

Athens City Planning Commission
Minutes of Regular Meeting
Thursday, December 1, 2016, 12:00 p.m.

The regular meeting of the Athens City Planning Commission was held in the Council Chambers, third floor, at City Hall on December 1, 2016.

Attendees: Tom Kostohryz, John Kotowski, Steve Robb, Jeff Risner

1. **Call to Order**

RJ Sumney called the regular meeting of the Planning Commission to order at 12:09 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, Mayor Present
Paula Horan Moseley, Service-Safety Director..... Present

STAFF:

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

2. **Disposition of Minutes**

Steve Patterson moved to approve the November 3, 2016 minutes, Christy Zempter seconded. 3 ayes, 2 abstentions (Nancy Bain, Paula Horan Moseley).

Paula Horan Moseley moved to approve the November 17, 2016 minutes, Nancy Bain seconded. 3 ayes, 2 abstentions (Steve Patterson, Christy Zempter).

3. **Cases**

**Case #16-18 Cats Den
110 W. Union Street
Zoning Amendment**

Rick Sirois/Summary

Star Partnership would like to improve the Cat's Den Property located at 110 W. Union Street. The property zoning is split R-3 and B-1, so almost every improvement that changes its footprint would be a non-conforming use. The proposal is to remove the house at the corner of W. Union and Washington Street, improve the business by expanding the bar/restaurant's first floor footprint, convert the three 1-bedroom apartments into a single 4-bedroom apartment on the 2nd floor, pull all structures back onto the property, improve the site, the interior space and the appearance of the building. Without a zoning change the work can't proceed. Present use is a bar/restaurant and

rental housing. Current zoning is R-3 and B-1. They are looking for a zoning change to B-1.

RJ Sumney: The job of the Planning Commission is to make a recommendation to City Council.

Christy Zempter: We would make a recommendation and City Council would make the ultimate decision.

Paula Moseley: Research on previous zoning changes indicated that the Planning Commission held public hearings.

John Kotowski/14 Northwood Drive

He is representing Star Partnership in helping the development to move along. He pointed out that the house to be removed is on the corner of Union and Depot, not Washington, as previously stated. The partnership would like to upgrade the property, improve the bar, expand, and upgrade the apartments above. The non-conforming use has been a limiting factor for any improvements. They are asking for it to all be zoned B-1.

Discussion

Christy Zempter: Has notification of neighboring property owners already taken place?

Rick Sirois: Notification would be done through City Council.

Paula Moseley: Concurred that this is business use and is in one of the city's business corridors. Asked about the condition of the house that they will remove.

John Kotowski: The house is in fair to poor condition. He hasn't been inside the house. The corner of the house is on Depot Street and in the right of way on Depot Street. The removal of the house will clean all that up.

Christy Zempter: Inquired about the other structure on the map, on Depot.

John Kotowski: The other structure is a cooler that will be incorporated into the 2nd floor of the new structure.

Paula Moseley: Asked about the back piece, behind the Smiling Skull, and whether it should it be included in the zoning change.

Rick Sirois: He has not received any calls from the Smiling Skull to be included.

Steve Patterson: The R-3 zoning along this corridor of West Union is a remnant. The district looks disjointed so to move in the direction of making this B-1 is appropriate. Bringing this to council will open up the issue of other properties to be included in the zoning change.

Rick Sirois: This is a positive move for the neighborhood area, to clean it up and straighten up the lines.

Paula Moseley: Asked about the process and whether the Planning Commission should hold a public hearing at their level or if City Council will hold a public hearing at their level.

Paul Logue: Believes that there is no requirement, however, if the Planning Commission deems it appropriate they can order a public hearing and follow the required procedure; advertise 30 days prior and give 20 days' prior notice to property owners by first class mail.

Paula Moseley: Is it a requirement of City Council to hold a public hearing?

Paul Logue: Yes, upon receipt of the recommendation from the Planning Commission.

RJ Sumney: The safety valve will be at council level for the public to speak to the people who will be making the final decision.

Steve Patterson: Is comfortable in moving it forward with a recommendation to City Council.

Nancy Bain: On occasion, sometimes it is helpful to have a public hearing at the Planning Commission level.

Nancy Bain moved to approve Case #16-18, Cat's Den zoning amendment, Steve Patterson seconded. All present voted aye.

4. **Communications**

Case #16-17 2 & 4 Dalton Avenue Major vs. Minor Subdivision

Rick Sirois/Summary

The property is on 2 & 4 Dalton Avenue. Originally the property was designated for condemnation. It was worked out through the owners and interested parties (Mr. Funk and Mr. Croxford) to re-do 4 Dalton; to stabilize the house and clean up the property because of blight concern and security concern for the neighborhood. Those issues have been addressed and now they are at the point where the property is a non-conforming property because it has three accessory buildings and two homes. In order to bring it into conformity a lot split down the middle (minor subdivision) was recommended which would allow 4 Dalton to include a home and one accessory building and 2 Dalton to include a home, one accessory building and a garage. The problem is the width to depth ratio which will require a variance. At the last meeting it was determined that an easement may be required for the existing driveway which would change it to a major subdivision.

Discussion

Paula Moseley: She met with the Law Director to discuss the rules regarding public meetings. It appears that the Planning Commission doesn't have any rules per say; ACC refers to the Ohio Open Meetings Act. The Act states that the Planning Commission is a public body and that the commission needs to establish by rule not only the method to establish regular meetings but also any special meetings.

Regarding 2 & 4 Dalton, a few citizens have contacted the Law Director's office and stated that they did not know about it. At the last meeting the commission imposed a possible easement for the shared driveway, so the question is, is this an access easement that now puts it into the category of a major subdivision. This was not requested by the applicant, but something that was imposed by the Planning Commission.

Nancy Bain: Would like to discuss the Open Meetings Act as a separate agenda item. Regarding 2 & 4 Dalton, she commented that the discussion last time included deed restriction language that it would remain one lot, however, she doesn't see the deed restriction included in the packet today.

Rick Sirois: Mr. Funk related at the last meeting that he would be willing to work on the deed restriction language, however, he told Mr. Funk to hold off on addressing it with his lawyer until he had more information to share with Mr. Funk after today's meeting.

RJ Sumney: Basically just splitting the property into two separate pieces of property and in the deed restriction it was to say that those two pieces were not to be further split.

Paula Moseley: Yes, that deed restriction was fine. It was the imposition of the easement for the shared driveway.

Paul Logue: Definition of a major subdivision, per ACC 21.03.07:

"Outline of conditions for major subdivision. A proposal involving any of the following shall be subject to major subdivision procedures: (A) More than five lots, any one of which is less than five acres, including the original tract. (B) Creation, widening or extension of a street or access easement. (C) Division or allocation of land as a utility or drainage easement".

At the last meeting when the requirement was for an easement of access, that triggered major subdivision regulations, which includes a public hearing at the Planning Commission level and then up to City Council. When the application was strictly for a variance from the width to depth ratio that fell under the minor subdivision regulations which doesn't mandate a public hearing; it only has to go to council with a recommendation. Easement of access issues have come up before. The original application was not asking for an access easement.

Paula Moseley: It was presented as a minor lot split, but through the discussion this easement was imposed by the commission.

Christy Zempter: Is there an alternative for access to the lot? Is the driveway contained on one of the two lots?

Rick Sirois: The driveway would straddle the two properties so they would share the driveway. The driveway goes all the way back to the rear of the property. The tenants can provide an easement or a shared tenant agreement to share the driveway.

Christy Zempter: Is there a restriction on shifting the driveway so that it remains with one of the properties and another point of access could be created for the other property? Are there any situational restrictions?

RJ Sumney: It meets all the set-back requirements and after the split there will be 100' of frontage for each property. There is room to add a driveway to each of the lots on the side.

Christy Zempter: The split properties would be mirror images of each other. Based on the way the Code is written, if the easement is part of the discussion, they can't get around the major subdivision requirements. But if there are ways to change the access points and add a new curb cut you would not need an access easement.

Rick Sirois: They could add 2' of asphalt on each side of the driveway and they would be good.

Steve Patterson: So they would ultimately have to widen their curb cut?

Rick Sirois: If they needed to widen they would have to come back to us for a permit for the curb cuts.

Paula Moseley: They don't have their own separate driveways.

Rick Sirois: No, there is one driveway right down the middle, which is how it was originally. There is some remnant where they used to park vehicles in the front of the building. There is no physical curb there.

RJ Sumney: Have they explored the idea of a separate ingress/egress there?

Rick Sirois: No, they are sticking with the historical design.

Paula Moseley: Their request was for the division, but in our deliberation last time the driveway issue came up.

Paul Logue: If you read ACC 21.02.03:

"Variances, exceptions and waivers of conditions.

(A) Where, due to exceptional topographic or other physical conditions, the planning commission finds that extraordinary and unnecessary hardship may result from strict application of these regulations, or the purpose of these regulations may be served to a greater extent by an alternative proposal, it may recommend to Council the approval of variances, exceptions, and waivers of conditions, provided that they will not be detrimental to the public health, safety, or welfare or injurious to other properties. Such variances shall not have the effect of nullifying the intent and purpose of these regulations, the comprehensive plan, or the Zoning Code, when they exist".

So, the Planning Commission could consider the requirement of making the imposition of a major subdivision as an exception or waiver of the condition in this situation. This could be up for debate.

Nancy Bain: The reason why they have the pathway to the back is to allow a business use for the back buildings. He was proposing to use the back building for tree planting and tree storage, etc.

Paula Moseley: She asked him about that at the last meeting, that it would be deemed a commercial activity, and he stated that if that were the case then he would not use them.

Rick Sirois: These building are large garages that are currently used for storage. Mr. Funk does a lot of tree planting and he would use the garages for storage for vehicles and tree seedlings. Are we governing what residents can put in their garages?

RJ Sumney: Could the owner, Raymond Croxford, use the garages for commercial purpose?

Paul Logue: Based on zoning, no.

Paula Moseley: According to the minutes when she posed that question Mr. Funk replied that he would not use them for a commercial purpose.

Steve Patterson: Can the Planning Commission also recommend alternatives to this?

Paul Logue: Per ACC 21.02.03, *"the purpose of these regulations may be served to a greater extent by an alternative proposal, it may recommend to Council the approval of variances, exceptions, and waivers of conditions, provided that they will not be detrimental to the public health, safety, or welfare or injurious to other properties".*

So as long as you are still acting within your police powers.

Steve Patterson: The issue is the shared driveway. Looking at the plats and the houses, is it possible that they both could have independent driveways? Both to the west? To alleviate a contentious easement in the future, they just truly become two independent parcels with their own driveways.

Rick Sirois: There are large trees there and they are trying stay away from them. They would have to be cut down in order to do this.

RJ Sumney: They have a clear plan on how they want to use the properties. To Nancy Bain's earlier point, the neighbors still saying they are not aware of what is happening. Do we need a special meeting on our level before it goes to council?

Paula Moseley: We already voted and made a recommendation to council.

Nancy Bain: Can we keep it as a simple lot split and require that they provide a driveway for both of them. If they don't want to have individual driveways then they will have to apply for a major subdivision.

Christy Zempter: Is there a requirement for the width of driveway?

Paul Logue: 10 feet.

Christy Zempter: Would it be possible to shift the existing driveway to the west property and add another driveway close to the house on the east property. There is 70 ft. between the two houses. Can two driveway's fit in that space and still meet the requirements.

Paula Moseley: She would ask the engineer to look, but she doesn't want the middle driveway to remain and end up with 3 driveways.

Christy Zempter: It could be managed with the stipulation that each property needs to have a self-contained access and drive.

Rick Sirois: To put a driveway on the other side would result in the garage door being on the wrong side.

Christy Zempter: There is still room to fit a drive on the east side of that property.

Rick Sirois: They could add asphalt to the existing driveway.

Christy Zempter: You would still need to add another driveway on the east side.

Nancy Bain: Can this be stipulated in the recommendation?

Christy Zempter: The stipulation can be as simple as each parcel has to have need so that have a self contained access and they can work it out based on the constraints.

Paula Moseley: Do we make a motion to amend our previous motion?

Christy Zempter: We can make a judgement to waive the major subdivision requirement which is more problematic than adding this stipulation to the recommendation. She would like a formal report from the Law Director if they choose to do that.

RJ Sumney: Is this something they are prepared to do? Can we tell them take it or leave it? Should we communicate with the owners?

Nancy Bain: We only have a lot that is split in two, did we add that pathway down the middle?

Paula Moseley: We added the driveway restriction in our recommendation.

Nancy Bain: Let us just do the split and put the restriction on.

Steve Patterson: My intent was to treat these as two separate parcels with separate houses and separate out buildings.

Paula Moseley: Previously we voted on a recommendation to City Council for a minor subdivision with a variance for depth/width ratio, a variance for a private access easement shared roadway use, and deed restriction on both lots, solely for the use of 2 and 4 Dalton. So, we can modify that to say we recommend a minor subdivision at 2 and 4 Dalton with a self-contained access.

Paul Logue: The self-contained access is a given with any minor subdivision. The owners can write anything they want into the individual leases. Can't drive on someone else's driveway.

Christy Zempter: The language we could use is legally conforming access fully contained within the bounds of each parcel.

Paula Moseley: Is this not necessary?

Christy Zempter: What if the properties get sold, and this never gets recorded? Issues could arise in the future as properties get sold.

RJ Sumney: He agreed that it is the future that they are concerned about and not the current owners.

Steve Patterson: The condition could be that this is fine until in the future when they sell the properties. At that point they have to create separate access points.

Paula Moseley: If we impose the continuous and contiguous language would that bind them?

Paul Logue: It is safe to assume that the long term goal is to sell, so if you are holding continuous and contiguous you are defeating the purpose.

RJ Sumney: Can people that are on the adjoining streets, if given the opportunity, buy into portions of the lots to expand their back yards?

Rick Sirois: Yes, unless they write a stipulation that they can't.

Christy Zempter: A lot split would have to come to them again.

Rick Sirois: Mr. Funk agreed to put into the language that they weren't going to make any further divisions.

Paula Moseley: Ultimately council will vote on the variance to the depth to width.

Nancy Bain: Also, we need to make sure that there is a deed restriction that there is only one dwelling unit on each property, not a four square.

RJ Sumney: This is under communications right now, so it will be better to vote after the owners have an opportunity to come before the commission.

Christy Zempter: Suggested to talk with the owners in the meantime about the possibility of separate access.

Rick Sirois: Mr. Funk has noted that he will be open to the Planning Commission suggestions.

Christy Zempter: Suggested to also look at layout in terms of the landscaping without disturbing trees.

Steve Patterson: There is a gasoline pump house pictured on the original documents.

Rick Sirois: the tank was housed in the building, there was never an underground storage tank.

RJ Sumney moved to table this until a later date. Nancy Bain seconded. All present voted aye.

5. **Report from City Planner and Director of Code Enforcement**

Paul Logue

- Wrapping up closing out the Armory Market Use study grant documentation in order to receive reimbursement.

Rick Sirois

- At the 12/15 meeting there will be a Communication from James Hartmeyer of SBA Communications Corporation. He will present information concerning the application for a wireless facility to be located on the County Fairgrounds. Rick requested confirmation from the commission that they would be present at the 12/15 meeting, as Mr. Hartmeyer has a long drive to Athens. Paula Moseley communicated that she won't be present, but there should be quorum.

6. **Opportunity for Citizens to Speak**

None

7. **Announcements & Other Business**

- Nancy Bain

- The recent issue with Case #16-17 could have been avoided if there had been more time to review the material. If applicants don't submit materials to Code Enforcement in a timely fashion cases should not be included on the agenda. A submission deadline should be imposed for communications and cases to be put on the agenda. People who are interested don't have an opportunity to speak.
 - Steve Patterson: Agreed and noted that RJ Sumney was the only continuous link between the previous two meetings.
 - RJ Sumney: Suggested that in the future, with something of this nature, he will table until the full commission is present to hear the case.
- Inquired about a majority vote, and whether if a full quorum of 5 isn't present (3 or 4) is a majority vote of 3 still required for something to pass.
 - Christy Zempter: Suggested that the Law Director be consulted about what constitutes a majority vote when there is only a quorum of 3; will 2 votes suffice, or is a majority of 3 still required?
 - Paula Moseley: Noted that the Open Meetings Act should have guidance on what constitutes a majority.
 - Christy Zempter: In her experience, 2 people are a quorum of 3, but both people had to support it in order for it to pass. You still have to have the majority of the full body.
 - Paula Moseley: The Planning Commission can establish their own rules regarding majority vote.

- The next meeting of the commission will be December 15, 2016.

8. **Adjournment**

The meeting was adjourned at 1:09 p.m.

RJ Sumney, Planning Commission

Patricia Witmer, City of Athens