

**Planning Commission
Regular Meeting**

Virtual Meeting @ 7:00pm

Tuesday, April 13, 2021

CALL TO ORDER

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

ROLL CALL

Planning Commission members present via zoom were Frank Doden, Chair, Council Liaison Laura Curliss, Sarah Amend and Stephen Green. Alternate Matt Kirk joined the meeting about four minutes after roll call. Also present were Denise Swinger, Zoning Administrator, Village Manger Josue Salmeron and Village Solicitor Breanne Parcels.

REVIEW OF AGENDA

There were no changes made.

REVIEW OF MINUTES

Minutes of March 13, 2021 Regular Meeting. Doden MOVED and Green SECONDED a MOTION TO APPROVE the Minutes as written. The MOTION PASSED 5-0 ON A ROLL CALL VOTE.

COMMUNICATIONS

- Dionne Greenburg re: Objections to Home Occupation Request
- Jeff Robertson re: Objection to TGLs
- Kristin Murray re: Support for Home Occupation Request
- Chris Cain re: Support for Home Occupation Request
- Carrie Evans re: Support for Home Occupation Request
- Melody Kingsley re: Support for Home Occupation Request
- Charlotte Toms re: Support for Home Occupation Request
- Maggie Cooper re: Support for Home Occupation Request
- Heather Livingston re: Support for Home Occupation Request
- Caryn Diamond re: Support for Home Occupation Request
- Mary Jo Richlen re: Support for Home Occupation Request
- Joan Northway re: Objection to TGLs

COUNCIL REPORT

Salmeron reported that he pool will be opened May 29th, with a new rate schedule. He noted a first reading of Transient Guest Lodging legislation requiring a yearly permit. He noted addition of an Affordable Housing Mitigation Fee of \$1,500 in the legislation to be applied to non-operator occupied units.

Salmeron noted that Council had heard a presentation on Reciprocal Taxation, and that this will be follow up upon at a later meeting.

CITIZEN COMMENTS

There were no Citizen Comments.

PUBLIC HEARINGS

1) Conditional Use Application – R-A, Low Density Residential District –Sarah Strong has submitted a conditional use application for a home occupation at 256 Northwood Drive for use as an art studio and small group or one-on-one classes– Chapter 1248 Residential Districts, Ch. 1262.08 Conditional Use - Specific Requirements Greene County Parcel ID #F19000100120009100.

Swinger explained that the home occupation will not entail more than eight client visits per day or 40 per week. During the school year, Ms. Strong anticipates up to 24 students per week and up to 8 students for one weekend per month. Strong anticipates 32 to 40 per week for her Art & Nature Summer Camps, June through August. Classes will be hold in the home and in the backyard of the home.

Swinger stated that traffic would be limited to drop off and pick up, and that parking would take place in front of the home.

Swinger asked that PC consider traffic noise as well as concerns of adjacent land owners. She asked that children not play in the creek area due to an erosion problem.

Green received clarification that the creek is in the Township, but is also in the rear yard of the homeowners.

Parcels stated that the home occupation is considered to be occurring within the Village limits for Village purposes, but that they may wish to ask for permission from the Township.

Amend received clarification that the use is not as a day care, which requires licensure, but as an Art and Nature camp, which does not.

Strong responded to a question regarding pick up and drop off, stating that parents do this.

Strong stated that time outside varies depending upon weather and time of year. She described free time activities that might occur outdoors.

Curliss asked about the statement in the zoning code that no outdoor “storage or activities” are permitted in a home occupation.

Swinger stated that this is something that can be determined by PC.

Curliss asked whether this was discretionary or was in the code.

Parcels responded that this “is in the code,” and that PC can impose the conditions within the code while taking into consideration the factors presented. She stated that if PC determines that the code is too restrictive in this instance, they can impose a condition to address it.

Swinger identified this as section 1262.08 (e) (5).

Curliss argued that the statement “no outdoor storage, activities or displays are permitted” seems categorical to her. She noted that the “no outdoor storage” has been enforced in the past.

Doden pointed out that the same section of the code iterates that the activities are described as “an occupation or profession conducted, as an accessory use in a dwelling or a detached accessory building on the same lot as a principal dwelling,” which supports the notion that there will not be outdoor activity.

Curliss opined that it sounded as if there would be more than 40 visits per week.

Strong did not directly address the concern, but did state that she would normally have eight students daily.

Curliss reiterated her concern regarding outdoor activities.

PC heard from the applicant regarding the nature of the neighborhood, which is typical, and has children living in it.

Strong referenced an “empty buffer lot between the neighbors and my house”. She stated that her clientele would not be uncontrolled or excessively noisy, addressing the concerns raised by those neighbors in their letter.

Strong stated that she has run the program successfully for 10 years but now has new neighbors.

Swinger clarified that the neighbors are not new, but that Strong has just moved into the neighborhood.

Strong responded to a question regarding a permit, stating that she had been previously unaware that she needed a permit.

Doden OPENED THE PUBLIC HEARING.

Dionne Greenberg, the neighbor who has objection to the conditional use, stated that in her initial conversation with Strong she was not given the impression that Strong would keep the children off of her property or control the noise. Regarding the referenced buffer area, she clarified that it is “not an empty lot—it is our yard.”

Greenberg stressed that she did not want children on the property or have to supervise them. She noted money recently invested in shoring up the creek bank, which she was concerned would be dismantled.

Greenberg expressed concern regarding traffic, and complained that Strong had engaged in the practice of parking her vehicle in front of the Greenberg residence so that there was space in front of her residence for pick-up and drop off, but would leave the vehicle there all day.

Greenberg requested that the pick up and drop off stay in front of Strong’s residence. She commented that she would prefer not to have a business next door, but that she was not opposing the use.

In response to a question from Green, Greenberg stated that she had contacted the Zoning Department because she was not convinced that Strong would keep children off of the Greenberg property. She commented that she and her husband have now had a fence installed.

Doden CLOSED THE PUBLIC HEARING.

Strong commented that at no time had she permitted children on the Greenberg property, and that she sees no reason for concern.

Amend MOVED to APPROVE the Home Occupation Permit with the condition that the children stay on Strong's property. Kirk SECONDED.

Swinger asked that the motion be amended to include the condition of inspection by Miami Township Fire Rescue.

The Clerk asked that the language be amended to have the children stay off of the neighboring properties so that they are not limited regarding field trips.

Amend MOVED TO APPROVE with the conditions that the children stay off the neighboring properties; that a fire inspection be conducted by Miami Township Fire Rescue, and that a visitor log be maintained. Kirk SECONDED.

Curliss MOVED TO ADD THE CONDITIONS that drop off and pick up take place only in front of 256 Northwood and that Strong comply with any state or county licensure. Green SECONDED. The MOTION PASSED 5-0.

Salmeron interjected that the street is public right of way.

Parcels stated that PC has the latitude to impose the condition, but noted that it would be very difficult to enforce.

The Clerk read in the amended motion as follows: APPROVE with the conditions that the day camp participants stay off the neighboring properties; that a fire inspection be conducted by Miami Township Fire Rescue, and that a visitor log be maintained; that drop off and pick up take place only in front of 256 Northwood and that Strong comply with any state or county licensure.

Doden CALLED THE VOTE ON THE AMENDED MOTION TO APPROVE. The MOTION PASSED 5-0 ON A ROLLCALL VOTE.

2) Conditional Use Application and Site Plan Review – B-2, General Business District – 1435 Xenia Avenue - Bill Cacciolfi has submitted a conditional use and site plan review for a mixed use with primary use of automotive sales and shows and accessory uses of kayak rental service, mobile food vending, and sales of nonalcoholic beverages per Yellow Springs Zoning Ordinance Table 1250.02 Schedule of Uses - Business Districts, Table 1258.01 Schedule of Uses by District, Chapter 1262 Conditional Use Requirements, and Chapter 1268 Site Plan Review.

Swinger explained that the property is located in the B-2, General Business District, which “accommodates general retail and/or auto-dependent businesses.

The property, Swinger noted, was historically a source of nuisance complaints. In 2005, a prior owner was convicted of operating a junk yard in Xenia Municipal Court, but non-compliance continued. In 2016, the Police Department inventoried thirty-seven vehicles, including trailers, tractors, campers, etc. The prior owner removed many of the vehicles, but everything inside the fence remained. Cacciolfi has cleared the property of these vehicles, and plans to re-blacktop the area and stripe the front parking area.

Mr. Cacciolfi intends to sell cars, hold classic car “cruise in” shows, and occasional special event fundraisers, and serve as a point of pick up for kayak tour groups. He plans to sell soft drinks and coffee from the building, and have mobile vending for use by customers.. He plans to sell soft drinks and coffee from the building, and have mobile vending for use by customers.

Although this will be a new business venture, Mr. Cacciolfi, a Yellow Springs resident, is also the owner of New World Expeditions, a travel company providing adventure tours to Zimbabwe and South Africa.

There were no comments submitted from neighbors.

Amend asked whether there were any environmental concerns.

Salmeron stated that the property was identified as a key risk to groundwater. He lauded Cacciolfi for being proactive in cleaning up the area and having an underground gas tank properly removed.

In response to a question from Doden, Swinger stated that any overflow parking could be directed to the rear, and stated that it was difficult to calculate the parking requirements due to the variety of uses.

Cacciolfi addressed a question from Kirk, stating that he would not be operating a used car lot as such, but would be permitting friends to sell muscle cars periodically. He stated that he would hold car shows and “sell a few cars” and that the proceeds from these car shows would be donated to charitable organizations. He commented that the sales are rapid, and that he might “test the waters” with camper sales as well.

Cacciolfi commented that all parking will be transient, since kayaking trips meet at the kayaking location. He stated that there are about 30 available parking spaces in the area he plans to re-blacktop. He stated that he will be in “complete compliance” with the regulations dictated by the Zoning Administrator.

Cacciolfi stated that for car shows, he will open the back lot for parking. He commented that he is installing lighting on the property and is activating the streetlight. All lighting will be directed downward, he stressed.

Lots will be filled during an event, he clarified.

Curliss asked whether the storage containers have to meet setback requirements.

Cacciolfi stated that he will be placing a fence around the property on the property line, so that the containers will be inside the fence.

Swinger clarified that the containers abut the alley, and that there are no setback requirements for an alley abutment.

Cacciolfi stated that he will clearly mark the sidewalk when he has the parking lot striped. He noted that the drain grid at the corner needs to be addressed.

Cacciolfi responded to a question from Amend, stating that the fence he plans to put in will be a privacy fence.

Parcels asked whether Cacciolfi will be obtaining a license for car sales.

Cacciolfi stated that if he needs a license to sell 3-4 campers at a time he will obtain one.

Carol Cottom expressed concern regarding the site lines from the stop sign at the corner looking south from Brookside.

Doden CLOSED THE PUBLIC HEARING after conclusion of comments.

Cacciolfi stated that he will follow all setback and striping requirements.

Kirk followed up on the auto dealer’s license issue, asking how Cacciolfi is in business as an auto dealer, and whether PC is approving a use that is not actually taking place.

Cacciolfi stated that he does not charge for his friends to sell their cars at his location, but that he does intend to try to sell campers.

Kirk asked whether it should be required that Cacciolfi obtain a dealer’s license if PC is to approve that use.

Parcels responded that yes, that made sense, and that the cutoff was five vehicles—once five vehicles are sold, the person is considered a dealer and must be licensed.

Cacciolfi asked whether if others sell their cars from his lot during a car show, must still have to have a dealer’s license?

Parcels advised that Cacciolfi obtain his own legal counsel on the matter.

Curliss MOVED TO APPROVE the conditional use for automotive sales and shows, a mobile food truck, a kayak rental service and retail sales of non-alcoholic beverages. As a condition of approval, Curliss asked that Cacciolfi have a parking site plan approved by staff that includes no parking in the ROW and sufficient setback

for sight lines. She added conditions that the County Engineer visit the site and suggest a setback; that there be a 90 degree cutoff of all lighting; that all county and state licensure requirements for food and beverage and auto sales are complied with. Doden SECONDED.

Swinger questioned the addition of the County Engineer.

Amend asked whether the Village was not capable of determining the sight lines.

Curliss stated that the parking plan should include a sign-off from the County Engineer.

Salmeron commented that this responsibility should be taken on by Village staff.

Amend agreed.

Curliss WITHDREW THE MOTION.

Doden MOVED to APPROVE the conditional use for automotive sales and shows, a mobile food truck, a kayak rental service and retail sales of non-alcoholic beverages, with the following conditions: a parking site plan approved by staff that includes no parking in the ROW and sufficient setback for sight lines; that there be a 90 degree cutoff of all lighting; that all county and state licensure requirements for food and beverage and auto sales are complied with. Curliss SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

The Village of Yellow Springs seeks Planning Commission recommendations for amendments to the Zoning Code:

3) Chapter 1262.08(e)(7) Conditional Use – Specific Requirements – Transient Guest Lodgings. Planning Commission may also discuss related Chapter 882 sections pertaining to Lodging Excise Tax in making such recommendations, pursuant to the Village of Yellow Springs Charter.

Salmeron introduced the topic, stating that Council is now contemplating legislation addressing taxation of TGLs in an effort to limit their scope.

Swinger related the history of TGL legislation and the effect of this on their growth or lack thereof.

The solicitor has incorporated some of the concerns expressed by Council by prospective changes to Chapter 882 with respect to the lodging excise tax. If Planning Commission agrees to recommend additional restrictions in the zoning code, such as a cap on the total number of TGLs in the Village, a cap on the number of investor-owned establishments (as suggested), or a cap on the total number of days TGLs can be rented, such recommendations should be based upon established Village regulations and data sources, such as the Zoning Code, Comprehensive Land Use Plan and the Bowen Housing Study of 2018, rather than speculation. If Planning Commission desires to consider any given TGL's impact on affordable housing, it may distinguish between operator-occupied establishments and others based on the Bowen study, along with other factors.

Swinger noted that the proposed legislation also requires that the applicant go through a vetting process with the Finance Director, to assure that they are in good standing from a utilities perspective.

Swinger noted that it is not legally defensible to enact a ban, but a cap could be placed upon TGL's based upon factors present in the code.

Green asked what the goal of the legislation is, and was informed that it is to limit non-operator occupied TGLs.

Parcels affirmed that the text amendment proposed restricts operators to one TGL per operator. Current operators of multiple TGLs would be grandfathered-in.

Swinger pointed out that the Affordable Housing aspect of the legislation gives PC another potential tool to use in considering the use.

Parcels stated that the current percentage of total TGLs is that 27% of the total number of TGLs are non-operator occupied. If a cap of 30% is placed, this effectively caps non-operator occupied TGLs until or unless there are more owner occupied TGLs permitted, shifting the percentage downward.

Parcels addressed a suggestion that the total number of non-operator occupied TGLs be limited as a percentage of total housing stock, stating that she would be hesitant since the census data is 10 years old, and tracking total available units in the village might prove laborious. She noted that the Village will be able to track the number of total TGLs since permits will have to be renewed annually, per the suggested amendments to Chapter 882.

Swinger commented that she is not sure whether a wait list would be started, or how that would be handled.

Parcels explained the changes to Chapter 882, including the requirement of background checks to discourage human trafficking as well as the certificate of good standing to address other potential issues for non-operator occupied TGLs.

In response to a question from Swinger, Parcels explained that PC would have grounds to deny a TGL request based upon significant neighbor objection based upon prior incidents at that location or upon concerns specific to that neighborhood that could be impacted by the TGL.

Amend asked whether TGLs could be limited in areas near schools. This was discussed as a possible PC recommendation.

Amend asked about the feasibility of imposing a cap.

The legal difficulty of imposing a cap was discussed, as were other approaches to limiting TGLs in other communities.

Doden suggested that the language be approved with the caveat that additional suggestions could be made at a later point.

Doden OPENED THE PUBLIC HEARING.

Carol Cottom received answers to her questions regarding the definition of operator-occupied. She suggested a high tax on non-operator occupied TGLs to discourage these establishments.

Green informed her that this was the purpose of the ordinance now before Council.

Hearing no further comment, Doden CLOSED THE PUBLIC HEARING.

Doden MOVED to pass on the recommendations for text amendments listed in Exhibit A to Council for their approval. Green SECONDED.

The Clerk asked whether Curliss has recused. Curliss affirmed that she did not participate in the discussion and is recusing under objection, as the holder of a permit for a short term rental for a non-functioning building. Curliss stated that because she has been told to recuse by the solicitor, she will recuse.

Kreeger stated that she had joined the meeting and was standing in for Curliss.

The Clerk received Matt Kirk's recusal.

The Clerk CALLED THE ROLL, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

OLD BUSINESS

There was no Old Business.

NEW BUSINESS

AGENDA PLANNING

Transient Guest Lodging Text Amendments; Conditional Use Hearings for: Cresco Expansion for Medical Marijuana Production; Proposed Comedy Club; Home Occupation; Union Schoolhouse; Residence with Agra-Business in E-I.

PC agreed to meet at 6pm on May 11th due to the potentially heavy hearings schedule. They agreed to an extra meeting on May 24th if one is needed.

ADJOURNMENT

At 9:25pm, Doden MOVED and Curliss SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 ON A ROLL CALL 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.