

ITEM NO. 6 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; ACCESSORY DWELLING UNIT (MJL)

TA-13-00106: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Articles 4 and 5, to permit the Accessory Dwelling Unit use as an accessory use in the RS5 (Single-Dwelling Residential) District. *Deferred by Planning Commission on 6/26/13.*

STAFF PRESENTATION

Ms. Michelle Leininger presented the item.

PUBLIC HEARING

Ms. Cille King, League of Women Voters, expressed concern about the definition of owner occupancy in the Code regarding Accessory Dwelling Units (ADU). She said the original concept of ADU's was to aid families that owned and lived in single-family homes that needed living space for elder relatives. She said this was later expanded in the Development Code to include expanded living space to encourage owner occupancy. She said homeowners who live in their home provide stability to a neighborhood. She said the wording "other than a natural person" opens up for the opportunity for absentee owners. She stated Accessory Dwelling Units were a privilege, not a right. She suggested two definitions of owner occupancy.

Ms. Laura Routh, Lawrence Association of Neighborhoods, objected any amendment or language that allowed corporations or investment interests to use the Text Amendment as proposed as a loophole for the creation of rental housing in RS Districts. She asked for a show of hands from the audience of those opposed to the Text Amendment as proposed.

Mr. Jim O'Malley wondered if there was a rush to extend Accessory Dwelling Units (ADU) to RS5 Districts. He said there had not been demand for it so far and that the people who requested the amendment said they didn't plan to put in an ADU but rather an office instead. He said Old West Lawrence was already dense and was not a good idea to add more density that close to the University. He said it made no sense to allow corporate ownership of homes with ADU's because they were intended for living breathing homeowners who live on the property. He suggested the language 'only natural persons may be owners for purposes of this section.' He felt the amendment was too vague and open to sham transactions.

Mr. John Nitcher asked what "principal" meant.

Mr. Randy Larkin, staff attorney, said it would be someone on the board of directors of a corporation, a member of LLC, or someone who had ownership stake in it.

Mr. Nitcher said he would be okay with someone starting out as the owner of record of a property and creating a living trust but that a corporation was totally different and should be excluded. He said if the owner was not a natural person than the owner living in either the principal dwelling unit or Accessory Dwelling Unit must petition the City for permission to occupy the unit and demonstrate the occupancy was consistent with the purpose statement of 20-534(1)(iv).

Ms. Candice Davis said Accessory Dwelling Units (ADU) were allowed in single-family neighborhoods but only included one person. She said rental property in a single-family neighborhood could house three people plus the additional one person in the ADU, which would equal four people. She said four unrelated people was similar to multi-family. She believed the lack of rental inspections in multi-family neighborhoods meant there were a lot of houses and units available but not in very good shape. She said the rental inspection program may help. She felt single-family neighborhoods were at risk for more rentals due to the stock being in better shape than multi-family areas.

Ms. Marci Francisco supported the interest of being as specific as possible in the Code about addressing the issue because it would eventually affect how Accessory Dwelling Units were implemented in multi-family districts.

Ms. Tresa Hill said single-family meant one family. She said to allow Accessory Dwelling Units for a non-family member meant a second unit, which meant it was no longer single-family zoning, it was multi-family zoning. She said to allow multiple units meant there was no more single-family zoning throughout Lawrence. She felt they should take the proposal off the table and never consider it again.

Ms. Jeanne Pees, Sunset Hills Neighborhood Association, opposed the language. She felt Lawrence needed to maintain the integrity of single-family neighborhoods.

Ms. Karen Kressin opposed extending Accessory Dwelling Units (ADU) to the RS5 District. She said the ADU concept bothered her because it could be seen as a duplex. She said the principal provided a loophole for non-human owners. She said it also did not require the removal of the unit when the need was gone or the house was sold. She felt they should postpone the item to meet with stakeholders and neighborhoods to discuss language.

Commissioner Rasmussen said he had heard two sides from the public; that some were okay with an accessory dwelling unit but that they did not want corporations to be able to own them; and others who did not want any accessory dwelling units whatsoever in RS5. He polled the audience to find out how many people there were for each.

Commissioner Rasmussen said he thought Mr. Nitcher stated he was okay if it was a living trust but then he raised his hand to indicate he did not want any Accessory Dwelling Units.

Mr. Nitcher said his first preference was that no Accessory Dwelling Units be allowed but if the change was made he wanted it to be limited to owner occupied.

Commissioner Denney said he thought he heard some audience members say they were okay with Accessory Dwelling Units as is but not within the RS5 District.

Mr. O'Malley said he did not want Accessory Dwelling Units extended to the RS5 District.

Commissioner Josserand asked Mr. Nitcher about his thoughts on other legal entities.

Mr. Nitcher said he had same objection.

Commissioner Josserand said a lot of couples use a living trust as a title holding vehicle, which should be fairly easy to define.

Mr. Nitcher agreed and said there would be a warranty deed or quick claim deed from the human beings to the trust.

Commissioner Josserand said they ought to be able to allow that kind of use while tacking down potential sham transactions from other entities.

Mr. Nitcher said the language suggested tonight regarding principal was problematic.

Commissioner Josserand concurred.

COMMISSION DISCUSSION

Commissioner Josserand asked staff to respond to the public comment regarding single-family having an accessory dwelling with one person.

Mr. McCullough said the Code reads that the total combined number of residents in both the principal residence and Accessory Dwelling Unit was the occupancy limit plus one. He said that distinguished it from multi-family or duplex which gets occupancy limit in both.

Commissioner Josserand said that would just be in the RS category currently.

Mr. McCullough said yes, four unrelated people were allowed in the combined units within the RS Districts that currently allow Accessory Dwelling Units (ADU). He said ADU's intensify the district but do not double it as a duplex configuration would.

Commissioner Josserand asked if this change was adopted would it change what he said relative to RS7.

Mr. McCullough said no, not in terms of the occupancy limits.

Commissioner Rasmussen stated there were currently about 14 Accessory Dwelling Units city-wide in the six other zoning districts. He felt they may be worrying about a problem that may not exist. He said other than the applicant there had not been anyone in support of it. He said he would rather deny it because he did not see the benefit of crafting language to address a problem that may or may not occur in a zone where the vast majority of people were opposed.

Ms. Leininger said a current rezoning application was on hold for an applicant who was looking to rezone out of RS5 in order to add an Accessory Dwelling Unit (ADU). She said that applicant was waiting on this Text Amendment and that she had others inquiries about adding ADU's in RS5.

Commissioner Denney said that would still leave the ownership issue in question in other RS Districts.

Commissioner Rasmussen did not feel they should go down this road. He stated there may be legitimate reasons to have a corporation. He felt they were trying to solve a problem that may not exist.

Mr. Larkin said the definition of owner applies throughout the entire Code and that a change to 20-1701 could have unintended consequences.

Commissioner Josserand felt the risk was bigger with Accessory Dwelling Units in the Oread neighborhood. He said he would support not doing anything with the Text Amendment and felt the definition of principal was a big loop hole. He felt there was potential for abuse through corporations, limited partnerships, etc. and felt there was a way to tighten this. He wondered about the enforceability. He thought maybe the best thing to do was to do nothing and deny the Text Amendment at this point in time.

Commissioner Liese said he was absent from last month's meeting and he wondered what the rationale was for having staff work so hard on the rewording.

Mr. McCullough said it was a product of last month's meeting that someone had concern that owners would allow corporations and that corporate entities would buy property and turn it into rental property versus owner occupied. He said some of the Commissioners thought it would be beneficial that a natural person would form a corporation for protection and still have the benefit of an Accessory Dwelling Unit use. He said Planning Commission tasked staff to attempt to get at the issue with language.

Commissioner Liese inquired about their options for voting. He asked what would happen if they had no recommendation to City Commission.

Mr. McCullough said all the options would be laid out for City Commission to decide. He said if denied they would be left with the current Code in all the RS Districts except RS5. He said the current Code definition of owner meant a corporation could own the property with no more than four unrelated total persons.

Commissioner Josserand said they could make a motion to deny.

Commissioner Liese said he would not vote in favor of the Text Amendment.

Commissioner Rasmussen asked if Planning Commission recommended denial could City Commission override that recommendation.

Mr. McCullough said yes.

Commissioner Denney said the way he read it was that it didn't change it, but rather extended Accessory Dwelling Units to RS5 and the original proposal didn't change any language about owner. He said the concern brought up by public last month was more with the definition of owner and staffs purpose this time was to tighten that definition rather than broaden it. He said the definition of owner would still exist even if they denied the request for RS5.

Mr. McCullough said there was no practicing issue or harm out there that they were trying to solve. He said there may be a theoretical loophole but that it was not seen in practice. He said Planning Commission could modify the definition owner if they chose to do so.

Commissioner Britton said if they do not extend Accessory Dwelling Units to RS5 the definition of owner would not really be an issue because it was not so inherently incompatible with zonings of RS7 and above. He asked Ms. Leininger about the applicant she mentioned who was seeking to be rezoned to RS7. He wondered if that was a viable option for accommodate people.

Ms. Leininger said she did not think it would be something that staff would recommend to be used frequently. She said the situation she referenced was an option that staff outlined for the applicant. She said it would depend on the situation and if the applicant was near other zoning districts.

Commissioner Rasmussen said if there was support for Accessory Dwelling Units in RS5 he would rather have Accessory Dwelling Units allowed through a Special Use Permit where conditions could be placed to ensure the owner was living there.

Commissioner Liese asked if the greatest preponderance of RS5 was in Old West Lawrence.

Ms. Leininger said there were some in Pinckney, East Lawrence, and Barker.

Commissioner Liese said he would want to send a strong message by denying the item.

Commissioner Culver apologized to staff for sending them down the path of defining owner. He said it could create unintended consequences by changing the definition. He said he would support a motion for denial because he did not see overwhelming support or justification.

Commissioner Josserand also apologized to staff. He said if they wanted to look at it in the future he would volunteer to serve on a sub-committee to draft language.

ACTION TAKEN

Motioned by Commissioner Josserand, seconded by Commissioner Liese, to deny Text Amendment, TA-13-00106, to the City of Lawrence Land Development Code, Chapter 20, Articles 4 and 5, to permit the Accessory Dwelling Unit use as an accessory use in the RS5 District.

Commissioner Britton said there could be unintended consequences by changing the definition of owner so they should not go lightly on the issue.

Motion carried 6-0.