

**MONTGOMERY COUNTY PLANNING COMMISSION
COUNTY ADMINISTRATION BUILDING
451 WEST THIRD STREET
DAYTON, OHIO 45422-1350**

**MINUTES
MARCH REGULAR MEETING**

March 8, 2018

The Third Regular Meeting of the Montgomery County Planning Commission was held Thursday, March 8, 2018, at 8:45 a.m. in the Tenth Floor Hearing Room, County Administration Building, 451 West Third Street, Dayton, Ohio.

MEMBERS PRESENT: *Sheila Crane* *Richard Holmes*
 Michael Cromartie *William Uhl, II*
 Carl Daugherty *James Zengel*

Dan Foley

OTHERS PRESENT: *Gwen Eberly, Planning Staff*
 Larry Weissman, Planning Staff
 Angela Swartz, Planning Staff
 Bert Kelsey, County Engineer's Office
 Charles Schaffer, County Environmental Services Dept.
 David Swanson, County Environmental Services Dept.
 Alex Hale, County Prosecutors Office
 Mark Stuart, County Engineer's Office
 Ryan Lee, Washington Township
 John Davies, Washington Township
 David F. Helmers, Architects Asscoication

MINUTES:

On a motion by Mr. Daugherty, and seconded by Mr. Cromartie, it was moved to approve the minutes from the Regular Meeting held Thursday, February 8, 2018.

On a call of roll: Ms. Crane, aye; Mr. Cromartie, aye; Mr. Daugherty, aye; Mr. Dan Foley, aye; Mr. Holmes, aye; Mr. Zengel, aye; Mr. Uhl, abstained Motion carried.

ZONING:

ZC 427-18 – Miami Township

Mr. Weissman stated the Zoning Commission has initiated this text amendment case in order to update current zoning regulations governing the granting of variances. The amendments would eliminate use variances, and would establish specific and detailed standards for the review of applications and site plans.

Mr. Weissman reviewed the summary of the details of the amendment as follows:

- Prohibit the granting of use variances
- Allow the granting of height or area variances where practical difficulty in meeting zoning standards exists.
- Add a requirement that the Board of Zoning Appeals find that the following factors support the request:

Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Whether the variance is substantial;

Whether the essential character of the neighborhood would be substantially altered or whether adjoining property owners would suffer a substantial detriment as a result of the variance;

Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

Whether the property owner purchased the property with knowledge of the zoning restrictions

Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

- Prohibit the granting of variances to established standards of Planned Developments.
- Add provisions for one alternate member of the Board of Zoning Appeals.
- Add a provision requiring that a variance be utilized within three months after its granting if the subject structure is removed subsequent to the granting of the variance.
- Add a requirement for a site plan that includes specific elements.

Mr. Weissman explained that Under the current provisions of the Township Zoning Resolution, the Board of Zoning Appeals may consider and grant variances from zoning standards. The current language implies that “area” and “use” variances may be so requested. Township staff indicates that use variance requests are extremely rare.

Use variances can allow the establishment of a land use that is contrary to the presiding zoning district. They are granted to remedy an undue and substantial hardship in meeting the restrictions on land use at a particular location within a zoning district. An area variance can remedy a practical difficulty in meeting a height, overhang, bulk or other development standard. Area variances do not tend to alter or impact the existing pattern of land use.

The granting of use variances is, in general, a rare occurrence compared to area variances. Use variances are problematic because they deal with land uses that are not allowed or anticipated within a zoning district, and if granted, can result in the juxtaposition of dissimilar land uses. Additionally, the decision making process for granting use variances has been complicated by frequent litigation over the burden of proof necessary to show unnecessary hardship in meeting the zoning requirements. In contrast, several other mechanisms, such as re-zonings, conditional uses and planned developments, are available to regulate the establishment of new land uses in a planned and predictable manner.

However, Planning Commission legal counsel advises that there is legal precedent (North Fork Properties v. Bath Township, Ohio Ct. App. 9th Dist. Summit County 2004)) which does not support the prohibition of the granting of use variances by the Board of Zoning Appeal.

A dilemma is thereby created for the Township, in that the administrative history of use variances is murky, and use variances are rare occurrences; but a zoning regulation expressly barring the granting of use variances appears to be in conflict with the authority granted to township Boards of Zoning Appeals by the Ohio Revised Code. Alternately, the Ohio Revised Code does not mandate the granting of variances, but merely extends to the Board of Zoning Appeals the authority to grant variances to remedy unnecessary hardship (case law seems to support the use variances to address practical difficulty as well).

In sum, although neither use variances or area variances are mandated by the Ohio Revised Code, the Township may establish rules for the review and approval or denial of variance requests. However, the Township appears to be precluded from prohibiting the Board of Zoning Appeals to grant use variances. Nonetheless, staff anticipates that use variance cases would remain rare. Moreover, the zoning process (rezoning, conditional use, planned development) offers other means of addressing the need to establish new land uses that are not allowed within an existing district.

Therefore, staff suggests that the Township not adopt a regulation that bars the Board of Zoning Appeals from granting use variances. The proposed text contains sufficient standards and detail to provide a fair and efficient means of responding to variance requests in general, notably a standard that appears to require the use of other lawful means to address the stated hardship or difficulty. This would seem to minimize the likelihood of a use variance emerging as the only available means of addressing the difficulty.

Other than the issue presented by the barring of use variances, staff finds no major issues to be associated with the amendment. The proposed standards are consistent with the most recent case law on the matter. While the authorizing statute mentions only unnecessary hardship as a justifying factor in the granting of a variance by a township Board of Zoning Appeals, case law has established a set of standards which are reflected in the proposed text amendment. Except for the proposed bar on the granting of use variances, the adoption of the standards and the proposed procedures will add predictability and align the process with the most recent case law on variances. The inclusion of use variance requests in the proposed amendment would not compromise the integrity of the variance process.

Staff recommends approval of the proposed amendments, but strongly urges the Zoning Commission to reconsider the proposed language barring the Board of Zoning Appeals from granting use variances.

On a motion by Mr. Foley and seconded by Mr. Daugherty, it was moved to recommend approval of Zoning Case ZC 427-18 for Miami Township as recommended by the Planning Staff.

All approved; Motion carried.

ZC 428-18 – Miami Township

Mr. Weissman stated The Zoning Commission has initiated this zoning text amendment case in order to codify circumstances under which telecommunications towers may be constructed as a permitted use in residential zoning districts situated within the Township. The new regulations will not affect any statutory exemptions from zoning.

The amendment will replace all of existing language of Article 51 Telecommunications Towers.

Currently, such towers are allowed only as conditional uses within residential districts, and are considered to be exempt from zoning when located in non residential districts (pursuant to statute). The amendment would allow telecommunication towers in residential districts in the following manner:

- On Township owned land
- On existing telecommunication towers (with the added tower not to exceed 20% of the existing tower's height)
- On other lawful non residential tall structures with the top of the added tower not exceeding 50 feet, and a minimum distance of 100 feet from the property line. Variances from these standards could be requested, pursuant to the appropriate processes for such requests.
- All of the above provisions are subject to an overriding provision requiring approval as a Conditional Use if objections to the installation are received by the Trustees from nearby property owners, or from any of the Trustees.

The amendment also contains standard guidelines for Conditional Use approval. The conditional use standards are similar to those now found within the zoning resolution, but are intended to be used only in those cases in which objections have been filed, or in the case of a successful legal challenge to the text amendment, after its adoption by the Township.

By providing for the placement of the towers in residential districts, the amendment addresses the growing need for the installation of antennae and supporting equipment to serve wireless personal communication systems. These systems utilize an array of relatively compact transponders which require proximity to each other. Planning literature indicates that the operation of these systems will require a ubiquitous distribution of the equipment that is the subject of the amendment.

The amendment presents a logical and reasonable approach to the regulation of new telecommunication towers, which may become necessary within residential districts. The amendment would allow the towers on certain publicly owned land, and on tall buildings not used for residences, thereby minimizing impacts upon residential land uses.

Staff recommends the approval of the requested text amendment.

On a motion by Mr. Daugherty and seconded by Ms. Crane, it was moved to recommend approval of Zoning Case ZC 428-18 for Miami Township as recommended by the Planning Staff.

All approved; Motion carried.

Z - 721 – Washington Township

Mr. Weissman stated the Trustees have indicated that there is a need to modify the definitions section of the Township Zoning Resolution to better regulate the provision of professional massage services by relying on State licensing practices for massage therapists.

To that end, the following definitions will be added the Zoning Resolution:

- Licensed Massage Therapist
- Non Licensed Massage Establishment
- Therapeutic Massage Establishment

In addition, the existing definition of Personal Services will be amended to include therapeutic massage establishments.

The intent of these changes is to allow the operation of licensed massage establishments under the provisions of the Zoning Resolution that regulate personal services. For example, if the operation of personal services establishments is allowed within a particular zoning district, a licensed massage establishment would be allowed as a personal service establishment within that zoning district.

The licensing of massage therapists is administered by the State of Ohio Medical Board. Although the licensing of massage practitioners is not mandated by the State of Ohio, the licensing system does provide a means to assure that practitioners have been well trained and do not have criminal backgrounds.

The proposed amendments would foster the provision of medically based massage therapy, and leave in place an alternative for highly regulated non therapeutic massage establishments within Adult Use Districts.

Staff recommends approval of the proposed amendments.

On a motion by Mr. Uhl and seconded by Mr. Cromartie, it was moved to recommend approval of Zoning Case Z - 721 for Washington Township as recommended by the Planning Staff.

All approved; Motion carried.

Z - 722 – Washington Township

Mr. Weissman stated the applicant seeks the rezoning a 6.57 acre site from its current zoning of PD O2 Planned Development Office and I -1 Light Industry to PD-O2 for the construction and operation of a hospice center, comprising two main buildings, parking, landscaping and a circulation design. The site contains a vacant office building, and is located to the north east of the intersection of Congress Park Drive and Paragon Road. Access will be from Congress Park Drive.

The applicant wishes to expand a use which could be approved under PD-O2 zoning to the entirety of the 6.578 acre property. However, the proposed hospice use can be established within a PD-O2 District, but not under the I-1 District that covers the southern portion of the property.

The site is surrounded by commercial and light industrial uses. The zoning to the south is I-1 Light Industry, Planned Development Business to the west, and Planned Development Office to the west. Interstate 675 is to the north. The Long Range Land Use Plan designation for the property is Office.

The applicant wishes to expand a use which could be approved under PD-O2 zoning to the entirety of the 6.578 acre property. However, the proposed hospice use can be established within a PD-O2 District, but not under the I-1 District that covers the southern portion of the property.

The applicant has submitted a site plan showing two story construction for each of the buildings, parking and circulation lay outs and extensive landscaping.

The site plan shows that the main buildings will be buffered by distance and landscaping from adjoining land uses. The plan also shows artistic renderings of the facades and elevations of the two buildings. The site will be readily accessible from a fully improved public street.

The proposed use is fairly intensive and will utilize hybrid style of multi family residential and commercial development to serve terminally ill persons and their families. The surrounding pattern of commercial and light industrial seems to be compatible with the proposed campus development.

The existing zoning predated the acquisition of the property by the owner/applicant. However, the configuration of the zoning leaves no direct access to any PD O2 uses within the north half of the subject property. The necessary access from Congress Park Drive is only available through the portion of the site that is zoned for Light Industry, to the exclusion of the proposed hospice development, thus compromising the comprehensive development of the entire 6.578 acre site owned by the applicant.

The current “split” zoning of the site, which may have provided a benefit at one time, seems to be in conflict with the comprehensive development of the site for a land use that may of benefit to the community and region.

While the County Planning Commission will offer a recommendation on the overall concept of the requested zoning, a detailed traffic and drainage review will be conducted by the Township prior to final action by the Trustees. The precise location and dimensions of driveways, parking spaces and landscaping will be determined by the Final Development Plan approved by the Trustees, as will the building materials and architectural finishes.

Subject to the outcome of those reviews, the requested PD-O2 Zoning District appears to be a reasonable request that will not conflict with the surrounding pattern of land use.

Staff recommends approval of the requested PD-O@ Office District.

On a motion by Mr. Holmes and seconded by Ms. Crane, it was moved to recommend approval of Zoning Case Z - 722 for Washington Township as recommended by the Planning Staff.

All approved; Motion carried.

REPLATS:

3EUC, LLC – Washington Township

Mr. Weissman stated this is a Record Plan for a replat of two commercial lots on a total 2.793 acres of land, located northwest of the intersection of Paragon Road and SR 725, in Washington Township. The plat will establish ingress and egress easements to serve both lots, one of which has been developed for retail commercial use. The easements will allow there to be shared access from Paragon Road for the users of each lot. Other than the new easements, there will be no changes in the configuration of the current lots. This replat does not necessitate any new public improvements.

Staff recommends approval of the Record Plan.

On a motion by Mr. Daugherty and seconded by Mr. Cromartie, it was moved to recommend approval of the replat for 3EUC, LLC in Washington Township as recommended by the Planning Staff.

All approved; Motion carried.

Meeting was adjourned as there was no further business to come before the Planning Commission.



Erik Collins
Executive Director



Douglas Harnish
Chairman

Date Approved: 4/12/18