

**ITEM NO. 5 TEXT AMENDMENT; LAND DEVELOPMENT CODE; MU DISTRICT (MJL)**

**TA-1-1-10:** Consider Amendments to the City of Lawrence Land Development Code, various sections of Chapter 20, to permit Bars or Lounges and to consider changes to development standards for various Eating & Drinking Establishments in the MU (Mixed Use) District and to consider a new Mixed Use Entertainment District. *Initiated by City Commission on 2/2/10.*

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

Commissioner Harris asked what happens when the asterisk about Quality Restaurant and Fast Food is removed.

Mr. Leininger said if the asterisk is removed the Jayhawk Bookstore could have a larger Fast Order Food Use. The asterisk for the Quality Restaurant use does not apply because there are no regulations where it refers you to the district.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said this all started with the desire to put in safeguards for the Hawk and the Wheel. He suggested adding the following language to recommendation 2a of the staff report:

2. Section 20-403

- a. Adding a "S" for the Bar or Lounge use in the MU District to permit the use by Special Use Permit, *for properties zoned MU after June 1, 2010*

He also said a possible fifth recommendation may be to exclude the bars and/or lounge from the tertiary zone.

**PUBLIC HEARING**

Mr. Bill Muggy, owner of the Jayhawk Bookstore, said he spent 30 years trying to secure his property. He said it was not his intention to rezone and expressed concern over personal comments that have been made about him and the Jayhawk Bookstore.

Commissioner Harris said she hoped that the public comments this evening would not be personal. She said Planning Commission needs to consider the property and possible future uses. She said it is about the use, not the owner.

Mr. Bill Mitchell said the staff suggestion to allow bars with a Special Use Permit only after this date may serve to forestall a bar at 1420 Crescent but he liked the idea of a bar-less MU district for use elsewhere in town. He said he can imagine other neighbors excepting plain MU zoning if they had assurance that bars would not be one of the uses. He stated whatever mechanism Planning Commission comes up with he was confident it was their intention that a bar not be permitted at 1420 Crescent. He expressed disappointment that his chief concern, the lack of notification of zoning changes made by innocent appearing Text Amendment administrative decisions, was not addressed in the staff recommendations in spite of Mr. McCullough having said at the March 24 Planning Commission meeting that it could be looked at. He said this whole matter arose because the administrator was focused on MU at 14<sup>th</sup> and Ohio and failed to see the implications of the Text Amendment at 1420 Crescent. He said a similar thing can happen again under different circumstances, different zoning districts or uses, slipped in by Text Amendments. He rejected the contention that notification at the site plan stage is sufficient because at that point the deal is done and is a new use by right. He felt neighbors deserve timely notice of zoning changes no matter the means used to initiate the change.

Ms. Mary Lake, Sigma Corporation Board of Gamma Phi Beta, said the sorority at 1339 W Campus Road is just around the corner from the proposed property. She said to her knowledge all five sororities and fraternities along W Campus Road oppose a drinking establishment of any kind at the applicant property. She said alcohol abuse in Lawrence is an issue and felt that part of the City's responsibility was to address those issues by refusing to allow a drinking establishment so close to the University and so close to housing establishment

where the majority of those students are underage. She also expressed concern about parking. She said among the alumni of the University in Johnson County the perception is that the City of Lawrence does very little about the drinking problem at KU and in fact encourages underage drinking because of the economic impact of the bars on the city.

Commissioner Rasmussen asked Ms. Lake to clarify when she referred to applicant property.

Ms. Lake said 1420 Crescent Road.

Commissioner Rasmussen said the property has been zoned MU for quite some time and that the real applicant who initiated this whole issue is where the Hawk and the Wheel are located. The applicant applied to be incorporated into the MU District but because the current zoning ordinances do not allow bars or lounges in the MU District they asked that it be changed. He wanted to clarify that all Ms. Lake's comments were focused on the Jayhawk Bookstore, who is not the applicant, not the Hawk and Wheel.

Ms. Lake said it was her understanding that in the future there would be an application to make drinking available at the Jayhawk Bookstore.

Commissioner Rasmussen said nobody has asked to make that available at this point. He said this change would not apply to anything that was zoned MU prior to this taking effect so it would not apply to 1420 Crescent.

Commissioner Harris said Ms. Lake's comments were not inappropriate because if Planning Commission does not approve that provision to have the bar use happen after the first MU approval then it would apply to that property.

Mr. Jim Sherman said many neighbors would prefer two different districts, one that permits bars and one that does not. He thanked Planning Commission, staff, and Mr. Muggy in trying to resolve the issue. He said option number one suggested by staff was perfectly satisfactory. He also requested consideration of broader notification.

Ms. Gwen Klingenberg, President of Lawrence Association of Neighborhoods, she asked that Planning Commission protect the adjacent neighborhood. She said if the neighborhood had not found out about this and come forward Planning Commission wouldn't even be discussing this one district possibly having a change. She said it takes the neighborhood to help the Planning Commission understand the consequences of their decisions. She requested better notification of the public.

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to close the public comment.

Motion carried 8-0.

## **COMMISSION DISCUSSION**

Commissioner Finkeldei asked for clarification on the recommendation for non-conforming.

Mr. McCullough said the Legal Department recommended tweaking the language a bit for Section 20-1108 (d)(4):

*Any use existing at the time of rezoning to the MU District that is regulated as a Special Use upon rezoning to the MU District shall be considered an approved Special Use and will be allowed to continue without an additional public hearing. Any alterations or expansions of the use are subject to the Special Use amendment procedures of Section 20-1306.*

Commissioner Harris asked if that would allow someone with a non-conforming use to change or expand that use beyond what it is.

Mr. McCullough said no, the last sentence of the same section talks about any alterations or expansion of the use are subject to the Special Use amendment procedures of Section 20-1306.

Commissioner Harris asked if someone has a non-conforming use that requires a Special Use Permit they wouldn't have to apply for a Special Use Permit they would just be granted one for that non-conforming use.

Mr. McCullough said it would be granted one but it is not a blanket exception to never being regulated by the Special Use Permit criteria. If there are issues that the governing body believes should be addressed through conditions then they can start a proceeding to seek conditions to address a community need.

Commissioner Harris asked why staff was not pursuing two different MU districts.

Mr. McCullough said the MU district is relatively young and there is currently only one district, so staff would like time to get a feel for how the district will work in the community. Staff feels that the Special Use Permit is the mechanism that protects neighborhoods when there is a specific use that isn't necessarily compatible as a permitted use in a district.

Commissioner Harris inquired about the bar use with a Special Use Permit and asked under what conditions would staff envision that not going through in a Mixed Use area.

Mr. McCullough said it would be compatibility issues. It may be those issues of tertiary versus primary versus secondary. Staff has discussed different areas of the community where there aren't a lot of adjacent residential uses that may be more compatible with a bar use than an area that has a lot of residential around it.

Commissioner Harris asked if putting a bar next to a residential area would be a City Commission decision.

Mr. McCullough said yes.

Commissioner Dominguez said it seemed like they were tweaking this to have the Hawk and Wheel remain in MU district. He wondered about legal challenges.

Mr. John Miller said there wasn't any way to prevent someone from saying that it is unfair and bring a challenge against the City. He said if it is the issue of saying the MU District in this circumstance is going to allow existing legal non-conforming uses to continue but wouldn't be allowed in another district, the governing body has the authority to establish the zoning regulations in the fashion that permits that to occur.

Mr. Werner said the difference is that the Hawk and the Wheel are already there.

Commissioner Dominguez asked if grandfathered clauses legally work.

Mr. Miller said yes. He also stated that having a separate MU District would not make a stronger argument.

Commissioner Carter said his concern with not doing separate districts was that neighborhood reaction will be more common with infill projects and Special Use Permits will mean Planning Commission will have to go through the same process for each request.

Mr. McCullough said other uses such as homeless shelters also require Special Use Permits. The MU District requires mixed uses, not just a stand alone bar. There are some inherent compatibility issues for developers that want to do Mixed Use in that sense to really control the bar impacts of their development.

Commissioner Moore felt there was a lot of merit in trusting the Special Use Permit process.

Commissioner Rasmussen said when the original applicant came before us to rezone the Jayhawk Bookstore from a non-conforming zoning classification MU the entire Planning Commission expressed concern about what type of uses could go there. Planning Commission specifically excluded the sexual oriented media store and light manufacturing. At that time bar and lounge was not a use. All property will require MU zoning regulations. He felt they should proceed with the staff recommendation.

Commissioner Harris said she liked the idea of excluding the original MU zoned property from consideration from having a bar. She liked Mr. Werner's idea of excluding the tertiary district from consideration for a bar. She also preferred having two MU districts, one allowing for a bar with a Special Use Permit and one without. She felt it would be clearer and give neighbors more comfort on what would be allowed.

Commissioner Moore agreed with the staff recommendation.

Commissioner Blaser also agreed with the staff recommendation.

Commissioner Dominguez agreed with Commission Harris and felt that having two separate districts would provide more clarification for the public, especially if no notification is provided for Text Amendments.

Commissioner Carter felt they should pay attention to how much resistance they get to infill projects because they aren't separating out the district. He said he trusts the process and felt that Special Use Permits would not be approved in areas that were not appropriate.

Commissioner Rasmussen asked if they could also consider changing the sexually oriented media store zoning table to S instead of P in the MU District.

Mr. McCullough said yes.

Commissioner Rasmussen said he did not understand why it would be a permitted use instead of a special use to begin with.

Mr. McCullough said the legal advertisement for the Text Amendment did not include that as one of the things being looked at so if the Planning Commission would like to look at that issue it will need to be advertised.

Commissioner Finkeldei asked staff to look into the issue.

Ms. Leininger said in the standards there is a section that talks about no sexually oriented business may be located in the same block as property in an R zoning district or a religious assembly, school, daycare, community recreation or cultural exhibit, or library uses.

Commissioner Finkeldei addressed the audience members who discussed public notification and encouraged them to stay for the next item on the agenda which is an update on public notification.

## **ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Rasmussen, to approve the proposed amendments of TA-1-1-10 to Development Code and forward to the City Commission with the following conditions:

1. Revisions to Section 20-223 as noted in the staff report;
2. Section 20-403
  1. Adding a "S" for the Bar or Lounge use in the MU District to permit the use by Special Use Permit
  2. Add an asterisk for the Bar or Lounge use to refer to Section 20-509
  3. Removing the asterisk from the Quality Restaurant use in the MU District
  4. Removing the asterisk from the Fast Order Food use in the MU District

3. Section 20-509
  1. Removing references to the MU District in Section 20-509(3)
  2. Add number 6 and add text to the Bar or Lounge use is only permitted by SUP for properties zoned MU District after the effective date of the amendment
4. Revisions to Section 20-1108 as noted in the staff report and with a change to proposed Section 20-1108(d)(4) to read "Any use existing by-right at the time of rezoning to the MU District that is regulated as a Special Use upon rezoning to the MU District shall be allowed to be continued with out a public hearing. Any alterations or expansions of the use are subject to the Special Use amendment procedures of Section 20-1306".

Commissioner Rasmussen asked if Planning Commission could recommend to City Commission that they change the note on Sexually Oriented Media Stores from permitted to special.

Mr. McCullough said City Commission could initiate a Text Amendment and then it would come before Planning Commission.

Motion carried 6-2, with Commissioners Dominguez and Harris voting in opposition. Commissioners Blaser, Carter, Chaney, Finkeldei, Moore, and Rasmussen voted in favor.