

Athens City Planning Commission
Minutes of Regular Meeting
Thursday, November 1, 2018, 12:00 p.m.

The regular meeting of the Athens City Planning Commission was held in City Council Chambers, third floor, at City Hall on November 1, 2018.

Attendees: Jeremy Young, Steve Robb, Lisa Eliason

1. Call to Order

RJ Sumney called the regular meeting of the Planning Commission to order at 12:06 p.m. and administered the oath to all who intended to speak before the commission. Quorum was established.

PLANNING COMMISSION MEMBERS:

RJ Sumney, Chair Present
Christy Zempter Present
Nancy Bain, Vice Chair..... Present
Steve Patterson, MayorPresent
Andy Stone, Service-Safety Director.....Present

STAFF:

Paul Logue, City Planner Present
Rick Sirois, Code Enforcement Director.....Present

2. Disposition of Minutes

RJ Sumney moved to accept the October 18, 2018 minutes. Steve Patterson seconded. Motion passed 3:0 with two abstentions.

3. Cases

None

4. Communications

Ohio University Chilled Water Plant

Steve Patterson: On October 29th an official request was made to the Law Director, Lisa Eliason, for her opinion on ACC 23.03.18 and compliance under ACC 23.03.19.

Steve Patterson made a motion to receive the Law Director's opinion. RJ Sumney seconded. All present voted aye. Motion passed 5:0.

Lisa Eliason/Law Director, City of Athens

Law Director Eliason distributed her legal opinion to the Planning Commission members and provided an overview of her opinion.

The Planning Commission asked for an interpretation of ACC Section 23.03.19, Government Property Exemptions provision, and what procedures the Planning Commission must follow to comply.

Historical Overview:

In 1969 ACC 153.28 (now ACC 23.03.19) provided “Government property exemptions. Buildings and grounds of the city, and the county, the state and the federal government shall be exempt from the regulations of this zoning code.” Then in 1997 the code added a provision for property rented by governmental agencies for governmental purposes and leased buildings. In 2003 that section was amended to clarify the responsibility of government units. Minutes for the amending of 23.03.19 quoted Ed Baum “where such authorities cannot conform to uses within the regulations, they must inform the Planning Commission, in writing, outlining the nature and reasons of the non-conformance.” That language didn’t include the leased property provisions but it is the same as it is today.

Case Law:

The leading case seems to be the *Brownfield v. State of Ohio* case from 1980. The Supreme Court stated that unless there is a direct grant of immunity from local zoning laws in a given instance, the condemning or landowning authority must make a reasonable attempt to comply with the zoning restrictions of the affected political subdivision. It appears we added that language in the 2003 version. That case was subsequently overruled on other grounds.

In 1999 there was another case that cited the Brownfield case: *Laketran Board of Trustees v. City of Mentor*. In that case the court stated that in light of the applicability of Brownfield they concluded that the proceeding before the Mentor Planning and Zoning Commission was superfluous and the hearing should never have been held. And in that case they also stated that it was an issue for a court to determine whether the government property had an exemption.

In 2001 there was an Attorney General case that summarized both Brownfield and Laketran and stated the same thing “if after making a reasonable attempt to comply with the township’s zoning or land use restrictions, the board finds that compliance would frustrate or significantly hinder its use, the board may proceed with such use of its property unless a court of competent jurisdiction enjoins it from so doing.

The Law Director concluded that in accordance with 23.03.19, Ohio University informed the Planning Commission in writing and outlined the nature and reasons of such non-conformance, so in her opinion no further inquiry is needed.

Discussion

Steve Patterson: Clarified that he referenced 23.03.18 earlier, but the opinion he sought was on 23.03.19.

RJ Sumney: Where it says after making a reasonable attempt to comply with the Township zoning, would it be up to the Planning Commission to determine that the university had made a reasonable attempt to comply with the zoning?

Lisa Eliason: If you look at the language of 23.03.19, there are two parts: 1. make a reasonable attempt to ensure that they conform with the regulations of the zoning code and 2. when they can't conform to the regulations they need to inform the commission in writing outlining the reason for the non-conformance. This government property exemption has been in place since 1969.

Nancy Bain: Did you look at the ORC? Do they have such an exemption?

Lisa Eliason: We have it in ours.

Nancy Bain: We have had several consultants say that what we have is very generous.

Lisa Eliason: It is generous. This does provide, though, that the proper place to go is for the property owner to take it to court.

Steve Patterson: Clarified the acceptable decibel level that was discussed at the previous Planning Commission. Code Director Rick Sirois informed him after the meeting that Athens City Code states that 85 decibels is the maximum decibel level of an acceptable noise level, addressed in the nuisance area of code.

Paul Logue: Pointed out that he provided additional documentation, a 10/23 letter from Ohio University. The information is included in the packet as well as forwarded to the commission.

Jeremy Young/Lawyer, Roetzel & Andress, Columbus

Represents CPP Athens I LLC and its affiliates, who are the property owners immediately south of the proposed chiller site. Respectfully disagrees in part with the Law Director's opinion. Their analysis is that the immunity determination as to whether or not Ohio University can proceed without conforming with the zoning code is the province of a court of law to make that determination, and not the province of this body, however, under the Brownfield case that was cited there is a threshold showing that has to be made; you have to make a reasonable attempt to comply with the zoning code. That threshold determination is essential in order to proceed to the next step to be potentially eligible for immunity. Interpreting and applying Athens own code section expressly requires that the government authority make a reasonable attempt to comply with the zoning regulations. That is the piece that they are proposing that the Planning Commission has jurisdiction to satisfy itself about; that the university made an attempt to comply with the zoning code and it was impossible for it to do so. Then and only then would a court step in.

The Planning Commission received on October 23rd a supplemental letter from Ohio University regarding the chiller plant. They sent by email this morning a letter in response to OU's letter outlining the shortcomings and inaccuracies.

Overview of their letter dated 11/1/2018

Site Selection: In the 10/23 letter, OU admitted to not considering the zoning classification for the sites that were being considered. Five of the seven sites are zoned R3 so it was something they didn't consider a distinguishing factor. It is impossible for

OU to make the threshold showing where it freely admits that it did not even consider the zoning code in the site selection process.

Excessive Height: Rick Margolis spoke at the last meeting about when River Gate went to the Board of Zoning Appeals and were denied a height variance for their 4.5 story building and they had to cut back to 3.5 stories. The chiller is 9 stories, more than double the permissible height.

Noise Pollution: The 10/23 letter misrepresents the findings of the Centech sound study. The Henderson report outlines the deficiencies in the Centech report. The Centech sound study is incomplete.

Architectural Design: The 10/23 letter justified that it satisfies its own architectural standards. Following the 10/18 meeting, the OU Board of Trustees were presented with an alternate design that won't be voted on until January of 2019. So the design is incomplete. Rick Margolis and da attended a portion of the OU Board of Trustees meeting and heard the discussion. It seemed that the board members were unaware of the chiller plan details. One of the trustees said "this looks like a nuclear reactor, who would want to live next to that?"

The chiller is a non-conforming use because they wouldn't be trying to proceed under the government exemptions if it were.

Discussion

RJ Sumney: We have established, per the Law Director that this is a university issue in terms of what they want to do. They have conformed as much as they could to our zoning ordinances.

Andy Stone: The Planning Commission is not required to act.

5. Report from City Planner and Director of Code Enforcement

Paul Logue

- **Comprehensive Plan:** He is working with his interns on studying the city corridors. They are also looking at disabilities and autism planning. Did a lot of off campus and on campus student engagement. Hopes to have all the fact finding and data collection all resolved in the next month and then will put together a draft plan. Goal to get a rough draft plan completed mid-first quarter of 2019.
- **Regional Planning Commission Ad Hoc Committee** that is facilitating discussion on a zoning ordinance for The Plains had their second meeting last Friday. Athens Twp. and Dover Twp. provided the maps that the Ad Hoc Committee requested. Using that as the basis and working with the County Prosecutor's Office to help better understand the potential paths in the ORC to help them move forward. There will be a follow up meeting on 10/16 at 3:30 at the Athens High school.

Rick Sirois

- He and the Solid Waste Litter Control officers are attending the 2018 SE Ohio Litter Summit on 11/14.
- 11/15: Code Office will be closed for training and to visit the Athens Hocking Recycling Center.
- In response to recent floor collapses, a letter was sent to all landlords and tenants. Mr. Sirois read from the letter: *“Code Enforcement Advisory/Recent Floor Collapses in Rental Apartments. Due to two most recent events concerning floors collapsing in apartments, we felt it was best to address this in a mass email and social media. As recent as this Halloween weekend, an Athens rental house hosted a large house party in a first floor apartment in a relatively small room. It was discovered that people were jumping up and down in unison to a song and the floor collapsed approximately 16 inches. Fortunately, this was on the first floor and the partial crawl space caught the floor from falling an additional several feet into the partial basement, saving what could have resulted in numerous injuries and possible deaths. Last week there was a similar incident at an off campus rental unit in South Carolina after a football game, this resulted in numerous injuries. (See Web Page) In Nov 2017 at Texas University campus building a same situation, people jumping up and down in unison collapse the floor injuring numerous people. During fests we have removed people from overcrowded porches, balconies and decks, some, after seeing the very floors flexing under the weight of the crowds. With the age of some of these homes it is very possible that the jumping up and down in unison, is the cause for such tragic events. Please raise awareness and explain to tenants that homes were not designed to hold large crowd events, especially those which involve masses jumping up and down on wooden floors.”*

Steve Patterson: We have seen this happen in not so aged structures as well.

6. **Opportunity for Citizens to Speak**

None

7. **Announcements & Other Business**

- The next meeting will be November 15, 2018.

8. **Adjournment**

The meeting was adjourned at 12:46 p.m.

RJ Sumney, Planning Commission

Patricia Witmer, City of Athens