

MINUTES
ONTARIO PLANNING COMMISSION
APRIL 10, 2019

The Ontario Planning Commission met in regular session on April 10, 2019, at 5:00 p.m., in the Municipal Building with acting Chair Adam Gongwer presiding. The following Commission members were present at roll call: Service-Safety Director Jeff Wilson, Jill Knight and Mick Motley. Also, in attendance was Assistant Law Director John Studenmund, K.E. McCartney Engineer Mark Rufener, Zoning Inspector Adam Gongwer and Clerk of Council Cathy VanAuker.

Mayor Hutchinson and Mrs. Hellinger were excused from this evening's meeting.

Mr. Gongwer presented for approval the minutes of the regular Planning Commission meeting held October 10, 2018 and special meetings of October 15, 2018 and November 8, 2018. Mrs. Knight moved to approve the minutes as presented with a second by Mr. Wilson. Three members cast their votes Aye, zero Nay, and the motion to approve the minutes passed.

Pursuant to the Ohio Revised Code and the Planning Commission Rules, Assistant Law Director Studenmund administered an oath for the testimony of those speaking before the Commission.

The first item to come before the Commission was a variance request submitted by Buckeye Village Apartments LLC, requesting use of Building #4 to include residential (families) and current student housing. In 2015, approval was granted for Phase 2 of the project, to continue student housing. Current zoning code does not allow apartment style buildings because they do not comply with height, number of floors or number of units. CFO for Buckeye Village Apartments and Springfield Properties Group, Mike Whisler, came forward to explain the need for the variance and to answer questions.

- Campus Advantage, a nationwide off-campus student housing management company, was hired to operate Buckeye Village.
- Based on occupancy in the third building, named Building #4, Campus Advantage made the recommendation, as they do for many of their properties, to designate a single building for traditional apartments.
- When the concern of combining students with residents was expressed, Mr. Whisler said Campus Advantage makes this change regularly. Fair housing law states because they are not on campus dorms they can't deny a qualified applicant to live in housing.
- Springfield Properties was not aware an additional variance was needed.
- Total occupancy at the property is just under 50%. There are currently eight (8) residential units leased, there have been seventeen (17) total leases. They have mostly pursued apartment living for people in town on business with an organization. Of the 17 leases, 12 have been through businesses, only five were traditional residential leases. These are temporary leases.

- Campus enrollment is up because of the college plus program which is not traditional college students. Enrollment of traditional students who would live on campus is down, just under 1,000, from the previous year.
- Dean Jones could not attend but he wrote a letter supporting the variance request because he sees the need to fill the additional occupancy for the private investment made by the individuals who own Buckeye Village Apartments.
- Families with children are placed in first floor apartments that have a patio with a fence.
- Building #4 has 24 units, is to the back of the property and sits the farthest away from campus.

Mr. Gongwer requested, if the variance was approved that only families would be allowed in Building #4 and students in Buildings #1 and #2. Also, in the future if a contractor is approved for student housing development and later is allowed to have family housing what would prevent them from building student housing so later it could be changed to family housing. He doesn't want to set a precedence with this variance. He doesn't want to see the building become vacant or go into disrepair which would not be good for the community. This building is in an area conducive for multi-family, Ohio State borders two sides of this property with business on the other side and across the street.

Mr. Whisler responded to more questions:

- The amount for traditional apartment rent is slightly less than for students.
- Building #1 and #2 would house students and #4 families. When the student buildings exceed occupancy and there becomes a waiting list they would review moving on from the traditional leases and return Building #4 to students. Primarily, they want this to be a student housing development to support the campus and allow growth for the campus. There will not be intermixing of traditional apartments with students.

Mr. Studenmund asked Mr. Whisler to provide a formal legal opinion to the Commission and/or Zoning Inspector that states their legal argument is because they are not on campus they can't discriminate and have to consider other applicants than students. Mr. Whistle will ask Campus Advantage for their legal opinion because they do this across the nation. Mr. Studenmund said the economic reason is less important than the legal discrimination issue that you just can't say no to someone who is not a student, this is a more significant issue.

At 5:09 p.m., the public hearing was opened for the variance request submitted by Buckeye Village Apartments requesting use of Building #4 for traditional leases.

At 5:10 p.m., hearing no one who wished to speak, the public hearing was closed.

Mr. Gongwer thought when Buckeye Village opened as student housing, being a student was a requirement.

- Mr. Whisler discussed this with Campus Advantage. Typically what they see is off-campus housing is zoned multi-family and they try to fill with just students. This was originally approved for student housing based on the application.
- Mr. Whisler said there are no deed restrictions within the property requiring proof of enrollment at a university.
- Mr. Studenmund said he was unaware of any law that would support the way the housing was set up because you can't discriminate and say someone is not a student.

Mrs. Knight moved to approve the variance contingent upon receiving the letter stating the legal opinion that because this housing is not on campus property they can't discriminate against leasing to anyone who is not a student and, students and traditional leases are housed in different buildings, second by Mr. Motley. Three members cast their votes Aye, zero Nay, and the motion passed.

The next item on the agenda brought Rob Gage of GBT Realty Corporations, Brentwood, TN, forward seeking a variance for the loading/unloading zone to be located at the side yard instead of the required rear yard of the new Dollar General to be located at 3489 Park Avenue West. Mr. Gage said the proposed building is a prototypical building used by Dollar General. The loading area for this building is on the east side of the site, which is the side yard. Mr. Gage thought Ordinance 1141.01 (g) was used to hide truck wells but they do not use a traditional loading facility for a retailer, they have two double doors on the side of the building. The trucks have lifts and all items going into the building are on rolling racks, trucks are on-site 45 – 90 minutes.

- The variance request would not infringe on parking.
- Deliveries are weekly, early on Monday morning before the store opens. No night deliveries and trucks are not permitted to sit on the property overnight.
- Dollar General has over 15,000 stores in 44 states.

At 5:23 p.m., the public hearing was opened for the variance request to allow the loading/unloading zone on the east side yard of the Dollar General store to be located at 3489 Park Avenue West.

At 5:24 p.m., hearing no one who wished to speak, the public hearing was closed.

Mrs. Knight moved to approve the variance request for the loading/unloading zone to be in the side yard of Dollar General, second by Mr. Motley. Three members cast their votes Aye, zero Nay and the motion passed.

Mr. Gage said the Fire Department is requiring they upgrade their alarm monitoring system, he is in the process of checking with their architect but it doesn't appear to be a problem.

Next to come forward was Alexander Etchill of Contractors Design Engineering, representing the Panda Express Group, requesting the loading/unloading zone for the new Panda Express Restaurant is located in the front yard instead of the required rear yard. Mr. Etchill said the original plans were approved last year but with the new developer, Panda Express is taking over the project.

- The preference to have handicap spaces closer to the building for safety reasons results in changing the unloading/loading zone from the rear of the building to the front in the drive-thru lane.
- Deliveries will be early mornings or late evenings because the drive-thru lane can't be blocked during business hours and to avoid being an eyesore from Lex-Springmill.
- The exposure from Lex-Springmill is important for this building and they don't want their signage blocked by trucks.
- Even though the loading zone is at the back of the building it is located in the front setback, there is no drive access to a public street from this parcel.
- Landscape screening for the drive-thru will prevent headlights from shining onto the roadway.
- Not all of the tenants are known yet so it is difficult to determine the number of weekly deliveries.

Mr. Wilson asked if tenants would be restricted when they could receive deliveries, Mr. Etchill said he could ask, Panda Express should be able to make that request because they own the building, it is their drive-thru lane and the only drive-thru lane planned for this property.

- All six tenants will have signage facing Lex-Springmill but the building faces a different direction.

At 5:32 p.m., the public hearing was opened for the variance request submitted by Panda Restaurant Group for the loading/unloading zone to be in the front yard instead of the rear yard.

At 5:33 p.m., hearing no one who wished to speak, the public hearing was closed.

Mrs. Knight moved to approve the variance request for Panda Restaurant Group to place the loading/unloading zone in the front yard instead of the rear yard, second by Mr. Wilson. Three members cast their votes Aye, zero Nay, and the motion passed.

Mr. Gongwer addressed the next items on the agenda, which were unfinished discussions from previous meetings. Mr. Gongwer reported on Law Director Medwid's comments on each of these topics:

Noise decibel level

Law Director Medwid looked into current code but found nothing on prohibiting time of day. Both the Ohio and National EPA Regulations were researched regarding noise levels as well as decibel levels in other communities.

Assistant Law Director Studenmund said most municipalities are getting away from stating specific noise levels, especially industrial areas. He checked the Ohio EPA and they do not have any regulations setting certain decibel levels. Ontario may want to change their code that states to check with Ohio EPA because nothing is written. Ontario has code typical of other municipalities. Operations of business have the right to conduct business. Residents have the option to proceed with the private nuisance.

Fences and Walls

Law Director Medwid may have findings or recommendations in the future to propose. There is little in code on fences, they can be on the property line. Mr. Gongwer said if he is contacted he suggests they leave a few feet from the property line for mowing.

Assistant Law Director Studenmund doesn't think fences should be on the property line to help avoid property line disputes between neighbors. Two surveyors on the same property don't always agree on the location of the property line making it impossible for neighbors to agree. He suggested limiting fences to a specific distance from the property line, such as two or three feet. The farther from the property line, the less problems with the neighbor.

Mr. Wilson said this has been an ongoing discussion and the last recommendations to Council were returned to the Planning Commission for further review. Mr. Wilson liked the idea of placing a fence on the property line if neighbors agree to share a fence but that could result in a problem later if property ownership changes. Council was not in favor of creating a six foot space between fences.

Assistant Law Director Studenmund referenced the ORC addressing the reckless cutting of someone else's tree or shrub which allows for treble damages. If a survey wasn't performed prior to cutting it could be considered reckless and the amount awarded could be three times the replacement cost.

Driveways

Language for sidewalks will go before Council with any new changes to fences.

Mr. Gongwer said he is receiving many new construction permits and it is an expense for developers to install sidewalks. Currently, if development is in an area without sidewalks the developers signs an agreement that sidewalks don't have to go in at the time of construction but if the area is ever required to put in sidewalks they would need to comply.

- Mr. Wilson said a couple of developers have signed this agreement that will go into effect once the other properties are sold and the connecting sidewalks extend to their property.

Mr. Gongwer said he was recently contacted about streamers at a used car lot. Nothing was found in code referencing streamers as a banner which requires wording, a symbol or iconic graphic. There is nothing in code restricting the red, white and blue streamers or a triangle flag promoting something for sale, length of time, square footage, or placement outside of the right-of-way. The business originally placed the streamers in the right-of-way but moved them back once they were notified.

Assistant Law Director Studenmund said the Commission may want to consider discussion on regulating non-message banners and be as specific as possible so it isn't constantly needing modified. Contacting other municipalities for their regulations is easily done.

At 5:51 p.m., with no further business to come before the Planning Commission, the meeting was adjourned upon a motion by Mrs. Knight and a second by Mr. Motley.

Adam Gongwer, Acting Chair

Date