

Gorton
Blues
Gray
Ellinger
James
Lawless
Beard
Feigel
Stinnett
McChord

A G E N D A

PLANNING COMMITTEE

March 2, 2010
11:00 A.M.

1. **Moratorium Related Issues** (1-8)
 - a. **Residential Zone Issues** – Stinnett
 - b. **Residential Additions** – Lawless
2. **Items Referred to Committee** (9)

“Planning Committee, to which should be referred matters relating to parks, planning and zoning, housing, transportation, grants, legislation and social services.”

Council Rules & Procedures, Section 2.102(1)

TO: Mayor Jim Newberry
Councilmembers

FROM: Moratorium Work Group
CM Diane Lawless
CM Tom Blues
CM Linda Gorton
CM Peggy Henson

DATE: January 29, 2010

RE: Moratorium for Third District Residential Zones
Proposed Zoning Text Amendments

In response to the moratorium imposed by Council in Resolution No. 678-2009, passed October 15, 2009, the Moratorium Work Group was appointed by the Vice Mayor to consider alternatives to address the density problems being experienced in single family [R-1] and two-family [R-2] residential zones. In some areas, multiple unrelated persons are occupying single family homes in a manner that more closely resembles lodging or boarding houses, creating density issues and thereby threatening the integrity and stability of our single and two family neighborhoods.

In the course of examining this problem, we reviewed the definitions in Article 1 of the Zoning Ordinance for Family, Boarding House, and Lodging house. We are also aware of the pending litigation with respect to the application of these definitions. Copies of those definitions as they are currently written are attached hereto for your convenience. Attempts to enforce the use of residences for single family use only have raised issues of how to determine whether a group of people living together constitute a family. In the pending litigation, the property owner alleges that the students in his houses share meals, share the kitchen, and have meals together, thereby qualifying as a single housekeeping unit and meeting the current definition of family.

During hearings before the Court on the property owner's motion to dismiss, the judge questioned how a landlord was supposed to know, based on our current definitions, whether he was renting to a family or to a group that instead would qualify as a lodging or boarding house. Our current definition of family has been attacked in the litigation on the basis that it is too broad and vague to be enforceable. We are aware of extensive case law throughout the country struggling with the definition of family for land use regulation purposes.

The proposed text amendments to the definitions of family, boarding or lodging house, and congregate living facility were drafted after examining current case law and reviewing ordinances in other jurisdictions that have withstood scrutiny by the courts. Land use regulation is intended to address the impact of various uses on neighboring properties and assure a compatibility that will not cause disruption between property uses. Thus, the courts have looked to the definition of family as a density-controlling factor. We are proposing a definition which will allow up to and including four adults to live together without regard to relationship because that level of density is reasonable in a single dwelling unit in a single or two family residential zone. This amended definition would be put forward as a clarification of what has always been intended to be a family for zoning purposes, rather than any change in prohibited uses. Allowing up to four adults to constitute a family for zoning purposes is, if anything, less strict than what was previously permitted. Therefore, we believe we have minimized the risk of existing dense, boarding house uses from claiming to be grandfathered in. It remains our position that such a use always was, and remains, illegal in these zones.

At the same time, we do not want to prohibit non-traditional family units that are indeed stable and permanent family units of more than four adults. A group of five or more adults living together as a functional family can apply for a conditional use permit from the Board of Adjustment recognizing them as a functional family rather than a boarding or lodging house. This will allow for any unanticipated family unit to be recognized and permitted to live in a single family or two family residential zone. The attached draft includes the factors to be considered by the Board of Adjustment in making that determination.

In addition, the definitions of boarding and lodging houses have been combined since apparently any practical purpose for a distinction no longer exists. A definition of fraternity or sorority house has been added also. All

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three of these living arrangements fall under the new definition of congregate living facility created to be all-encompassing for living arrangements for more than four people not living together as a family. The term "congregate living facility" also creates a tie-in to building code standards which are applicable to congregate living facilities, thus incorporating a safety factor by giving notice of such regulations.

These proposed definitions were developed after review of similar legislation across the country as well as court opinions addressing the definition of family in a zoning context. We believe these amendments will address the problems of density in our existing residential neighborhoods while still providing flexibility to provide the needs of non-traditional but still functional family units. We request your serious consideration of these proposals.

POSSIBLE ORDINANCE AMENDMENTS TO CONSIDER:

1. COMBINE AND MODIFY DEFINITION AS FOLLOWS:

Boarding or Lodging House: A residential building or part thereof for adults living together, **not as a family**, but in a congregate living arrangement. In identifying this use, the following factors shall be considered:

- a) sleeping rooms are for hire for five (5) or more persons;
- b) meals and/or food costs are typically not shared;
- c) 5 or more rooms, excluding bathrooms, which are lockable from the exterior;
- d) rent is established by leases to individuals or rents are based on charges assessed to each individual;
- e) individual mailboxes are provided;
- f) multiple utility meters or connections are present.

2. ADD THE FOLLOWING DEFINITION:

Congregate Living Facility: A building or part thereof that contains sleeping units where residents share bathrooms or kitchen facilities. The term includes but is not limited to boarding or lodging houses, and fraternity and sorority houses.

3. REVISE THE DEFINITION OF "FAMILY" TO READ AS FOLLOWS:

Family: A person living alone, or any of the following groups living together as a single housekeeping unit and sharing common living, sleeping facilities, and kitchen:

- a. Any number of person related by blood, marriage, adoption, guardianship, or other duly authorized custodial relationship;
- b. Four or fewer unrelated persons;
- c. Two unrelated persons and any children related to either of them or under their care through a duly authorized custodial relationship;
- d. Not more than eight persons who are:
 - 1. Residents of a "home-like" residence as defined in KRS 216B.450
 - 2. "Handicapped" as defined in the Fair Housing Act, 42 U.S.C. Section 3602(h). This definition does not include those currently illegally using or addicted to a "controlled substance" as defined in the Controlled Substances Act, 21 U.S.C. Section 802(6).
- e. A functional family as defined and regulated herein.

4. ADD THE FOLLOWING NEW TERM AND DEFINITION:

Family, Functional: A group of five (5) or more persons not otherwise meeting the definition of "family" who desire to live as a stable and permanent single housekeeping unit and who have received a conditional use permit from the Board of Adjustment.

"Functional family" does not include:

- a. residents of a boarding or lodging house;
- b. fraternity, sorority or dormitory;
- c. any lodge, combine, federation, coterie or like organization;
- d. any group of individuals whose association is temporary or seasonal in nature;
- e. any group of individuals who are in a group living arrangement as a result of criminal offenses.

5. ADD A NEW SECTION PERTAINING TO THE BOARD OF ADJUSTMENT (7-6(a)(8)):

- 8) The granting of a conditional use permit for a "functional family" shall be based upon application of the following considerations by the Board:

- a. Members of the family will share a strong bond or commitment to a single purpose (e.g., religious orders);
- b. Members of the family are not legally dependent on others not part of the functional family;
- c. Members can establish a legal domicile as defined by Kentucky law;
- d. Members share a single household budget;
- e. Members prepare food and eat together regularly;
- f. Members share in the work to maintain the premises;
- g. Members legally share in the ownership or possession of the premises;
- h. Members demonstrate stability in the arrangement as opposed to transient living arrangements.

6. ADD THE FOLLOWING NEW TERM AND DEFINITION:

Fraternity or Sorority House: a congregate living facility used as living and/or gathering quarters for students of a college, university, or seminary who are members of a fraternity or sorority that has been officially recognized by the college, university or seminary; or their guests.

7. ELIMINATE "the keeping of roomers or boarders" by a resident family as a permitted accessory use in the single family and two family zones

PLANNING COMMITTEE SUMMARY FEBRUARY 16, 2010

Blues chaired today's Planning Committee meeting calling it to order at 1:00 pm. All committee members were present except Gorton and McChord. Martin and Henson attended as non voting members.

1. Residential Additions - Lawless Residential Zoning Ordinances - Stinnett

Chris King, Director of Planning recapped history of this zone text amendment, giving a brief overview of steps and process involved to start a text amendment. He said either the Planning Commission, Council or property owners can request such an action.

King provided a simplified flow chart showing how zoning ordinance text amendments are processed which included the Planning Commission, public hearing, and final council approval.

Rochelle Boland, LFUCG Law Dept. spoke to the committee about the work of the Moratorium Task Force which was established formed as a result of complaints regarding "vinyl box" house additions in neighborhoods. She talked about definitions of family residences for zoning purposes. A model was proposed to help define family and help the Law Dept. come up with a definition. Boland explained some of the criteria such as impact on neighborhood, etc.

Lawless asked for a copy of the original lodging house ordinance. Boland displayed it for discussion.

Feigel asked what criteria the board of adjustment would use for making decisions, adding some will be very difficult. Boland said the boarding house ordinance is not the only criteria to be used. She named other forms of criteria the board of adjustment could use.

Feigel had concerns about zoning issues, where will students go, suggested looking at another zoning category as "student housing".

A motion by Feigel to create a zoning definition to also consider "student housing" as a category or zone was withdrawn after discussion.

Stinnett talked about the purpose of the original definition of family asking Boland what we are currently doing. She said we are sending out letters to property owners, who have provided documentation on leases, etc. to see if they comply with our current definition of family. Stinnett asked do we know how many are in violation of our current definition of family and are we keeping track. If we change the current definition of family what would happen to these

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properties in question? He also asked about changing category such as student housing and what effect it would have.

Boland said yes building inspection is responsible for tracking/documenting. She talked about other possibilities to change definitions such as "uses".

Lawless said this is not what she prepared and brought forward. This is an issue in every district in this city. Is not about students it's about density. She said we need to put a number on what is considered reasonable single family use. Lawless asked for other versions and what the federal Supreme Court says about this issue, citing it still needs work and there are still loopholes.

James asked how a landlord would prove reasonable single family use.

Boland explained how to get information needed to determine a family or single family and talked about factors that will be used for consideration explaining Building Inspection will be the first line for consideration and to bring continuity of safety to building codes.

James asked about fraternity or sorority houses and how universities sanction them.

Boland said she was not totally familiar with how that is handled.

Martin expressed concern and does not have a great level of confidence about this ordinance and grandfathering. He wants to see the issue resolved, to protect single family neighborhoods but to be fair to others.

Floor was open to public comment:

Dick Murphy – Attorney representing the Greater Lexington Apartment Assoc. and the University Landlord Assoc. told the committee he is was not here to endorse the large" vinyl boxes". His concern is the definition of family and having to go before the board of adjustment, holding public hearings to prove relationships and interpretation of wording. He urged well thought out consideration and encouraged consultation with all parties involved.

Ellinger asked Mr. Murphy how he would define family. Murphy said he thinks we need to have a number going forward, and explained what he thought should be grand fathered in.

Craig Hardin – Landlord spoke to the committee about investing in the community.

Molly Davis, Neighborhood Assoc. President - feels those representing rental property are using fear tactics, talking about investments and maximizing profits is tearing away the residential integrity of neighborhoods.

Ann Stamatiadis, Neighborhood Assoc. President - said it's tough to live in areas around UK and feels there is little a resident can do to stop these changes. She cited the large amount of cars on a street saying that is only one tiny example of the problem. She said to even consider student housing zoning is wrong.

A Motion by Lawless to hold a Special Planning Committee meeting on March 2, 2010 at 11:00 am to further discuss the moratorium, seconded by James. motion passed without dissent.

Motion to Adjourn at 2:50 pm

Planning Committee- Issues Outstanding

02.05.2010

Issue	Member Referred	Date Referred	Status
• Liberty Road Project Status	Stinnett	Jan 06	Bi Monthly Written Report
• Newtown Pike Status	Blues	Feb 06	Bi Monthly Report
• Loudon Avenue Phase 1 Status	James	Oct 06	Bi Monthly Written Report
• Fence Regulations- Sight Distance Issues	Blues	Dec 07	Jan 10
• Mobile Home Trailer Park Quality of Life	James	Dec 07	On Hold
• Infill Redevelopment Committee Recommendations	Gray	Feb 08	Unknown
• Tree Protection Ordinance	James	Mar 08	Unknown
• Downtown Master Plan	Lawless	Apr 08	Review Recommendations
• Management Audit Recommendations	Crosbie	May 08	Subcommittee Formed
• Art 16 Zoning Ordinance re Rear Yard Parking in Residential Areas	Henson	Apr 09	Fall 09 - Winter 10
• Parks Master Plan	Stinnett	Feb 09	Financing Sub Committee Formed
• Downtown Lexington Building Inventory	Feigel	June 09	Winter/Spring 10
• Residential Additions	Lawless	Sept 09	Fall 09 - Winter 10
• Mobile Food Vendor Permits	Henson	Sept 09	
• Residential Zoning Ordinances	Stinnett	Oct 09	
• Permitting of Yard Sales	Henson	Oct 09	
• Encroachment Issue	Stinnett	Jan 10	
• Commercial Signage Text Amendment ◦ property is located along a four lane public highway	James	Feb 10	Moved to Services