

ITEM NO. 4 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; BAR OR LOUNGE AS PERMITTED USE IN CN2 (SMS)

TA-13-00336: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to include *Bar or Lounge* as a permitted use in the CN2 (Neighborhood Commercial Center) District. *Initiated by City Commission on 9/3/13.*

STAFF PRESENTATION

Ms. Sheila Stogsdill presented the item.

APPLICANT PRESENTATION

Mr. and Ms. Dan and Chelsea Rose were present for questioning. They said they were happy to abide by the Special Use Permit.

Commissioner Josserand asked what location they had in mind.

Ms. Rose said Wakarusa Market Place located at 15th & Wakarusa.

PUBLIC HEARING

Mr. Alan Black, League of Women Voters, asked what the zoning was for 23rd Street Brewery, located at Clinton Pkwy & Kasold.

Ms. Stogsdill said it was zoned PCD.

Ms. Cille King, League of Women Voters, said it would be difficult for neighbors in these areas to have the Code changed on them. She felt the Special Use Permit was the best option.

COMMISSION DISCUSSION

Commissioner von Achen asked if there was any thought to include CN1 as well.

Ms. Stogsdill said all she could find while reviewing the zoning diagnostic to try and identify why it was not included was one comment about there being so many commercial districts and there really wasn't much distinction between them. She assumed that was why CN1 and CN2 didn't include it and the other districts did. She said the CN1 was more for businesses such as a little coffee shop or bakery rather than a shopping center with multiple stores.

Commissioner von Achen inquired about the League of Women Voters concern about neighbors who deal with nuisance noise and what protection they have.

Ms. Stogsdill said there were restrictions through the noise ordinance and any individual could call to request police respond to excessive noise. She said any change to an existing use would still require a revised site plan which would typically include notice to neighbors within 200 feet and a public notice sign posted at the site.

Commissioner Liese wondered about the impact to the neighborhood and asked the applicant to provide a mental image of what they were proposing.

Ms. Rose said she was seeking a Class B club type liquor license which would not allow people to come in off the street and buy a beer. She said the business would have designated hours of operation and clients would pay to participate in the activity. She said clients would purchase an activity for the evening and the liquor license would only allow for members to be in the establishment drinking. She stated it would be a painting party so they would hire several artists to come in and clients would enjoy wine and learn how to do a painting.

Commissioner Liese asked if there was a downside to Option 3.

Mr. McCullough said there would be more process and cost to the applicant.

Commissioner Rasmussen said it would be harder to get a loan with a Special Use Permit.

Mr. McCullough said that could be a consequence of a Special Use Permit. He said Special Use Permits could be revoked if conditions were not abided by.

Commissioner Liese said at this time he favored Option 3.

Commissioner Josserand inquired about non-conforming businesses.

Ms. Stogsdill said there was one at 19th & Haskell and Hillcrest at 9th & Iowa. She said Wayne & Larry's in Hillcrest Shopping Center, for example, was permitted because it was also a restaurant.

Commissioner Denney inquired about what CN2 meant and if it was meant to be a small neighborhood function.

Ms. Stogsdill read the definition from the staff report:

Section 20-208(a) provides the purpose statement for the CN2 District: The CN2, Neighborhood Shopping Center District, is primarily intended to implement the Comprehensive Plan's "Neighborhood Commercial Centers" policy of providing for the sale of goods and services at the neighborhood level. Options have been provided that would allow this use with either Development Standards or approval of a Special Use Permit if the Commission does not believe it is appropriate to permit this use by-right in the CN2 District. In Staff's opinion, it is reasonable to permit this use as a by-right use in all CN2 Districts.

She said CN1 was the inner neighborhood commercial district and was very small, such as one property right on the corner. She gave the example of 13th & Haskell where a beauty salon was located.

Commissioner Denney said he was leaning toward Option 2. He asked if there were any negatives to putting a 3,000 square foot limit on it.

Ms. Stogsdill said nothing that she could think of. She said she chose 3,000 square feet because that was the same size used for the standard for a fast food establishment in Section 20-509. She said that was the size of a tenant space that already had that same restriction. She said The Pool Room, for example, would become conforming in terms of use but not conforming to that standard.

Mr. McCullough said they had the option to set a use standard by right and then require a Special Use Permit after that.

Commissioner Liese wondered about limiting it to 3,000 square feet.

Mr. McCullough said they were talking about a limit by right without a Special Use Permit and if that limit was exceeded it would require a Special Use Permit.

Commissioner Denney asked how many people would be allowed in a 3,000 square foot business.

Mr. McCullough said it would depend on the Code design and how the space was laid out. He said there was a distinction between a nightclub and a bar and that this text amendment would not allow a nightclub use.

Commissioner Denney asked if this would allow an outdoor patio without a Special Use Permit.

Mr. McCullough said that was an option they could talk about. He said the way that option could be written was to include outdoor patio space but anything over 3,000 gross square feet would require a Special Use Permit.

Commissioner Denney said he would support that because it seemed like a good compromise.

Commissioner von Achen said since this was in CN2 the size limit wasn't as important to her. She said she would choose Option 1 with a Special Use Permit being required for an outside area.

Ms. Stogsdill said the business would still have to meet the parking requirement. She stated bar and eating establishments had higher parking requirements compared to retail uses. She said sometimes the size of what was available was dependent on the parking that was already built.

Commissioner Denney said he was not married to the idea of including the outdoor area in the 3,000 square feet.

Commissioner Britton agreed with Commissioner von Achen. He felt it was more important to require a Special Use Permit for outdoor areas than relying on total square footage.

Commissioner Struckhoff said he liked the idea of having the total indoor and outdoor square footage under the limit. He said there were practical limits to how big they could be in a CN2 district.

Commissioner Rasmussen said he was inclined to go along with the staff recommendation of Option 1. He did not support Option 2 because he did not feel size restrictions were necessary. He said he was reluctant to require a Special Use Permit because he felt it created more impediments for trying to have a business. He said the staff professional recommendation was Option 1 and he was inclined to follow it. He gave the example of Bambino's outdoor seating area and said it was not a problem. He also said other businesses with bars in the same area, El Mezcal and Shenago Lounge, had not been a problem in the neighborhood. He said when he looks at other site locations zoned CN2 he was not sure there was a need for a Special Use Permit, especially if it would make some of them non-conforming. He said he was more inclined to follow the staff recommendation of Option 1.

Commissioner Culver agreed with Commissioner Rasmussen regarding staff recommendation Option 1. He felt the Text Amendment would correct an inconsistency and felt it was consistent with the Comprehensive Plan. He felt if they got into the size limitations they may be favoring some size businesses and possibly penalizing others. He said he was inclined to support Option 1 but not opposed to other options.

Commissioner Liese felt they should send the discussion tonight to City Commission for their consideration. He said regarding outdoor accommodations, he rarely hears screaming and laughing when he goes past restaurants and bars with outside patios. He said patrons leaving an establishment had the potential to be just as loud as people in an outside area.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Denney, to recommend approval of a modified Option 2: Permit *Bar or Lounge* as a use by right with Use Standards similar to those required for *Fast Order Food* establishments in the CN2 District in Section 20-509(3) which limits the gross floor area of the use, including any outdoor area, to no more than 3,000 square feet. When the gross floor area is greater than 3,000 square feet, a *Bar or Lounge* may be permitted with a Special Use Permit in a CN2 District.

Commissioner Britton said he would support the motion but did think there was a difference between the noise generated by people coming in/out of an establishment where they were having a good time versus a sustained good time outside on a patio. He felt the language could be improved to invoke the Special Use Permit for the sustained outdoor presence.

Commissioner Liese agreed with Commissioner Britton that it wouldn't be bad to consider.

Commissioner Rasmussen asked if the motion was if a bar or lounge was 3,000 square feet or less it would be permitted by right but above that size would require a Special Use Permit.

Mr. McCullough said yes.

Commissioner Culver said he would support the motion but would like the City Commission to take a good look at if the 3,000 square feet was an appropriate number and/or if having a size limitation was appropriate.

Commissioner Liese asked the applicant what size space they were looking at.

Ms. Rose said 2,000 square feet.

Commissioner Struckhoff said he hoped the City Commission looked at the 3,000 square feet and addressed it in some way.

Commissioner Rasmussen said he was reluctant to support the motion. He asked staff about the 3,000 square feet.

Ms. Stogsdill said staff picked a number based on what was already in the Development Code. She said it would be consistent with the standard the code requires of a fast order food restaurant in a CN2 district.

Mr. McCullough said 3,000 square feet would capture the majority of establishments in CN2.

Commissioner Liese said most of the establishments on Massachusetts Street were under 3,000 square feet.

Ms. Stogsdill said a lot of the store fronts on Massachusetts Street were 25' wide.

Commissioner Denney said they were looking at a small neighborhood function, not a major nightclub.

Commissioner von Achen said she would prefer Option 1 and would like a Special Use Permit triggered with an outdoor use. She said even if there was no support for that she would still go with Option 1. She said she would not support the motion.

Commissioner Rasmussen said he would support the motion and let the City Commission decide whether they exercised good judgment.

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