

**Planning Commission
Regular Meeting**

Virtual Meeting @ 7:00pm

Tuesday, June 15, 2021

CALL TO ORDER

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

ROLL CALL

Planning Commission members present via zoom were Susan Stiles, Acting Chair, Council Liaison Laura Curliss, Sarah Amend, Gary Zaremsky and Stephen Green. Also present were Denise Swinger, Zoning Administrator, Village Manager Josue Salmeron and Village Solicitor Breanne Parcels.

REVIEW OF AGENDA

There were no changes made.

REVIEW OF MINUTES

Minutes of May 11, 2021 Regular Meeting. Amend MOVED and Stiles SECONDED a MOTION TO APPROVE the Minutes as written. The MOTION PASSED 5-0 ON A ROLL CALL VOTE.

COMMUNICATIONS

Tom and Holly Underwood re: Complaints Regarding Adjacent TGL. This communication was discussed, with the Zoning Administrator indicating that she had been in touch with the complainants and had indicated that they needed to make a police complaint, since the people in the TGL were not violating terms of the conditional use.

Parcels noted that if the terms of the conditional use were violated an investigation would ensue, with the parties under investigation being accorded all due process rights.

Jon Ricketts re: Objection to CU at 213 N. Winter St.

All communications were noted and will be filed by the Clerk of Council.

COUNCIL REPORT

Curliss noted a recent Town Hall discussing the formerly proposed DORA, commenting her belief that the initiative is not going to be pursued further.

Curliss noted upcoming local celebrations of Juneteenth and Pride.

Salmeron presented information to PC regarding staff efforts to create a Building Department to include the capacity to issue permits to both residential and commercial structures. He described this as an economic imperative as the Village seeks to attract business.

Salmeron noted that the annexation for property at the corner of Hyde and Spillan will come to Council at their first July meeting.

Salmeron noted receipt of grant funds received towards rerouting of the collapsing storm system under Dayton Street.

CITIZEN COMMENTS

There were no Citizen Comments.

PUBLIC HEARINGS

- 1) **Conditional Use Application** —Alex Melamed of Axis Architecture, on behalf of Tracy and Johnny Cooley, has submitted a conditional use application for a garage with an accessory dwelling unit (ADU) at 213 N. Winter St - Chapter 1248 Residential Districts, Chapter 1262.08 (e)(1) Conditional Use – Specific Requirements - Accessory Dwelling Units, R-B, Moderate Density Residential District. **Greene County Parcel ID# F19000100110017000.**

Swinger introduced the hearing as follows:

The conditional use application is for the purpose of an accessory dwelling unit above a garage. The current garage site access will be abandoned and access will be provided off Cliff Street. The existing garage will be demolished.

This property has two front yard lot lines. Accessory structure setback requirements are 10 feet from the rear and five feet from the side. The setback requirement for front yards in R-B is 20-feet. However, the existing primary dwelling has a 10-foot setback on the Cliff Street side of this property (Exhibit B).

Additionally, accessory structures for garages require a setback of 20-feet from the property line (see 1260.02 (a) (2) below). In this case, there is a 31'4 ¾" setback from the edge of the road to the proposed accessory structure, but 21'4 ¾" of this measurement is in the public right-of-way.

Public Works Director Johnnie Burns visited the site and had no issue with the driveway entrance location as long as the drainage swale crossing follows Greene County and Village of Yellow Springs standards. However, this will be the location of an upcoming storm sewer project and he has advised the owner to hold on constructing a permanent driveway until after this project is completed. Driveway construction plans will need to be approved by the Public Works Department prior to its construction.

The existing garage and its access driveway will be eliminated. The new driveway will be located off Cliff Street, which will be for the garage/ADU. This property has two front yard frontages and an accessory structure for a garage requires a driveway setback of 20-feet. A variance from the BZA will be a requirement if approved.

Swinger noted a letter from the neighbor with concerns regarding the location of the property line.

In response to a question from Stiles, Swinger stated that the primary dwelling is not yet habitable, and is in the process of being renovated. She stressed that the structure being requested is a garage with an ADU above.

The designer, Alex Melamed, added that the Cooleys plan to live in the ADU while completing work on the primary structure, and will then move into the primary structure so that their son can live in the ADU.

Curliss asked whether Melamed could redesign the structure to move the balcony to the east.

Melamed demurred, stating that this would be a significant change. He expressed similar doubt to the suggestion that the balcony be moved so that it faces the street. He commented further that if the balcony was removed that there would be windows in the same location.

The Cooleys stated that they had spoken with the neighbor at some length regarding his concerns, stating that the concern is with line of sight from the proposed balcony to the neighbor's hot tub and rear yard.

Tracy Cooley added that there is the same line of sight from the second story of the primary dwelling as there would be from the proposed balcony.

Swinger commented that another concern of the neighbor is that in the future there might be a request to make the ADU into a TGL.

Melanie Rickets, a neighbor, stated that she objects to the line of sight from the proposed balcony.

The Cooleys shared some photos of other homes with lines of sight to the neighboring home, as well as lines of sight from their primary dwelling. They argued that there were other, more egregious, lines of sight from existing structures.

Green differentiated between a window and a deck, noting that people tend to spend more time on a deck (balcony).

Swinger interjected into a discussion of setbacks, stating that the location of the property line is in question, and would have bearing on the distance the garage would be from the neighboring yard.

Matt Kirk commented that a deck would be more of an intrusion than a window.

Amend concurred, adding that moving the balcony in response to the neighbors' concerns would assure that the neighbors did not experience any devaluation of their property.

Ted Donnell, President of Axis Architecture, commented that there is no proscription against the addition of a deck to the primary structure, which would be as potentially invasive as the proposed balcony. Donnell characterized this as a double standard.

Amend responded that a new structure requires some compromise among neighbors, and an understanding of the neighborhood and issues at hand on the part of Planning Commission. She commented that the issue is that the neighbors would expect the line of sight from existing structures, but that the addition of an ADU creates yet another set of eyes.

Curliss asked whether there is actually a boundary issue.

Melamed stated that he had calculated the lot line from the fence line, which is also indicated by the GIS map.

Curliss commented that it is difficult to contemplate the proposed use without clear knowledge regarding the property line.

Johnnie Cooley stated that there is a “100 year-old Magnolia tree” that they have taken care to preserve, expressing his concern that the Village might damage or kill the tree when undertaking the sewer project slated for Winter Street. He stated the tree as a large part of the reason he did not want to change the location of the balcony. He added that the balcony might be used for morning coffee and “that’s about it.”

Zaremsky suggested a patio instead of a balcony.

Melamed commented that they are willing to move the structure farther away from the property line if BZA is willing to grant a variance.

Several suggestions were made regarding moving the structure and/or a possible zero lot line at the other side of the yard to accommodate this possibility.

Melanie Rickets expressed that she did not want the balcony overlooking their back yard regardless of its proximity to the lot line.

Amend suggested privacy fencing on the Cooley’s side.

Melamed indicated that this would defeat the purpose of the balcony.

Neighbor Jonathan Rickets reiterated that proximity does not solve the problem and asked that the balcony not overlook his property.

Public Works Director Johnnie Burns responded to the zero lot line suggestion, saying that he was opposed to the possibility, particularly given that the Village is undertaking a major sewer project on that street, and he cannot predict the extent of the project.

Parcels cautioned PC members, stating that if they impose conditions, those conditions must have basis in the zoning code under either 1262.03 or 1262.04. She read the conditions listed in each of the sections as follows:

(e) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operations, including, but not limited to, hours of operation, that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, odor or other characteristic not comparable to the uses permitted in the zoning district.

(f) The proposed use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Parcels summarized the issue, stating that Burns is opposed to a zero lot line, and the neighbor is not satisfied with a change in location regarding the ADU.

Melanie Rickets concurred with the summation of the neighbors’ position.

Amend asked for clarification as to the exact location of the lot line.

Johnnie Cooley stated that Melamed had indicated that “the fence line is on the lot line” per Greene County GIS, and that it is “probably accurate to within 6-12 inches,” but that this has not been confirmed. He stated that he was awaiting approval before investing in a survey.

Swinger received confirmation that no pins have been located.

Melamed responded to a question from Swinger, stating that the structure is planned at five feet from what he assumes to be the lot line (ie: the fence), as measured from the furthest overhang.

Kirk commented that it is reasonable to design any outdoor space on an ADU to focus onto the property owner’s lot.

Melamed commented that this is not feasible for this design.

Melamed commented that in a village that is increasing its infill, residents need to learn to share and to live closer. He stated that he did not see his design as invasive or predatory, and that this is not substantially different than a window that can open.

Tracy Cooley commented that no matter where on the ADU the balcony is located it will overlook someone's yard.

Kelsey Cooley, the Cooley's daughter, who lives in town, spoke to the quality of the proposed construction, citing her father's past work. She stated that the proposal seeks to comply with all applicable areas of the zoning code, and the proposed use is in character with the surrounding neighborhood. She noted the ways in which the structure will be in compliance and fits the character of the neighborhood. Cooley stated further that the occupant will be her brother, who has disabilities and for whom the ADU is being built so that he can be enabled to live independently with the support of his family. Cooley asked that PC not speculate as to the use of the structure.

Jonathan Rickets stated that he is not opposed to the apartment, only to the balcony, for the reasons previously stated. He commented that it is in fact speculative to state how the dweller plans to utilize the balcony.

Kelsey Cooley responded that as her brother's attorney, she can indeed speak for him.

Stiles CLOSED THE PUBLIC HEARING.

The Clerk received confirmation that Matt Kirk was not acting as a PC alternate, and that Gary Zaremsky was the official alternate.

Stiles asked for guidance from Swinger and the Solicitor as to what PC is able to request of the property owner with regard to changing or moving the ADU.

Swinger opined that while the structure meets the conditions listed in the zoning code, it is a conditional use, and is therefore subject to conditions, based upon comments from neighbors.

Parcels cautioned that as legal counsel, she is loath to offer any legal opinion "off the cuff", but that her earlier statement with regard to any condition needing to relate to the specific area of the code the condition is meant to address. Swinger has informed PC that the application meets all criteria of the code, she noted, and PC should be wary of any denial of the use, since a denial could be readily challenged as arbitrary and unreasonable.

Green asked whether the matter could be tabled, stating that the issue is not with the ADU, but is with the location of the deck.

Curliss MOVED TO TABLE. Green SECONDED.

The Clerk expressed concern that there was no basis for tabling the hearing, given the information that the application was complete and in compliance, unless PC could offer some further reason for tabling,

Curliss explained that she wished to table because she cannot know whether the structure does indeed meet the setback requirements. She suggested that Axis Architecture could indeed redesign the structure to give greater credence to the neighbor's concerns.

Amend commented that 1262.04 (c) should be cited, in part in order not to further a negative impression of growth in the Village.

Stiles summarized that the matter was moved to table so that the property owners could obtain a survey and so that the property owner and neighbor(s) could resolve their concerns with regard to the proposed balcony.

Zaremsky disagreed, pointing out that until the property line is identified, the property owner cannot be certain of the design.

Amend agreed with the motion to table for the purpose of having a survey conducted to determine the exact location of the property line.

Stiles CALLED THE VOTE, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Amend asked whether the neighbors could meet with Village Mediation to assist in the discussion.

Swinger stated that she would like to wait on this option.

- 1) Amend Chapter 1262 re: Expiration and Specific Requirements – Transient Guest Lodgings. This amendment changes the expiration for a conditional use approval to 24 months, and allows the Zoning Administrator to extend it for an additional 12 months if no changes to the original plan have been made.

Swinger explained that during the pandemic materials and supplies have proven difficult to obtain, building permits have been slowed, and construction has regularly been delayed for most. She suggested the increase in time from the current one-year for applicants to complete construction or apply for extension would be a great help.

Curliss stated that 24 months is a more realistic time frame.

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

Curliss MOVED TO APPROVE THE AMENDMENT TO CHAPTER 1262 as written. Green SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

1262.08 (e) (7) B. – Swinger explained that at the last meeting there was discussion around defining the location of a transient guest lodging establishment. Staff has provided a sentence for the Planning Commission to consider regarding the proximity of a transient guest lodging to another transient guest lodging as below:

In no case, can a transient guest lodging be located closer than _____ feet from another transient guest lodging, as measured from _____ property line to _____ property line.

Parcels noted that Oxford, Ohio has language addressing proximity. She noted that the Village currently has in place a de facto cap, since non owner-occupied TGL operations are limited to a percentage of the total.

Amend suggested “500” be the number of feet that must separate TGLs.

PC discussed this, with Parcels noting that if this limit is set, there will be no exception to that caveat.

Zaremsky argued that the number can be modified in the future if it proves unworkable.

Curliss MOVED to ADD THE NUMBER “500” and the word “closest” in the sentence for the following amended text: ***In no case, can a transient guest lodging be located closer than 500 feet from another transient guest lodging, as measured from closest _____ property line to closest _____ property line.***

Amend SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

1262.08 (e) (7) C.—Swinger explained that the noted entity for approval of occupancy is not the Health Department, as the code currently states, and that the section needs an amendment to reflect this.

Parcels suggested inserting the words “Health, Safety and Welfare” to replace the words “Health Department”.

Curliss MOVED TO REPLACE THE WORDS “Health Department” with the words, “Health, Safety and Welfare”. Green SECONDED, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE. Zaremsky was unable to register his vote.

1262.08 (e) (7) G.—Swinger said she is retracting her suggestion to remove tenants from the TGL language because the operator of a TGL may not be the property owner.

Swinger noted that if the amendment is made, the for a new hearing to be triggered, the current property owner would have to sell

1262.08 (e) (7) N. – A discussion regarding a designated smoking area was proposed. Staff has added a sentence for consideration, as follows: “A designated outdoor smoking area to be located at least fifteen (15) feet from all property lines”.

Responding to a concern expressed by Zaremsky, Amend explained that the suggestion was in response to TGL guests going off the property to smoke.

Zaremsky commented that the road and sidewalk are public property and might be go-to places.

PC discussed the pros and cons of this amendment, concluding that giving some direction to the property owner is a positive.

1262.08 (e) (7) O. – Another suggestion at the last Planning Commission meeting was to require commercial insurance for non-operator occupied transient guest lodgings. Staff has added a sentence for consideration as follows: “Proof of commercial insurance is required for non-operator occupied transient guest lodgings.”

Curliss commented that it might not be possible for some to obtain commercial insurance.

Amend stated that she has asked about this, but the problem is that failure to have the insurance would void their property and liability insurance in the event of a problem. She advised that this is critical for a non-owner occupied TGL.

Curliss MOVED TO INCLUDE SECTION 1262.08 (e)(7) O in her MOTION TO ACCEPT THE AMENDMENTS AS WRITTEN. Green SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

- 2) Amend Chapter 1268.09 re: Expiration. Changing the expiration for a site plan review approval to 24 months.

Amend MOVED TO APPROVE THE TEXT AMENDMENT AS WRITTEN. Curliss SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Chapter 1278 Board of Zoning Appeals – This will allow a variance to lapse rather than “expire” after 24 months if, in the case of new construction, no progress is made. Staff is recommending this change as variances are permanent and do not “expire”, as follows: “Every variance granted by the Board shall lapse and be of no force or effect after 24 months from the date of granting by the Board, unless the applicant has made substantial progress toward achieving the approved construction.”

Curliss MOVED and Green SECONDED a MOTION TO APPROVE THE TEXT AMENDMENT AS WRITTEN. The MOTION PASSED 5-0 ON A ROLL CALL VOTE.

OLD BUSINESS

There was no Old Business.

NEW BUSINESS

There was no New Business.

AGENDA PLANNING

- 314 Dayton Street Conditional Use Hearing.
- 108 Cliff Street Conditional Use Hearing.
- 213 North Winter Street.

Swinger noted that the Oberer development will come up in September, and that at some point Home, Inc. will bring their 54-Unit Senior Housing Project back for approval.

ADJOURNMENT

At 9:06pm, Stiles MOVED and Green SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Susan Stiles, Acting 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.