



Planning and Public Safety Committee Meeting

August 10, 2021

Summary and Motions

Chair J. Brown called the meeting to order at 1:03 p.m. Committee Members Ellinger, McCurn, Lamb, Kloiber, Worley, Baxter, Bledsoe, and Reynolds, were in attendance. Committee Member Plomin was absent. Vice-Mayor Kay and Council Members Moloney, LeGris, Sheehan, and F. Brown were in attendance as non-voting members.

I. Approval of July 6, 2021 Committee Summary

Motion by Bledsoe to approve the July 6, 2021 Planning and Public Safety Committee Summary. Seconded by Ellinger. The motion passed without dissent.

II. Infill & Redevelopment Committee Recommendation

Vice-Mayor Kay explained that there is an analysis of the current Comprehensive Plan included in the packet which pulled out phrases or indirect references to “context sensitivity”. The reason this is being brought forward, he said, is because the Infill & Redevelopment Committee had an extensive discussion about the way in which this currently functions, especially when it comes to the way zone changes are presented to Council. There has been some interest in clarifying as much as possible what it means to be context sensitive and to allow for a change in a zone that respects context sensitivity so this is an attempt to work on increasing that clarity. He referenced 4 specific recommendations which pertain to encouraging the Planning staff to work toward providing more clarity in the next Comprehensive Plan, but there is no action requested at this time.

J. Brown asked what the next step would be for getting clarity on context sensitivity with regard to zone changes and James Duncan, Director of Planning, explained the process and he said the idea is that staff will review context sensitivity and this would get incorporated into the next Comprehensive Plan.

No further comment or action was taken on this item.

III. Comprehensive Plan Implementation Update

Motion was made by Lamb to suspend the rules and allow public comment on this item. Seconded by Bledsoe. Motion passed without dissent.

At this time, several members of the public provided comments regarding the ADU topic included in the *Comprehensive Plan Implementation Update*.

James Duncan, Director of Planning, provided a status update on initiatives that came out of the last Comprehensive Plan (2018). He began with a background that explained several Zoning Ordinance Text Amendments (ZOTAs) and Subdivision Regulation Amendments (SRAs) which were initiated by adoption of the Comprehensive Plan and explained that these amendments would enable more housing and would ensure that neighborhoods are protected and enhanced as new development occurs. He emphasized that this has been done with a great deal of transparency and public input. He highlighted a few of the changes

such as the de-regulation of the Zoning Ordinance to allow for multi-family housing in shopping centers; the unanimous recommendation by the Planning Commission to support Accessory Dwelling Units (ADUs) that would apply throughout the Urban Service Boundary; parking relief for qualified affordable housing developments; adjustment of the Floor Area Ratio (FAR); and elimination of parking minimums for all zones. To improve quality of life, he said, the width of sidewalks was increased and there were adjustments to street continuity for improved safety and access for public streets. Chris Woodall, Manager of Long-Range Planning, spoke about separate processes for ADUs and Street Patterns and Continuity which are both amendments to the ordinances and regulations, but have followed different paths. He explained that the ADUs had significant interest from the public and concerns were raised and addressed by the Planning Commission which led to a more involved process. The process for Street Patterns and Continuity received less public participation with no serious concerns raised and this allowed for a more streamlined process to implement. He spoke about the opposition tied to this initiative because of the Open Space ZOTA and said while the Street Patterns and Continuity and the Open Space ZOTA complement one another, each is not dependent on the other. Chris Taylor, Administrative Officer in Long-Range Planning, reviewed the four types of ADUs permitted: new construction, alteration of existing structure, addition to existing structure, and conversion of existing structure. He highlighted multiple community response efforts and public input sessions, most of which were received in 2018 and 2019. Based on the public input received regarding the initial proposed ordinance, he said, the Planning Commission made changes to the maximum occupancy limit; added a conditional use requirement for short-term rentals within ADUs; and there is an owner-occupancy requirement.

Kay asked why the setback of 1.5 FT for auxiliary buildings is the same setback requirement for ADUs. Taylor explained that originally for detached structures, the proposal was for a 3 FT setback, but the Planning Commission preferred to have the setback for a detached structure at a consistent 1.5 FT to avoid potential confusion especially when considering the conversion of an existing detached structures. Kay asked if the setback could be amended to 3 FT excluding detached structures and Taylor confirmed that with additional efforts, this can be done. Kay asked what happens when a property with an ADU on it is sold and Duncan explained that it would be connected to the deed so the subsequent property owner would be subjected to the same deed restrictions. He added that should the property owner choose to do so, the ADU could be removed and the deed restriction for the ADU could be removed as well.

Reynolds asked if a conditional use is required for ADUs to be rented. Duncan explained that a conditional use permit is required to allow for short-term rentals, but the property owner can rent the ADU without a conditional use permit. Reynolds asked about the process for doing to this and Duncan explained that they would request this through the Board of Adjustment and decisions are made on a case by case basis. Reynolds asked about the logistics of enforcing these regulations for dimensional aspects or life safety requirements (plumbing, electrical, etc.) and Duncan said this would be monitored by Division of Building Inspection, particularly when they issue the building permit and the Certificate of Occupancy. Reynolds expressed concern about not having a minimum requirement.

McCurn asked which type of ADU has generated the most negative feedback and Duncan explained that it has been the detached structure because currently most of the ADUs exist in homes with basements or attic spaces that have been converted so the physical impact is non-existent. McCurn asked if there has been any discussion to remove the detached structure from the proposal and Duncan said the intent is to provide a variety of options for the accessory unit because there are homes with no basement or attic space to be converted, but a detached garage could be converted and would be less expensive than building a new one. McCurn asked if the ADU could be sold as a separate parcel or if the home would have

to be sold with the ADU and Duncan explained that this proposal does not anticipate a subdivision of property.

Kloiber spoke about the design of ADUs and asked if there will be enforcement of context sensitivity applied to these structures for approval. Duncan explained that as context sensitivity is incorporated into new policy, he anticipates it would be addressed with detached structures just as with other structures that are built in the neighborhood. Kloiber asked if there would be a requirement for this to meet some type of connectivity to the neighborhood and Duncan explained that the design manual would be reviewed with the property owner and the neighborhood, especially if they are in areas where restrictions exist.

Sheehan asked about the plan for public input on ADUs because she wants to be sure the public is included in the conversation. J. Brown said he agrees it is important to have the public weigh in on this as we move forward.

For clarification, F. Brown asked if this would be a separate ordinance coming forward for ADUs in the ZOTA process without combining other issues and Duncan confirmed saying this is an update to the existing Zoning Ordinance in various single family residential zones, but it is focused on ADUs. F. Brown spoke about the 4 types of ADUs permitted and said the biggest concern is new construction with the 1.5 FT setback and said he does not see a reason for this provision. He suggested that Division of Planning review the item on new construction as this appears to be most controversial.

Ellinger and Duncan discussed that an apartment in a basement qualifies as an ADU when there is a full kitchen, full bathroom, and a sleeping area. Ellinger asked if all ADUs are required to have a pre-application conference and Duncan explained this would be addressed in the building or electrical permit process. Ellinger asked if a new address would be required and Duncan said it is not required, but a separate address could be created for the ADU and Taylor added that there are guidelines for addressing this in the design manual. Ellinger asked about ND-1 and H1 overlay and how that is different and Duncan confirmed that applicable built-in and government regulated design standards would apply to outside construction. When asked about owner-occupancy, Duncan confirmed that the owner is required to live in the principal structure or the ADU. Ellinger asked about renting out the ADU long-term, but not short-term and Duncan confirmed that the ADU could be built with the intention of renting it out and he pointed out that it does not have to be rented to a family member.

Moloney spoke about homes with unfinished basements that will eventually be finished with setups for bathroom and kitchen and he asked if Building Inspection identifies this as ADU since it has the capacity to be one. Duncan said that because ADUs are only permitted in the expansion area, the builder would not be declaring to Building Inspection that it will be an ADU. Moloney asked if a home that has a basement with a kitchen and bathroom would be considered an ADU. Duncan said they would not be called an ADU at this time, because those are currently not allowed and ADU implies there will be a sleeping room.

Baxter explained she has received a lot of feedback and many have reached out in opposition of the ADU proposal because it is a big change and because there has been misinformation. She asked how many neighborhoods would be excluded from having the opportunity to build an ADU based on deed restrictions or the HOA. Duncan said they do not have an accurate sense of how many HOA restrictions or deed restrictions there would be because that information is not shared. Baxter spoke about the need

to overcome obstacles such as financing and assessing appraisals for properties that include an ADU as well as deed restrictions on the property as we move forward.

Kloiber spoke about the Street Patterns and Continuity and Open Space ZOTA being independent, but working together and he asked if they would be presented to Council all together or piece-meal. Duncan explained that Street Patterns and Continuity has already been recommended by the Planning Commission, but they have not reviewed the Open Space ZOTA so that will be coming separately.

Moloney asked if there would be a limit to square footage of ADUs in basements and Duncan confirmed that the current requirement is that ADUs can be no more than 800 sq. ft., regardless of the amount of space available. Moloney expressed concern that basements converted to ADUs would be limited to 800 sq. ft.

J. Brown spoke about the ZOTAs having the intent to improve opportunities for increased housing and housing density. He asked about the impact of having ADUs in committee for so long. Duncan explained that there is significant community interest surrounding this item and he understand the desire to have this discussed in a format that would be accessible to the community. He said this was a housing option the senior citizen community and other members of the community have requested and it is also a way to add additional, incremental housing to the community without having to take up additional land. J. Brown asked if there is nothing that currently governs ADUs and if this is an attempt to have an intentional regulation put in place to regulate and enforce ADU standards. Duncan said in order to make ADUs as specific and described as possible, the Zoning Ordinance should be updated to address whether or not ADUs are permitted and what that process should be. J. Brown asked how deed restrictions work with enforcement when someone is in violation. Duncan said it would be a Zoning Enforcement issue and that process would be followed similar to other zoning violations. J. Brown asked if the ordinance could be amended to make all detached structures a conditional use or if that would have a negative impact on the effectiveness of ADUs. Duncan said research shows that having a barrier such as this one, would halt someone's desire to move forward in the process of getting an ADU. J. Brown suggested having a special meeting of this committee with all council members allowed to participate and including a public hearing component for further discussion on ADUs.

Worley expressed concern with making a committee meeting a Committee of the Whole (COW) and setting aside a single item from the traditional committee structure when a Work Session at the time the item is reported-out of committee will allow for full Council participation, but he stressed that he is not against moving this forward. Bledsoe said there could be an issue with having a meeting that allows for public comment and then not taking action at that same meeting because people who came to hear and participate in the discussion were not present when action was taken. Moloney spoke about questions asked today that were not answered and he asked if the public hearing would be for public input only without answering questions or providing clarification. J. Brown said the meeting could potentially be structured similar to a Zone Change Hearing with a review of Ordinance, addressing the changes that have been made since the original version and opening the floor for public input. Baxter said it would be helpful to have a one-page clear and concise information sheet to be shared with constituents. Worley said he is supportive of having this done similar to Zone Change Hearing with a notification process for public input. Kay spoke in favor of a having a Special Planning and Public Safety Committee meeting with all Council Members recognized to participate, allowing public comment at that time, and a review of the ordinance. Sheehan spoke about public education on this issue and asked if there is a web site the public could go to for this information. Woodall confirmed that imaginelexington.com/ADU will direct the public to more

information on ADUs. Lamb pointed out that this item will still be reported out at a Work Session and will follow the traditional process of having first and second readings at subsequent Council meetings.

No further comment or action was taken on this item.

IV. Sustainable Growth Study Update

Due to time constraints, this presentation was postponed to the September 21, 2021 Planning and Public Safety Committee agenda.

V. Items Referred to Committee

No further comment or action was taken on this item.

Motion by Baxter to adjourn at 2:34 p.m. Seconded by Kloiber. Motion passed without dissent.