

**Planning Commission
Regular Meeting**

Council Chambers 7:00pm

Tuesday, October 15, 2019

CALL TO ORDER

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

ROLL CALL

Planning Commission members present were Frank Doden, Chair, Susan Stiles, Vice Chair, Council Alternate Representative Lisa Kreeger, Alternate Dino Pallotta and AJ Williams. Also present was Denise Swinger, Zoning Administrator and Solicitor Chris Conard.

REVIEW OF AGENDA

There were no changes made.

REVIEW OF MINUTES

Minutes of September 10, 2019 Regular Meeting. Stiles MOVED and Doden SECONDED a MOTION TO APPROVE the Minutes as amended. The MOTION PASSED 5-0 on a voice vote.

Minutes of September 17, 2019 Work Session. Doden MOVED and Stiles SECONDED a MOTION TO APPROVE the Minutes as amended. The MOTION PASSED 4-0 on a voice vote with Kreeger abstaining due to absence from that meeting.

COMMUNICATIONS

Doris Hubschman re: Objections to 1315 Corry St. Variance Request
Marianne MacQueen re: Notice of Planned EPA Meetings at John Bryan Center

COUNCIL REPORT

Kreeger reported that she has been hearing feedback from citizens regarding the Active Transportation Plan's pilot project at Walnut/Short/Limestone Streets, most notably that the problem seems "primarily a school problem" and that the school system should be involved in creating a solution and that "this seems like more change than is necessary." She noted the need for evidence that input had been sufficiently obtained from the PD, the schools and from local businesses.

Kreeger noted concern regarding how feedback will be received and how the changes will be monitored. Kreeger stated that US Bank and the hardware store will be handing out questionnaires in their own effort to obtain feedback.

Salmeron observed that specific locations will be targeted for volume counts and that northbound traffic from Limestone onto Phillips will be monitored.

Salmeron stated that a survey will be released for the second and third weeks of the study, accessed off the Village's website.

Salmeron then gave a presentation detailing the temporary changes and signage.

Stiles stated that she would like the Village to hold a public hearing to address concerns.

Pallotta disagreed, stating that there would be no value in a public hearing until data have been collected and presented.

Kreeger expressed agreement with Pallotta's point.

Chris Mucher commented that traffic travelling along Elm Street should be counted to determine if there is an increase in the use of this street.

CITIZEN COMMENTS

There were no comments made.

PUBLIC HEARINGS:

- Conditional Use and Site Plan Application – R-C, High Density Residential District. Miami Township Trustees have submitted a conditional use and site plan review re-application for their new fire station and township offices at 1001 Xenia Avenue. Parcel ID #F19000100080030600.

The applicant originally submitted an application and received conditional approval November 13, 2017 which expired after 12 months. The application is for the re-approval of a conditional use permit for the construction of a new fire station and offices for the Miami Township trustees. The Fire Department will consist of five apparatus bays opening out onto Xenia Avenue, administrative offices, support spaces, living quarters for up to six full-time firefighters, and a training room. The Township offices will consist of an open office and a small conference room for use by the Township Trustees and staff. The Township will use the training room for public trustee meetings.

Swinger noted several conditions for approval were made during Planning Commission's November 13, 2017 meeting when PC approved a conditional use application and site plan review for the new fire station. As a conditions of that approval, the Planning Commission required:

- 1) Final storm water runoff report from Kleinger Engineering, and approved by the Village's engineer. Swinger noted that this has now been completed.
- 2) Replat of the 11 lots into one. Swinger reported that this condition has been completed.
- 3) Addition of bike racks on the final drawings. The new site plan incorporates this addition.
- 4) Screening around the dumpster on the final drawings. Swinger noted that the dumpster has been removed as an option on the updated site plan.

Swinger commented that the building footprint has increased slightly from 16,199 to 16,399sf due to an increase in the length of the east wing. At 16,399 square feet, the building meets the maximum lot coverage requirements of the zoning code at just over 35%. The height however, has been significantly reduced, and parking has been reorganized and reoriented away from Herman Street. The total number of parking spots remains the same, at 20 parking spaces.

The driveway entrance off Marshall Street was eliminated as a cost savings measure.

The driveway width on Herman Street was reduced in width from 30 feet to 24 feet to reduce cost. The Xenia Avenue driveway remains the same with a measurement of 96.5 feet in width.

The walkways have been modified to accommodate the new parking layout with the width reduced from six feet to five feet as a cost savings measure.

The above changes, Swinger stated, have resulted in a reduction in impervious surface, even given the increase in the building footprint.

In response to a question from Stiles, Swinger stated that the storm water detention proposal in the site plan meets or exceeds current county and state requirements, and that it has met the approval of the Village's contracted engineer.

Chris Mucher explained that the dumpster had been added by the architect, but has never been required by the fire station personnel, and so has been eliminated.

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

Williams MOVED to re-approve the conditional use. Doden SECONDED. Doden CALLED THE VOTE, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

- Continuation of Conditional Use Application – R-A, Low Density Residential District –Kim and Trent Warner have submitted a conditional use application for a home occupation permit to receive clients for yoga and holistic classes at 1315 Corry Street. Parcel ID #F1900010017000190.

A conditional use hearing was held for a home occupation permit at 1315 Corry Street on Tuesday, September 10th. Due to concerns expressed by neighbors and follow up questions from Planning Commission members, the meeting was continued.

Swinger reminded PC that they had asked the Solicitor to research the legal meaning of "a person" to determine whether the business cooperative currently in place meets the legal definition of "a person".

Swinger commented that if clients followed one another in order to park in the pull-through driveway that at least eight cars at a time could be accommodated.

Swinger noted that she had received confirmation of registration for the "Corry Street Retreat" from the State of Ohio.

Kim Warner stated that the group had already asked the Children's Yoga Camp leadership to find another venue for that use, and that this is being done.

Warner noted that the parking strategy noted above is being implemented and is working well.

Warner confirmed that a log of clients and classes is being kept.

Swinger corrected a recommendation #1, changing it to "eight per day".

Doden OPENED THE PUBLIC HEARING. He asked that previously presented information not be repeated.

Maria Varandani commented that permitting more than one person not a resident of the home would be in violation of the zoning code, pointing out that the yoga instructors are a cooperative, indicating that there is more than one person.

Varandani complained about noise occurring in the past, which she characterized as "sounds and vibrations."

Varandani passed out a map indicating the location of the homes.

Conard explained the hearing process generally. He cited Chapter 1701.01 of General Corporation Law which includes an unincorporated society or society as "a person". Conard stated his belief that a "cooperative" falls into the spirit of this definition. Conard cited the staff report, which requires that not more than one other person (outside of the family of residence) be present at a time, seems to favor the definition of a coop as "a person". He noted that a property owner should not be denied the "reasonable use of his or her property" as a factor in reaching this conclusion, noting that each case before Planning Commission is weighed on its merits.

Kreeger restated, asking for confirmation that if there is only one other instructor present in addition to the residents of the home, that one person can be a different person from class to class, as long as only one non-resident instructor is present at a time.

Varandani argued that "the goings on in that house" have changed the character of the neighborhood.

Swinger addressed this, commenting that past practice should not be brought into the discussion, and that the request was being considered on its own merits. She noted that conditions to mitigate any impact on the neighborhood are being suggested.

Doden CLOSED the PUBLIC HEARING.

The clerk read through the suggested conditions.

- 1) Only eight clients per day, up to 40 per week.
- 2) All client parking shall be off street with no more than eight cars allowed.
- 3) Consider having clients enter from one location and exit from the other so there is not an issue with turnarounds or backing out onto Corry Street.
- 4) Inspection of dwelling by Miami Township Fire & Rescue – copy of certificate of compliance required.
- 5) No classes that will generate noise or repetitive sounds beyond the Warner's property that is above the maximum allowable decibels per the Village's noise ordinance.
- 6) Allow Ms. Warner's one-on-one personal fitness training classes in addition to the yoga classes as long as the total number of clients does not exceed 8 per day/40 per week.
- 7) No Children's Yoga Camp

Discussion regarding parking ensued. Stiles asked that all parking be off-street.

Warner stated that she will do what is best for the neighborhood, but asked that the parking not be enforced as off-street only.

Stiles asked that all business traffic be off-street.

Warner asked how it would be proven whether the on-street parking was not a client, expressing concern that she would have to prove this if a friend stopped by or if an occasional client forgot to follow the protocol.

The Clerk suggested modification of the requirement to the following, "To the extent possible, all client parking shall be off street with no more than eight cars allowed."

This was agreed-upon.

The Clerk asked whether the “Children’s Yoga Camp” prohibition should be struck, given that it was not a requested use on the CU application.

The Solicitor commented that the condition indicates that PC is responsive to neighbor concerns, suggesting that it remain as a condition.

Stiles MOVED to APPROVE THE CONDITIONAL USE AS REQUESTED WITH THE CONDITIONS SUGGESTED BY STAFF AND AS AMENDED AT THE MEETING. Pallotta SECONDED.

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

- The Village of Yellow Springs is applying for amendments to the following Codified Ordinances:

- 1) **Text Amendments** -The Village of Yellow Springs is applying for amendments to the general offenses code for Weeds and Junk Cars and to the zoning code for Junk Cars.

At the last PC meeting, issues staff have encountered with the current Weeds ordinance were reviewed. Staff explained the current process as follows:

- 1) Complaint filed by citizen or staff.
- 2) Letter sent to the property owner giving five days from the date of letter to comply.
- 3) If not remedied, the Village has the authority to trim or remove the vegetation and bill the property owner. If not paid, the Village has the authority to assess the cost to the owner’s property taxes.
- 4) The Village can also issue a citation that the property owner is guilty of a minor misdemeanor.

As previously explained, staff first attempts to call the property owner about the violation and, most of the time, the property owner complies. If not, a violation letter is sent. If the property owner still does not comply, the Village by ordinance attempts to remove the vegetation.

Both the Village Manager and Mayor agree that the section of the ordinance in which the Village removes the vegetation should be deleted from the code, leaving only the section which states, “whoever violates or fails to comply... is guilty of a minor misdemeanor.” Because the issuance of a citation does not necessarily mean that the property owner will comply, staff discussed the issue further with the Mayor and Clerk of Courts. It was decided that by adding language making failure to comply a court appearance citation, the Mayor could then reduce the court costs if the owner shows that they have complied with the ordinance.

One question PC did not discuss at the last meeting has to do with who should receive the citation; property owner or tenant. The Village Manager feels strongly that the citation should go to the property owner of record as Village staff should not be responsible for knowing who is responsible for what is in a lease agreement. Staff recently printed door knocker violation notices that can be filled out by Village crew members and left on the door of the property in violation. Since the zoning office will keep track of all of the door violations placed at properties, staff can check to see whether the property owner’s address on the Greene County Auditor’s site is the same. If not, a phone call could be made or a duplicate notice mailed to the owner.

Swinger suggested that “doorknocker notifications” be added as another means of noticing the property owner(s). She also asked that the time from notification be increased to 10 days to account for the US mail and potential weekend delivery delays.

Amend General Offenses section 674.01 – Trimming of Trees, Plants and Shrubbery

Amend General Offenses section 674.02 – Removal of Plants and Weeds by Owner

Amend General Offenses section 674.03 – Removal of Trees, Weeds and Grasses by Village;
Notice

Amend General Offenses section 674.04 – Assessment of Costs by Village

Kreeger asked what the process would be if a person continued to refuse to address the issue.

Conard stated that the same thing can occur with any misdemeanor, calling it a “power struggle”, but noted that the desired result is an expectation. He noted that with repeated infractions, the monetary consequences could compound.

Pallotta asked what the recourse could be if a person chose to ignore the citations.

Conard responded that when situations devolve there are normally other issues at play, such as mental health concerns.

Doden OPENED THE PUBLIC HEARING ON SECTIONS 674.01, 674.02, 674.03, and 674.04.

Mitzie Miller commented that she has been dealing with a situation involving a neighbor for some time without satisfaction. She asked that citations go to the property owner rather than to the resident, stating that this would yield better results. She asked that a certified letter be sent. Last, she expressed concern at the efficacy of Mayor's Court to resolve an issue.

Kreeger stated her support for a certified letter.

Swinger noted that this would add time to the response.

Swinger noted that the door knocker is sealed so that it cannot be altered, and a photo is taken as proof of delivery. She noted that the first attempt is a phone call, and that "90%" of complaints are handled with the phone call.

Conard backed this up, commenting that anyone finding themselves in court over yard maintenance issues has ignored many efforts to gain compliance.

Doden CLOSED THE PUBLIC HEARING.

Swinger commented that the step of going to court has not previously been taken, and that she believes adding this step will improve compliance.

In answer to a question from Pallotta, Swinger responded that the person of record for a given property is the property owner, and the Village uses the Greene County Recorder's office to confirm property ownership and thereby responsibility for the dwelling.

Miller commented that these changes should improve the situation.

Kreeger expressed concern that "weeds are becoming a misdemeanor" and feels in response to a behavior that is outside of the norm.

Conard commented that most communities would criminalize this behavior. This is very scaled down, he stated, noting that the Mayor would have the ability to reduce costs.

Stiles MOVED TO APPROVE THE RECOMMENDATIONS MADE BY STAFF TO AMEND THE TEXT IN SECTIONS 674.01, 674.02, 674.03, and 674.04 of the ZONING CODE. Kreeger SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Amend General Offenses section 660.07 - Storing Junk Vehicles, Unlicensed Vehicles and Inoperable Vehicles on Private Property with Permission of Owner.

Amend Zoning section 1260.03 (d) - Storage and Repair of Vehicles

Amend Zoning section 1272.05 - Enforcement; Penalty

Swinger introduced the topic as follows:

At the September 10, 2019 Planning Commission meeting, the conflict in the codified ordinances concerning junk vehicles was discussed. The general offenses code which is enforced by the Police Department allows one junk vehicle on private property that is not enclosed in a garage. However, the zoning code reads that a junk vehicle may only be parked on private property unenclosed for 48 hours and repairs of unenclosed vehicles for less than six days. One officer recently dealt with a vehicle on private property and staff referenced the code in General Offenses. Staff then researched the zoning code and found the conflict.

Although a junk vehicle is declared a 'public nuisance' within the general offense's code Chapter 660.07(b), there is a separate chapter in the codified ordinances under Part Fourteen Building and Housing titled "*Chapter 1470 Public Nuisances.*" Chapter 1470 is under the Village Manager's authority and is used in cases where public safety or health is at risk, or in the case of a continued vacancy that cause a structure's deterioration and blights the neighborhood. In these cases, it requires an agreement with at least two other entities, such as the health department, fire department or building department, who agree with the Village that it is a public nuisance.

In Chapter 1260.03(d) Storage and Repair of Vehicles (Exhibit B), staff suggests removing section (2) regarding the open storage or parking of junk vehicles on land within the Village and keeping it entirely under the police department's authority. This will remove the conflict between the general offenses code and zoning code on junk vehicles.

Section (1) regarding the repair of vehicles in a Residential District can stay since any vehicle that is inoperable will be by definition a junk car and under the police department's authority. Section (3) can also stay as it relates to the open storage or parking of larger vehicles, such as tractors and trailers. Even in this case, it is often the police department that talks to the property owner or owner of the vehicle.

Swinger advised removal of any allowance for a time extension, which is regularly abused.

Pallotta asked for clarification as to the difference between a car being repaired and a "junk vehicle."

Indicators of a "junk vehicle" would be expired tags, lack of registration and/or inoperability.

Doden asked for a definition of a "public nuisance".

The solicitor described a public nuisance as that which is either an eyesore or which has the potential to cause injury or damage to others. He continued that the municipality then has the right to intercede.

Pallotta received confirmation that causing runoff of deteriorating materials could be considered a public nuisance.

The solicitor affirmed that it is a matter of interpretation to some extent.

Kreeger received confirmation that private property could be considered a residence or a business.

Kreeger asked how this would be dealt with in terms of the complaint going to the property owner as is the case with the weeds ordinance.

Conard responded that cars are generally tracked to their last registered owner, and the citation or complaint would go to that person. He commented that if the vehicle is on another person's property, that person could claim that the vehicle is abandoned property and have it removed.

Williams commented that an "abandoned" or "missing" title can be issued.

Conard stated that a vehicle abandoned on public property can be towed.

Swinger asked whether the line stating that a junk car is not eligible for a use variance should remain.

Conard stated that the line could stay, although it is unnecessary, as a clarification.

Swinger noted that the citation can be sent to either Mayor's Court or to Xenia Municipal Court.

Swinger noted that she had added section 1272.05 Enforcement; Penalty (Exhibit C) for Planning Commission to discuss. Swinger suggested adding Mayor's court as another option. A referral to the *municipal prosecutor* means that the case would be referred to the prosecutor's office in Greene County and heard in Xenia Municipal Court.

Kreeger expressed approval for the added language.

Doden OPENED THE PUBLIC HEARING ON GENERAL OFFENSES SECTION 660.07; ZONING CODE SECTION 1260.03 (d), and ZONING CODE SECTION 1272.05.

Mitzie Miller reiterated the changes and received affirmation that her reiteration was correct. She asked what would happen if the person in question states that they cannot afford to get rid of the car.

Conard stated that there are many entities who will take a junk car at no cost.

Becky Campbell stated that nothing has been done in 40 years and asked who "would be the enforcer", without which, nothing will continue to be done.

Kreeger stated that the changes being voted upon "do exactly that," and resolve the issue of conflict between the two codes.

Doden CLOSED THE PUBLIC HEARING.

Kreeger MOVED TO APPROVE THE PROPOSED TEXT AMENDMENTS TO SECTION 660.07.
Williams SECONDED.

Doden CALLED THE VOTE, and the MOTION PASSED 4-1 ON A ROLL CALL VOTE with Doden opposing.

Stiles MOVED APPROVAL OF THE TEXT AMENDMENT TO SECTION 1260.03 (d). Doden SECONDED.

Doden CALLED THE VOTE, and the MOTION PASSED 5-0 on a ROLL CALL VOTE.

Kreeger MOVED TO APPROVE THE PROPOSED TEXT AMENDMENTS TO SECTION 1272.05
Williams SECONDED.

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

OLD BUSINESS

NEW BUSINESS

AGENDA PLANNING

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| November 12: | Yellow Springs Brewery Private Party Area Re-Approval
Home, Inc. Preliminary PUD – 54-unit Senior Housing Project
Transient Guest Lodging Hearing |
| December 10: | Update re: Subdivision Regulations
Solar Rights
Sandwich Board Signs |

Doden volunteered to come up with a “voting guide” for the PUD process.

The Clerk suggested a 6pm meeting time, for the November meeting, given the heavy agenda. This was agreed upon.

ADJOURNMENT

At 9:04pm, MOVED and Doden SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 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.