

**Planning Commission
Regular Meeting Minutes**

Council Chambers 7:00pm

Monday, December 10, 2018

CALL TO ORDER

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

ROLL CALL

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

REVIEW OF AGENDA

Doden reviewed the agenda. There were no changes made.

REVIEW OF MINUTES

Minutes of November 12, 2018. MacQueen MOVED and Donnell SECONDED a MOTION TO APPROVE the Minutes as amended. The MOTION PASSED 4-0 on a voice vote, with Stiles abstaining due to absence from that meeting.

COMMUNICATIONS

Ted Donnell re: E-mail
Susan Stiles re: PUD Hearing
Sue Pfeiffer re: Senior Housing
Suzanne Patterson re: Senior Housing

Doden noted communications received. Donnell explained the inclusion of his response to an e-mail from a citizen, stating that he erred in responding to the e-mail given his role on the Planning Commission, and that its inclusion is a way to put that into the record.

COUNCIL REPORT

MacQueen reported that Council had been given a presentation on the final Active Transportation Plan, and asked that PC members receive a copy of the document.

MacQueen noted that the Village has received a \$22,000.00 grant from the county to be used for an infrastructure project, noting that a suggestion had been made that it be used for an engineering study for Hilda Rahn (sic: this should have been stated as Beatty Hughes) Park as a possible parking site.

She noted that an affordable housing budget line had been approved to move forward, and that the 2019 budget had been approved as a first read.

CITIZEN COMMENTS

There were no citizen comments.

PUBLIC HEARINGS:

Conditional Use Application ó R-C, High Density Residential District ó Jess Holihan has submitted a conditional use application for a home occupation permit to receive clients for medical massage therapy at 127 ½ Glen Street. Parcel ID #F19000100100017700.

Swinger introduced the hearing as follows:

Jessica Holihan is applying for a home occupation permit to receive clients for medical massage therapy appointments in her home. She rents the dwelling unit at the rear of the property (Exhibit A), which is managed by Dunphy Real Estate. Home occupations are a conditional use when the use generates clients or customers.

The proposed use as a home occupation for the practice of medical massage therapy is in conformance with the requirements of Section 1262 of the Zoning Code, with the exception of 1262.08 (e) (5) C. 2. Staff requested a letter from the landlord giving approval for the home occupation (Exhibit E).

In response to a question from Stiles, Williams stated that the property lines are superimposed and are not accurate, so that the impression that the structure lies over the property line is probably incorrect.

Doden OPENED THE PUBLIC HEARING.

Conard stated that he will not serve as solicitor or be seated at the table for purposes of the public hearing since his sister and brother in law are neighbors to the property in question.

Jess Hollihan stated that she has recently obtained her medical massage license and anticipates fewer than 20 clients per month.

Doden CLOSED THE PUBLIC HEARING.

Donnell inquired as to how many of the residences on Glen Street are still businesses.

Swinger opined that there are ða fewö air BnBs on the street as well as the tattoo parlor.

Stiles MOVED TO APPROVE the conditional use as submitted. MacQueen SECONDED, and the MOTION PASSED 5-0 on a roll call vote.

OLD BUSINESS

Preliminary Plan for PUD Rezoning (Completion of Preliminary PUD Plan Review and Recommendation to Council re: St. Mary/Home, Inc. Request for Rezoning).

Stiles recused herself from the hearing due to potential conflict of interest and joined the audience.

Doden stated that while the public hearing on this matter has closed, he would entertain comment or questions from anyone present with a previously unheard question or comment. He limited this to two minutes per speaker and a total of 10 minutes.

Judith Hempfling commented that Village Council had passed a welcoming community resolution, and opined that it is the responsibility of Planning Commission members to follow the goals of Council ðas a part of Village governmentö. She asked that if members of the PC felt unable to adhere to that document that they should attach changes to the PUD process and/or zoning code which should occur to allow them to do so in their recommendation to Council. Hempfling commented that the purpose of the PUD is to allow flexibility to developers ðwho bring excellent proposalsö. Hempfling characterized an earlier characterization of the project as ðwarehousing seniorsö as prejudicial. She stated that this was insulting and unprofessional.

Hempfling then stated that a previously referenced general standard of 20% deviation was incorrect and had been 25%, and that this should not be considered in either case, since they are meant to be applied flexibly.

Hempfling then referenced ðJudge Kavanaugh and ðNotorious RBGö in stating that even judicial entities are political, so to state that the PC is not is untrue.

Richard Lapedes noted that federal buildings and churches ðas communal buildingsö are exempt from height requirements, and asked that senior citizens be considered as worthy of the same exemption.

Linda Chernick stated that she is ðwithin feetö of Greene County subsidized housing. She stated that tenants are not long term, and are not Villagers, and asked how it would happen that Yellow Springs residents would be given priority in the proposed housing units. She expressed her belief that residents would be drawn from a wide area.

Kathryn Hitchcock responded to the above question, stating that if the project is approved, that a notice will go out to Yellow Springs, and those in the village ðwould know about it first.ö Hitchcock went on to opine that ðthere is no ðtheyö here,ö since persons living outside the village may have ties to it, or may always have wanted to live in the village.

Doden returned the matter to the table.

Swinger reminded those present that at Planning Commission's meeting held Monday, November 12, 2018, members reviewed the application for rezoning to PUD submitted by Yellow Springs Home, Inc.

Swinger then reviewed actions taken at the prior Planning Commission meeting as follows noting that there are 9 qualifying conditions (some with subsections).

Swinger noted that size and architecture were the two areas where there was a divergence of opinion, and suggested returning to these.

Donnell spoke to the height and total mass ðin that location, serving the need it servesö is too large in scale for that location.

Swinger sought clarification, noting that the structure meets setback, lot coverage and open space requirements.

Donnell explained that the structure disrupts the harmony of the surrounding area, which is a residential area. Donnell stated that he is in agreement with changing the underlying zoning to R-C, and to increasing that density another 20%. The density past those parameters, Donnell, said, is just too much. Donnell referenced his many years on BZA, stating that the maximum variance for that body is generally 20%, in large part to "maintain small town character".

Doden referenced the former zoning code, which permitted a 25% variance in the PUD, and read that the new code uses broad language "to encourage negotiation as a useful tool."

Williams stated that he does not see the building fitting harmoniously into that neighborhood as too large.

Doden commented that the Mills Park Hotel (MPH) was "really noticeable" at first as "really large," but opined that this perception has changed over time, and that the same would occur as people got accustomed to the PUD structure.

Donnell noted that the PUD is 2/3 larger in size than the MPH.

MacQueen read a statement stating her disagreement with the argument that Planning Commission is not a political body and has a duty to follow the zoning code. She stated, "Planning Commission is a political body just like the Supreme Court is a political body."

MacQueen implied that the Vision Document and Comprehensive Plan are outdated and noted the length of time it has taken to obtain a housing study. She stated that the PUD is the third project to come to Planning Commission, the first two having failed for funding reasons, and opined that "this is the one chance we have." She equated a "no" to the project with having the effect of expressing a desire not to house seniors.

Regarding small town appeal, MacQueen stated that it is very subjective, and commented that it is "the sense of community" that creates a small town feeling. She argued that this building will create a sense of community for those residents. She stated a different reading of the standard "harmonious", commenting that her opinion is that the building is harmonious in and of itself.

MacQueen noted the synergy with Friends Care and stated that she is not concerned with the height issue. She opined that if "we stay a small town" the village will become older and whiter and more gentrified.

Doden commented that he has no desire to live in a wealthy, older village. Doden commented that the PUD will maintain the small town feel by allowing people to stay here.

Donnell stated that he does not look at the zoning code and interpret it politically. He stated that it has long been his intent to work to refine the zoning code as a set of rules that encourages innovation and infill. The zoning code rewrite anticipated the need for affordable senior housing and made it more possible for seniors to stay in their homes, Donnell commented. We have not sold the possibilities to the community, he said, and that effort comes from leadership. He opined that that available tool should be taken advantage of. Can we use more current strategies that allow senior to be integrated into neighborhoods, to keep a cat or dog or live with a partner who earns more than 80% of the median income, he asked. He stated that a project is needed, but that it should be on a smaller scale.

MacQueen stated that there are varied interpretations of the same zoning documents. There will be options for some seniors contained in the code, she said, and this does not negate those, but many seniors don't have that capacity.

MacQueen stated that the village won't accommodate many seniors if Planning Commission does not approve this project.

Conard explained Planning Commission's role in the PUD process, noting the impasse regarding mass (density and height), and suggested that PC include these deliberations or perspectives in the record to Council.

Conard referenced page 14 of the staff report, asking whether there is some middle ground upon which PC might agree with regard to density. If, he stated, there is no consensus regarding a middle ground, PC will proceed in the knowledge that Council will be aware of the impasse.

Swinger noted that Home, Inc. had included a traffic study, but that the Public Works Director wishes to have an independent study done.

Donnell requested that any study include the presence of the fire station. He asked if Greene Cats would consider placing a covered permanent stop at the Herman/Xenia Ave. location.

Swinger determined that the study supplied by SMDC is based upon a single count of one of their existing Dayton facilities.

Donnell added that 68 is now the primary thoroughfare for truck traffic since Dayton Yellow Springs Road is closed to this traffic.

PC added this condition to the recommendation to Council:

Swinger then noted the Qualifying Conditions, commenting that one of these which was not determined at the November 12 meeting had been the issue of parking.

Members discussed this briefly, agreeing to allow 43 spaces for parking, with a requirement that SMDC be ready and able to expand to 54 spaces should the need arise.

Doden read through the review standards, 1254.06, calling a vote following each question with the following result:

- (a) The PUD will comply with the standards, conditions, and requirements of this chapter. The standard did not pass, on a vote of 2-2, with Donnell and Williams dissenting.
- (b) The PUD will promote the intent and purpose of this chapter. The standard did not pass, on a vote of 2-2, with Donnell and Williams dissenting.
- (c) The proposed project will be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the proposed project. The standard did not pass, on a vote of 2-2, with Donnell and Williams dissenting.
- (d) The proposed project will be consistent with the public health, safety, and welfare needs of the Village. The standard did pass, on a vote of 4-0.
- (e) Granting the PUD rezoning will result in a recognizable and substantial benefit to ultimate users of the project and to the community, which would not otherwise be feasible or achievable under the conventional zoning districts. The standard did not pass, on a vote of 2-2, with Donnell and Williams dissenting.
- (f) The PUD will not result in a significant increase in the need for public services and facilities and will not place a significant burden upon surrounding lands or the natural environment, unless the resulting adverse effects are adequately provided for or mitigated by features of the PUD as approved. The standard did pass, on a vote of 4-0.
- (g) The PUD will be consistent with the Village's Comprehensive Plan and Vision: Yellow Springs and Miami Township. Specifically, the following planning principles shall be adhered to, as applicable:
 - (1) Redevelopment and infill locations should be favored over greenfield development;
 - (2) Natural features and resources should be preserved or at least conserved;
 - (3) Future development/redevelopment shall strengthen the physical character of the Village;
 - (4) Quality design is emphasized for all uses to create an attractive, distinctive public and private realm;
 - (5) Places are created with an integrated mix of uses that contribute to the Village's identity and vitality;
 - (6) Diverse housing choices are found throughout the Village, including relatively high density and affordable units;
 - (7) Parks, open space and recreational areas are incorporated into future development; and
 - (8) Places are connected and accessible throughout the community by transportation methods other than automobiles.

The standard did not pass on a 2-2 vote, with Williams and Donnell dissenting.

MacQueen asked which of the subsets did not apply for Williams and Donnell so that she could understand their vote on (g) overall.

Williams stated that he disagreed with number (5), seeing the use as a dedicated use, not as a mixed use.

Doden and MacQueen offered a different interpretation of the numbered categories.

Donnell stated that for number (5), he interprets the statement to mean that the PUD in and of itself provides for integrated uses, and so was in disagreement that this criterion was satisfied.

Donnell stated that he also disagreed that number (4) was achieved, stating that there are other options for that lot which would be more attractive.

Williams stated that for him, (5) was a no, and that he was maybe a no to (4).

(h) The PUD will respect or enhance the established or planned character, use, and intensity of development within the area of the Village where it is to be located. The standard did pass, on a vote of 3-1, with Donnell dissenting.

PC then discussed crafting their recommendation to Council.

Conard recommended a preamble to the recommendation which would indicate to Council where PC agreed and diverged in its opinion, leading to the inability to achieve the majority required for an affirmative recommendation.

The Clerk suggested that if there were modifications that PC members wished to propose which would shift their votes, that this was an option available.

PC members agreed that the difference of opinion, combined with the mandate from the applicants that the plan could not be significantly altered precluded an agreement upon modification.

MacQueen queried Wes Young as to whether they could submit their application with fewer than 54 units. Young responded that they would not have a chance at funding with fewer than 54 units.

In response to a question from Donnell, Young stated that they will be applying for funding under the urban and senior housing designations.

Donnell asked whether there were other options, and was told no, and that SMDC felt the most acute need was senior affordable.

Donnell stated that he would like PC to modify the plan to recommend 34 or 35 units to indicate the overall desire on the part of the commission to support senior affordable housing but not at the scale presented.

Doden and MacQueen were not in agreement with this suggestion.

Conard read through several draft versions of a statement.

Donnell received clarification that the plan will return to PC if Council approves the PUD. He stated that he has not received a clear explanation regarding transition of ownership of the property and of the structure.

Young stated that 15 years is the tax compliance period, in which the funding partner and SMDC must co-own the facility. Young stated that SMDC is operating under the rules of capacity building in partnering with YSHI. Young stated that HUD (Housing and Urban Development) requires that SMDC own the facility for not 15 but 20 years.

Young stated that he had checked with the Ohio Housing Finance Agency, and SMDC is required to be the 100% general partner through 20 years. The 30 years is the restrictive covenant for the requirement for affordable housing, Young stated. After 20 years, he stated, YSHI could come in and be the general partner. We're going to be partners for a long time, he stated, and the land will be held by YSHI, if that will establish a level of confidence on the part of the Village.

Donnell asked what would occur in 30 years if there are significant repair or upgrades that need to be done. How will this impact a small organization like Home, Inc.

Young stated that SMDC's mission is to "create affordable senior housing solutions." He explained a system of operating and replacement reserves which SMDC engages in, which addresses this issue.

Young addressed questions regarding the scope of SMDC.

Seibel, Yellow Springs Home, Inc., stated that when and if ownership is transferred, the reserves are transferred with the property.

Young stated that at the end of 15 years when the finance partner can exit the partnership, SMDC can apply for further credits to add to refinancing debt and other funds to continue to maintain and refurbish the building.

Donnell asked whether, given demographics change over time, can the building be repurposed for a more mixed use affordable use.

Young stated that this was the case.

Seibel addressed a question regarding affordability, stating that although the requirement for affordability is 30 years, because YSHI owns the land, they will assure the permanent affordability of the units.

Doden called a recess so that the Clerk, the Solicitor and the Planner could construct the language for the Planning Commission Recommendation to Council.

Conard read that statement as follows:

Yellow Springs Planning Commission held a public hearing on the application of Home, Inc. and reviewed the Yellow Springs Home, Inc./SMDC PUD Preliminary Development Plan, based upon its conformance or non-conformance with the standards set forth in the applicable sections of the Yellow Springs Zoning Code.

During the course of the December 10 meeting, Planning Commission stated its support for the principles set forth in the Yellow Springs Housing Vision Values Statement.

Planning Commission was unable to reach the required concurrence of three members to approve the PUD Preliminary Development Plan as presented.

Planning Commission by a majority vote found the Preliminary Development Plan met the following Qualifying Conditions set forth in Section 1254.02: (a), (c), (d), (e), (f), (h) and (i).

Planning Commission could not reach a majority vote on the following Qualifying Conditions set forth in Section 1254.02: (b) "Size" and (g) "Architectural." Those voting that the PUD did not meet these standards stated that their opposition was specific to the scale of the proposed project in relationship to the neighborhood.

Planning Commission by majority vote found the proposed Preliminary Development Plan met the following PUD Requirements set forth in Section 1254.03: (a), (c), (d) (1), (2), (3), (6), (7) and (8), (e), and (f).

Planning Commission could not reach a majority vote on the following Preliminary Development Plan PUD Requirements set forth in Section 1254.03: (b) in relationship to height, and (d) (4) and (5).

Planning Commission by majority vote found the proposed Preliminary Development Plan met the following Review Standards set forth in Section 1254.06: (d), (f) and (h).

Planning Commission could not reach a majority vote on the following Preliminary Development Plan Review Standards set forth in Section 1254.06: (a), (b), (c), (e), and (g).

For the foregoing reasons, Planning Commission did not reach the necessary majority vote to recommend approval of the Applicant's Preliminary Development Plan to Village Council.

Should Village Council approve the Preliminary Development Plan and re-zoning request, Planning Commission recommends the attached conditions:

1. A traffic study coordinated by Village Staff with consideration for the location of the Miami Township Fire House and with input of the County Engineer and Ohio Department of Transportation as needed.
2. Approve parking with no fewer than 42 parking spaces, reserving additional parking spaces for expansion as needed for 54 parking spaces.

Addressing a concern raised by Donnell, the Clerk opined that it would not work to attach a condition that necessary infrastructure improvements be accomplished without being bumped forward, stating that if Council approved of the PUD that would signal their view of the project as a priority.

Swinger noted that SMDC, the developer, will be responsible for all costs related to aid to construction, including the electric transformer, the water line and that Home, Inc. had stated that they would attempt to assist with the cost of sewer relining, projected at \$27,000.00.

Donnell asked what happens if Council reverses PC's decision, and asked about the importance of the conditions PC might attach to their recommendation.

Swinger indicated that those conditions, unless amended by Council, would stand, and that if amended significantly the project would have to return to PC for further review.

Conard stated that the question PC will have to address at the time of final development plan review will be whether the final development plan substantially conforms to the preliminary development plan. This is the time for the PC to attach any significant condition so that the applicant is put on notice that this will be required. The record has been thoroughly made on each issue, he stated.

Donnell asked how Council will work through the review of the matter.

Swinger noted that Council is being kept abreast of all aspects of the discussion, and will be provided with all available informational materials prior to their discussion.

Swinger expressed concern that the Village does not have the stormwater calculations from their engineer for the detention basin, and received assurance that this could be determined prior to the final plan review, and that conditions could be attached at that time.

Donnell stated that he uses the underlying PUD requirement as his baseline in determining a project's viability, and noted that the zoning code stresses using energy efficiency and LEED requirements as offsets to deviations. Donnell commented that those parameters are not on the table in this project, and that he is left to consider simply the massing of the structure without what he sees as the offsets.

However, Donnell opined, if Council determines that the project fulfills a village goal, and that the project should move forward, then, he said, "I'm on board." The issue then becomes to assure that due diligence is done on behalf of Yellow Springs citizens to assure that "this is not just a sign-off." I don't want the worth of the zoning code thrown out for what is essentially a funding issue, he said, "and I don't want another funding source coming through demanding the same pass-through. The system needs to work."

MacQueen asked that Council be recommended to view the video of the meeting.

Conard asked that the recommendation to Council read in part as follows: Planning Commission by a majority vote found the Preliminary Development Plan met the following Qualifying Conditions set forth in Section 1254.02: (a), (c), (d), (e), (f), (h) and (i), as more affirming.

The Clerk called a vote on the recommendation.

MacQueen MOVED to APPROVE the RECOMMENDATION AS READ AND AS AMENDED. Doden SECONDED, and the MOTION PASSED 4-0 on a voice vote.

AGENDA PLANNING

Infrastructure Report: Public Works Director Johnnie Burns
ADU
Replat

Donnell asked for a report on the Active Transportation Plan.

Swinger stated that the ATP should be incorporated into the Comprehensive Land Use Plan.

MacQueen suggested a goals setting session.

Donnell raised PC's duties with regard to infrastructure concerns, stating that PC should be intimately involved in these decisions.

Doden suggested a goals setting session.

Donnell expressed concern that he may have to step down due to a number of projects coming up.

MacQueen asked that a date be set for the goals setting session.

ADJOURNMENT

At 9:50pm, MacQueen MOVED and Donnell SECONDED a MOTION TO ADJOURN. The MOTION PASSED 4-0 ON A VOICE VOTE.

Frank Doden, Chair

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.