

LIBERTY TOWNSHIP ZONING COMMISSION
January 18, 2017
6:00 PM
MEETING MINUTES

The Zoning Commission was called to order at 6400 Princeton Road at 6:00 P.M. by Chairman Forrest Holger. The Pledge of Allegiance was recited by those in attendance.

Upon call of the roll, members in attendance were: Forrest Holger, Mike Stater, Jamie Dobrozsi, Mike Dunn, and Mike Ward. Staff member Andy Juengling was also in attendance.

Mr. Holger reviewed the procedures of the hearing and performed a group swearing in.

Mr. Holger stated that case **ZC16-013** will be continued to the January meeting.

Mr. Holger asked for a motion on this case.

Mr. Dunn made a motion to **CONTINUE** Case ZC16-013 until the February 22, 2017 Zoning Commission meeting. Mr. Stater seconded the motion. Upon call of the roll: Mr. Holger – yes; Mr. Stater – yes; Mr. Dunn – yes; Mr. Ward – yes; Mr. Dobrozsi – yes. The motion passed.

Mr. Holger called for case **ZC17-001**.

Mr. Juengling presented the staff report.

Mr. Dunn asked staff if all property owners responded from the mailing, or if only 7 property owners confirmed they wanted to move forward with the map amendment.

Mr. Juengling clarified that 7 properties owners confirmed they wanted to move forward, and that staff had not heard from all of the property owners. He added staff has spoken with a number of residents beyond that 7, and explained to them the options for rezone or maintaining the existing zoning designation. Mr. Juengling further stated that if a property owner that did not choose to proceed with this rezone decides in the future they would like to, they are still able to at that point in time. Mr. Dunn asked if the property owner would have to pay for the rezone at that point in time. Mr. Juengling confirmed that they would.

Mr. Holger asked if there was anyone to speak as a proponent of this case. No one spoke.

Mr. Holger asked if there was anyone to speak as an opponent of this case. No one spoke.

Mr. Holger asked if there was anyone to speak as a neutral party of this of this case.

Greg Brophy, 6455 Hunting Creek Drive, asked about the properties near Devon Drive, and whether these properties could then be subdivided to lots a minimum size of 20,000 sq. ft. Mr. Juengling confirmed. Mr. Brophy then stated it was his understanding that these properties were part of a trust and there were certain restrictions regarding limiting development. Mr. Juengling stated that the restrictions of the trust would need to be met through that agreement which is separate from the zoning regulations that the township has authority over. Mr. Juengling then explained the process of subdivision through Butler County.

Susan Schechter, 5605 Yankee Road, stated she is in attendance regarding her mother's property at 5517 Yankee Road. She stated the letter arrived just before her mother passed and the family decided to proceed with the rezoning in order to make the property more marketable. She stated they are not in a hurry to sell the property at this point in time, it is currently being used as a farm and the interest they are receiving on the property are for individuals who are interested in continuing to use it as such. She asked if this rezoning would prevent farming from continuing to operate on the property. Mr. Juengling stated that farming would be able to continue to operate on the property as a continuation of a legal non-conforming use, should the property be rezoned. He added that the legal non-conforming use does continue with transfer of ownership as long as the use does not become any more intense than it currently is. Ms. Schechter stated she might be having second thoughts of rezoning the property. Mr. Juengling offered to meet with Ms. Schechter to discuss all of the options regarding the rezone.

Mr. Ward made a motion to **CLOSE THE PUBLIC HEARING**. Mr. Dunn seconded. Upon the call of the roll, the motion passed. **PUBLIC HEARING CLOSED**.

Mr. Stater expressed concern that only 7 property owners decided to proceed with the rezone. He added that as long as it is documented that all property owners were notified of this offer, he is okay with proceeding.

Mr. Dunn stated that it sounded like more than 7 property owners responded, but these were the ones that chose to proceed with the rezone.

Mr. Holger asked for a motion on this case.

Mr. Ward made a motion to **RECOMMEND APPROVAL** of Case ZC17-001 as presented by staff. Mr. Dunn seconded. Upon call of the roll: Mr. Dunn – yes; Mr. Dobrozsi – yes; Mr. Ward – yes; Mr. Stater – yes; Mr. Holger – yes. The motion passed.

Mr. Holger called for case **ZC17-002**.

Mr. Juengling presented the staff report.

Mr. Holger stated that he noticed that the staff report outlines that the zoning resolution establishes that corner lots have two front yards, and asked staff if this was typical of zoning resolutions. Mr. Juengling confirmed.

Mr. Holger asked to hear from the applicant.

Applicant, Todd Prewitt, 5506 Trails Run Court, presented images to the Zoning Commission and explained that some of the pictures are of his residence and the others are of other properties in Carriage Hill that are corners with fences similar to what is installed on his property. He stated that adding this fence to his property will not decrease property values in the area as this is the fence type that is present throughout Carriage Hill. He asked staff for clarification regarding what is considered the right-of-way. Mr. Juengling stated that the right-of-way begins at the front property line near the sidewalk and is the area where the public utilities, streets, sidewalks, etc. are located. Mr. Prewitt stated that the fence is 18.6' from the back of curb. He stated when he decided to install the fence, he staked the location and got Randy Terry's (the developer) approval of the location. He added that he also got approval of the location from the gas company since approximately one-third of his rear yard is a gas easement. Mr. Prewitt pointed out that the property across Trails Run Court from his house is a gas line and open space, so there is no negative impact on this property either. He stated as soon as they received the Notice of Violation,

they applied for a permit and found out that they would need to request a variance so they applied, and that is why they are there this evening.

Mr. Stater asked the applicant what the response was for the fence installation from the HOA. Mr. Prewitt stated that at the time the fence was installed, there was no HOA in place, but now it is in existence. He added that at the time the fence was installed, Randy was the approving body, and he received his blessing.

Mr. Holger asked the applicant if perhaps Randy stated that he had no issue with the fence, but approval from the township was still necessary. Mr. Prewitt stated this was not the case that he recalled.

Mr. Holger expressed concern that a lot of the pictures that the applicant submitted were not true corner lots. He stated he drove through the entire subdivision and did not see a corner lot with a fence that protruded past the limits that are permitted. Mr. Prewitt stated there is a property near the pool house that is an example. Mr. Holger stated that his hesitation is that this regulation has been in the zoning resolution since 1992; and by granting this variance, a precedent would be set regarding placement of a fence.

Mr. Prewitt stated that his house is set back further from the property line than it needs to be, so at a minimum he should be able to kick his fence out towards the property line a foot or so. Mr. Juengling illustrated on a site plan where the right-of-way line is compared to the front yard setback for the home on the property. Mr. Prewitt stated that if he moves the fence to this location, it would interfere with landscaping and hardscaping that he has installed.

Mr. Dobrozsi asked who installed the fence. Mr. Prewitt stated Mills Fence installed the fence. Mr. Dobrozsi then asked how the fence was installed, to which Mr. Prewitt explained the method of installation.

Mr. Prewitt stated it was his understanding from talking with Randy Terry that because this property was within Carriage Hill and a Planned Unit Development that there were different guidelines than applied.

Mr. Holger stated that the issue is that if this is approved it would set a precedent that fences can be approved to protrude into a front yard. He added that the property next door to the subject property has this fence going right along their front yard. Mr. Holger asked for confirmation regarding the hardscaping and landscaping in the rear yard. Mr. Prewitt explained.

Mr. Prewitt stated that if the variance is not approved and he has to remove this section of the fence, the whole thing will be removed.

Mr. Holger asked Mr. Prewitt regarding the access into the yard for the gas company for the easement. Mr. Prewitt explained that he installed the gate for their access and the gas company was on site during the installation of the fence.

Mr. Holger asked if there was anyone to speak as a proponent of this case.

Jason Reeves, 6339 Winding Creek Blvd, stated he lives in the house across Winding Creek Blvd from the property. He stated the fence is visible from his front yard, and he has no issue with it.

Mr. Holger asked if there was anyone to speak as an opponent of this case. No one spoke.

Mr. Holger asked if there was anyone to speak as a neutral party of this of this case.

Greg Brophy, 6455 Hunting Creek Drive, asked about the 40' regulation. Mr. Juengling stated that this is the front yard setback, which establishes how far a structure must be from the property line. Mr. Brophy asked if this was for just this subdivision or all of Liberty Township. Mr. Juengling stated that the 40' requirement is for this section of the Carriage Hill subdivision, but that the setbacks are established for each zoning district.

Mr. Holger asked if there were any other neutral comments. No one spoke.

Mr. Ward made a motion to **CLOSE THE PUBLIC HEARING**. Mr. Stater seconded. Upon the call of the roll, the motion passed. **PUBLIC HEARING CLOSED**.

Mr. Holger stated his concern is that there are no other instances of this in Carriage Hill and this could set a precedent for not only the PUD but for the zoning regulations for the entire township.

Mr. Dobrozsi asked staff if there have been any other cases similar to this in the history of this development. Mr. Juengling stated that he was not aware of any requests regarding fence location. He added that there have been requests like this before the BZA, but typically the requests come before staff prior to the fence being installed and staff can explain the regulations to the property owner on the front end, rather than after the fence is installed. Mr. Dobrozsi stated reluctance to establish a precedent for fencing.

Mr. Stater asked if there was any way to even negotiate this. Mr. Holger stated that there could be certain conditions added if the request was entertained.

Mr. Dobrozsi outlined the easement that runs across the property.

Mr. Holger and Mr. Dobrozsi both made mention that even though the HOA voiced support, township zoning approval is still required.

Mr. Ward stated that typically when you apply for an improvement before the HOA, the HOA asks if there has been township approval for the improvement.

Mr. Stater outlined that when he is looking over this case, and relating it to what the BZA reviews requests upon, there needs to be a hardship demonstrated. He stated that based upon the presentation, he did not see any type of a hardship demonstrated that would prevent the applicant from being able to meet the fence placement regulation.

Mr. Holger asked for a motion on this case.

Mr. Dunn made a motion to **DENY** Case ZC17-002. Mr. Dobrozsi seconded. Upon call of the roll: Mr. Ward – yes; Mr. Stater – yes; Mr. Holger – yes; Mr. Dunn – yes; Mr. Dobrozsi – yes. The motion passed.

Mr. Holger called for case **ZC17-003**.

Mr. Juengling presented the staff report.

Mr. Holger asked for verification that the BZA approved a 5' setback. Mr. Juengling confirmed. Mr. Holger then asked for clarification regarding the location of the stakes on the photographs indicating the proposed location of the sign. Mr. Juengling clarified.

Mr. Stater asked if they are being asked to approve the applicant's request or the BZA's approval. Mr. Juengling stated that the Zoning Commission is reviewing the applicant's request, but the BZA has already made a decision on the case, which is more restrictive than the request, so should the Zoning Commission approve the request as stated by the applicant, the BZA's more restrictive condition would apply. Mr. Juengling added that should the Zoning Commission decide to approve the case, he would recommend incorporate language to maintain consistency with the BZA's dimension.

Mr. Holger asked to hear from the applicant.

Applicant, Paul DeRoussel, 6668 Keeneland Way, Mason, OH, stated the heavy traffic on Cincinnati Dayton Road was a main factor for purchasing this building, and the advertising for a realtor is really word of mouth, so this sign would help to identify the property for those who were referred to the business. He stated that they became aware of the 10' setback as they came through the zoning process, but they were unaware of the location of the right-of-way. He added that a question that came up for the BZA was whether there could be an alternative method to the proposal, and discussed the challenges they faced regarding visibility of a wall sign and a projecting sign. He further stated they looked at different locations for the proposed monument sign, but the proposed location maximized the visibility. Mr. DeRoussel mentioned that they were one of the first offices to go through the Overlay District Review process, and would imagine there would be many more, who would likely also be seeking a variance for the placement of a monument sign due to shorter front yards and visibility. Mr. DeRoussel then clarified the proposed sign location based upon the images that were submitted. He stated the front most stake in the images is actually located 5' from the sidewalk, which demonstrates the location approved by the BZA. He then demonstrated visibility of the sign based on the images shown in the presentation.

Mr. Holger asked the applicant if they were aware of the BZA's approval of a 5' setback. Mr. DeRoussel confirmed and stated he originally asked for 4', and at this point he is requesting the relief granted by the BZA.

Mr. Dobrozi asked the applicant if vehicular visibility was considered when locating the proposed location of the sign. Mr. DeRoussel stated that he worked with staff and staff recommending considering sight distance for vehicles turning out of the driveway. Mr. Dobrozi then asked if landscaping was yet discussed with staff. Mr. DeRoussel stated it has not yet been discussed, but his understanding is the sign will still need to be approved through the Zoning Certificate process and landscaping will be required. Mr. Dobrozi stated he would recommend that landscaping should factor into the visibility as well.

Mr. Holger discussed that Cozy's has a larger front yard setback so they could have larger landscaping.

Mr. Dunn asked if the north side of the driveway had been considered for the sign location. Mr. DeRoussel stated that the driveway goes just about up to the property line.

Mr. Stater asked if the building was currently occupied. Mr. DeRoussel stated it is not yet occupied, however they just recently received their Certificate of Occupancy. Mr. Stater asked which entrance clients would use most often. Mr. DeRoussel stated the west entrance. Mr. Stater asked if the foot traffic would hinder the sight distance visibility. Mr. DeRoussel stated he did not believe it would.

Mr. Juengling then discussed the sight distance visibility in relation to the driveway, Cincinnati Dayton Road, and the slope of the front yard.

Mr. Holger asked staff for clarification regarding staff comments listed that are not necessarily conditions. Staff clarified that the draft Notice of Decision & Resolution included in the staff reports is the condensed list of items that could be approved as conditions if the Zoning Commission determined appropriate. Mr.

Holger asked the applicant if they had a chance to review these items. Mr. DeRoussel read over the items and confirmed that he was agreeable to the conditions recommended by staff.

Mr. Holger asked if there was anyone to speak as a proponent of this case. No one spoke.

Mr. Holger asked if there was anyone to speak as an opponent of this case. No one spoke.

Mr. Holger asked if there was anyone to speak as a neutral party of this of this case. No one spoke.

Mr. Ward made a motion to **CLOSE THE PUBLIC HEARING**. Mr. Dobrozsi seconded. Upon the call of the roll, the motion passed. **PUBLIC HEARING CLOSED**.

Mr. Holger stated that the applicant seems agreeable to the items listed in the draft Notice of Decision & Resolution and the BZA decision.

Mr. Dobrozsi asked staff what the height of the base of a smaller sign. Mr. Juengling stated that it appears to be approximately 1' to 1'-6". Mr. Dobrozsi stated this height seemed appropriate to have a lower sign closer to the ground to maximize visibility.

Mr. Holger asked for a motion on this case.

Mr. Dobrozsi made a motion to **APPROVE** Case ZC17-003 as presented by staff with the modifications that the sign be approved at a minimum distance of 5' from the right-of-way line to maintain consistency with the Board of Zoning Appeals, that the base of the sign not exceed 1' – 6" in height, and that the landscaping not hinder visibility. Mr. Stater seconded. Upon call of the roll: Mr. Ward – yes; Mr. Stater – yes; Mr. Holger – yes; Mr. Dunn – yes; Mr. Dobrozsi – yes. The motion passed.

Mr. Holger called for case **ZC17-004**.

Mr. Juengling presented the staff report.

Mr. Dunn asked for clarification regarding an existing definition in the Zoning Resolution which is outlined in the proposed text. Mr. Juengling clarified that this was included because there is grammatical changes including capitalization to the sexually oriented business definitions, but the main content that is being added to the Zoning Resolution is defining Live Sex Act Businesses, which are not protected by the First Amendment, and prohibiting them within all zoning districts. He added that Sexual Oriented Businesses are protected by the First Amendment and can be regulated on in certain ways, however Live Sex Act Businesses do not fall into this category.

Mr. Dunn pointed out that it looks like Institutional Care Facilities are permitted differently than how Nursing Homes are currently permitted in the Zoning Resolution. Mr. Juengling outlined the districts where Nursing Homes are currently permitted versus where Institutional Care Facilities are proposed to be permitted. He added that Nursing Homes were listed as a residential use, whereas Institutional Care Facilities are listed as a Public & Institutional use.

Mr. Dobrozsi clarified with staff that previously there was language for Sexually Oriented Businesses, but not Live Sex Act Businesses. Staff confirmed and stated that previously Live Sex Act Businesses were not defined in the Zoning Resolution. Mr. Dobrozsi asked staff the specifics regarding state law for the definition of Live Sex Act Businesses. Staff indicated that proposed definition was developed through working with Township Legal Counsel.

Mr. Stater asked about the outcome of the Butler County Planning Commission meeting. Mr. Juengling stated that the Planning Commission recommended approval on January 10th.

Mr. Holger asked if there was anyone to speak as a proponent of this case. No one spoke.

Mr. Holger asked if there was anyone to speak as an opponent of this case. No one spoke.

Mr. Holger asked if there was anyone to speak as a neutral party of this of this case. No one spoke.

Mr. Dobrozsi made a motion to **CLOSE THE PUBLIC HEARING**. Mr. Ward seconded. Upon the call of the roll, the motion passed. **PUBLIC HEARING CLOSED**.

Mr. Holger asked for a motion on this case.

Mr. Dobrozsi made a motion to **RECOMMEND APPROVAL** of Case ZC17-004 as presented by staff. Mr. Dunn seconded. Upon call of the roll: Mr. Stater – yes; Mr. Holger – yes; Mr. Dunn – yes; Mr. Dobrozsi – yes; Mr. Ward – yes. The motion passed.

Mr. Holger called for the next item on the agenda of the approval of the meeting minutes from the September 7st, 2016 and stated that Mr. Stater, Mr. Ward, and Mr. Holger are in attendance so there is a quorum to vote on this item.

Mr. Holger identified two corrections for the September 7th, 2016 minutes. Mr. Juengling stated he had already made those corrections.

Mr. Holger made a motion to **APPROVE** the September 7th, 2016 meeting minutes with the identified corrections. Mr. Ward seconded the motion. Upon call of the roll: Mr. Stater – yes; Mr. Ward – yes; Mr. Holger – yes; Mr. Dobrozsi – abstained; Mr. Dunn – abstained. The motion passed.

Mr. Holger called for the next item on the agenda of the approval of the meeting minutes from the December 19th, 2016 meeting.

Mr. Stater made a motion to **APPROVE** the December 19th, 2016 meeting minutes. Mr. Dunn seconded the motion. Upon call of the roll: Mr. Dunn – yes; Mr. Stater – yes; Mr. Holger – yes; Mr. Dobrozsi – abstained; Mr. Ward – abstained. The motion passed.

Mr. Holger asked if the Zoning Commission needed to make a motion to approve the 2017 meeting schedule. Mr. Juengling stated that the Trustees approve the meeting schedule, and he will send out the approved schedule for the Zoning Commission members review.

Mr. Holger called for the next item on the agenda of the approval of a chairman and vice-chairman for the Zoning Commission. He asked if there was any member that wished to offer their services as chairman.

Mr. Stater made a motion to nominate Mr. Holger as the chairman. Mr. Holger asked if anyone else was interested in serving. Mr. Dunn seconded Mr. Stater's motion. Upon call of the roll: Mr. Dobrozsi – yes; Mr. Ward – yes; Mr. Dunn – yes; Mr. Holger – yes; Mr. Stater – yes. The motion passed.

Mr. Holger called for the nomination of a vice-chairman and asked if anyone wished to offer their services. Mr. Dobrozsi stated he would offer to be vice-chairman. Mr. Dunn made a motion to nominate

Mr. Dobrozsi as vice-chairman. Mr. Ward seconded. Upon call of the roll: Mr. Ward – yes; Mr. Dunn – yes; Mr. Holger – yes; Mr. Stater – yes; Mr. Dobrozsi – yes. The motion passed.

Mr. Holger asked if there was any other new business.

Mr. Juengling stated that at this time there were no applications for the upcoming February agenda, other than the continuation of case ZC16-013. He further clarified that this meeting would be held on a Wednesday, due to the holiday.

Mr. Dunn asked if there are no cases, if there would still be a meeting. Mr. Juengling stated there would not be a meeting if there were no scheduled cases.

Mr. Holger made a motion to **ADJOURN ZONING COMMISSION MEETING**. The motion passed unanimously and **ZONING COMMISSION MEETING ADJOURNED**.

Respectfully submitted,

Forrest Holger, Chairman

Andy Juengling, Secretary