

Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Monday, September 21, 2009. Mayor Peggy Dunn presided.

Councilmembers present: Gary Bussing, Jim Rawlings, James Azeltine, Debra Filla, Julie Cain, and Mike Gill

Councilmembers absent: Councilmembers Rasmussen and Peppes

Staff present: Scott Lambers, City Administrator Joe Johnson, PW Director
Patty Bennett, City Attorney Deb Harper, City Clerk
Mark Klein, Assistant Planning Director Pam Gregory, Deputy City Clerk

Others Present: Mary Marcille, 12822 High Drive, Leawood, KS

Front Yard Accessory Uses

Mayor Dunn called the work session to order at 6:15 P.M. Introductions were made by those present.

Opening Remarks

City Administrator Scott Lambers stated this discussion was in regard to the City's ordinance as it pertains to garden structures. This issue was brought forward as a result of an individual who constructed a garden structure in their front yard without a permit. The structure, by current ordinance, is illegal. Some Councilmembers had requested that they review whether this prohibition should remain in place. Staff surveyed other cities and found that this ordinance was common among the metro area. He included picture attachments of encroachments that were approved by the Board of Zoning Appeals [BZA]. These do not constitute garden structures and are in place more for entry protection. The items approved by the BZA do not resemble what has been constructed and what is being requested to be allowed for an ordinance amendment.

Assistant Planning Director Mark Klein clarified that garden structures are allowed in the side and rear yard; however, not in front yards.

Mr. Lambers stated the reason garden structures are restricted in front yards is to maintain a high level of integrity for streetscapes.

Mr. Klein stated homeowners are allowed to extend 5' feet into the front yard with an open porch; however, when installing vertical columns to support the roof structure, it is required to meet the setback of the house.

Councilmember Bussing was concerned of using specific definite terms of what is/is not allowed in the ordinance and wanted broader guidelines given to the BZA so they can determine the appropriateness of a variance request. He wanted to encourage residents to continue to enhance their properties. Mr. Bussing referred to Picture Attachment No. 4 and felt this should be viewed as an entranceway, not a garden structure. He thought it should be allowed as long as it doesn't violate their homes association guidelines or deed restrictions and noted it wasn't visible from the street.

Mr. Lambers thought they first needed to decide if they want to allow front yard setback encroachment. If so, they will be required to go through the BZA and he felt there should be a limitation to how much encroachment is allowed.

Councilmember Bussing indicated there were front yard setback violations in several areas of the City, based upon zoning variations.

Mayor Dunn clarified that the BZA is not allowed to make "reasonable" decisions and are governed by state statutes.

City Attorney Patty Bennett clarified that the state mandates that five factors be met to receive a variance on a setback. An option may be to provide a specific exception that could be architecturally pleasing and meet the character of the neighborhood. Ms. Bennett cautioned against going on the basis of homes association restrictions because they are subject to interpretation.

Councilmember Filla agreed to the importance of maintaining a streetscape, especially in established neighborhoods.

Councilmember Gill confirmed with staff that the residents were all required to get a variance from the BZA because of the setbacks. Mr. Klein noted that variances are difficult to meet because of the state mandated factors; two of these include: 1) the uniqueness of the property and; 2) having an undo hardship on the property owner.

Councilmember Gill felt the language in the current ordinance needed clarification because it currently states that garden structures may be allowed anywhere in the side or rear yard and doesn't specifically state they are "limited to" the side or rear yard. He also noted he wasn't in favor of changing the setbacks.

Mayor Dunn thought they could clarify the language that garden structures are not allowed in front yards.

Councilmember Gill thought there were other examples in the City's Code that have permissive language that is not construed as prohibiting.

Mr. Lambers thought they may need a legal interpretation whether City staff is correct in stating this is not allowed and if this is a garden structure. He understood Mr. Gill's concerns and indicated if they wanted to change the ordinance to allow garden structures in the front yard, anything that encroaches into the front yard setback would have to go before the BZA.

Mayor Dunn thought they may want to consider some criteria to make the ones that were approved by the BZA an exception, versus a variance.

Mr. Lambers stated the BZA receives several applications for porch coverings and staff felt they weren't being legitimate in looking at the statute and approving these as they should.

Mr. Klein gave the definition of a garden structure; "parallel colonnades supporting an open roof or girders and cross rafters, commonly known as pergolas, arbors, trellises and garden statuary."

Ms. Bennett noted that an attorney would argue that garden statuary was not part of a definition of garden structures.

Councilmember Bussing confirmed with Mr. Lambers that a porch covering is not allowed unless it is made of the same materials as the house and it also has to have an enclosed roof. Anything other than this is considered a garden structure. Mr. Bussing felt this was too limiting and thought it would be prudent of them to allow an exception process. Homeowners should be legally allowed to enhance their property in a way that is creative and he wanted to find a way to be more flexible.

Councilmember Filla thought if they were going to allow porch coverings, they should be consistent in how far they extend, they should be attached, and be made of similar home materials.

Councilmember Gill felt residents should be allowed to have trellises adjacent to their homes.

Councilmember Rawlings referred to Picture Attachment No. 4 and noted the porch covering extends 6' feet, 8" inches and was in violation of the 5' foot rule.

Mayor Dunn indicated the 5' foot rule was currently not in the ordinance and was only arbitrarily suggested. The BZA struggles with every few inches and she thought they wouldn't approve something that extends this far into the setback. She felt the setbacks should be protected and thought they should make an exception, versus a variance to some of the porch coverings that look like an extension of the home. This would allow the BZA some relief on approvals.

Councilmember Rawlings concurred; however, felt they should set maximum limits.

Mayor Dunn received consensus to request staff to draft exception language for some of the porch coverings that were similar to what had been approved by the BZA, and consensus, with exception to Councilmember Bussing, of banning arbors and trellises in front yards.

Councilmember Gill concurred with Mayor Dunn regarding refining the language for porch coverings; however, he wasn't in favor of the ordinance banning front yard trellises that are adjacent to homes. His definition of a trellis was "one dimensional lattice that grows flush with the house".

Mayor Dunn confirmed that Mr. Gill meant this would be approximately 1" inch into the encroachment.

Councilmember Gill stated whether or not this is in the setback was irrelevant since trellises are currently prohibited in front yards. He concurred with Councilmember Bussing on the point of banning garden structures as they relate to trellises.

Councilmember Filla thought this was meant for trellises that extend out at a right angle, versus flush with the home. Mr. Gill felt this should be clarified in the ordinance and he also thought if they were going to ban garden structures, they should define the language to clearly state they are not allowed in front yards. There may be a generic statement in the Code that states "unless it's permitted, it's precluded," which would be clarification.

Councilmember Rawlings confirmed with Mayor Dunn that the porch covering in Picture Attachment No. 4 would need to be moved to the side or rear yard. If they want to cover their porch after the exception language is in place they can come forward with materials that coordinate.

Mr. Lambers stated they need the ordinance amendment process completed before anything could be done and thought this could be achieved within 60 days. This way, there is no question in the ordinance that it's not permitted in the front yard.

Councilmember Bussing remained dissatisfied with their narrow definition of garden structures as it relates to this particular structure and also felt that a porch needing to match the materials of the house and be covered was too narrow of a definition.

Councilmember Azeltine indicated he didn't want to change any of the setbacks and concurred that they should be more explicit on any front yard prohibition and define garden structures more clearly.

Councilmember Cain thought the porch covering in Picture Attachment No. 4 could be attached to the house and become a natural porch, complete with vines.

Mayor Dunn stated they could further discuss this at a Council meeting after the exception language has gone through the Planning process. She preferred a finished look for the front of the house if it is going to encroach into the setback and also wanted the roofs enclosed. She noted caution to the use of vines since they will eventually die.

There being no further business, the meeting was adjourned at 7:25 P.M.

Pam Gregory, Recording Deputy City Clerk