

PLANNING COMMISSION MEETING

August 8, 2013

The Planning Commission convened in Courtroom No. 1 at Painesville City Hall for their regularly scheduled meeting. Chairman Fitzgerald called the meeting to order at 7:30 PM. He asked the secretary to call the roll. Members in attendance were, Ms. Carol Fleck, Mr. David Komjati, Ms. Christine Shoop, and Chairman Thomas Fitzgerald. Mr. Mark Wainwright was absent. Also present were, City Manager Anthony Carson Jr., Assistant City Manager/Community Development Director Douglas Lewis, City Planner Russ Schaedlich, Assistant Law Director James Lyons, and Secretary Lynn White.

MINUTES:

Chairman Fitzgerald asked for additions or corrections for the Planning Commission Meeting of July 11, 2013. There being no comments, Chairman Fitzgerald asked for a motion. Motion by Ms. Shoop, seconded by Ms. Fleck to approve the minutes for the Planning Commission Meeting of July 11, 2013 as written. On roll call, Ms. Fleck, Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald, answered "aye". Motion carried.

Chairman Fitzgerald indicated there was no New Business. He moved onto the Administrative Report.

ADMINISTRATIVE REPORT:

Request for Office Use – 180 Main Street – Soto's Insurance Agency – B-3 Central Business District.

Chairman Fitzgerald requested comments from the City. Mr. Russ Schaedlich indicated the proposal is to have a small insurance office at the rear of the first floor of the building located at 180 Main Street. The proposed office will occupy approximately ten percent (10%) of the first floor. The remaining ninety percent (90%) of the first floor will be used for a general merchandise retail operation with which the application will also be involved. Mr. Schaedlich stated that Staff recommends approval with the condition of a restriction on the insurance office space expanding beyond its proposed square footage of approximately 10% of the first floor square footage per plans submitted to the Painesville City Building Department.

Chairman Fitzgerald asked if members of the Commission had any questions for the applicant. Mr. Komjati inquired about the retail portion of the building. Ms. Soto stated they have not finalized anything yet. They are still working on what type of retail would be best. Mr. Komjati asked where the patrons of the Insurance Agency would enter the building. Ms. Soto replied the rear entrance would be used for the Insurance Agency.

Chairman Fitzgerald asked about signage for the Agency. Ms. Soto responded there would be signage on the entrance door. The signage on the front of the building will be for the retail operation only.

Ms. Fleck asked about parking. Ms. Soto indicated there are parking spaces in the rear of the building. There is on-street parking spaces in front of the building will be used for the retail. The retail use would be utilizing those spaces. Mr. Schaedlich explained that there is a public parking lot in the rear of the Main Street businesses.

Mr. Komjati asked the applicant if they anticipate the insurance business to grow where they will need more space. Ms. Soto replied no.

Ms. Shoop inquired what type of insurance would be handled through the agency. Ms. Soto indicated it would be property insurance only.

There was discussion regarding the renovations on the first floor. There were questions about how long it would take for completion. Ms. Soto indicated they were hoping to be done by the end of the year. The interior is being painted currently.

Ms. Shoop asked if this was a new business for the applicant. Ms. Soto replied that she is moving the insurance agency from Railroad Street to this location.

Chairman Fitzgerald asked if there were any other questions. There being none, he asked for a motion. Motion by Mr. Komjati, seconded by Ms. Shoop to allow the Office Use at 180 Main Street for Soto's Insurance Agency with the stipulation that 1) restriction on the insurance office space expanding

beyond its proposed square footage - that being approximately 10% of the first floor square footage and; 2) that the office area location be limited to the rear fifty percent (50%) of the first floor area. On roll call Mr. Komjati, Ms. Shoop, Ms. Fleck, and Chairman Fitzgerald answered “yes”. Motion carried.

Chairman Fitzgerald moved onto the next item on the Agenda.

Zoning Code Amendment – Amendment of the Definition of Family [1125.04 DEFINITIONS (37)]

Chairman Fitzgerald read the proposed definition of family as submitted to the Commission. “Family” means an individual or two (2) or more persons living together as a single housekeeping unit. A “single housekeeping group” exists where the group of individuals shares expenses and labor related to the maintenance of the dwelling unit and are living and eating together as a household. “Family” shall not include an individual occupying a rooming unit nor a group of unrelated individuals occupying a rooming house.

Mr. Schaedlich stated he has prepared additional information from other communities that have been given out to the Commission.

Chairman Fitzgerald asked Mr. Lyons if he felt the proposed definition was appropriate after looking over the submittal given by Mr. Schaedlich. He asked if there is a need to change what has been given as the definition.

Mr. Lyons suggested the information from Hudson or the one in the packet from Lakewood were the better two from a legal standpoint. He indicated the Oxford definition was looked at since they are a smaller community and it is a college town. The situation seems to be two or more college students residing in a home. This technically places them into a violation under our current zoning code. The Oxford definition caps the number at four individuals. The others look at how the individuals are living together as a family unit. Mr. Lyons stated that he is most comfortable with the Hudson or Lakewood definitions. The City could live with capping the number at four unrelated individuals as long as they are living together as a family unit.

Chairman Fitzgerald read the Hudson definition, “Family shall mean an individual living alone, or a group of individuals not necessarily related by blood, marriage, adoption, or guardianship, living together in a dwelling unit as a single household, under a common housekeeping management plan based on an intentionally structured relationship that provides organization and stability. (see “Household.”)” Household states, “Household shall mean a family living together in a single dwelling unit, with common access to and common use of all living and eating areas and of all areas and facilities for the preparation and serving of food within the dwelling unit. See “Family.”

Mr. Komjati asked if there are four college students living in a house, they share the kitchen, refrigerator, and cooking area is that considered a household even if they each pay separate rent. Mr. Lyons replied, yes, the definition does not address the issue of separate rent. Typically, the property owners create a lease for the group as a whole where they would all be responsible however; they would accept payments from them individually. This would meet the definition of family.

Mr. Lyons stated that the reason the word family is used is all zoning ordinances are linked to single family and multi-family housing. This had to be created and made sense in the 40’s and 50’s. There are quite a few different housing arrangements than there were years ago. Mr. Lyons stated the Oxford definition that has a specified number within the definition; cities are allowed to put occupancy limits based on square footage of the house. He feels that putting the number is arbitrary but is more defensible than having the number two.

Ms. Fleck stated that looking forward since we have a college within our boundaries, maybe the Oxford definition for Fraternity/Sorority House would be beneficial to add to our code with the changes made to state Lake Erie College.

Chairman Fitzgerald inquired what is the difference between a rooming house/boarding house and a single family home. Mr. Lyons stated that rooming houses do not have access to the common facilities in the home. In many cases, it is a matter of proving what goes on inside the four walls of the house. That goes for situations happening right now under the current definition of family. Mr. Lyons stated the reason the City looked at communities like Hudson, South Euclid, Broadview Heights, Mayfield Heights, and Lakewood is because they are good communities. They go across a wide spectrum in case of both income and people that live there. Their definition seems to be much more enforceable from both a legal and housing standpoint.

Mr. Angelo Cimaglio, 477 Owego Street, stated the family definition seems more like a boarding house. He asked what the definition of a boarding house is. It was explained that boarding houses are no longer allowed. Two grandfathered boarding houses currently exist in the City. The boarding house use was removed in 1992 when the zoning code was re-written.

Mr. Jim Behrens, 355 South State Street, stated that he has an issue with the house next door to him. Even with the new definition that was given, there is no way to prove what is going on inside the house. The question was brought up about the college housing and the proposed dwellings on the old Harvey High School site. He asked if the property is currently zoned R-1 will it remain R-1 regardless of what the college puts on the property. Mr. Lyons stated he does not know if that is correct or not. There was discussion regarding the placement of dormitories on the property and the zoning being residential and how that would be addressed. It was explained that within the R-1 zoning district, colleges and universities are allowed as a use. This would allow the installation of college housing.

Mr. Anthony Torre, Sanford Street, stated that he is more concerned with the immigrant population more than the school kids. The immigrants are housing more than one family in a house. There seems to be no policing of this issue. He asked the Commission to be careful on this zoning change.

Chairman Fitzgerald indicated the definition as proposed is more enforceable so the matter of two families living together should be able to be held up in court. Mr. Lyons stated that the current definition that would be allowed if they are technically related. He gave examples of this happening historically where families would live together until one was able to go out on their own.

Chairman Fitzgerald asked if there were any other questions or comments. He asked if the members of the Commission were comfortable with the proposed family definition. The recommendation from the Commission will be forwarded to City Council for adoption.

Ms. Sue Betteley, 352 Courtland Street, indicated that if what is currently in the code is not enforceable what does the new definition change in regards to enforcement when there is no way to tell what is going on in the house.

Mr. Lyons stated that it is the same situation however; you are taking the relationship portion out of the definition. How you prove it any more than is done now. It is not an easy situation.

Ms. Fleck stated the Oxford code has additional language in their definition, "using only common entrances and exits". She suggested this be added into the proposed language. Mr. Lyons confirmed that was an excellent idea. He stated you could also add only one utility service to add some clarification.

Mr. Gary Betteley, 352 Courtland Street, commented the statement was made that you cannot tell what is going on inside of a house. The last flood was a perfect example. When you drive down the street and you see a half-dozen mattresses stacked up on the treelawn it make you wonder. Not that many bedrooms were flooded. One can only assume that those mattresses came from the basement where the people are living. The number of cars going in and out of an area should also be an indication of the type of living arrangements that exist. He stated those should be looked at so the enforcement can begin. Having a good definition of a family is necessary however, you need to have enforcement.

Chairman Fitzgerald stated that many times there are instances that need to be called in so the proper enforcement people can address the issues.

Mr. Lyons commented on the number of mattresses statement. He agrees that this is an enforcement issue and would qualify in both definitions of the Code. Is this enough to prove a case of housing depends on all the facts that would be presented in court. The definition was not designed so that when we do enforce the definition we are not targeting a specific group. The definition is made to address how they are living and adding the common entrance and exit would be important.

Mr. Cimaglio gave an example of having eight people living in a large house using the facilities. There was discussion on if this situation would be considered a family. Mr. Lyons stated that eviction processes on a situation like this would be difficult since there are no landlord/tenant agreements.

Ms. Betteley stated that she does not understand why this is being changed since the code is not enforced. She made the statement that the law is being changed to accommodate the people that are in violation.

Mr. Carson made the statement that the change would help the City to defend its position against people that are violating the Code.

Chairman Fitzgerald read the current definition of family from the City's code. "Family - a single individual living upon the premises as a separate housekeeping unit, or a collective body of two or more adult persons related by blood, marriage or legal adoption, or not more than two adult persons not so related, living together in a single dwelling unit as a single housekeeping unit." He stated the proposed change fine-tunes the definition for enforcement purposes.

There was a question regarding the limitation on the number of people allowed in a house. Mr. Schaedlich explained that the Housing Code provides requirements for living units, which includes a limitation of the number of people in a house.

Mr. Lewis addressed the comments regarding enforcement. When the City is made aware of a situation there is an investigation started. If the investigation provides enough evidence that a violation has been made an administrative search warrant is obtained. The City has done this in the past specifically when it comes to the living space.

Mr. Behrens commented that the situation Mr. Cimaglio gave as an example, is what is happening next door to him. The City has been made aware of the situation. He stated that if the City changes the definition and Council approves it, the Administration needs to follow through uphold the law. The laws need to be enforced and ignoring the situation cannot be tolerated.

Ms. Fleck responded that this change should provide the Department with the best vehicle to enforce the code.

Mr. Lyons stated that the City believes the current definition is not enforceable which is why the Commission is being asked to recommend to City Council the proposed change. There was discussion regarding the activities that have been occurring next door to Mr. Behrens. Mr. Lyons explained the conversations that he has had with Mr. Behrens regarding the situation. The proposed amendment is a direct result of those discussions. Mr. Behrens made the comment that the house next door to him is not an eyesore and he has no issues with the tenants that live there. He merely wanted to be sure that the activities that are happening there are within the allowable uses for a residential zoning district.

Ms. Betteley made the comment that it seems the City deliberately did not enforce the law because the definition was not enforceable. Mr. Lyons replied that this is not the case. The matter of the code not being enforceable was brought to light when Mr. Behrens had inquired about the situation next door. When the Administration started looking at it more closely, it had been determined at that time the current definition was unenforceable.

There was discussion regarding overcrowding situations within the City and the enforcement of those conditions.

Chairman Fitzgerald asked that the Commission focus on the proposed definition of family. He asked if there were additional text to be added for clarification. Ms. Fleck commented that she would like to add all members of the household must use common entrances and exits. Mr. Lyons commented adding it to the end of what was submitted to it would read, "A "single housekeeping group" exists where the group of individuals share expenses and labor related to the maintenance of the dwelling unit and are living and eating together as a household and using only common entrances and exits and one set of utility connections at the dwelling unit."

Ms. Shoop stated that the new definition is being describes as being defensible and enforceable. This is so if it were to be brought through court the City would not subject themselves to a discrimination lawsuit in regards to housing. She asked if there was a difference between defensible and enforceable. Mr. Lyons replied that upon reviewing the current Code language and the housing laws; it was felt that our Code would not have been successful in litigation in regards to being defensible. By changing the definition to look at the arrangements within the unit, it provides a better mechanism for defense, which makes it enforceable. There was discussion of college living and other living arrangements within the City and how it has to stand up in a court of law where it will be considered fair. This is not an easy issue.

Chairman Fitzgerald asked for a motion. Motion by Ms. Fleck, seconded by Ms. Shoop to modify the definition of "Family" to state: Family – means an individual or two (2) or more persons living together as a single housekeeping unit. A "single housekeeping group" exists where the group of individuals

share expenses and labor related to the maintenance of the dwelling unit and are living and eating together as a household and using only common entrances and exits and one set of utility connections at the dwelling unit. "Family" shall not include an individual occupying a rooming unit nor a group of unrelated individuals occupying a rooming house. Ms. Shoop stated that this issue would be forwarded to City Council for further input. On roll call Ms. Shoop, Ms. Fleck, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION:

ADJOURNMENT:

There being no further business, Chairman Fitzgerald adjourned the meeting.

Lynn M. White, Secretary

Thomas Fitzgerald, Chairman