may be accompanied with a remand to the review body, if any, for further consideration.</p> <p>(3) The decision-making body may impose conditions, except that it may not recommend modifications or conditions for rezoning applications, on the application or allow modifications or amendments if the effect of the condition, modification or amendment is to allow a less intensive use or Zoning District than indicated in the application or to reduce the impact of the development or to reduce the amount of land area included in the application.</p>
<p>(M) Conditions of Approval When the procedures of this Article allow review bodies to recommend or decision-making bodies to approve applications with conditions, the</p>	<p>(M) Conditions of Approval When the procedures of this Article allow review bodies to recommend or decision-making bodies to approve applications with conditions, the</p>

conditions shall relate to a situation created or aggravated by the proposed use or development. When conditions are imposed, an application will not be deemed approved until the applicant has complied with all of the conditions.	conditions shall relate to a situation created or aggravated by the proposed use or development. When conditions are imposed, an application will not be deemed approved until the applicant has complied with all of the conditions.
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The revised text shown in the column on the right of Section 20-1301 are intended to exclude the use of conditional zoning on zoning applications. The ability to condition other types of applications such as development plans, special use permits, and site plans would remain intact. The language below in Section 20-1303 is specific to rezoning applications.

Existing Language 20-1303	Revised Language 20-1303
<p>(f) City Commission Decision After receiving the Planning Commission's recommendation, the City Commission shall take one of the following actions on the proposed zoning map amendment:</p> <ul style="list-style-type: none"> (1) approve, approve with conditions or modifications, or deny; or (2) return the application to the Planning Commission for further consideration, together with a written explanation of the reasons for the City Commission's failure to approve or disapprove. <ul style="list-style-type: none"> (i) The Planning Commission, after considering the explanation by the City Commission, may resubmit its original recommendations with its reasons for doing so or submit a new or amended recommendation. (ii) Upon the receipt of such recommendation, the City Commission may, by a simple majority vote, approve the proposed zoning map amendment, approve it with modifications, or deny it. (iii) If the Planning Commission fails to deliver its recommendations to the City Commission following the Planning Commission's next regular meeting after receipt of the City Commission's report, the City Commission will consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly. 	<p>(f) City Commission Decision After receiving the Planning Commission's recommendation, the City Commission shall take one of the following actions on the proposed zoning map amendment:</p> <ul style="list-style-type: none"> (1) approve, approve with conditions or modifications, or deny; or (2) return the application to the Planning Commission for further consideration, together with a written explanation of the reasons for the City Commission's failure to approve or disapprove. <ul style="list-style-type: none"> (i) The Planning Commission, after considering the explanation by the City Commission, may resubmit its original recommendations with its reasons for doing so or submit a new or amended recommendation. (ii) Upon the receipt of such recommendation, the City Commission may, by a simple majority vote, approve the proposed zoning map amendment, approve it with modifications, or deny it. (iii) If the Planning Commission fails to deliver its recommendations to the City Commission following the Planning Commission's next regular meeting after receipt of the City Commission's report, the City Commission will consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly.

CRITERIA FOR REVIEW AND DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

1) Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition;

A previous review of of the Land Development Code by the City's Legal staff concluded that the Land Development Code is written, "to allow conditioning of conventional zoning." See attachments for more information.

The proposed text amendment is not in response to an error or inconsistency in the Land Development Code; however, it is in response to disfavor by the City Commission for use of the tool.

2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Code (Sec. 20-104)

Specific goals of *Horizon 2020* state the intent to protect and preserve neighborhood character, provide compatible infill development, and encourage appropriate commercial development scaled in size and intensity to the surrounding area. These overall goals are found in the principal strategies listed in Chapter 3, General Plan Overview; Chapter 5, Residential Land Use; Chapter 6 Commercial Land Use; and Chapter 7 Industrial and Employment-Related Land Use. Conditional zoning, when used judiciously and thoughtfully is an appropriate tool implementing the goals and policies of the comprehensive plan.

Conclusion

The application of conditional zoning should be used cautiously, when all other options have been exhausted, and when a clear neighborhood goal can be achieved, or when a clear harm to the surrounding area can be demonstrated. There is a challenge to the tool regarding tracking various conditions and making the general public aware of the unique conditions of the particular ordinance. Staff strives to provide up-to-date interactive mapping and information regarding zoning information for public information through mapping, website applications, and office interactions.

Since 2006, conditional zoning has been employed 35 times to accommodate a development project while mitigating identified impacts. Prior to 2006, a similar tool, in the form of Planned Unit Development, accomplished many of the same things. Without conditional zoning many of the 35 projects approved likely would have been denied. Staff recommends keeping this important method for addressing the context of projects in the Land Development Code.