

STOW PLANNING COMMISSION

Minutes of the Stow Planning Commission meeting held Tuesday, June 26, 2018, at 6:00 p.m.

MEMBERS PRESENT: Mr. Brauer, Mrs. Harrison, Mr. Miller, Mr. Ross, Mr. Sprungle

MEMBERS ABSENT: None

ALSO PRESENT: Rob Kurtz, Director of Planning
Pamela Daerr, Executive Secretary

PRESS REPRESENTATIVE: None

Mr. Brauer called the meeting of the Planning Commission to order at 6:00 p.m. and asked the audience to stand and say the Pledge of Allegiance. Roll call was taken.

BUSINESS ITEMS:

1) P.C. 2018-012 – Text Amendment to Chapter 1163 Regarding Two Family Dwellings in R-2 and R-3 Districts; and Chapter 1191 Nonconformities

Chairman Brauer introduced Rob Kurtz to provide comments.

Mr. Kurtz: Thank you. As you recall, this was sent to us from City Council. We reviewed it at our last meeting. One of the issues discussed was what about the dwellings that are going to become non-conforming. This was a very good question that we had an opportunity to look at. Before I get to that, let's review what the proposed changes are: With this proposed amendment, the two-family dwellings in R-2 and R-3 Districts would only be permitted as part of a multi-family development (Chapters 1169 or 1171), or cluster development (Chapter 1165), or a planned residential development (Chapter 1153).

One of the impacts of this proposed amendment is that most of the existing two-family dwellings located on individual lots will then become ~~legally~~ non-conforming. This means that they can remain, but if destroyed by fire or some other means, they must be reconstructed in compliance with the code, which will be impossible.

So, it would require an act of City Council or Planning Commission for that to occur. So, we did some research and we have approximately 534 lots with two-family dwellings on them. Of those, only 55, or 10.3%, currently meet both of those minimum lot depth regulations. Obviously, we have 90% that are in that state and, again, with this amendment, there will be 100% in that state; approximately. Considering that, we are recommending additional amendment to our non-conforming section. In summary, that proposed amendment would allow single family dwellings or 2-family dwellings to be reconstructed if destroyed; provided the non-conformity is not increased.

In terms of the non-conforming status, in my point of view, the issue has more to do with when these properties are transferred. The bigger impact is on lending: the title companies and banks. Lending to folks who want to purchase a two-family dwelling or single family dwelling that is, say, 6q from the boundary when it's supposed to be 8q or 10q. Because when they call me and get a zoning verification letter, we need to state that. It's legally non-conforming and it can be rebuilt in conformance with the code. If that's not possible, then it's going to be difficult for them to obtain a loan for that because the banks may shy away from that. I would rather make sure that people can still invest in these existing properties that we have: single family or two-family; even though they may be non-conforming. That's what this amendment 1191 proposes. And again, that's not something that Council recommended but, it's something that occurred to me during discussions since the last meeting that it could be a significant benefit to our existing dwellings; and that's why it was written in that manner. Furthermore, there is a distinction between a conditional zoning certificate that approved a two-family with a variance and a legally non-conforming. When Council and Planning approve a project with a variance, if it is destroyed, it can be re-built up to that variance. That's what's approved. It may be a subtle distinction; but, a distinction none-the-less. When we are talking about constructions that were built in the 70's or the 80's, code changed in the 80's and again in the 90's, and they become legally non-conforming. That's different than something we approve with a variance. That summarizes what the amendments are. I'd be happy to answer any questions.

Mr. Sprungle: Thank you. That was a really good point. So help me to understand. Out of the 534, there are 480 some lots that are non-conforming and were they conforming when they were built?

Mr. Ross: That's not quite correct. That's a non-conforming under this provision. They are not currently non-conforming.

Mr. Kurtz: Currently, only 10% are conforming under our current regulations.

Mrs. Harrison: So the regulations changed to increase the lot size and to have 2 within so many feet?

Mr. Kurtz: Right, so the code was changed in 1983 from the old type code to the new code; and there was another specific amendment in 1994 with regard to two-family dwellings that tightened things even further. We're talking about dwellings that were built in the 60's, 70's and 80's that no longer meet the zoning code; 90% don't.

Mr. Sprungle: So in other words, if the existing two-family owners wanted to build a two-family, they would have to come here to get a variance today?

Mr. Kurtz: Yes

Mr. Sprungle: So really all we are doing here is changing the size of the lot that requires a variance?

Mr. Kurtz: It's a fairly significant change where two-family are built. It has to be part of a two (2) acre lot and meeting all the multi-family regulations and cluster regulations. It takes away that possibility of a lot that

Mr. Sprungle: But, what I'm saying is 90% of those that exist didn't meet the requirement anyway. Now, we are just making the requirement more difficult.

Mr. Kurtz: Right. To give some perspective, we looked back and since 1998, there were seven (7) applications for two-family dwellings before Planning Commission and Council. Four (4) required variances, five (5) were approved and four (4) were built. So we have four (4) two-family dwellings built since 1998. So when I said it is a significant change, it is a significant change according to the code, I guess in practical matters ..

Mr. Sprungle: They could still come for a variance

Mr. Kurtz: Yes, they certainly could. That's a valid point.

Mr. Sprungle: A more gross variance.

Mr. Kurtz: Yes, that's true.

Mrs. Harrison: It seems that there are not very many lots out there (inaudible)

Mr. Kurtz: I don't know but, it certainly doesn't seem that way. I could do a study of that but, it certainly does not appear that there are very many lots available.

Mr. Ross: (Inaudible)

Mrs. Harrison: (Inaudible)

Mr. Kurtz: Typically, the definition that's why it says, "destroyed by fire or some other means, if we need to tighten it up by saying "by natural means". That's what it's intended to do. The City could certainly demo some house or require demolition of some house. In the existing code I think we say "natural means". Let me see if we say that or not. On the other hand, even if it doesn't say that, if we, the City, require demolition or it's demolished, there may not be a reason that it couldn't be rebuilt to meet the current zoning code.

Mr. Ross: It couldn't be.

Mr. Kurtz: In that case, then you come to Planning Commission and Council for a variance. You asked if this includes . It doesn't say by natural means. It says by fire or other means. I'm okay with either, honestly.

Mr. Ross: So, is it my assumption that subsequent text is going to be revised (inaudible) if this is approved?

Mrs. Harrison: (Inaudible)

Mr. Kurtz: What are you suggesting?

Mr. Ross: The following section of the code 1191.06, item 2, reconstruction, in other words .

Mr. Sprungle: Destroyed or damaged by any means to an extent.

Mr. Ross: Is that a contradiction?

Mr. Sprungle: What are you saying is the term ~~any means~~? And what you had suggested is ~~natural means~~?

Mr. Kurtz: Well, I looked at the code again and I don't see ~~natural means~~ anywhere else in the code. So, no, it would be ~~any means~~.

Mr. Ross: So, a condemned property could not be rebuilt as a two-family unit on that lot?

Mr. Kurtz: Here's my opinion. I think it works as it is but, if you want to make an amendment that limits it to natural means, you could suggest that.

Mr. Brauer: Any other conversation from the Commission?

Mr. Miller: Since last week, I came up with another point of view. From the statements that we heard from the last meeting, it's basically to protect the values of the homes in the City of Stow, control building violations, cut down on traffic in the streets. Basically, the underlying factor, placing a two (2) acre limit, bans all multi-family dwellings from being built within the City of Stow. Not sure why they would want to put a ban on two-family and multi-family dwellings? I don't know if it's a stigma that the type of resident or property owner that will move in that won't retain some of the values of the Community. Overall, this will stifle people moving into our City because it removes a different residency for a certain type of income for people that can't afford a home that have to move into a two-family unit. And by not allowing people of that income status to move in by using a 2 acre banning on multi-family dwellings, we are flirting with the State of Ohio Fair Housing and the Federal Housing Act that extends to the State of Ohio. And I would like to quote from that law: ~~prohibits~~ discrimination in housing, financing, rentals based on race, color, religion, sex or national original. Federal Housing law was extended to protect apartment dwellers right to enjoy access to housing based on those protected classes. In addition to these protected classes, the ORC 4112, offers legal protection based on several other areas in which we are flirting with and that is making housing available and denying dwelling. We are denying dwelling by placing a 2 acre minimum lot revision on someone trying to move into our City. If I remember from the history classes, land was used to stop people from doing other things in our Country and placing this on here is, to me, the exact same thing. And, I think we need to be a little bit careful in this situation. I think we just need to tread lightly. Thank you.

Mr. Sprungle: If we're looking right now at 534 lots 480 are treading where you are talking about. Because they already didn't meet the variance didn't meet the requirements. They had to get some kind of variance to get built in the first place. The restriction is already tight enough.

(Inaudible conversation)

Mr. Sprungle: The restriction is already tight enough that there's hardly any opportunity for that. So why make it an even tighter restriction.

Mr. Ross: Excellent observation. I'm shy of taking action without legal counsel review. I'm not sure it's appropriate to bring a document to this body prior to having legal counsel look over it.

Mr. Kurtz: Legal aside; this Commission could support it, not support it or hold it again. The non-conformity now seems more important or potentially more significant than the 2-family. I'm not sure the Law Director could weigh in on this; she's not a Fair Housing expert certainly she could. Council referred it to this Commission for action.

Mr. Brauer: I feel as though essentially we have another colleague that is asking for more research. To act on it right now would be inappropriate. But, Council referred this to us, correct? Rob, how would you feel if we tabled it and asked legal to review it?

(Varied conversation)

Mr. Kurtz: You have 60-90 days to act. If you don't, they can still act. If the only thing you are asking me is to have the Law Department to review this for...what specific area?

Mr. Sprungle: Or, quite frankly, we can act on it and reject it for whatever reason. Because we don't agree with it or because we don't feel that it's necessarily legal.

Mrs. Harrison: Rob, I think your point in amending 1163.04 isn't necessarily something we're looking at or you think is necessary but, that there might be a need already to amend 1191.06 because there are so many non-conforming. That would give them the permission to rebuild. So, now a bigger concern was giving them that permission than the first issue. I think there are two (2) separate issues. You may need one even though you don't agree with the other.

Mr. Kurtz: So, you certainly have the alternative to recommend only part of these amendments; 1191 for example.

Mr. Sprungle: In other words, recommend that we don't change the square footage requirements but, change the verbiage to allow for non-conformity.

(Various conversation)

The following were sworn in by the Secretary:

Mr. Robert Chevalley (4615 Diplomat Drive): I've been a Stow resident for more than 40 years. Mr. Miller, you made some excellent points. I own a two-family lot on Ritchie Road. It conformed to the requirements of the Ordinance No. 1971-170. I have held this lot for about 39 years and paid more than \$25,000 taxes on it hoping someday to build a two-family house. It's right next door to a two-family house that I built 39 years ago and it has other two-family houses on the side and multi-unit buildings across the street. I would hate to think that I wouldn't be able to build a two-family house on that lot after all these years of that being my plan. I also have the architect's plan, if you're interested. That's a similar building to the one I already have on Ritchie Road. The lot is about an acre in size; not 2 acres. It certainly conformed to ordinance at the time I bought the lot. I have been counting being able to use that lot to build a two-family house ever since that time. I would hate to see the thing change where I couldn't do that. The lot wouldn't really have value at all because I don't think you'd want to building a single family house with a commercial property to the rear, and twin plexs on each side and a multi unit across the street. So the only real viable economic use of this lot would be to build a two-family house. I've built some two-family houses in Stow that are pretty attractive: on Woodlawn Circle, Forest Heights Drive, Hillcrest, Norton Road, Ritchie Road, Gangl, Hibbard. I think everything I've built has been attractive, again, priced for the rental market so people can live in Stow and not have to buy a \$300,000 house. I hope you'd take that into consideration. Thank you.

Paul Zuravel (3720 Gilbert Drive): I like the way the conversation's going too because I mean let's put it out on the table. The reason this was thrown back to you was because you approved a two unit for Mr. Vizmeg and when it came to Council, there were 25 people that signed a petition that said it was going to hurt their property values. And so Council voted 3-to-3 and they denied him his conditional use. The code specifically says that they need 5 votes to overturn any Planning Commission recommendation. If Planning Commission make recommendation to Council, Council has to have 5 votes to overturn that.

Mr. Kurtz: They also needed 4 votes to approve any item so if they didn't approve it

Mr. Zuravel: They just didn't approve it. By not approving it, they denied it.

Mr. Kurtz: Planning Commission can't force Council to act so they would need 4 votes to have it approved.

Mr. Zuravel: Not approving it is a way of denying it. There's just an underlying sentiment that like Mr. Miller said that people that rent are 2nd class citizens. He was going to build over there and charge \$1,500 a month is what he stated. 1200 sf units. Only 65% of the people nationwide are homeowners. 35% of the people in this Country have chosen not to own a home. And the trend is more people are going that way. They're paying

higher rents. They're not cheap. To me, the code is fine – it's pretty restrictive right now. I would recommend that you guys just leave it as is. Council can adopt it this legislation without Planning Commission's recommendation? Is that right, Rob?

Mr. Kurtz: Yes, all Council needs to do is – Planning Commission just has to give a recommendation. They don't have to approve it.

Mr. Zuravel: The point I want to make is this is before you because of one incident; this two-unit that Mr. Vizmeg wanted to build up here. The other solution to that is if you don't want to allow the two units, make the lots smaller; like they are in Cuyahoga Falls. Make them to be able to build on 6,000 or 8,000 or 4,000 sf. There's nothing to prevent somebody from building a huge house here and renting it out to 10 people. And then what do you have? I just think the whole thing is stupid. It's a waste of time. It was brought up because of one person and it became arbitrary when these neighbors come in. Every time the neighbors come in and say they don't want something, Title 9 spells out the conditions that a conditional zoning certificate is to be granted. It's a permitted use with conditions according to Title 9 in the Zoning Code. And as far as I know, the neighbors not wanting it, isn't one of those conditions. It's all subject to Title 9 conditions – any conditional zoning certificate that's given. So a conditional zoning certificate, from my understanding, is actually a permitted use subject to Title 9 conditions. And when they start getting arbitrary about it, then it really gets cloudy. I think you're going in the right direction. Throw it back to them and say "we don't even think this is a viable option because it affects too many" + We can't make a law every time one person wants to do something and we want to outlaw him. And that's what it's come down to. Thank you.

Jim Yeager (4485 Knob Hill): First of all, I want to thank you for everything you've said. Everyone seems to be in great agreement. The intent is to better our City and hopefully these comments will be conveyed to City Council. I have been a property owner and landlord predominately in this community. Mr. Chevale was invited by me and he is where I was 20 years ago. People live in his homes; he pays taxes on these properties. It isn't easy to sit on land and not get a return on it. I like what Mr. Miller said concerning the rights of all of us. As these housing units become older, wouldn't Stow like it to see them rebuilt with a newer, safer, more up to date multi-family dwelling? If a property is say, 1.85 acres, why wouldn't that qualify? Why does it have to be so strict? There isn't a code that Stow has requiring what type of duplex can be built. I would like to see requirements to clean up this town. New construction will be safer and of a higher standard. Thank you.

Mr. Brauer made a motion and Mr. Ross seconded to approve P.C. 2018-012.

Nay: Mr. Brauer, Mrs. Harrison, Mr. Miller, Mr. Ross, Mr. Sprungle.

Yea: None

The motion failed 5-0.

Comments: Mr. Sprungle recommended that City Council address the issue of legal non-conforming lots and the consequences and natural disasters affecting those legal non-conforming lots.

Mr. Kurtz: Specific review of 1191 by the Law Department.

NEXT MEETING: Scheduled for July 10, 2018

With no further business to discuss, Mr. Brauer moved and Mr. Sprungle seconded the motion to adjourn. It was unanimously approved and the meeting adjourned at 6:46 p.m.

Chris Brauer
Planning Commission Chairman

Jill Janson
Secretary