



Planning Commission

Meeting Minutes

January 23, 2019

7:00 p.m.

New Albany Planning Commission met in regular session in the Council Chambers of Village Hall, 99 W Main Street and was called to order by Planning Commission Chair Neil Kirby by at 7:05 p.m.

Neil Kirby	Present
Brad Shockey	Present
David Wallace	Present
Hans Schell	Present
Andrea Wiltout	Present
Sloan Spalding (council liaison)	Absent

Staff members present: Stephen Mayer, Development Services Manager; Jackie Russell, Development Services Coordinator; Chris Christian, Intern; Mitch Banchefsky, City Attorney and Pam Hickok, Clerk.

Moved by Mr. Schell, seconded by Ms. Wiltout to approve January 7, 2019 minutes. Upon roll call vote: Mr. Kirby, yea; Mr. Shockey, yea; Mr. Wallace, yea; Mr. Schell, yea; Ms. Wiltout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0.

Mr. Kirby asked for any changes or corrections to the agenda.

Ms. Russell stated that staff would like to add case law conversation under other business.

Mr. Kirby swore to truth those wishing to speak before the Commission.

Mr. Kirby's invited the public to speak on non-agenda related items. (no response)

Formal Vote of Changes to Codified Ordinances Section 1179 – Wireless Telecommunication Facilities

Mr. Stephen Mayer presented the history of the small cell code section and code section 1179 updates.

Mr. Kirby asked what the alternative to a pole in the right of way.

Mr. Mayer stated that the preference would be to put them on secondary streets or public spaces. Many of the public parks have been deeded and are owned by the city. The parking lot behind the Heit Center is owned by the City. We think that would be the perfect place to put these small cell poles. It would be off the street and still targeting the area that they want.

Mr. Kirby asked if a private owner could offer to allow a small cell tower in village center on their property.

Mr. Mayer stated that we haven't done anything yet. The companies would rather put it in the right of way because there is no cost. Putting on private property they would need to lease.

Mr. Kirby stated that this may be an opportunity in PUD zoning text that we could add language that would allow cell towers in the parking lots.

Mr. Mayer stated that we can look in to that. Our typical light poles are 30' and they want 35 - 40'. Our first submittal has been received for a small cell on Thompson Road.

Mr. Kirby stated that if we could tell them that there is a streetlight in a private parking lot for you and there zoning text states that if you replace the streetlight with a pole on the top then it can be installed. We would need to figure out the power usage.

Mr. Mayer stated that it is worth looking into because it is out of the box. Even if it is a good idea sometimes it takes convincing.

Mr. Shockey stated that it is interesting that we spent millions of dollars to get rid of the poles in the historic village and now we are getting poles back.

Mr. Mayer stated that it is possible; we did everything that we can. The technology is always changing and getting smaller. In the village center, they can put the pole but we can force the boxes underground.

Mr. Kirby asked about rooftop mounted in the commercial areas.

Mr. Mayer stated that they could do that and I think staff would be supportive.

Mr. Kirby asked if the zoning and limitation texts allow it.

Mr. Mayer stated that typically the utilities is vague.

Mr. Kirby stated that the hotels might be a great location.

Mr. Mayer stated that it would need to be reviewed on a case-by-case basis.

Mr. Shockey stated that it would not be a Planning Commission issue.

Mr. Mayer stated that is correct.

Mr. Schell asked if 90 days is the maximum timeframe.

Mr. Mayer stated that speed to market is important to cell companies. The maximum might have been 110 days and we landed on 90 days. Many other communities are also doing 90 days.

Mr. Kirby asked if the chamber of commerce was informed.

Mr. Mayer stated no, more outreach and education would be done.

Mr. Kirby stated that if we can spin it as an advantage to the businesses and they allow at no charge we may not need to worry about small cells in the right of way.

Mr. Mayer stated that we may want to see which businesses would be open to that idea. We are building Rose Run and have discussed where we could have place for small cells.

Ms. Wiltrout asked if the private property towers be subject to the new code section 1179.

Mr. Mayer stated that anything in ROW would be code section 907 and anything on private property would be code section 1179. The last time we updated this code section was 4-5 years ago when small cells were starting. We specifically stated in the code that small cells could not be located in the right of way. He continued with his presentation on the code section 1179 updates.

Mr. Kirby verified that section 1179 states that small cells are not governed by this section.

Mr. Wallace verified that prior to section 907 all types of towers were governed by section 1179. The legislature passed the law that allows small cell in the right of way. So we need to carve out the restrictions that applied to small cell.

Mr. Mayer stated that is the intent is that this applies to everything except for what is defined as small cell, which is regulated by section 907.

Mr. Wallace stated that section 1179.02(a) was confusing and difficult to follow.

Mr. Mayer stated that staff will clean up section 1179.02(a).

Mr. Kirby stated that what this is trying to say is that small cell in the right of way is not covered in the code section but a small cells outside of the right of way is covered. The rest of section 1179 speaks to large towers so we may want to review this section to apply to small cells.

Mr. Mayer stated that we do have a section for towers less than 50 feet. For example 1179.05(1)(a) has tiered restrictions based on height.

Mr. Banchefsky stated that he wanted to add some background. Trying to make the best of a bad situation imposed on us by the legislature. The original bill stated that they could put them anywhere without permits. Multiple municipalities argued and have worked together. The speculators can't come in to install towers, they must have a letter from service.

Mr. Wallace stated that he had some other comments about clearing up the language.

Mr. Mayer stated that they could meet later.

Mr. Kirby moved to table until next regular meeting, seconded by Mr. Wallace. Upon roll call vote: Mr. Kirby, yea; Mr. Shockey, yea; Mr. Wallace, yea; Mr. Schell, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0.

Workshop to Codified Ordinances Section 1165 – General Development Standards

Mr. Mayer introduced Chris Christian as the new hire planner.

Mr. Christian presented the staff research.

Ms. Russell presented the recommended changes.

Mr. Mayer stated two main trains of thought that we found through research, either the size of lot or size of house footprint.

Mr. Shockey asked why not do form based.

Mr. Mayer stated that most variances have been around 1,200 square feet and gets the third car garage.

Mr. Shockey stated that most of the variance arguments have been about scale to house.

Ms. Wiltrout asked what is form based code.

Mr. Mayer stated that we have a Euclidean code, so it states that setbacks are "X" and height is "Y" and it has distinct maximums by zoning class. The Euclidean code is more focused on use. A form base code doesn't look at use, as long as you meet these parameters and the design criteria. We have a pseudo-form based code in the village center. We are most concerned about form in the village center and we still wanted some control over the use.

Mr. Shockey asked if we need a finite number so we seem less arbitrary.

Mr. Mayer stated that the form-based code still have size and setbacks but it has a range. It is an option here, if you look at minor improvements, they don't care what it is

but it must meet the setbacks and a maximum of this size. They are carving out this much space for whatever they want. Again, we were looking at a pseudo form based code because we believe that there are different impacts between a detached garage and patio.

Mr. Kirby stated that at grade items are less objectionable than a wall. You would need two boxes one for above grade items and one for at grade items.

Ms. Wiltrout stated that current code has a larger setback for a patio than a deck.

Mr. Mayer stated that this is to share our thoughts and research and things that were variances in the past.

Ms. Wiltrout stated that I think 5' for a deck is too small and that maybe 10' for patios and decks.

Mr. Shockey asked if we measured the encroachment with the overhang. Does our definition clearly define how to measure overhangs.

Mr. Mayer stated that we have interrupted it is the building footprint so a roof could overhang and we would say that its doesn't encroach.

Mr. Shockey stated that title insurance will state that it is an encroachment.

Mr. Mayer stated that in some areas that have the 0' lot line we need to look at the building code because they are required to fire rate the walls when they are that close.

Mr. Wallace stated that this is a good idea but the majority of variances are for mess ups and they are asking for forgiveness.

Mr. Mayer stated that we can't stop all variances. We don't think of variances as a bad thing, we just think that there is something unique about that property.

Mr. Kirby stated that most of these are self inflicted because they build a large house on a small property.

Mr. Mayer stated that is why we decided to look at the lot size instead of the building footprint.

Mr. Kirby stated that 40,000 sf won't stop the variances.

Mr. Mayer asked that board to refer to the handout of previous variances and discussed the size of lots.

Ms. Russell continued with presentation.

Mr. Mayer stated that our policy is to allow one unit per acre for rezonings. We get down to about .5 acres because of the open space, park land and streets.

Mr. Kirby asked if we have the subdivisions where the variances have been requested.

Mr. Mayer explained that for garages have been mostly in the country club but this code will apply to the entire community so we wanted to have an average size as possible.

Mr. Shockey stated that staff spent a lot of time of this. How did you get the data?

Ms. Russell stated that it was a group effort. We have used in house data and GIS.

Mr. Mayer stated that we tried to pull about 20 lots from each subdivision that we chose.

Ms. Wiltrout stated that she would recommend a third category, over 3 acres. You can group most of New Albany in the bell curve.

Mr. Mayer stated that many of the variance requests are for the lots that are large considering the average lot size in New Albany.

Ms. Russell continued with the presentation.

Mr. Schell stated that it needs capped, but what is the right number.

Mr. Shockey stated that when we hear variances for setbacks or size we ask what is the impact neighbor. I don't know how you incorporate that into code.

Ms. Russell stated that we have looked at increasing the setbacks if we are going to increase the size.

Mr. Shockey stated that I have seen code that is more of a narrative than a finite number.

Mr. Kirby stated that the size versus encroachment are different arguments to have. Patio and Deck - above ground items have larger setback than ground level.

Mr. Mayer asked if we allow a patio 5' from lot line do we want a pergola to match the setback.

Mr. Kirby stated that I want above ground items to have larger setbacks because it is more obtrusive.

Mr. Mayer asked if we care what the size of the pergola is, if they are meeting setbacks?

Mr. Kirby stated that he kind of likes the idea of here is the area you can build items but worried of the unintended consequences. Maybe that could be resolved with the DGRs because the accessory structures needs to relate to the house.

Mr. Mayer stated that pergolas have a rolling scale from other structure on the lot. We want to consider the over crowding of the lot. If we give people a box we can still state you need to be "xx" feet from other structures.

Ms. Russell stated that the standard that we found in other communities is 10' from another structure on the site. If we are talking about a box area, does a detached garage hold different weight than a pergola and deck for setbacks?

Mr. Kirby asked if the code requires secondary structures to be clearly secondary in appearance.

Ms. Russell stated that it does but we also have height limitations, such as detached garage or pool house can be up to 25' in height and pergolas or sheds can only be 10' in height.

Mr. Mayer stated that this is the accessory structure section. We want to ensure that they remain and feel accessory to the primary house. With variances, we compare to both lot size and house footprint. Currently we allow for taller detached garages than most communities to have the architecture and scale match.

Mr. Kirby asked if we send that type of height variance to ARB because it has an architectural impact. Do we want ARB to review this code change if we make it a sandbox area because of the architectural impact?

Mr. Mayer stated that it is something to consider although I think that this board does a good job of considering those things. I think staff is comfortable taking those types of variances with architectural issues to BZA or PC.

Mr. Kirby thinking about the Duncan criteria and the cases that sound good but don't meet Duncan.

Mr. Mayer stated that we start to see the same repeat variances it is time to look at the code section. We will look at the third tier.

Ms. Russell asked if there is any research that we didn't provide that you think would be useful.

Mr. Kirby stated that you have a reasonable number of the neighborhoods where the variances have been requested.

Ms. Wilttrout would like to read cases on the pergolas.

Mr. Mayer stated that we seem to have a lot of pergolas that are ask for forgiveness cases. I don't know if the code change will change this. Typically, the issue is that they want to cover the entire patio. It appears to be a growing trend.

Mr. Wallace stated that major and minor improvements may not be the right description. A 200sf pergola on a small lot may be considered a major improvement based on the impact to the neighbor.

Mr. Mitch Banchefsky distributed case law for City of Kent planning commission. This was a rezoing application before the City of Kent Planning Commission. It appears that the court will find in favor of the applicant. The Planning Commission denied, administrative appeal found in favor of the Planning Commission, Court of Appeals came back and said that the Planning Commission did not handle the case properly. I don't have a final decision because it was referred back to the Common Pleas Court. It provides an interesting analysis touching on items such as testimony from staff, developer and traffic engineers, surrounding residents and non-residents. Lack of record of action, completeness of the transcript and the inherent lack of creditability related to unsupported citizen comments. The court of appeal states that the City of Kents reason for denying the site plan were not supported by competent and credible evidence due to the reliance on unsubstantiated speculative public comments over expert evidence and features of the site plan. The court further finds City of Kent Planning Commission's reasons for denying the site plan for violations of codified ordinance was arbitrary due to reliance on the public comments of a minority of surrounding property owners and non-residents to the detriment of the majority of surrounding property owners and residents. The court further finds that City of Kent Planning Commission's reason for denying the site plan for violations of codified ordinance was illegal due to reliance on the economic conclusions of a housing market study rather than consider health, safety, welfare and moral as required by zoning law. It appears the court will find in favor of the developer. In Ohio, we don't get many detailed zoning decisions from the courts.

Mr. Mayer stated that the board does a great job with variances and following the Duncan factors.

Mr. Kirby stated that is why he asks for photo details because that is a difference between experts versus non-expert.

Mr. Banchefsky stated that the commission can call with any questions.

With no further business, Mr. Kirby polled members for comment and hearing none, adjourned the meeting at 8:52 p.m.

Submitted by Pam Hickok