

Newton - North Newton Area Planning Commission
Agenda
Planning Commission
Monday, September 13, 2021 @ 6:00 PM
Commission Chambers

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A. AGENDA	
1. Consider approval of the July 12, 2021 meeting minutes. 07.12.2021 PC Minutes	2 - 3
2. Consider and conduct a public hearing on a zoning district amendment from the City of Newton on behalf of the applicant Kelly McElroy, for property located on the east side of South Kansas Road, south of Southeast 24th Street between Newton Fire/EMS Station 3 and Cottonwood Crossing Apartments from the current C-2 to an R-3. Cottonwood Crossing Zoning Amendment	4 - 14
3. Old Business.	
4. New Business	
5. Adjournment	

**NEWTON-NORTH NEWTON PLANNING COMMISSION
REGULAR MEETING
July 12, 2021**

Members Present: **Newton:** Carl Harris (2-2), Denise Goodnite (3-1), Dan Harder (3-1), Jay Sommerfeld (4-0), Brian Scott (4-0), Arlan Newell (4-0)

North Newton: Gary Roth (2-2), Joe Slechta (3-1), Tyson Weidenbener (3-1)

[Note: attendance-recording period runs from 5-1-2021 to 4-30-2022]

Staff Present: **Newton:** Justin Erickson, Building and Zoning Supervisor
Matt Mullens, Assistant City Attorney
Sara Schmidt, Recording Secretary/Administrative Assistant

The Newton-North Newton Area Planning Commission met on July 12, 2021 in a regular meeting at the Newton City Hall commission chambers, 201 E. 6th Street, Newton. At 6:00 p.m., a quorum was present, and Chair Weidenbener called the meeting to order.

AGENDA ITEM NO. 1

Consider approval of the June 7, 2021 and June 14, 2021 meeting minutes.

MOTION: Commissioner Scott moved and Commissioner Sommerfeld seconded to approve the minutes. Motion carried.

AGENDA ITEM NO. 2

Consider and conduct a public hearing on a variance request from Teri Wray of 301 N. Main Street requesting permission to install a sign. If the variance is granted, the property owner will be allowed to place a sign along the north side of the lot.

Staff presented the item in which the applicant is requesting a variance from article 11.8-2 A-F stating the following: (A.) the top edge of the Monument Sign shall not exceed ten feet above grade from its base. (C.) The surface Display Area of any face of a Monument Sign shall not exceed one square foot per linear foot of street frontage to a maximum of 150 square feet.

The sign is an artistic mural that portrays iconic scenes from Newton, including the railroad, City flag, native fauna and flora, the Fox Theatre and much more. Many community members have contributed time and raised funds to see this project finalized.

Curtis Stubbs, 314 SW 12th Street, spoke as Chair of the mural committee, they have completed multiple murals and are excited to finalize this project as well. There have been several attempts to find a home for this mural and have finally landed on the location at 301 N. Main Street. Many of the panels that make up the mural are already painted and ready to be installed. Commissioners discussed maintenance and Mr. Stubbs assured them that the mural committee will be responsible for all maintenance for ten years.

Chair Weidenbener opened the public hearing at 6:10 p.m.

Constance Goering, 720 N. High Street discussed the placement and angle of the mural for best visibility from the road and on foot. She stated that the other murals have been popular, and she is happy to have another one in town.

There being no one else to speak, the public hearing was closed at 6:11 p.m.

MOTION: Commissioner Harris moved and Vice Chair Harder seconded to approve the variance request. Motion carried.

AGENDA ITEM NO. 3

Old Business

There was no old business to discuss.

AGENDA ITEM NO. 4

New Business

There was no new business to discuss.

AGENDA ITEM NO. 5

Adjournment

There being no other business to come before the Planning Commission, Chair Weidenbener declared the meeting was adjourned at 6:12 p.m.

Sara Schmidt
Recording Secretary

COMMISSION COMMUNICATION	
FOR MEETING OF	09/13/2021
AGENDA ITEM	2
FOR ACTION	✓
INFORMATION ONLY	



Justin Erickson
Planning and Zoning Supervisor
 jerickson@newtonkansas.com
 p: 316-284-6020
 201 E. Sixth, P.O. Box 426
 Newton, Kansas 67114-0426

August 6, 2021

To: Newton-North Newton Area Planning Commission
 From: Justin Erickson, Planning and Zoning Supervisor

Re: Consider, and conduct a public hearing on, an application for a Zoning District Amendment

Background:

Attached for your consideration is an application for a zoning district amendment, submitted to the Newton-North Newton Area Planning Commission by the Applicant(s), City of Newton, on behalf of Applicant Kelly McElroy, for property that is located on East Side of S Kansas Rd, South of SE 24th Between Newton Fire/EMS Station 3 and Cottonwood Crossing Apartments, from the current C-2 (General Business District) to an R-3 (Multi Family Dwelling District).

The property is legally described as:

Beginning at a point 687.68 feet South of the Northwest corner of the Northwest Quarter (NW/4) of Section Thirty-three (33), Township Twenty-three (23) South, Range One (1) East of the 6th P.M., Harvey County, Kansas; thence East a distance of 513 feet parallel to the North line of said quarter; thence South 89°35' East a distance of 749.06 feet; thence South 00°19' West a distance of 209.71 feet; thence South 90°26' West a distance of 1262.06 feet to the West line of said Quarter; thence North along said West line a distance of 211.76 feet to the point of beginning; EXCEPT the West 75 feet thereof; AND EXCEPT that part platted as Newton Fire Station Addition, Newton, Harvey County, Kansas.

Additional Information:

A map showing the surrounding properties zoning designations is included following this report as Attachment F.

The action to be taken by the Planning Commission following conclusion of the public hearing will take the form of a recommendation to the Newton City Commission, who have final authority to act upon the request.

The criteria by which an application for a zoning amendment must be judged are set forth in the zoning ordinances at Article 1, Section 1.10-4, subsection D.2. Findings must be made on each of the five following points. It is not necessary for Commissioners to find that all factors lead to the same conclusion, or even that a majority of factors indicate one way or another. It is possible one or more factors may be deemed so significant that they outweigh all others. Following each standard are the comments and observations of staff.

Criteria:

- (a) Whether the change in classification would be consistent with the intent and purpose of these Regulations, with the City's adopted Comprehensive Plan (ReNewton), and other adopted City policies, plans, programs, ordinances, rules and regulations.**

STAFF COMMENTS: When considering a change of zoning classification for any piece of property, it is necessary to consider whether every use that would be permitted under the requested classification would be appropriate for that property and the surrounding area, and not just focus on the use that the applicant indicates is intended or is presently being employed. This is because there is no way to prevent the applicant or any future owner of the property from using the site for any of the other uses permitted under the requested classification. In other words, the use of a property may not be restricted to the particular use contemplated, or in existence when the request is made, but may include any use allowed within that zoning classification.

Please see the map included as Attachment G for a graphic representation of the zoning of the surrounding properties. Application of the requested zoning is consistent with the current surrounding development.

- (b) Whether every use that would be permitted on the property if it were reclassified would be compatible with the uses permitted on other property located in the immediate vicinity; and whether the subject property is suitable for the uses to which it has been restricted.**

STAFF COMMENTS: R-3 zoning provides for specific activities including, but not limited to:

- R-3:
 - Same as R-2
 - Multi-family dwellings.
 - Lodging, rooming, and fraternity houses.
 - Flexible Multifamily developments. (See Article VIII)

 - Same as R-2
 - Same as R-S.
 - Two-Family Dwellings.
 - Child care centers.

 - Same as R-S
 - Single-family dwellings.
 - Historical sites and structures.
 - Public parks and playgrounds
 - Day care homes.
 - Churches and other places of worship.
 - Libraries, schools and museums.
 - Rights-of-way, appurtenances for public utilities and railroads.

(c) Whether adequate sewer and water facilities, and all other needed public services, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified.

STAFF COMMENTS: Water and sewer mains are available for extension to the property. The developer will need to submit petitions for the extension of the mains. The change in zoning does not impact the water and sewer utility extension requirements.

(d) Whether the proposed amendment would correct an error in the application of these Regulations.

STAFF COMMENTS: Staff is not aware of any errors in the application of the zoning regulations to be corrected through the requested zoning amendment.

(e) Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such change or changing conditions; and whether the proposed amendment provides a disproportionately greater loss to the individual landowner(s) relative to the public gain.

STAFF COMMENTS: The land is going to need to be rezoned for future development of Cottonwood Crossing Apartments.

Again, when the Planning Commission considers a change of zoning classification for any piece of property, it is necessary to consider whether every use permitted under the requested classification would be appropriate for that property and the surrounding area, and not to focus only on the particular use that the applicant indicates is intended or is presently employed.

It is also important that the Commission includes in the motion the reason or reasons for approval or denial of the zoning request. This need be no more than referencing some element of the staff report. Whether the motion is to approve or deny the request, it should be based on whether the land is appropriate for the proposed zoning classification.

Recommended Action:

The Planning Commission's decision to approve or deny the requested zoning will be forwarded in the form of a recommendation to the Newton City Commission for consideration. The recommendation will be at the October 12th, 2021 City Commission meeting.

Attachments:

- A. Zoning District Amendment Application
- B. Property Ownership Notification List for Public Hearing
- C. Notice of Public Hearing (Publication)
- D. Notice of Public Hearing (Owners of Nearby Properties)
- E. Affidavit of Publication
- F. Current Zoning Map
- G. Future Land Use Map – Comprehensive Plan (ReNewton)

Newton/North Newton Area Planning Commission Zoning District Amendment Application

Applicant(s) Information Name: City of Newton, Kansas
 Address: 201 E. Sixth St. Newton, KS 67114
 Phone: 316-284-6001

Property Owner(s) Name: Same as above
 Address: _____
 [if different] Phone: _____

Street address of property: N/A

Legal description of property: Beginning at a point 687.68 feet South and 517 feet East of the NW corner of the NW/4 of Section 33, Township 23S, Range 1E of the 6th P.M., Harvey County, Kansas; thence 745.06 feet East; thence 209.71 feet South; thence 745.06 feet West; thence 210.8 feet North to the point of beginning and containing 3.6 acres.

Present zoning of subject property: C-2 Requested zoning: R-3

Included with the Application are the following:

- ◆ A certified list of the names and addresses of the owners of record of the subject property, and of all properties located within a designated distance from the subject property. The designated distance depends upon the location of the property lines. The distance as to any portion of the boundary that is either within or adjacent to the existing city limits is 200 feet. The distance as to any boundary line that is outside the city limits is 1,000 feet. This has to be certified by a licensed abstractor.
- ◆ A filing fee of \$300.00. Checks must be made payable to "Newton City Clerk" (whether the subject property is within Newton or North Newton).
- ◆ [Optional] A narrative describing the reasons for the request including any potential problems or issues that might be raised by the request, and setting forth the applicant's reasons why the request should be granted.

<u>Kelley McElroy</u>	<u>07/26/21</u>			
Signature(s) of Applicant(s)	Date	Signature(s) of Owner(s)	Date	

Signature of owner, if other than applicant, is required for consent to the application.

OWNERSHIP LIST

Prepared by
SECURITY 1ST TITLE
July 27, 2021 at 7:59 AM

Tracts within 500 feet of the following described property:

Beginning at a point 687.68 feet South of the Northwest corner of the Northwest Quarter (NW/4) of Section Thirty-three (33), Township Twenty-three (23) South, Range One (1) East of the 6th P.M., Harvey County, Kansas; thence East a distance of 513 feet parallel to the North line of said quarter; thence South 89°35' East a distance of 749.06 feet; thence South 00°19' West a distance of 209.71 feet; thence South 90°26' West a distance of 1262.06 feet to the West line of said Quarter; thence North along said West line a distance of 211.76 feet to the point of beginning; EXCEPT the West 75 feet thereof; AND EXCEPT that part platted as Newton Fire Station Addition, Newton, Harvey County, Kansas.

The City of Newton, Kansas
PO Box 426
Newton, KS 67114-0426

AUTUMN GLEN THIRD ADDITION, NEWTON

Block 1
Lots 1, 2, 6 through 26, inclusive
Block 2
Lots 2 through 10, inclusive
Block 3
Lots 3 through 9
Block 4
Lots 1 & 13

Autumn Glen, LLC
500 Main St.
Newton, KS 67114-2200

KEY-AMELIA SUBDIVISION, HARVEY COUNTY

Block 1
Lot 1

The Kelby Harrison & Sharon Harrison
Revocable Trust dated October 30, 2017
2408 S Kansas Rd.
Newton, KS 67114-8732

KEY-AMELIA II SUBDIVISION, HARVEY COUNTY

Block 1
Lot 1

Kelly W. Jacob
613 SE 24th St.
Newton, KS 67114-8753

KEY-AMELIA THIRD ADDITION, NEWTON

Block 1
Lot 3

Cottonwood Crossing, LLC
109 N Main
McPherson, KS 67460-4303

ABSTRACTER'S NOTE: Subject to the Reversionary Interest to the City of Newton, Kansas, as established in Warranty Deed recorded in Book 243, Page 186, Deeds Records.

Block 1
Lots 4 through 9, inclusive
Block 3
Lots 1 & 6
Block 4
Lot 1
Block 5
Lots 1 through 5, inclusive

White Mountain Properties, LLC
709 N Main St.
Newton, KS 67114-1805

NEWTON FIRE STATION ADDITION, NEWTON

Block A
Lot 1 & Reserve A

The City of Newton, Kansas
PO Box 426
Newton, KS 67114-0426

METES AND BOUNDS DESCRIPTIONS

Tracts in NW/4 of Section 33-23-1E

Tract 1: Comm. NW/c NW/4; E 640.00 ft. for pob; E 470.74 ft.; S 462.68 ft.; W 470.74 ft.; N 462.68 ft. to pob.
Tract 2: Beg. 462.68 ft. S NW/c Sec 33; E 484 ft.; S 225 ft.; W 484 ft. to point 225 ft. S of pob; N 225 ft. to pob.
Tract 3: Comm. NW/c NW/4; S 462.68 ft.; E 484 ft. to pob; S 225 ft.; E 778.06 ft.; N 225 ft.; W 778.06 ft. to pob.

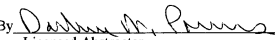
The Kelby Harrison & Sharon Harrison
Revocable Trust dated October 30, 2017
2408 S Kansas Rd.
Newton, KS 67114-8732

This report is not a representation of the condition of title to real property. It is not an abstract, legal opinion, opinion of title, title insurance commitment, or any form of title insurance or guaranty. This report is issued exclusively for the benefits of the applicant therefore, and may not be relied upon by any other person. Security 1st Title does not represent or warrant that the information herein is complete or free from error, and as a material part of the consideration given in exchange for the issuance of this report, recipient agrees that Security 1st Title's sole liability for any loss or damage caused by an error or omission in this report shall be limited to the fee charged for the report, whether such error or omission results from negligence, accident, or other cause. All other liability for loss or damage is expressly disclaimed. Recipient accepts this report with this limitation and agrees that Security 1st Title would not have issued this report but for the limitation of liability described above. Security 1st Title makes no representation or warrant as to the legality or propriety of recipient's use of the information herein.

That the undersigned is a duly licensed and qualified abstractor in and for the county and state aforesaid, a member in good standing of the Kansas Title Association and the American Title Association, whose bond as required by law is in force at the date of this certificate.

Dated at Newton, Kansas, this 27th day of July, 2021, at 7:59 AM.

SECURITY 1ST TITLE

By 
Licensed Abstractor

NOTICE OF HEARING

TO ALL PERSONS CONCERNED:

Notice is hereby given that an Application for Amendment of a Zoning District Classification has been filed with the City of Newton, Harvey County, Kansas, requesting the issuance of a zoning amendment pursuant to Article I of the City of Newton Zoning Ordinances for the following described property located on the East side of S Kansas RD between SE 24th St. and SE 26th St. The property is legally described as:

Beginning at a point 687.68 feet South of the Northwest corner of the Northwest Quarter (NW/4) of Section Thirty-three (33), Township Twenty-three (23) South, Range One (1) East of the 6th P.M., Harvey County, Kansas; thence East a distance of 513 feet parallel to the North line of said quarter; thence South 89°35' East a distance of 749.06 feet; thence South 00°19' West a distance of 209.71 feet; thence South 90°26' West a distance of 1262.06 feet to the West line of said Quarter; thence North along said West line a distance of 211.76 feet to the point of beginning; EXCEPT the West 75 feet thereof; AND EXCEPT that part platted as Newton Fire Station Addition, Newton, Harvey County, Kansas.

The Applicant requests that the above-described property be rezoned from a C-2 (General Business District) zoning classification to an R-3 (Multi Family Dwelling District) City of Newton zoning classification.

The Application will be presented to, and a public hearing held by, the Newton/North Newton Area Planning Commission in the Newton City Commission chambers at City Hall, 201 E. 6th Street, Newton, Kansas on **Monday, September 13, 2021 at 6:00 p.m.**, or as soon thereafter as the matter may be heard. All persons interested may appear and be heard as to the application.

/s/ Justin Erickson
Planning and Zoning Supervisor
City of Newton, Kansas



Department of
Public Works:
Engineering Division

201 East Sixth, P.O. Box 426
Newton, Kansas 67114-0426

August 3, 2021

NOTICE OF HEARING

To Owners of Nearby Properties:

Notice is hereby given that an Application for Amendment of a Zoning District Classification has been filed with the City of Newton, Harvey County, Kansas, requesting the issuance of a zoning amendment pursuant to Article I of the City of Newton Zoning Ordinances for the following described property located on the East side of South Kansas RD between SE 24th St. and SE 26th St. The property is legally described as:

Beginning at a point 687.68 feet South of the Northwest corner of the Northwest Quarter (NW/4) of Section Thirty-three (33), Township Twenty-three (23) South, Range One (1) East of the 6th P.M., Harvey County, Kansas; thence East a distance of 513 feet parallel to the North line of said quarter; thence South 89°35' East a distance of 749.06 feet; thence South 00°19' West a distance of 209.71 feet; thence South 90°26' West a distance of 1262.06 feet to the West line of said Quarter; thence North along said West line a distance of 211.76 feet to the point of beginning; EXCEPT the West 75 feet thereof; AND EXCEPT that part platted as Newton Fire Station Addition, Newton, Harvey County, Kansas.

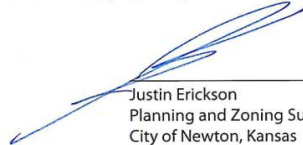
The Applicant requests that the above-described property be rezoned from a C-2 (General Business District) zoning classification to an R-3 (Multi Family Dwelling District) City of Newton zoning classification.

The Application will be presented to, and a public hearing held by, the Newton/North Newton Area Planning Commission in the Newton City Commission chambers at City Hall, 201 E. 6th Street, Newton, Kansas on **Monday, September 13, 2021 at 6:00 p.m.**, or as soon thereafter as the matter may be heard. All persons interested may appear and be heard as to the application.

The Zoning Ordinances of the City of Newton require as a part of any zoning amendment process that a certified list be obtained of the owners of all property within the area to be zoned; of all property within the city limits located within 500 feet of the boundary of the area to be zoned; of all property within 1,000 feet of any portion of the boundary of the area to be zoned that is outside the city limits; and that each of those property owners be given notice of the proceedings by mail. This Notice is provided to you as an owner of one of these properties.

The action to be taken by the Newton/North Newton Area Planning Commission will consist of a recommendation to the Newton City Commission. The Newton City Commission then has the authority to approve the recommendation in whole, in part, or to deny the application. The item is scheduled to be on the September 28, 2021 City Commission meeting agenda.

Copies of the application and other related materials are available for inspection at the office of the Newton City Clerk at 201 East 6th Street, Newton, Kansas, during normal business hours. Copies of any materials may be obtained from the City Clerk upon payment of a copying charge. Please inquire of the City Clerk for further information.


Justin Erickson
Planning and Zoning Supervisor
City of Newton, Kansas

AFFIDAVIT OF PUBLICATION

STATE OF KANSAS, COUNTY OF HARVEY,
Debra S. Jacobsen Debra S. Jacobsen
Being first duly sworn, deposes and says: That she is the
Classifieds Clerk of

The Newton Kansan

A daily newspaper printed in the State of Kansas, and published in
and of general circulation in Harvey County, Kansas, and that said
newspaper is not a trade, religious or fraternal publication.

Said newspaper is a daily published at least weekly 50 times a year;
has been so published continuously and uninterruptedly in said
county and state for a period of more than five years prior to the
first publication of said notice; and has been admitted at the post
office of Newton, Kansas in said County as second class matter.

That the attached notice is a true copy there of and was published in
the regular and entire issue of said newspaper

One
Insertion(s), the first publication being

August 5th 2021

subsequent publications being made on the following dates

None

Subscribed and sworn to before me this **AUGUST 19th**, 2021

Notary Public

My commission expires

Total Amount of Payment \$15.75

Notice of Hearing/Zoning Amendment

ANDREA FIEDLER
Notary Public - State of Kansas
My Appointment Expires 4/4/22

(Published in *The Newton Kansan*, Thursday, August 5, 2021)
NOTICE OF HEARING

TO ALL PERSONS CONCERNED:
Notice is hereby given that an Application for Amendment of a Zoning District Classification has been filed with the City of Newton, Harvey County, Kansas, requesting the issuance of a zoning amendment pursuant to Article 1 of the City of Newton Zoning Ordinance for the following described property located on the East side of S Kansas RD between SE 24th St. and SE 26th St. The property is legally described as:

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The Applicant requests that the above-described property be rezoned from a C-3 (General Business District) zoning classification to an R-3 (Single Family Dwelling District) City of Newton zoning classification.

The Application will be presented to, and a public hearing held by the Newton/North Newton Area Planning Commission in the Newton City Commission chambers at City Hall, 201 E. 6th Street, Newton, Kansas on Monday, September 13, 2021 at 4:00 p.m., or as soon thereafter as the matter may be heard. All persons interested may appear and be heard as to the application.

/s/ Justin Erickson
Planning and Zoning Supervisor
City of Newton, Kansas

