

TOLEDO PLANNING COMMISSION MINUTES

A special regular meeting of the Toledo Planning Commission was called to order at 6:40 pm by President Anne Learned-Ellis. Commissioners present: Geoffrey Wilkie, Penny Ryerson, and Cora Warfield. Excused was Planning Commissioner Bill Hansen.

Staff present: City Manager (CM) Craig Martin, City Attorney David Robinson, and Secretary Arlene Inukai.

VISITORS: Chad Van Amburg and Ralph Grutzmacher.

CONTINUED PUBLIC HEARING: MINOR PARTITION TO CREATE TWO PARCELS (FILE #MP-1-18) AND A VARIANCE TO THE MINIMUM LOT SIZE STANDARDS IN THE GENERAL RESIDENTIAL ZONE (VAR-1-18), FOR PROPERTY LOCATED AT 965 SE FIR STREET, REQUESTED BY CHAD VAN AMBURG:

President Learned-Ellis opened deliberations for the continued public hearing. Because of the Commission's request for information, President Learned-Ellis re-opened the public hearing to hear additional testimony.

Staff Report: CM Martin explained that this item was continued in order to clarify the definitions and criteria for the request. He introduced City Attorney (CA) David Robinson, who will present information to the Planning Commission to help with their review. CM Martin distributed excerpts from the Toledo Municipal Code (TMC), highlighting the lot size standards, dwelling definitions, and Class C Variance criteria.

CA Robinson reviewed the Class C Variance options, read the criteria, and the lot size standards for the General Residential (RG) Zone. He confirmed that the request is to create two parcels, 4987.5 square feet in size. Currently, the existing structure is occupied by two families and based on the lot size language, the existing structure would need 6000 square feet plus 1800 square feet and to build a new residence on a newly created parcel, the second parcel would need to be 6000 square feet. This is the reason why the applicant is requesting a variance to the lot size. TMC 17.68.020 establishes the variance types, which this is a Class C variance, reviewed as a Type III procedure and can be appealed to the City Council. CA Robinson read the five criteria standards in TMC 17.68.050(A) for a variance to the lot size. The staff report findings (Page 10) show that all five criteria are met. CA Robinson reported the Planning Commission has the authority to make the decision. If any of the five criteria cannot be met, the application could not be approve.

The applicant proposes two parcels at 4987.5 square feet, exceeding the 83% requirement by 7.5 square feet. This math will depend on the definition of dwelling unit. CA Robinson read the definitions for multi-family dwelling, single-family dwelling, dwelling unit, and duplex, as listed in TMC 17.04.020. In a plain reading of the code, CA Robinson believes it does not render a clear application for the existing structure. In other words, it is unclear if the property has a multi-family dwelling or a single-family dwelling with an additional unit.

The definitions of 'multi-family dwelling' and 'dwelling unit' appear to be redundant and contradict other parts of the municipal code. The terms seem to cover the same type of structure and CA Robinson cannot tell the difference with the term, therefore, creating ambiguity. When there is ambiguity, the Planning Commission is allowed to interpret the municipal code. If the Commission determines that the use is a single-family dwelling with an additional dwelling unit, then the 7800 square feet would apply and the Planning Commission would have to deny the request. If the Planning Commission looks at the structure as a multi-family dwelling, then the square footage calculation would not apply. CA Robinson noted the analysis would be to look for the plain meaning (if it's not ambiguous), then look at the affects to other parts of the code, and then review legislative history. In researching the history of the code adoption, notes could not be found and the language is left for interpretation.

CA Robinson read the variance and RG Zone purpose statements, several of the Comprehensive Land Use Plan goals and objectives identified in the staff report, and the purpose statement for the land division ordinance. The land division ordinance purpose statement does not say, 'implementation of the zoning code', but rather to implement the Comprehensive Land Use Plan. The request conforms with the Comprehensive Land Use Plan.

CA Robinson reiterated that the Planning Commission as the power and duty to decide the nature of the existing structure. If the structure is a single-family dwelling with an additional unit, the request would need to be denied and if the structure is a multi-family dwelling, the request could be approved, approved with conditions, or denied.

CM Martin explained that the Planning Commission and, ultimately, the City Council can be the arbitrator for the intent of the code. The Comprehensive Land Use Plan allows flexibility for increased density, but there is ambiguity between the zone and the Comprehensive Land Use Plan. The Planning Commission will need to determine if the structure is a either a single-family dwelling or a multi-family dwelling. If members disagree with the interpretation, an appeal process is available to take the decision to the City Council. The written text of the code could lead in one direction, but the over-arching Comprehensive Land Use Plan and zone designation may lead the discussion to another option.

Commissioner Warfield asked if the minimum lot size standards were established to allow for larger buildings. CM Martin noted that it could have been the assumption that structures would be larger than a standard single-family home, or it could include a separate building altogether. The larger size could mitigate other issues, such as lot coverage, parking, etc. CA Robinson added that they did not have the legislative history on this item. He noted that 'duplex' is only mentioned once in the zoning code—in the definition section—but nowhere else in the code.

Commissioners discussed the Comprehensive Land Use Plan, which was updated 18 years ago, but the zoning code language may have existed prior to the new Plan language. CA Robinson noted that when reviewing the minimum lot standard language, the omission of the multi-family dwelling term means that the section of code would not apply. Based on the definitions, CA Robinson cannot tell what type of structure is on Mr. Van Amburg's property.

The Comprehensive Land Use Plan sets the goals and guidelines and are superior to the ordinances, then the implementing ordinances set specific standards, and the variance criteria allows some flexibility within the individual ordinances. The Planning Commission has the

authority to interpret the language in the ordinance. In response to Commissioner questions, CA Robinson was uncertain why the first variance criteria had an "or" after the language, rather than "and".

President Learned-Ellis asked about the existing parking pad and that it is up to the applicant to provide an easement for the parking spaces.

Applicant Testimony: Chad Van Amburg reported that when he originally spoke to staff, the lots would not be exact and a variance would be necessary. He originally wanted the two lots to have the identical configuration with the two lots across the street, but realized, they would not meet the standards. He understands the ambiguity with the code and can see both views. However, he believes his proposal will improve the area and the surrounding lots are small or similar in size with the proposed parcels. He would like the vacant area to be its own tax lot. There is a housing shortage, especially since he had 35 applications to rent the existing home.

Mr. Van Amburg stated he can live with the decision, since there are options to add additional units to the site, but the property would most likely remain rental property. He would like to see the Planning Commission reach a decision and he can proceed from there.

Proponent Testimony: None.

Opponent Testimony: Ralph Grutzmacher of 829 SE Fir Street reviewed Page 2 of the staff report, TMC 17.12.020--Uses Permitted Outright in the RG Zone. Single-family dwellings and accessory dwelling units are allowed outright. One does not need to go to the Planning Commission to put a second unit in the same structure. He believes there are two dwelling units on the site. SE 9th Street is minimally prepared for traffic, but not for parking and the proposal will add to the problem. At the last meeting, Robert and Eunice Chavez reported issues in the area and cars blocking their mailbox. Mr. Grutzmacher stated the laws are clear, and he questioned how many homes should be crammed into one area. He believes the area is inadequate and happens too often. The City needs quality dwellings, rather than substandard development.

Other Interested Parties: None

Applicant Rebuttal: Mr. Van Amburg reported that the area is not a last resort for housing. He provides a quality home to hard-working tenants. He has good renters in the existing home and plans to provide an additional high quality home.

Commissioners discussed the required parking spaces, noting that on-street parking may not be an option because of the narrow street and neighborhood availability. President Learned-Ellis added that it is unfortunate that there is contention between neighbors for on-street parking, but it is not up to the Planning Commission to resolve the issue within this partition request. Upon development, the applicant must provide the required amount of on-site parking spaces for the proposed use.

Questions by Commission: None.

Deliberations: The public hearing was closed and the Commission entered into deliberations. Commissioners discussed SE 9th Street condition, width of the street, and how one additional home

may impact existing parking. Mr. Van Amburg clarified that the new home will have parking spaces available on the property itself and no parking will be on SE 9th Street, nor would they use SE Fir Street for the new homesite.

Commissioners discussed drainage impacts during construction and if a time frame should be implemented if/when there are disturbances to the drainage system. CM Martin noted that the drainage criteria is for work occurring during the construction period. The Commission can place conditions on the activity, if necessary, and address erosion control methods. President Learned-Ellis voiced that she would want to see immediate repairs for any disturbance. Commissioners reviewed the location of water and sewer services in the area and any new construction will be required to connect to the public infrastructure.

President Learned-Ellis reported she can see the structure as a multi-family dwelling. She asked if there was a consensus on the interpretation of the multi-family definition versus single-family dwelling. Commissioner Ryerson complemented CA Robinson's presentation, which was very helpful. After review of the definitions, President Learned-Ellis believes the proposed 4987.5 square feet parcel meets the 83% criteria. However, Commissioner Wilkie believes Parcel 1 should be based on the 7800 square feet standard. Commissioners Warfield and Ryerson both expressed their opinion that the parcel would not need 7800 square feet. Commissioner Warfield added that the footprint of the existing structure is not affected, it is one building, regardless of how many families are in it.

Commissioners discussed the parking situation, noting that there is an ongoing issue, outside of how the applicant develops the area. Commissioner Wilkie expressed several concerns with the site and developing the lot. Commissioner Warfield pointed out that the property directly across the street on SE 9th Street has a very similar lot size as the proposal. President Learned-Ellis believes the proposal is compatible with the neighborhood.

The Planning Commission reviewed the recommended conditions and that the applicant must address drainage improvements upon development. CM Martin noted that excavation and right-of-way work will be addressed during the building permit process and can be conditioned in their application.

It was moved and seconded (Ryerson/Warfield) that based on the testimony received, the staff report, and the evidence and arguments before the Planning Commission at the public hearings on March 19 and April 2, 2018, the Planning Commission finds that the request by Chad Van Amburg (MP-1-18/VAR-1-18) complies with the criteria identified in Toledo Municipal Code, Titles 16 and 17, including the criteria identified in Toledo Municipal Code Sections 16.08.070 and 17.68.050. The Planning Commission hereby adopts the staff report as findings, as well as the following conditions of approval for MP-1-18/VAR-1-18, and allowing for the correction of typographical and grammatical errors.

1. Partitioning of the property shall be in compliance with the proposed partition plan as described in the application and drawing submitted and included in Exhibit A of the staff report.
2. The applicant shall provide a final minor partition plat prepared by a registered surveyor and meeting the plat standards of the City of Toledo and including an approval signature line for the City Manager's signature. The applicant shall submit the final plat to the

Lincoln County Surveyor for review, and to the City of Toledo to review for compliance with conditions of approval prior to recording. The applicant shall record the approved final plat with the Lincoln County Surveyor. A copy of the recorded plat shall be submitted by the applicant to the City of Toledo.

3. In accordance with TMC Chapter 16, the final partition plat shall be recorded within one year from the effective date of the Planning Commission approval. One extension of time, not to exceed one year, may be granted to complete the partition if an application for an extension of time is made in writing prior to the expiration date.
4. Authorization of the variance shall be void after one year if the minor partition plat has not been recorded. Authorization may be extended by the Planning Commission for an additional one year period if a written request is made prior to the expiration date.
5. Any driveway modification, in accordance with the standards specified in the Public Infrastructure Design Standards Manual, may be required as determined by the Public Works Director. If required, it shall be completed within one year of approval of this application, or a deferred development agreement entered into, to address this requirement. Determination will be made when a construction permit has been submitted that identifies the location of a proposed residence and length of its driveway, to ensure that the development of Parcel 2 will comply with Public Infrastructure Design Standards and Fire, Life, Safety standards.
6. The existing driveway and concrete parking pad for 965 SE Fir Street shall either be removed or relocated, or the area shall be identified on the final partition plat and provide legal easement for the continued use of the driveway/parking area for Parcel 1.
7. Protect all existing easements (in addition to being noted on the plat) and, as appropriate, record any new easements to serve the proposed parcels for driveway access, utilities, and parking, and comply with the Public Infrastructure Design Standards Manual, before construction permits will be issued.

The **motion passed** 3-1, with Commission Wilkie voting in opposition, and noting the absence of Hansen.

President Learned-Ellis wished the applicant well during the development and thanked CA Robinson for the presentation.

STAFF COMMENTS:

CM Martin distributed information on the regional housing meeting, hosted by the City of Newport on April 12th. If any Planning Commissioner would like to participate, let staff know in case there is a potential for a quorum. CM Martin would also like to attend and can bring back any handouts, if available.

CM Martin reported he does not have an official resignation from Planning Commissioner Jeffery Quigley, but he voiced that he will be stepping down because he's moving out of state. There will be two vacancies, both positions will need to be filled by residents inside the City limits.

COMMISSIONER COMMENTS:

President Learned-Ellis reported her husband attended the History Center presentation, which was very well attended and they had to schedule a second presentation for the evening. CM Martin complemented the presentation because there's a lot of focus on the Toledo area and Toledo was well represented.

There being no further business before the Commission, the meeting was adjourned at 7:45 pm.

Secretary

President