

**Planning Commission  
Regular Meeting Minutes**

**Council Chambers 7:00pm**

**Monday, May 14, 2018**

**CALL TO ORDER**

The meeting was called to order at 7:00 P.M.

**ROLL CALL**

Planning Commission members present were Rose Pelzl, Chair, Council Representative Marianne MacQueen, Frank Doden, Susan Stiles and Ted Donnell. Also present were Denise Swinger, Zoning Administrator, and Chris Conard, Village Solicitor.

**REVIEW OF AGENDA**

There were no changes made.

**REVIEW OF MINUTES**

Minutes of April 9, 2018 were reviewed. Stiles MOVED to ADOPT THE MINUTES AS AMENDED. Doden SECONDED and the MOTION PASSED 5-0.

Minutes of April 24, 2018 (Work Session) were reviewed. Stiles MOVED to ADOPT THE MINUTES AS AMENDED. MacQueen SECONDED and the MOTION PASSED 5-0.

**CONSENT AGENDA**

Minor Subdivision and replat of two properties located at 450 Allen Street -Parcel ID #F19000100160001300, property owner: Mary Jane Short, and 1212 Corry Street-Parcel ID #F19000100160008000, property owners: Timothy Barhorst and Barbara Zulliger.

Donnell MOVED and Pelzl SECONDED a MOTION TO APPROVE THE CONSENT AGENDA. The MOTION PASSED 5-0 ON A VOICE VOTE.

**COMMUNICATIONS**

Antioch Proposal for Pocket Neighborhood Development. Swinger noted that the Housing Advisory Board (HAB) had advised the Antioch College Village group to send documents on to Planning Commission as an öFYIö, prefatory to their planned submission of a proposal later this year, and that these are those initial documents.

Housing Documents from Housing Advisory Board (3 items which were compiled and presented to Council on 5/7/18). MacQueen explained the documents, noting that she would like PC to remain informed as to the process.

**COUNCIL REPORT**

MacQueen noted that Council had heard the first reading of seven ordinances related to minor changes to the zoning code, all of which were the result of recommendations from Planning Commission (PC). These will receive second reading/public hearings on May 21<sup>st</sup>.

**CITIZEN COMMENTS**

Pat Brown stated her support of the Antioch College Village concept.

**PUBLIC HEARINGS:**

1. **Conditional Use Application** – Carol Gifford and Daniel Merfeld, owners of 102 Pleasant Street in the R-B, Moderate Density Residential District, are seeking approval for an accessory dwelling unit. Parcel ID #F19000100110014400.

Swinger noted that the property owners want to build a 24 X 24 foot garage with an efficiency apartment/ADU above off the North Walnut Street side of their property. Their plan is for it to be a long-term rental. She observed that the applicants have met all required conditions for approval.

Donnell noted that the site plan shows the setback encroaching into an alley.

This was discussed at some length.

Carol Gifford stated that there is a discrepancy in the dimensions on the provided map, and that the discrepancy seems in error. She noted that the property includes an abandoned alley, and so has a öflag shapeö.

Swinger explained that the property extends behind the other properties on the block because it includes a vacated alley.

MacQueen questioned why, if the Gifford property encompasses the alley, do all of the properties on that block show a depth of 150 feet, rather than the Gifford property showing an additional 10-15 feet.

Donnell stated that while one can speculate as to the reasons for this, Planning Commission has to rely upon verifiable data as the basis for a decision. He asked whether a survey might be available.

Swinger suggested that either a survey be provided, or the proposed structure be moved closer to the house.

Bob Swaney commented upon locations of the pins for that property. He noted that while he had located the pins, he had not conducted a survey, nor has he seen a survey for the property.

Pelzl OPENED THE PUBLIC HEARING. There being no comment, Pelzl CLOSED THE PUBLIC HEARING.

Donnell MOVED to APPROVE THE CONDITIONAL USE APPLICATION AS SUBMITTED, with the added REQUIREMENT: That the property owner provide a deed which describes the property boundaries and submit a new site plan that indicates that the proposed structure is within the setbacks. Doden SECONDED, and the MOTION PASSED 5-0 on a roll call vote.

**2. Conditional Use Application** ó Steven and Stacey Wirrig, owners of 335 Orton Road in the R-A, Low Density Residential District, are seeking approval for an accessory dwelling unit. Parcel ID#F19000100160003100

The property owners' pool house is classified as an Accessory Dwelling Unit. In addition, they intend to build an in-ground pool which is considered an accessory structure under the general provisions of the zoning code. One of the provisions is that the swimming pool be properly secured (see section 1260.04 below). The property owners would like to use an automatic pool cover instead of erecting a fence around the pool. The zoning code does allow for other protective devices if they afford the same or better safety protection.

On the Conditional Use application the property owner wrote, "The retractable cover provides equal or better protection than fencing, as it isolates the water itself removing temptation that exists with only a fence, supports the weight of several adults, can be closed in seconds when moving into the house or another part of the yard, and unlike a fence gate, it is very visible if it is open or closed. The cover type being considered is an Automatic Pool Covers, Inc. brand and is UL listed."

Swinger asked for Planning Commission input on the latter aspect of the hearing, as well as for input regarding lighting recommendations.

Stiles received clarification regarding the language around "fencing or other protective device" for a swimming pool.

Stiles and Doden asked the applicants several questions regarding access to the pool cover switch.

Steven Wirrig responded with information supporting their view that the pool cover is safer than fencing.

Donnell commented that he did not believe the pool cover issue is within the purview of Planning Commission, given the language contained in the zoning code. He noted that either the Building or Health Department for Greene County would make a determination as to the approval of the safety features of the pool.

Pelzl commented that this seems to be covered by the language contained in the zoning code.

Pelzl OPENED THE PUBLIC HEARING.

Clarification was provided that the only matter within the purview of the PC was the pool house, and Pelzl asked the comment be directed to the conditional use for the pool house (ADU).

Neighbor Ted Barker asked whether the pool house would be a year-round structure as opposed to a seasonal use.

Swinger clarified that an ADU is considered a year-round structure.

Barker then asked how this would impact the surrounding homes.

PC provided information regarding the history of ADUs, and general information as to their character.

Patrick Hemmenger asked whether an ADU could be rented out or used as an AirBnB.

Swinger responded in the affirmative.

Hemmenger expressed surprise at this aspect of the zoning code.

MacQueen interspersed information regarding affordability.

Steven Wirrig stated that the structure is meant as a part of their home, to serve the needs of their family.

Ken Strewing commented upon the metering, explaining the need for single-source metering.

Swinger explained the zoning code regulations governing ADUs.

Pat Barker asked how the addition of the pool and ADU would affect neighboring property values.

Donnell responded that it would increase property value in the area.

MacQueen commented that neighboring properties rarely affect property values in the Village.

Stiles MOVED TO APPROVE THE CONDITIONAL USE REQUEST FOR THE POOL HOUSE DWELLING UNIT. MacQueen SECONDED, and the MOTION PASSED 5-0 on a ROLL CALL VOTE.

### **OLD BUSINESS**

Minimum Lot Frontages. Swinger introduced the topic, noting the verbiage contained in the zoning code as follows:

Any lot created after the effective date of this code shall have frontage on an improved public street or approved private street or access easement, equal to the minimum required lot width in the zoning district in which it is located.

Swinger stated that staff has reviewed this with Coolidge Wall, and they have offered an interpretation of Section 1260.02 (e) as follows:

öBecause a lot can have frontage on an access easement, as well as on a public or private road, a lot that sits behind another lot and has no access to the road can still be used as long as there is an access easement that runs along the new lot for the required distance/frontage in that district.ö

In trying to further understand this, staff asked if the access easement to the landlocked lot stops at the lot line boundary or does it extend the appropriate frontage width for that district along the landlocked lot line. For example, if the property line width for R-A requires 60-foot frontage, would the easement need to run an additional 60 feet in order to show that there is the required width along the landlocked lot? The answer from the Village's legal representative was yes, it has to be extended 60 feet as there needs to be 60 feet of frontage within the easement.

Swinger provided several examples for PC consideration, and these were discussed.

Donnell stated that there is nothing in the zoning code that dictates the shape of a lot. He explained that lot frontage is dictated, and commented that density issues are determined by lot frontage and the size of the lot, in combination. Setbacks have to be maintained.

MacQueen questioned the need for lot frontage, stating that a flag lot should be permitted. She suggested stating that the rule should be changed for any existing flag lot to ask only 20 feet of frontage.

Donnell stated that road access is not frontage, and that such a change would require substantial changes to the zoning code.

Donnell stated that if this is what MacQueen desires, then the argument must be made to eliminate the lot frontage requirements, and have only one residential district with a 20 foot frontage requirement.

Swinger introduced example öCö, a property owned by Chris Till.

Swinger explained that the property has three 25 foot frontage lots. The owner would like to do a replat, combining three lots into two lots. There is enough room to create a second lot, but not enough frontage (50 feet in Residential B) to have a lot split. The property owner is interested in creating a flag lot, which is not allowed in

the zoning code. The property owner made reference in a meeting with staff that there are a number of lots with only 25 foot frontage. Why these were created isn't known and would have to be researched further.

Donnell stated that his interpretation of the code is that the access easement must be equal to the required minimum frontage, which would mean, in Till's situation, that a total of 100 feet would be required.

Conard commented that the code seems not to permit a shared, or overlapping, access easement.

PC contemplated the difference between an existing flag lot and one that is created.

Donnell commented that there is some grey area regarding frontage. He commented that doing away with minimum lot frontages is a major issue within the zoning code.

Swinger asked about the difference in interpretation if the same owner owns both lots in question.

Donnell responded that this would vary by district, given the differing requirements for lot frontage and density.

Chris Till spoke in favor of flag lots, asking that they be permitted in the zoning code, and arguing that this is a way to create greater density without expanding borders.

Till offered a proposal as to how he could use his property most effectively, with a flag lot. He stated that he would prefer not to create easements, since, in his experience, these create conflict.

Till commented that his proposal satisfies all requirements of the zoning code except that of minimum frontage.

Till stated that the access lane is the issue in question, and what the requirement for width at the street would be, and opined that 15-17 feet would be reasonable. Landowners should have a reasonable expectation as to what they can do with their property, Till said.

MacQueen recommended that Planning Commission make a recommendation to Council regarding flag lots at some point in the near future.

Donnell noted that the zoning code has a number of elements that drive the code with regard to lots and housing, but stated that none of these are "affordability".

Pelzl commented that surrounding property owners have an expectation as well, with regard to how homes are situated on a lot, etc. and that this has to be considered.

Till commented that he could build an ADU on that lot without any significant restrictions, but that he could not obtain a loan for this as easily.

Donnell commented that a text amendment reducing the lot frontage minimums evenly across all districts might be worth considering as a way to address the issue holistically.

Swinger noted that the matter is a discussion at this point, and serves as information to PC.

Donnell suggested that the topic be added regularly to the agenda so that the discussion can evolve.

Swinger asked about the Exhibit "B", noting that there is mention in the zoning code that if a non-conforming lot existed prior to the 2013 zoning code and meets all other conditions for approval, a separate lot could be created. Swinger noted that this is feasible as long as there is a 20 foot easement for an access lane at all points (for R-A).

Donnell commented that the property owner in Exhibit "B" will have to have a 60 foot access on Livermore Street, which can then narrow to 20 feet.

Pelzl compared a lot on Corry Street which had been permitted a 20 foot access easement from the street to the interior lot to the lot in Exhibit "B", arguing that because that had been permitted, and because the parameters were similar in Exhibit "B", the same access parameters should be permitted.

Donnell responded, opining that this could create a legal issue, and stating that he was not convinced that the Corry Street lot access was fully considered.

Donnell commented that in the past, it was common for property owners to create greenspace easements. He stated that there may be a deed access agreement to the property in question and go from that point.

The Clerk asked if PC could agree to a course of action for Denise with regard as to how to proceed with the requests for access she is receiving.

Donnell stated that the property owner would have to show full compliance with all zoning requirements, and that this would be the basis for an administrative decision.

MacQueen commented that if the Corry Street property owner was permitted the access agreement, than future requests should receive the same permission.

PC discussed how to approach the dilemma.

Conard suggested that he draft a legal opinion on the matter, noting that interpretation of the zoning code tends to defer to the rights of the property owner.

Swinger commented that perhaps just greater clarification as to what the frontage should look like would help.

Till asked whether he should go to the BZA for a variance.

Donnell commented that BZA could interpret frontage in a different way, and that Till could take the hearing to BZA if he so chooses.

Swinger stated that she will bring the discussion back at a later point.

**NEW BUSINESS**

There was no New Business.

**AGENDA PLANNING**

- Minimum Lot Frontages
- RVs/Tiny Homes/Mobile Homes.
- RV parking.
- Review of the Comprehensive Land Use Plan.

**ADJOURNMENT**

At 8:56pm, Stiles MOVED and Doden SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 ON A VOICE VOTE.

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Rose Pelzl, Chair

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Attest: Judy Kintner, Clerk

*Please note: These minutes are not verbatim. A DVD copy of the meeting is available at the Yellow Springs Library during regular Library hours, and in the Clerk of Council's office between 9 and 3 Monday through Friday.*