

OUTLINE OF ZONING AMENDMENT (REZONING) RULES AND PROCEDURES CITIES OF NEWTON AND NORTH NEWTON, KANSAS

Zoning amendment procedures (seeking either the assignment of a zoning classification for a property to be annexed, or seeking the rezoning of an existing property, within either the cities of Newton or North Newton) are processed through the Newton/North Newton Area Planning Commission. The principal staff person assisting the Planning Commission is the Newton City Attorney, who performs this function as to zoning amendment procedures for either city. All filing fees are payable to the Newton City Clerk, whether the subject property is within Newton or North Newton.

To initiate the zoning amendment procedure, an applicant must file the request with the Planning Commission (through the office of the Newton City Attorney) submitting to the Newton City Attorney each of the following:

- (a) A completed application form signed by the owner(s) of the property.

[Note: Application forms are available upon request. If the applicant is a prospective purchaser of the property, the current property owner(s) must also sign the application.]

- (b) 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.
- (c) 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).

Once these items have been filed, the matter will be placed on the agenda of the Newton/North Newton Area Planning Commission for the next regularly scheduled meeting occurring after the end of the required notice period (see below). The Planning Commission will then hold a public hearing on the request. The Planning Commission meets once a month, on either the first or second Monday of each month. The Newton City Attorney can provide the specific meeting schedule for the current calendar year.

At least twenty (20) days in advance of the Planning Commission's public hearing a notice of the hearing must be published in the local newspaper, and also notices must be mailed to all property owners within the designated distance of the subject property. The Newton City Attorney prepares and causes the publication and mailing of all such notices.

Due to these notice requirements, and providing time to prepare such notices and arrange their publication, it is necessary that the application and all related materials be submitted not less than twenty-five (25) days in advance of the desired Planning Commission meeting date.

Once an application is formally submitted, it is then the responsibility of City staff (the Newton City Attorney included) to then investigate the request and prepare an analysis and

recommendations to the Planning Commission. The applicant will be provided with a copy of that written analysis and recommendation in advance of the hearing.

Upon the public hearing being convened, the Planning Commission utilizes the following general procedure:

1. Determination that a quorum is present.
2. Determination that proper notice has been given.
3. Report by Commissioners and staff as to all written and oral communications that have been received on the application.
4. Introduction of the application by the Commission's professional staff.
5. Presentation by the applicant, and Commission and staff questioning of the applicant.
6. Receipt of any public comments on the application.
7. Closing comments by the applicant.
8. Closing of the public hearing.
9. Discussion and deliberation by the Commission and by the Commission's professional staff.
10. Adoption or findings, and formulation of the Commission's recommendation to the governing body of the City.

The Planning Commission is not required to conclude the public hearing or finalize their findings and recommendations in one meeting (although they usually do so). Any portion of those proceedings can be continued over to a subsequent meeting or meetings if additional time or input is felt to be necessary.

After the Planning Commission has made their recommendation, the matter goes before the City governing body (either the Newton City Commission or the North Newton City Council, depending upon which has jurisdiction over the property) at their next regularly scheduled meeting which occurs at least 15 days after the close of the Planning Commission's deliberations. At that time, the City governing body can do one of three things:

- (1) Accept the recommendation of the Planning Commission to either approve or disapprove the application; or
- (2) Send the application back to the Planning Commission for further consideration (which usually means they have some disagreement with or concerns about some aspects of those recommendation), in which case the Planning Commission takes the matter up at their next meeting and then sends it back to the City governing body with any further comments and recommendations; or

- (3) Take no further action, in which case the application will be deemed to have been denied if 120 days elapses without the City governing body taking the matter back up again.

This is not necessarily to say that zoning amendments are long, drawn-out processes, as most applications are decided upon after one Planning Commission meeting and one City Commission meeting. However, if particular problems or concerns develop, or if the application involves some unusual matter of complexity, it can take some time for these procedures to run their course.

In presentations as to applications before the Planning Commission or the city governing body, a party should be aware of the factors which those bodies are required by law to consider and upon which they are legally required to base their decisions. These factors are as follows:

1. Whether the proposed change would be consistent with the interest and purpose of the zoning regulations, the City's adopted Comprehensive Plan, and other adopted policies, programs, ordinances, rules and regulations;
2. Whether every use that would be permitted on the property if it were to be reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
3. Whether the subject property is suitable for the uses to which it is currently restricted;
4. 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;
5. Whether the proposed amendment would correct an error in the application of the zoning amendments;
6. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, what the nature of such changed or changing conditions are; and
7. Whether the proposed amendment provides a disproportionately greater loss (if any) to individual landowners in the area in comparison with the public gain (if any) that could be attained by the reclassification.

These factors must be considered in relation to every potential use that could be made of the property under the requested zoning classification, and not just as to the particular uses the applicant proposes to make of the property. The reason for this is that once a zoning amendment is granted neither the present owner nor any future owner is bound by what has been declared to be the intended use of the property under that zoning, and they would be legally entitled to make any use of the property that is permitted under that zoning classification.

It is not necessary that positive finding be made in favor of the proposed zoning amendment on each of the above factors for the amendment to be granted, and it is not always a question whether or not a majority of those factors are satisfied if some are deemed to be more important than others in the particular instance. In fact, not all of those factors will be relevant to every application.

The zoning regulations also provide that if a protest is filed within 14 days of the Planning Commission hearing, signed by at least 20% of the property owners within the designated distance to the subject property, then a three-fourths (3/4) majority vote is required by the City governing body to approve the application.

The Newton City Attorney may be consulted regarding any questions as to a property's present zoning as to the kinds of uses that may be made under various zoning classifications. Time permitting, staff will attempt to provide an initial assessment of an application, so that possible problems or issues related to particular requests could be identified in advance.

However, the City does not have the staff or resources to thoroughly investigate the propriety or feasibility of every potential rezoning inquiry. Any assistance provided through such inquiries or in the filling in the application forms can not be taken as an expression of any official staff position on the merits of the rezoning request. No official staff position will be formed on the request until an application has been filed and staff has had an adequate opportunity to perform a thorough analysis of the request in the process of their preparation of a report and recommendations to the Planning Commission.

We hope this summary is helpful to you. If you have any further questions, please call the office of the Newton City Attorney.