

**Planning Commission
Regular Meeting Minutes**

Council Chambers 7pm

Monday, November 9, 2015

CALL TO ORDER

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

ROLL CALL

Planning Commission members present were Matt Reed, Chair, Gerald Simms, Council Representative, Tim Tobey, Susan Stiles, Rose Pelzl, and Adam Abraham observing from the audience. Also present were Denise Swinger, Zoning Administrator, and Village Solicitor Chris Conard.

REVIEW OF MINUTES

Minutes for September 14, 2015 were reviewed. Stiles MOVED and Pelzl SECONDED a MOTION TO APPROVE AS AMENDED. The MOTION PASSED 3-0 ON A VOICE VOTE. Simms and Tobey abstained due to absence from that meeting.

Minutes for October 12, 2015 were reviewed. Tobey MOVED and Pelzl SECONDED a MOTION TO APPROVE AS WRITTEN. The MOTION PASSED 3-0 ON A VOICE VOTE. Stiles, Simms and Reed abstained. Abraham voted approval from the audience, having officially participated in the October 12th meeting.

REVIEW OF AGENDA

There were no changes made.

COMMUNICATIONS

Three new communications, from Tom Grey, Bob Swaney and Chris Conard were acknowledged as part of the packet for the Walnut Street hearing.

COMMITTEE/COUNCIL REPORTS

Conard reported that the text amendments that Planning Commission (PC) had approved and sent to Council will receive a first reading on November 16th.

CITIZENS' COMMENTS

There were no Citizen Comments.

PUBLIC HEARINGS

1. Conditional Use: Accessory Dwelling Unit 740 Dayton Street – R-C High Density Residential District. Arnold Adoff, applicant. Applicant is requesting approval of an accessory dwelling in an existing garage.

Swinger explained the situation as follows: The existing garage in the contractor's drawing is a 24' X 28' or 672 square foot structure. According to Mr. Adoff, only the downstairs portion of this structure will be used as living space. It will contain the living room/bedroom/kitchen combination, and one bath.

A smaller upstairs area of approximately 298 square feet has also been dry walled and could be used as a living space for a bedroom. Mr. Adoff has said that this area will only be used for storage, not living space. With this understanding, Swinger stated, only the downstairs portion of the garage conversion will be calculated in determining the zoning code's requirement of the size of the accessory dwelling unit.

Mr. Adoff spoke to the matter, stating that he had proceeded, as he stated, "in ignorance". The principle structure is currently occupied by a family, and the garage, Adoff stated, seemed to him to be an ideal possibility for a living structure for him as a single adult. He described the upper story as purely to be used for storage, with the lower portion as a living area for himself.

Adoff stated that he had not known that separate metering was not permitted under the current code, and noted that he is happy to comply with the single meter requirement.

Stiles asked about parking, and was told that there is a parking pad on the property as well as permitted parking on the street.

Reed OPENED THE PUBLIC HEARING. There being no questions or comments, Reed CLOSED THE PUBLIC HEARING.

Swinger noted that her recommendation to PC is to approve the Conditional Use request with the following conditions:

- 1) The finished upstairs of the ADU shall not be used as a living space.
- 2) A door shall be installed either at the top of the stairwell or at the bottom of the stairwell to separate the storage area upstairs from the living area downstairs.
- 3) No more than two adults shall occupy the ADU.
- 4) The accessory dwelling unit shall share all public utilities (water/ sewer/electric) with the principal dwelling unit.
- 5) A minimum of one off-street parking space shall be provided on the lot for the accessory dwelling unit.

Simms MOVED to APPROVE the Conditional Use with the conditions recommended by the Zoning Administrator. Stiles SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

2. Conditional Use: 128 S. Walnut Street - R-C High Density Residential

District. Norah Byrnes, applicant. Applicant is requesting a home occupation permit for a food service operation at her residence.

Reed referred to the Solicitor's memo regarding what Planning Commission is and is not permitted in terms of courses of action.

Swinger reported that the applicant, Norah Byrnes, is requesting a home occupation permit for a food service operation at her residence of which she is the property owner.

Swinger summarized her findings with regard to the request, noting that she had visited the property and had photographed the space. She commented that the available area exceeds the maximum square footage recommendation, but noted that there is some room for discussion on that matter, since the kitchen may or may not be considered a part of the operation.

Swinger noted that both Tom's Market and the Corner Cone have offered their parking areas to patrons, should the use be approved, noting the letters from both businesses.

Norah Burns commented on the positive impact of the experience for her patrons, stating that each meal represented a cross section of the community, and gives those persons the opportunity to interact in a meaningful way.

Stiles commented on the parking issue, stating that the Planning Commission has to be fair and equitable to every petitioner. She noted that there is no onsite parking, and that that is a recommendation in the zoning code. She asked whether parking can be substituted in another location.

Conard responded that the lots offered by Bob Swaney and Tom Grey, which are located on the same block, would serve the requirement in practical terms. Conard made specific reference to letters from both business owners.

Simms commented that it would be possible for Burns to create onsite parking if she invested in a curb cut and created a gravel drive.

Conard stated that the parking issue can be determined at the discretion of the Planning Commission.

Stiles read from the zoning code, noting that the limit in the zoning code is 40 persons per week, or eight per day. Stiles pointed out the difference between the Ohio Revised Code and the Village Zoning Code limits in terms of the number of persons per week permitted—115 for the ORC and 40 for the Village. Stiles commented further that the number of volunteers or employees is limited in the Village code to one non-resident, and that Burns' request exceeds that number. Finally, Stiles commented that the number of square feet permitted for the use (20% of the usable space or 250 sf, whichever is less), stating that the use would be significantly more than that number.

Stiles stated that deliveries cannot be made by vehicles over a certain size, and that she had heard that the Gordon Food truck had been making deliveries.

Burns responded, stating that the food delivery had been when she had served five days per week, and that the truck would not be used in the future.

Burns stated her objection to the 40 persons per week, opining that it would be antithetical to her intent to make such a limitation.

Reed responded that the regulation exists so that there are not suddenly home occupations with high numbers of clients popping up all over town.

Pelzl asked for clarification as to why the Village should adhere to the ORC and not to its own intent.

Conard noted that with regard to the zoning code, the lesser number is permissible due to the Charter. With regard to the limitation on the number of persons served, Conard stated that again, the Village is able to impose limitations due to Home Rule power, as long as the Village standard does not interfere with State statutes.

Pelzl asked what it was about the Conditional Use application that generated the restriction upon the number of clients.

Conard explained that the request falls within the spirit of what is regulated by the zoning code, and once the request is made, the use is automatically on the radar.

Conard read a definition of Home Occupation from the dictionary as, “any activity that a person spends time doing. . . an activity in which one engages. . .” He noted that vocation was also listed within the definition, but noted that financial compensation is not a required feature.

Swinger commented upon regulations listed in the zoning code, noting that the only area of the zoning code that opens the door to such use is the “Home Occupation” definition.

There being no further questions from Council, Reed OPENED THE PUBLIC HEARING,

Susan Oldham stated that she was the previous owner of the Morgan House Bed and Breakfast. She commented that she had only had to abide by State regulations, and asked how it was different for Norah’s.

Reed responded that the regulations were simply different for the different occupations/businesses.

Tim Courier, a resident of Xenia, stated that he felt that Norah’s represents the best of Yellow Springs.

Erin George identified herself as a mental health counselor at Antioch College, and stated that she values Norah’s as a place to introduce students to the Village. She commented that even if the use were permitted in general within the Village, it would be a good thing.

Louisa Klein spoke of the value of the experience to her and to her young daughter.

Mark Munger stated that he was always welcome, even if he had no money.

Walter Rhodes opined that the parking issue was really a non-issue at that hour, particularly given that Tom’s was offering parking.

Marianne Britton spoke as a single senior, stating that eating at Norah’s is the only time she has someone to eat with, and advocated for the continuation of the practice.

Scott Stohlsenberg and Patti Dallas also spoke to the value of the practice as a community builder.

Patti Dallas commented upon the value of the experience.

Norah Burns commented that there are too few opportunities to sit with persons we don’t know, and that building that space is her passion.

Janet Murie commented that the parking situation seems to be contained given the opportunity to park on private parking lots. Murie characterized the zoning Code as “mean”, stating that she did not understand why it would prevent a business from employing others.

Reed responded that the zoning Code is an attempt to regulate the numerous home occupations in the Village, and is as such a broadly written document.

Reed CLOSED THE PUBLIC HEARING.

Simms commented on Conard’s memo, stating that Planning Commission has no mechanism for variance to the code. He stated that persons would have to lobby Council to change the code. Simms expressed sympathy

for the business in question, but stated that he saw no other options as far as a ruling from Planning Commission is concerned.

Pelzl stated that Planning Commission could recommend a change to the zoning code. She asked why the regulations for a Bed and Breakfast could not apply. She stated that she has an issue with the use being a “more than residential use”. She stated that she is unconvinced by the Home Occupation argument when there is no money changing hands.

Swinger interjected that there are specific requirements as well as the general requirements for a Bed and Breakfast.

Tobey stated that the use meets the definition of a business in that meals are being provided. He commented that as a Bed and Breakfast, the use is limited to six guests and “family and friends” of the family.

Pelzl continued to press the argument, stating that “when you invite people into your home they are your guests by definition.

Klein commented that her understanding of the memo is that the State code takes precedent.

Conard corrected this, stating that Home Rule overrides State rules in this case.

Swinger made the case that the space regulation could be overcome if the space is only in use 4-5 hours per week.

Martha Klein characterized Norah’s as a community service and berated Planning Commission for being petty in not recommending passage.

Simms responded that Swinger had tried to work with Norah to come to point of permitting the 40 customers per week. He suggested that Norah move ahead with the operation as it can proceed, and work on requesting a change from Council once in gear. Simms cautioned that once the discussion becomes a matter of something that could occur on any street in any neighborhood, there will be opposition.

Stiles asked Burns if she would be willing to limit the number to 40, realizing that there is no guarantee that a text amendment would pass. Burns responded affirmatively, noting that she did not believe she had any other choice.

Alice Robrish wondered why the use could not be considered a Bed and Breakfast.

Deborah Leopold, Director of Environmental Health Services for the Greene County Combined Health District stated that there are “a multitude” of specific exemptions related to specific uses. She specified that the exemption for a Bed and Breakfast is a maximum of 16 breakfasts per day. Leopold cautioned that when one opens up service to the public, all regulations, state, county and local must be followed.

Stiles MOVED to APPROVE THE CONDITIONAL USE REQUEST WITH THE FOLLOWING CONDITIONS:

- The use is limited to 40 persons on one day per week.
- Parking is accommodated via either Toms’ or the Corner Cone parking lots.
- The space is approved based upon the fact that the use is limited to 4 hours per week.
- There can be a maximum of one volunteer and any family members to serve as assistants.
- Any State or County regulations must be met.

Simms SECONDED, and the MOTION PASSED 5-0 on a ROLL CALL VOTE.

Burns asked how she could proceed in changing the code.

Swinger noted that there would need to be a discussion as to whether the use would be limited to one specific zoning district.

Pelzl and Reed agreed that some research should be done to determine what uses have been granted to what areas of the zoning code in the past.

Tom Nofle requested that Planning Commission bring the zoning code text amendments to a meeting soon.

Reed stated that PC could add this matter to their agenda.

OLD BUSINESS

There was no Old Business.

AGENDA PLANNING

Donna Haller: Conditional Use.

Jennifer Horner: Conditional Use.

Stiles asked the group whether they wanted to put the zoning text amendment on the agenda. Swinger suggested that Burns should bring the request for the text amendment. Swinger stated that she would contact Burns to walk her through the process.

Conard opined that having the impetus begin with Burns, with the assistance of Swinger, would be the most appropriate course of action.

ADJOURNMENT

At 8:22 pm, Simms MOVED and Tobey SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 ON A VOICE VOTE.

Matt Reed, 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.