

PC Minutes 10/26/09

ITEM NO. 7 AMENDMENTS TO DEVELOPMENT CODE; BOARDING HOUSE (SDM)

TA-6-17-09: Consider Text Amendments to various sections of the City of Lawrence Land Development Code to review standards related to "Boarding House." *Deferred from 9/21/09 Planning Commission.*

STAFF PRESENTATION

Mr. Scott McCullough presented the item. He stated that this was discussed and initiated during the May Planning Commission meeting. Staff conclusions in reviewing boarding houses results in condensing the use down to a new section called congregate living in the use standards that would require a permitted use in the appropriate zoning districts, up to a certain threshold. The threshold being six bedrooms and six occupants, after that a Special Use Permit would be required. Staff also proposes that a full time resident manager or owner reside on the site with a Special Use Permit to address some of the impacts that congregate living type uses can create for neighborhoods. Staff proposes that parking be provided at a rate of one space per occupant, that uncovered decks and patios located on the side or rear of the structure be limited to 15 square feet per occupant, and that a trash receptacle be designated on the site plan. Staff accepts the League of Women Voters recommendation on the definition of congregate living. Kyle Thompson recommended that the standard related to the covered decks eliminate the words 'side or rear.' He would not like large decks constructed on the front of a structure either. Paul Werner's letter discusses the legal non-conforming nature of what this might do to existing boarding houses. Mr. McCullough said the Development Code does address legal non-conformities.

Commissioner Finkeldei inquired about the definition of a full time resident manager.

Mr. McCullough said it is not a defined term, it is an element of Special Use Permits and defined through that process.

Commissioner Finkeldei asked if the resident manager could just be one of the 10 college kids living there.

Mr. McCullough said the value in having a resident manager is to have one contact point that Code Enforcement or the Police can contact.

Commissioner Finkeldei asked about the definition of fraternity or sorority.

Ms. Sheila Stogsdill said the definition is under household living as Greek Housing.

Mr. McCullough said fraternity or sorority is in the use table.

Commissioner Carter inquired about Paul Werner's email that says more could be done to protect existing legal boarding houses.

Mr. McCullough said he thought it was a philosophical question about how the Development Code would treat legal non-conforming structures. He said there is an article in the Development Code that generally reviews any non-conforming structure.

Commissioner Harris inquired about the wording in the Development Code that says the first purpose is to have the use economical to the owner. She thought that was unusual wording for a purpose.

Mr. McCullough said the reason that staff included that is because the standard is speaking to the fact that part of the use is permitted by right up to a certain threshold. The Special Use Permit goes through Planning Commission and the governing body and is an additional process, so economical was included for the owner because the use is worthy of some mitigation or review of possible mitigation for a neighborhood, which has an economical element to it. Staff have heard that boarding houses should have an economical element to them so staff thought that if a system was created where a certain number of bedrooms and occupants by right were part of the site planning, then anything over and above that will be reviewed for mitigation.

Commissioner Harris asked if it is tied to efficiency.

Mr. McCullough said yes, and efficient process.

Commissioner Harris inquired about the importance of a manager to maintain the site. She said the Development Code does not really talk about what the purpose of the manager is and what the owner is responsible for.

Mr. McCullough said there are going to be a range of possible issues that may present itself with an application for a Special Use. Staff wanted the Code to remain a bit open ended on what issues the resident manager may have to contend with. Any issues presented through the Special Use Permit process can become conditions for a resident manager to keep on top of. Staff did not necessarily come up with an exhaustive list of what those issues may be. Staff felt it was important to require that element in the Special Use Permit process and then define that as the Special Use unfolds.

Commissioner Harris inquired about the language *'shall have a full time resident manager as identified through the Special Use Permit process.'* She asked if that is what was meant by no conditions attached with that.

Mr. McCullough said there are no conditions that the Code outlines now and that each Special Use Permit may have their own set of issues. He said staff would like a main contact for issues that come up during the Special Use process and any issues that may come up afterward.

Commissioner Harris inquired about the communications received that suggests having the front patio or deck have a limit on the square feet as well as the side and rear.

Mr. McCullough said that staff discussed that. It is a proposed standard because some of these decks are large and can hold a large number of people and support large gatherings. Staff was looking for a way to mitigate that issue through design. Staff talked about whether that should include front covered/uncovered porches, rear, side, etc and this is where staff landed based on discussion, but it is certainly up for further discussion.

Commissioner Harris asked why front porches were not included.

Mr. McCullough said that staff experience has not been that a lot of front decks are uncovered. Staff determined excluding covered decks and patios because they are typically wrap around or have front porch type design elements and that covering the decks or patios would help contain some amount of noise. It is something that staff debated and this is where it ended up. Staff did not think it was an issue that had to be addressed today in the Code.

Commissioner Harris inquired about the number of people who can live together and where they fall in the Code. She said that if staff liked the language that the League of Women Voters suggested

regarding five or more sleeping units, what happens if there are four, would that fall under congregate living.

Mr. McCullough said if there are four people in the RM district then it meets the definition of family so it would not be considered congregate living.

Commissioner Rasmussen inquired about the deck size and asked if there was no limit to size if it was a covered deck.

Mr. McCullough said that was correct.

Commissioner Rasmussen asked how the city would enforce not sharing trash receptacles.

Mr. McCullough said today some of the site plans that are processed for boarding houses have notes related to sharing trash receptacles, which may be a couple of homes down such as a dumpster in the alley on another private property. In staff's discussions with Solid Waste anything that demands site planning over the definition of family of four or more really demands their own trash receptacle site. Staff is trying to support the Solid Waste department by creating the Code requirement that if there is a threshold that requires site planning in a residential district that there will be a designated trash receptacle site on the property, similar to what is done with apartment complexes. He said that staff agreed with Mr. Kyle Thompson's suggestion of changing the sentence *'Sharing trash receptacle areas with other properties shall not be permitted'* to *'The area shall be used for trash collection when deemed necessary by the Solid Waste Division.'*

Commissioner Rasmussen inquired about the League of Women Voters definition of congregate living and asked if that was going to confuse how the requirement of six bedrooms and six occupants is interpreted if it is defined as five or more.

Mr. McCullough said it simply defines what congregate living is and then the Code directs to specific use standards for that particular type of use where it then creates the threshold for process.

PUBLIC HEARING

Mr. Steven Watts, 1649 Edgehill Road, said his road was removed from the Oread Neighborhood Plan to eliminate his input on the plan.

Mr. Eric Oligschlaeger, owns boarding houses, and expressed concern about the depreciation of boarding houses. He wondered if there had been an analysis of the cost to renovate depreciated houses around campus. He said he could not do it with only six occupants and would need more occupants to afford the proper work needed to the depreciated homes. He said the renovation of these houses is pretty high and that some single families could not afford to do it. He wondered what would happen to the houses around campus if they could only be sold as five or six bedrooms.

Commissioner Carter asked Mr. Oligschlaeger to clarify what he said about five or six bedrooms.

Mr. Oligschlaeger said if the parking requirement is changed he would not be able to get six parking spaces and what would be the incentive to fix up a dilapidated house. He said when he asks for a loan from a bank he has to prove a certain amount of people will rent the house to be able to afford the mortgage.

Commissioner Harris inquired about his thoughts on parking.

Mr. Oligschlaeger said not all of his occupants have cars, for example he has renters from Chicago who do not have vehicles. He said he did understand that parking is limited in the Oread neighborhood. He said possible options could be a parking spot in front or each side of the house sideways. He suggested changing the setback requirements.

Mr. David Holroyd asked if the term congregate living was replacing the term boarding house.

Mr. McCullough said yes, as proposed.

Mr. Holroyd asked what district a boarding house could be in.

Mr. McCullough said all of the RM districts except RM12D and RMG.

Mr. Holroyd asked if RM32 would still have the same use.

Mr. McCullough said none of the districts have been changed pertaining to where congregate living/boarding houses would be permitted.

Mr. Holroyd asked about the notification process.

Mr. McCullough said that all statutory requirements for the notification process were followed for text amendments.

Ms. Candice Davis, expressed concerns about the Code being distorted in the last several years. She was concerned about people changing their single dwelling with four occupants to a boarding house. She was also concerned about parking issues and said that most people living in boarding houses have cars and their friends have cars. She felt there was a loophole in the Code. She said she too has an investment in her own property.

Commissioner Rasmussen asked if the parking requirement was imposed on boarding houses did Ms. Davis think it would solve the parking issues in the neighborhood.

Ms. Davis felt it would solve a lot of problems and would have a critical impact on parking and the livability of the neighborhood.

Mr. Rob Farha, asked where five people would fall if four people constitute as a single family and six people for congregate living.

Mr. McCullough said that five or more would be the definition of congregate living. Six is the threshold for what would be permitted through a Site Plan approval. Over six would be a Special Use Permit.

Mr. Farha inquired about the resident manager and said that his rental occupants change yearly. He said that the ownership group of his boarding houses is already proactive so he did not feel another administrator was necessary.

Commissioner Carter asked if he had suggestions for where boarding houses should be located.

Mr. Farha said there are appropriate locations for boarding houses. He felt that an appropriate area would be on Ohio Street from 13th Street to 14th Street because he did not believe single family would ever be back in that area.

Commissioner Harris asked Mr. Farha who the neighborhood should call if they have concerns about the house.

Mr. Farha said the police should be called because there is an ordinance in place.

Mr. McCullough reminded the Commission that RM districts are city wide, not just specific to the Oread neighborhood.

Ms. Marci Francisco, 1101 Ohio Street, said the proposal makes sense because if parking requirements are consistent with other uses in the multi family districts then the choice about what is the most appropriate way to develop will be made for other reasons other than how many people can live in the property. She said there is a house on the east side of the street on Indiana that has open front decks. She appreciated the changes made regarding the trash. She suggested adding language to specific standard #4 'a trash receptacle *on the property*' She also hoped that in the future it would be referred to as 'trash and recycling area.' She said she lives in the neighborhood and has made investments. She felt the price of the property is often set by what is able to be done with it. She felt that if people kept up their properties then property values would be maintained and become more affordable for home owners and investors.

Commissioner Dominguez asked how to resolve the idea of a house that needs a substantial amount of investment in order to make a profit and sustain a business venture. He asked how that would be offset when a house has to be demolished because there is no investor; how is balance found.

Ms. Francisco said that she has made it work on several properties in the past, such as 1042 Ohio. She said if there is a limit to the development then the initial cost will be less for others to purchase. She felt that the change would also encourage people with property to maintain it instead of thinking that they don't have to invest in it and let it deteriorate and then tear it down and build a boarding house. There is an opportunity to invest and maintain property that will pay off.

Mr. Tony Backus, owns 1121 Ohio Street, not sure what he thinks about this change. He felt that more density is needed as opposed to apartments out on the fringe of the city. He said that limiting a deck to 15 square feet was absurd and goes against the nature of a deck.

Mr. Bill Gadberry, owns a home in the Oread neighborhood. He said he bought the house as an investment and when he purchased it in 1984 it was zoned RD and when it was put back on the market again in 2006 it was RM32 which he felt was downzoning. He felt there should be compensation of some sort. He felt the parking issues were due to students who live in apartments further away and drive to campus. He said his building is the only one with two trash receptacles. He was opposed to another change in the zoning and felt that that the downzoning has to stop. He felt the neighborhood should be allowed to improve through development.

Commissioner Singleton asked if he thought this text amendment would improve the neighborhood.

Mr. Gadberry said no. He said he did not think parking was an issue because it is not the people who live in the area that are parking there. He was opposed to further downzoning in the area.

Mr. Steven Watts, 1649 Edgehill Road, said that Edgehill Road is the only street in the Oread that allows parking on both sides of the street on a one way road. He said that parking is an issue. He said that because he doesn't have a neighborhood association he doesn't have anyone to lobby for him.

Mr. Tim Coldsnow, owns property in the Oread neighborhood, understood the frustration of the Oread neighborhood, because it has a certain character and as long as the campus is there it will continue to have that character. He felt that this code would hamper owners and that downzoning is only going to hurt. He said there are ordinances that should take care of any problems. He said these are investment properties and they should be seen as this.

Commissioner Harris asked Mr. Coldsnow what he would have to do to his property to comply.

Mr. Coldsnow said that some of them would have to be completely gutted and have new electrical and fire sprinklers added.

Mr. McCullough said that boarding houses are site planned today and when uses change there are requirements to bring elements up to standard. That exists today through the building and fire codes and is not changing. There are elements of the zoning standards are changing that may limit the scope of what a boarding house can become. He said outside of that we are not doing anything with the standards that exist today except attempting to create a process by which we can determine based on review of the golden factors in the zoning process whether a boarding house is compatible with a neighborhood. He said the city is not limiting anything in this revision that is not there today in terms of boarding houses. He said today the definition of boarding house is limited to 12 sleeping rooms and 24 people and that cap is being removed so if someone has a very large structure they can bring in a Special Use Permit and have it reviewed. If parking is met and other zoning requirements then it may not be limited to 12 sleeping rooms.

Commissioner Dominguez asked what value a large boarding house brings to a neighborhood.

Mr. Coldsnow said it is neighborhood specific but that it adds character to the Oread neighborhood if it is done correctly.

Mr. Farha said value to the neighborhood is specific for the right location. Structures that are cleaned up add value as opposed to a dilapidated structure.

Commissioner Finkeldei asked if any of the properties Mr. Farha owns meets the 1 to 1 parking.

Mr. Farha said the most recent one he worked on, 1042 Tennessee Street, is 5 bedrooms and 5 parking spots.

Mr. John Davis, thought it was bad policy. He said the Oread neighborhood has a serious problem with blight. The investment in boarding houses has improved the neighborhood and caters to a need for university students. He encouraged neighbors to call him or police if there are problems with any of his tenants.

Commissioner Finkeldei asked how many of his projects could he have done with one parking space per person.

Mr. Davis said one. He said parking is not a problem and a spot can always be found.

Commissioner Finkeldei asked for his opinion on the Special Use Permit requirement for large houses so that the city can have more control due to congregate living being more disruptive than apartments.

Mr. Davis said it might be okay in theory but it might be a tough process. He did not want the houses next to his investment property to fall apart. He felt it was not good for the neighborhood.

Commissioner Finkeldei asked if he owns 1339 Ohio Street and if it met parking.

Mr. Davis said he does own that property and that no it did not meet the parking, a variance had to be sought. He said it didn't meet the parking requirement as an apartment house either.

Commissioner Finkeldei asked if someone wanted to buy an apartment house and fix it up would they have to request a variance for parking.

Mr. McCullough said no, if it was a legal non-conforming property and they were doing regular maintenance but not adding more density they would not need a variance.

Mr. Davis said his experience has been the exact opposite.

Commissioner Finkeldei asked why did Mr. Davis choose to go from a 14 unit to 12 unit. He inquired about the economics of that.

Mr. Davis said they were never meant to be apartments and over time it ruins the structural integrity of the house. We have put them back to what they previously were which makes them easier to manage.

Ms. Carol von Tersch, lived in the Oread neighborhood for 30 years, and not everything is a problem in the neighborhood. She said that the only people speaking from the heart for the neighborhood this evening are women. She said this was not a downzoning issue. She said this is an issue that has cropped up in the past four years because of a loophole in the Code and that is the bottom line. She said a majority of the people who have spoke this evening do not currently live in the neighborhood. She said the four unrelated people occupying the house was established in the 1970's and not a new item. Most of the boarding houses approved in the past years have been granted variances in parking. She said it would be nice to have a responsible party in a boarding house instead of calling the police.

Ms. Fadila Boumaza, owner of 928 & 930 Ohio Street, said she was disappointed with the proposal. She said they should focus on rules that are already in place and try to address the root cause of the issue. Said she did not think this text amendment would fix any issues.

Mr. Jeff Hatfield, said the business he is part of, Crimson Properties, have decreased the total number of bedrooms and have not requested an increase in bedrooms. He said the parking requirements are too restrictive. He said they have improved their properties and he does not know who else would invest in these properties with increased regulations.

Commissioner Finkeldei asked Mr. Hatfield what he thought about needing a Special Use Permit for more than six bedrooms.

Mr. Hatfield said he has not fully read the Code so he would like further discussion on it.

COMMISSION DISCUSSION

Commissioner Singleton thanked staff for looking into this issue because it involves the entire community. She liked the changes and felt it is an excellent way to address the issue. She said occupants need enough parking for every individual. She also felt that having the appropriate

disposal for trash meets the needs of everybody in all of the community. She said that when listening to the people who are economic invested in these types of homes in this neighborhood one of the things they say is that they are catering to the needs of the students. She said the students are a built in population so there will always be a need there for housing in that area. She liked the requirement about having a manager onsite and it addresses party houses. She felt as a community there is a responsibility to student housing that is being missed in boarding houses.

Commissioner Finkeldei said he is convinced that this has nothing to do with parking issues in the Oread neighborhood. The issue is the parking requirement allowing people to increase the density. He said the issue here is changing the parking requirement. The neighbors have mentioned a loophole and it is clear this is one area where there could be more occupants with less parking spots. He felt the reason for changing the parking would be to limit how these houses are redeveloped. He said there are more problems, such as noise, trash, and parties, with congregate living in general than apartment buildings and that is an issue. He said this won't help the issues of all the boarding houses already built and that City Commission will have to go about how to solve those problems. He stated this text amendment does not solve the party problem to a great extent because there need to be other ways to solve that problem. There are dilapidated dwellings within the Oread neighborhood that need to be fixed up and the question is will there be single family home owners or investors to buy and fix them up. He said the biggest issue is when someone takes a small structure that could have been a single family house and converts it to a congregate living house and the neighbors don't like it. He agreed that some large structures would never be converted back to single family but he felt that they are hurting themselves by allowing some of these larger structures to be renovated. He thought they needed to look at a hybrid of this system. He said for a certain size he would be okay with a Special Use Permit and he likes as part of that to have an identified manager. He said the manager could either be a tenant or property owner. He felt that for a certain size, probably 6 occupants or below, 1 to 1 parking was fine, but anything over 6 occupants that 1.5 parking would make sense. He said that the 15' square feet of patio is way too small. He said he could not support this text amendment the way it is written now and felt there is still work left to do.

Commissioner Moore inquired about 6 people as the threshold.

Mr. McCullough said it was a starting place that was very close to the definition of family. He said it is a philosophical issue about if the definition of family in the Code is valuable in the city and staff did not want to vary too much from that. He said this is the only use that is allowed in a large number of districts that was unabated in terms of the number of people that can live in a congregate setting if parking was there for the use.

Commissioner Moore said if 6 occupants is the threshold then it makes 66% of the 21 examples of boarding houses non-conforming.

Mr. McCullough said the number of 6 occupants did not come from an analysis of what would be issue of non-conforming and conforming.

Commissioner Carter was concerned about the unintended consequences of moving forward with the text amendment tonight. He said this does not fully resolve issues. He felt they needed to do a better job of figuring out what we want to do with the neighborhood and there might be a few blocks in the Oread neighborhood that should be identified in the Oread Plan for boarding houses. He said he was not comfortable moving forward on this tonight. He felt they should consider other parking solutions.

Commissioner Moore said it seemed like people were being penalized through parking and that it was almost like a double hit by requiring a Special Use Permit and parking reduction. He suggested moving forward with one or the other and see how it goes would be a better alternative than implementing both at the same time.

Commissioner Harris said the issues expressed seem to be lack of parking in the neighborhood, trash, noise from parties, and no channel to address concerns except through the police. She was grateful to staff for the changes made but was not sure it really addressed the lack of parking in the neighborhood and felt there should be a permit system. She liked the idea of having a manager on the property. She said she has personally complained to the police in the past about parties and has had her tires slashed, things stolen from her house, and threatened. She also liked the trash provision. She felt they are not ready to move forward on this tonight.

Commissioner Rasmussen said that these restrictions would not resolve blight, parking, noise, and trash issues and that it was more of a back door attempt to address issues. He said if parking is a serious problem then they should consider a parking permit program or meters on the street. He said they cannot ignore the fact of the proximity to Kansas University and they should encourage compact living around the campus to encourage walking. He felt that increased density around the campus is a good thing. He said there are few boarding houses outside of the Oread neighborhood but that the majority are in the Oread neighborhood so they should focus on that. He said they are in the middle of looking at the Oread neighborhood plan so they need to talk about zones that may be better suited to have mixed use with boarding houses, commercial, and residential. He felt they might be jumping the gun a little bit since the Oread Neighborhood Plan is not done yet.

Commissioner Dominguez felt that neighborhoods belong to the people who live there and they should give the neighborhood credit and look to them for suggestions. He said he lives in the Oread neighborhood and there are some good and bad neighbors. He did not think it will devastate landlords because there will always be a market for students to live in that area. Parking will probably always be an issue especially with students driving in from other parts of town and parking there. He felt they should look into a parking system to regulate parking for those driving to the neighborhood. He likes the Special Use Permit and having a manager live on the premises because this is the heart of the city and should be kept up.

Commissioner Finkeldei said one possibility would be to defer this until the Oread Plan or defer it with more staff direction.

Commissioner Carter felt they should wait until the Oread Plan.

Commissioner Blaser said he was not sure what should be done about parking. He likes the manager on site concept. He lives near a few boarding houses away from the Oread neighborhood and they are clean. He said this text amendment may help with the Oread Plan since the text amendment is for the entire city. He was in favor of limiting the deck space on all sides of the house. He said parking was not resolved by this text amendment and may create a hardship for large houses. He was in favor of moving forward with this tonight and thought it had some good points in it.

Commissioner Singleton said she did not think this plan was proposed to solve the parking issues for the neighborhood plan. This is about this type of unit, boarding houses, which is an unusual type of unit generally. Requiring there to be enough parking and trash onsite makes complete sense for boarding houses. She gave an example of a patio on Edgehill Road that was massive with a bar and she would not want to live near it. She felt the text amendment does address the issues that are problematic as a result of boarding houses. She said there needs to be diversity in the neighborhood

and everyone contributing value to it. She thought this addresses boarding houses and it is a separate issue from the Oread Plan.

Commissioner Harris said if she had a choice between voting on what is on the table tonight or deferring until the Oread Plan she would chose to vote on what is proposed tonight because she felt they could not afford to be approving any more boarding houses.

Commissioner Dominguez said this will change rules and he wondered how it would be enforced.

Mr. McCullough said the Oread Plan will be heard by Planning Commission next month and he would recommend deferring the boarding house text amendment indefinitely. He said he has some ideas of how to get at some of the issues.

Commissioner Harris requested that the item not be deferred indefinitely and suggested it come back to Planning Commission in December.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to defer the item to the December Planning Commission meeting.

Motion carried 8-1, with Commissioner Blaser voting in opposition.