

MARIEMONT PLANNING COMMISSION
REGULAR MEETING HELD JANUARY 19, 2022

The Mariemont Planning Commission met January 19, 2022. Mayor Brown called the meeting to order at 5:30 p.m. Present were Ms. Reed, Mr. Rich and Mr. Van Stone. Mr. Rod Holloway was in attendance as the Village Building Zoning Officer.

Mr. Rich moved, seconded by Mr. Van Stone to accept the minutes as written for December 15, 2021. On roll call; four ayes, no nays.

Ms. Reed moved, seconded by Mr. Rich to nominate Mr. Van Stone Chairman of the Planning Commission for the calendar year 2022. On roll call; four ayes, no nays.

Ms. Reed moved, seconded by Mr. Van Stone to nominate Mr. Rich as Vice-Chairman of the Planning Commission for the calendar year 2022. On roll call; four ayes, no nays.

Mr. Rich moved, seconded by Mayor Brown to nominate Ms. Reed as Secretary of the Planning Commission for the calendar year 2022. On roll call; four ayes, no nays.

The first request was from Christopher Leonidas of 4110 Grove Ave. Cincinnati, OH 45227 for a variance to locate a section of new fencing outside his defined property lot.

§ 151.024 POWERS AND DUTIES OF THE PLANNING COMMISSION

(3) Property variances.

(a) The Commission shall have the power to grant a variation in the property provisions and requirements of this chapter which will not be contrary to the public interest or intent and purpose of this chapter, so that the public health, safety, convenience, comfort, prosperity, and general welfare will be conserved and substantial justice done, but only where, owing to special conditions pertaining to a specific piece of property, the strict application of the provisions or requirements of this chapter would cause a clearly demonstrable hardship.

(b) Variances may be granted under the following circumstances:

1. When there is reasonable doubt as to any provision of this chapter or the building zone map as applied to such property; or
2. When the following facts and conditions exist:
 - a. An exceptional narrow, shallow, or irregular lot, exceptional topographical conditions existing and of record June 27, 1941; or
 - b. Large "specimen" trees are in jeopardy; or
 - c. Where, by reason of extraordinary or exceptional circumstances or conditions, the literal enforcement of the requirements of this chapter would involve practical difficulty or would cause unnecessary hardship, or would not carry out the spirit and purpose of this chapter; and
 - d. Such variance is necessary for the use and enjoyment of the property in a manner similar to that which other property in the village is used; and
 - e. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity in which the property is located; and
 - f. That the condition or situation of the subject property, or the intended use of the property, for which variance is sought, is not so general or recurrent a nature as to make reasonably practical the formulation of general regulations for such conditions or situation

Findings from the Building Department as Follows:

For Item #1:

§ 151.104 CONSTRUCTION

(7) All fences shall be placed entirely on the property owner's lot. No setback is required for fencing in any yard

Reference photograph below where the red line indicates the fence location in question (parallel to Grace Ave, which is approximately 12ft beyond the northern property line). The blue line is the owner's lot. Prior to purchase of this property there was an existing fence in this area.



Mr. Leonidas referred to bullet point 2(a) and indicated that his is a corner lot which is a challenge and noted that the rear yard is fairly small. There was a fence erected prior to his purchasing the residence. He did not realize it would be a problem to put it back. He wants to provide a safe area for his children to play. Regarding bullet point 2(d) there is a large tree in the dead center of the yard reduces the physical space in the yard and this would allow access to the entire grass area as it was prior to his living there. Regarding bullet point 2(e) the fact that the existing fence was there and was removed because it was deteriorating prior to the sale of the house. He replaced the fence with a similar quality and he has had many compliments from his surrounding neighbors. The intention was if there was ever a need to access the property he would remove/rebuild the fence at his expense.

Mr. Rich said he believes this matter should be heard at another forum. The Planning Commission has the authority to grant variances on a property owner's property but not outside their property. Perhaps Village Council can grant that authority but he proposed that the question be put before the Village Solicitor.

Mr. Van Stone confirmed that the fence was erected without a building permit. He voiced concerned that on that section of Grace Avenue that there is no other fence out to the street. He finds that the applicant's fence blocks the view and does not find it appropriate.

Mayor Brown said he will contact the Village Solicitor. In the past he knows when a resident has asked for a variance to put a fence or invisible fence in the Village right-of-way that they were denied.

Mayor Brown moved, seconded by Ms. Reed to table the request until an opinion is given by the Village Solicitor. On roll call; four ayes, no nays.

The second request was from Gregg & Casey Burke of 2 Sheldon Close, Cincinnati, Ohio 45227 for a variance to utilize an accessory building for a non-permitted use in "Residence A" zoning district. Separately a variance would be required to allow this structure to be modified as its height is also non-conforming.

For Item #2:

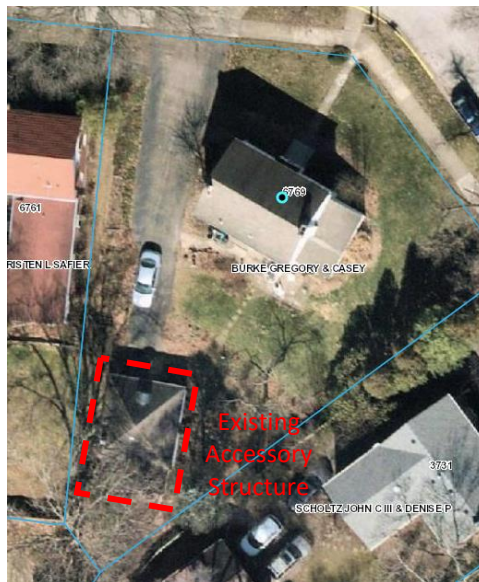
§ 151.060 RESIDENCE A DISTRICT REGULATIONS

(b) Accessory buildings, erected as part of the principal building or as separate from this division (A)(7)(b): when erected as a separate structure, the accessory building shall be located in the rear yard. Accessory buildings shall be located on the same lot as the principal building, shall not involve the conducting of any business, and there shall be not more than one separate accessory building on any lot.

1. Accessory buildings are permitted for one or a combination of one or more of the following uses:

- a. A private garage or carport;
- b. A building for the storage of tools, equipment, or supplies used for the maintenance of the buildings and land of the lot on which the accessory building is located;
- c. A building for the storage of tools, equipment, or supplies used primarily for recreational use by persons residing on the premises on which the building is located; and
- d. A building for the storage of tools, equipment, and supplies used for the growing of vegetation, vegetables, fruits, shrubs, and trees on the lot on which the building is located

The plans submitted with the application for a building permit note that the intended use will be for both a playroom (non-conforming/permitted use) and a storage area. The accessory structure is existing on the lot and is taller than allowed for this zoned district (est. height of 17ft, allowable is 15ft).



Mr. Burke submitted a copy of the updated plans. The property bought at 6769 Fieldhouse Way has a rear structure that was used as a dentist office. Upon the transfer of the property to his family, the plan is to leave the original character of the house intact and modify the structure in the rear for storage and secondarily a multi-purpose space for the kids to play. It will not be a living space and there are no plans to add a bathroom or bedroom. There is currently a sink which they may modify to a utility sink, but it is not in the initial building plans as it is not a current high priority need.

Mr. Rich said his opinion is this building is too large to be all storage. The other half is dedicated to something that is a permissible use in “Residence A” district. He applauds the approach in wanting to preserve a building that has been part of the fabric of Mariemont for a long time.

Mayor Brown asked if the square footage meets the code requirement for the back yard. Mr. Holloway said he is fairly certain it does. Mayor Brown noted that there are utility lines and drain lines that run to the building. According to the drawing, the area for storage is roughly one-third of the space. Mr. Burke said there was some termite damage that needed to be repaired thus some of the walls were removed/repaired. Mayor Brown asked if the walls were going to be drywalled and insulated. Mr. Burke said for now they are going to insulate, but they do not see a need to finish it at the moment. Mayor Brown was unsure if insulation could remain exposed.

Mr. Rich said he does not see that any of this needs to be rated walls because it is not in close proximity to any property line that would require a rated wall. Also, the use does not require rated walls.

Ms. Reed asked if they wanted to put in a bathroom would they need to get a variance. Mr. Holloway said to use it as a playroom is currently not a permissible use. A non-conforming use would require a variance and code review for the intended use. Should the intended use change (such as adding a bathroom) a permit would need to be applied for and a possible variance request from the Planning Commission. Ms. Reed said the slippery slope is if the area would be

changed in the future to an office, bedroom etc. Mr. Burke did indicate that the plan was to add heat and air conditioning to make the playroom more comfortable.

Mr. Van Stone said there will not be HVAC and no water, except for the possibility of a utility sink, he wanted to make sure the applicants understand the dilemma the Planning Commission is in by having a semi-residential use building. He does not believe the Village wants to go there and stressed should they want to do additional work they would need to come back to the building department.

Mayor Brown said he is concerned about precedent, but as long as the applicants know they cannot not make any alterations beyond what has been expressed to the Planning Commission in this variance request.

Mr. Van Stone said if the Planning Commission grants a no HVAC, dry-wall, or insulation conditional use permit, he believes it needs to go before Council for approval based on Code Section 151.021 (D)(3) and 151.021 (D)(4) and requires 2/3 vote of Council. He believes there may be an additional step and recommends that the Solicitor provide an opinion.

Mr. Rich moved, seconded by Mayor Brown to recommend approval of this non-conforming use of the building and in addition to the non-conforming use and because it is an existing structure that the height be approved as well with respect to Code Section 151.024(B)(2)(c)(d)(e)(f). It is noted that the variance will not be granted by the Planning Commission until they receive the opinion from the Solicitor that is does not need to go before full Council. On roll call; four ayes, no nays.

The meeting adjourned at 6:07 p.m.

Respectfully Submitted,

Ms. Shelly Reed, Secretary