

SOLON PLANNING & ZONING COMMISSION
September 15, 2020 – 7:15 P.M.

The Planning Commission met at City Hall on the above date.*

Present*: Commission Members Greenspan, Mazur, Newberry, Councilman Bentley, Mayor Kraus, Assistant Law Director Stolarsky, Planning Director Frankland, Secretary Letourneau

Absent: None

Also Present*: Support Service Analyst Walker, Assistant City Engineer Lyndon, Inspector Eisenhuth

*Due to the COVID-19 health crisis all those present appeared via video connection.

NOTES OF CAUCUS DISCUSSION:

(Secretary's note: Agenda items not mentioned under Notes of Caucus Discussion are items that were not pertinently discussed during Caucus.)

Councilman Bentley presided.

Due to the COVID-19 health emergency, the general public was not permitted to attend, however, were invited to phone-in to provide comments.

NEW:

2. 35900 Sedge Circle – Dale & Lanny Getz - accessory pavement area variance: Councilman Bentley said no objections were received from abutting property owners.

COUNCIL REFERRAL:

4. Proposed amendment to Section 1288.04(3)(d) entitled "Non-Commercial Opinion Signs" of the Zoning Code: Councilman Bentley said discussion is necessary to determine if the ordinance is enforceable.

Mr. Newberry asked Mr. Stolarsky to discuss during the meeting how this item was brought to the Commission's attention.

Mr. Stolarsky said the Law Department will review the issue and said consideration might be given to contact outside expertise in constitutional law. He said the City's goals are to avoid future litigation and to balance the people's constitutional rights with the City's enforcement for the health, safety and welfare of the City.

Mr. Newberry questioned what litigation has occurred since 2017 when the ordinance was amended and suggested that the Garfield Heights case be discussed.

Mr. Frankland clarified the Garfield Heights case, as well as two other prior cases, occurred before the 2017 code amendment and were considered at that time.

Councilman Bentley said a public hearing will need to be scheduled for Thornbury Homeowners Association for a lot split.

The caucus ended at 7:27 P.M. and the meeting began at 7:30 P.M.

CHANGES TO THE AGENDA:

There were no changes to the agenda, however, Councilman Bentley said Items 1 and 3 have been withdrawn at the request of the applicants.

COMMENTS FROM THE AUDIENCE REGARDING AGENDA ITEMS:

There were no comments regarding agenda items.

MINUTES:

Motion by Mr. Mazur, seconded by Mr. Newberry to approve the minutes of the August 25, 2020 meeting as presented.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None Motion Carried

NEW:

1. 35515 Bainbridge Road – Harlan & Jayne Klein 046-2020 4
▪ 72 sq ft accessory structure area variance

Motion by Mr. Newberry, seconded by Mr. Greenspan to accept the withdrawal of Item 1 at the request of the applicant.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None Motion Carried

2. 35900 Sedge Circle – Dale & Lanny Getz 047-2020 6
▪ 1,142 sq ft accessory pavement area variance

Mr. Rob Lasko, RL & ML Properties & Construction LLC, was present representing the applicant. Mr. Lasko explained the proposal to expand the existing patio pavement.

Exhibit C was displayed and Mr. Lasko indicated the location for the new pavement shaded in red. Mr. Lasko noted pavement will be added to the existing patio.

For clarification, Mr. Frankland further explained the existing pavement shaded in blue was never permitted and is included in the amount of the variance. He said when the new pavement is constructed, it will connect to the existing patio shaded in green and the existing driveway. He said as greenspace will be removed and vehicles could be parked on the new pavement, it is considered accessory

pavement. Therefore, the accessory pavement variance request is for 1,142 square feet.

Mr. Lasko said he was unsure when the pavement shaded in blue was installed.

Motion by Mr. Newberry, seconded by Mr. Greenspan to approve a 1,142 sq ft accessory pavement area variance.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

COUNCIL REFERRALS:

3. From Daniel Mayer, Brokerage Services/Healthcare to rezone Permanent Parcel numbers 954-30-017, 954-30-018 and 954-30-019 on Aurora Road from the R-1-C "Single Family Residential" Zoning District to the O-1 "General Office" Zoning District

Councilman Bentley said the applicant requested this item be withdrawn due to issues regarding the purchase of property.

Motion by Mr. Greenspan, seconded by Mr. Mazur to accept the applicant's withdrawal of a rezoning request for Permanent Parcel numbers 954-30-017, 954-30-018 and 954-30-019.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

4. Proposed amendment to Section 1288.04(3)(d) entitled "Non-Commercial Opinion Signs" of the Zoning Code

Councilman Bentley said this item referred by the Council is regarding political yard signs and the enforcement involved. He encouraged everyone to review Section 1288.04(3)(d) of the Zoning Code, pages 214 and 215 of the document, which is available on the City website.

Councilman Bentley advised there has been litigation in other cities regarding freedom of speech in which a municipality enforced sign laws but judgment was against the municipality. Councilman Bentley said the question is whether to remove the language regarding enforcement completely, to maintain the language or to modify the language to allow enforcement for issues such as signs in right-of-way. He said the Law Department will review recent court cases.

Mr. Newberry said this section of the code was reviewed and amended in 2017. He questioned why it is necessary to change this section of the code if there have been no new court cases to justify changes. He does not believe it is necessary to change the code without further information.

Mr. Stolarsky said there has been litigation in lower courts that the Law Department will review.

Mr. Newberry would like further information regarding cases after 2017.

Mayor Kraus recalled in 2017 the options presented by Mr. Frankland were 1) to continue to enforce all aspects of the Code, which was not supported by Council; 2) to enforce the aspects of the Code that would be least likely to face legal challenges, which he and the majority of Council supported from a health, safety and welfare aspect; or 3) to suspend all enforcement. Mayor Kraus said of concern to him is the placement of non-commercial opinion signs 30 days before an election and how the court's opinion has possibly changed since 2017. He discussed health, safety and welfare issues such as signs in the right-of-way, the size of a sign or site distance. He is concerned that the 30-day requirement could be challenged in court based on freedom of speech and would not be comfortable enforcing this requirement.

Mr. Mazur agreed and said because of early voting, the 30-day requirement may now be outdated. He said, however, the balance of the language is practical. He agrees that a timeline should be provided by the legal department regarding litigation since 2017.

It was questioned if legal filings have been received recently regarding non-commercial opinion signs and Councilman Bentley advised he has received resident concerns. Mr. Newberry asked if there have been any legal filings since 2017. Mr. Stolarsky said legal action is the result of an order to comply with the code which would be done by sending notices to individuals to comply with the code.

Mr. Newberry believes the code should not be changed based on speculation from others of what may happen. He believes if regulations of the 2017 amendment have not been changed, it is not imminent to amend the code. He looks forward to the Law Department's response to what has transpired during the last three years that would give cause to change the code.

Mr. Mazur said the next election to change the code is not until May of 2021 so there is ample review time.

Mr. Stolarsky explained the importance of opinion sign content and said a standing election may be not be the issue.

Councilman Bentley asked Mr. Newberry's opinion of having an ordinance that may not be enforceable. Mr. Newberry was unsure that the ordinance is unenforceable and has not seen any facts supporting that it is unenforceable.

Mr. Frankland summarized the basic legal issue is the Supreme Court determined that content-based restrictions are unconstitutional, but later added unless the government demonstrates compelling government interest in regulating the issues. He said political signs cannot be treated differently than commercial signs without compelling government interest. In 2017, the City reviewed each reason as a compelling government interest. He agrees with the Mayor that the 30-day requirement may be the weakest requirement and difficult to justify.

Mr. Newberry agreed and believes if there are court decisions rendered in regard to language in the ordinance, maybe it should be amended.

Mayor Kraus said he has not found a compelling government interest in the 30-day provision.

Mr. Newberry believes the danger of litigation does not justify changing the ordinance.

Mr. Mazur suggested the Commission continue the discussion after the Law Department provides further information.

In response to Mr. Greenspan's question regarding concerns received from residents, Councilman Bentley recalled one complaint was for a sign erected year-round.

Mr. Frankland said one non-commercial sign at eight square feet, year-round is permissible in the code and during an election cycle, thirty days prior is permitted with one sign per issue. He said the courts have supported deadlines for removal of time-based political signs in the past.

Motion by Mr. Newberry, seconded by Mr. Greenspan to table this item and refer it to the Law Department for further review.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

Motion by Councilman Bentley, seconded by Mr. Newberry to schedule a public hearing for a lot split for Permanent Parcel numbers 955-20-022 and 955-20-052 for Thornbury Homeowners Association.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

COMMENTS FROM THE AUDIENCE:

There were no phone-in comments.

COMMENTS FROM THE COMMISSION:

Mr. Newberry wished everyone a happy New Year to those who celebrate Rosh Hashanah.

Councilman Bentley asked everyone to be patient with remote learning in the schools.

Mayor Kraus wished everyone a happy and healthy New Year to those who celebrate Rosh Hashanah.

Mayor Kraus looks forward to the Solon Comets' football season.

Motion by Mr. Mazur, seconded by Mr. Newberry to adjourn the meeting at
8:04 P.M.

Roll Call: Aye: Bentley, Greenspan, Kraus, Mazur, Newberry
Nay: None

Motion Carried

Chairman

Secretary