

MARIEMONT PLANNING COMMISSION
REGULAR MEETING HELD DECEMBER 13, 2022

Mr. Van Stone called the meeting to order at 6:00 p.m. Present were Mayor Brown and Mr. Rich. Mr. Dan Deters was present as legal representative for the Burke's. Solicitor McTigue was present on behalf of the Village of Mariemont.

Mr. Van Stone moved, seconded by Mayor Brown to approve the minutes as written for October 4, 2022. Mr. Rich said he would prefer to have a full quorum to accept the minutes. Mr. Rich had asked at the meeting on October 20th for the minutes to be reviewed, but he rescinded the request in writing to members of the Planning Commission. All members of the Planning Commission have received the minutes. On roll call; two ayes, Mr. Rich refused to vote.

Mayor Brown moved, seconded by Mr. Van Stone to approve the minutes as written for October 20, 2022. On roll call; two ayes, Mr. Rich refused to vote.

Mr. Rich read a memorandum to the Planning Commission members. It quoted four narratives of irregularities he noted from the Planning Commission held at the October 4, 2022, and the October 20, 2022, meetings regarding the process of approving the Sanctuary Cove PUD along with other areas of concern and questionable practices.

A request was submitted from Gregg & Casey Burke of 6769 Fieldhouse Way, Cincinnati, OH 45227 to appeal a decision from the Building Department to deny an HVAC permit for a previously approved accessory structure. If appeal is allowed, then it is requested by the Building Department to grant a conditional use permit for this accessory structure to the applicant to avoid future enforcement issues.

§ 151.020 ENFORCEMENT.

(A) It shall be the duty of the Building Commissioner to enforce this chapter, the Village Building Code, and the State Building Code, where applicable, by the grant and refusal of building permits and certificates of occupancy. The Building Commissioner shall review and forward applications for conditional use permits to the Planning Commission. The Building Commissioner shall forward requests for certificate of appropriateness to the Architectural Review Board. No building permit, certificate of occupancy, or conditional use permit shall be issued for any building, use, or occupancy which in its construction, location, or proposed use would violate or fail to comply with the provisions of the above-mentioned Codes.

(B) In the event of the refusal of the Building Commissioner to issue any building permit or certificate of occupancy, such refusal shall be stated in writing stating reasons for such refusal, and a copy thereof mailed or delivered to the applicant for the permit and dated as of the date of that mailing or delivery.

(C) Enforcement of all zoning regulations shall be charged to the Building Commissioner. The Building Commissioner shall not issue a permit for excavating or construction unless the plans, specifications, and intended use conform to the provisions of this chapter. Final certification thereof shall be made by endorsement on the application in writing by a member of the Planning Commission designated by the Planning Commission as authorized to endorse application for building permits. The Building Commissioner shall examine all plans of all types of buildings and all plans for use as to compliance with this chapter and shall furnish executive services for the Planning Commission, handle correspondence, issue notices, compile all data and information necessary to an intelligent consideration of the appeal cases, and perform all services which require technical understanding and intimate knowledge of this chapter.

§ 151.024 POWERS AND DUTIES OF THE PLANNING COMMISSION

(B) The Planning Commission shall also act as a Zoning Board of Appeals and is delegated power to hear and determine appeals from any decision, including the grant or refusal by the Building Commissioner of building or other permits, where such decision, grant, or refusal is based on the requirements of this chapter, and power to permit exceptions and variations from the district regulations in the classes of cases and situations hereinafter set forth, including the granting of subdivision of existing parcels or a planned unit development, and conditional use permits. If approval of a conditional use heretofore not permitted, the recommendation must be approved by Council (see Appendix E). No member of the Planning Commission shall participate in the review of any work of which he, she, or any partner or professional associate is the author, or in which he, she, or they may have any direct or indirect financial interest.

(C) Appeals, requests for conditional use variances, and requests for subdivision of existing parcels may be taken to the Planning Commission by any person or by any officer, board, or commission of the village, seeking a conditional use variance, a division of parcel, or affected by the grant or refusal of a building permit, certificate of occupancy, or by any other decision of the Building Commissioner where such decision is based on the requirement of this chapter. An appeal shall be filed with the Planning Commission within 30 days from the date of the grant, refusal, or other decision of the Building Commissioner. Historic structures or structures located within a historic district shall apply for a certificate of appropriateness from the Architectural Review Board prior to bringing an appeal to the Planning Commission (see § [151.021\(E\)](#) and [Appendix E](#)). Appeals from a Building Commissioner decision regarding the Building Code may be taken to the Building Appeal Board (see Building Code, 1260: PM-106). The entity filing an appeal of a refusal by the Building Commissioner to issue a permit shall furnish to the Building Department by the first Wednesday of the month the following materials:

§ 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.

Findings from the building department: HVAC is not a building code requirement for an uninhabitable storage area. Alternate solutions (local heating or seasonal line clearance of water supply lines) are available that would remedy the homeowners concern while not enabling the critical elements of an inhabitable space to be in place for an accessory building. If this appeal is allowed, enforcement of the Village zoning code regarding accessory buildings becomes much more challenging to administer.

Mr. Burke questioned why the HVAC building permit was denied. Mr. Holloway said his response included that it would provide a critical element in the space becoming

habitable and was not deemed to be a needed requirement for a storage area. There is possibility of transferring the property in the future and with the HVAC installed all residential elements are in place. The feel is that it is no longer a storage facility. Mr. Burke said he was not asking for a variance or change in zoning or asking for a change in use of the structure.

Solicitor McTigue said his understanding is it has always been represented as a habitual structure. The prior submissions seem to indicate that. Mr. Holloway is the gate keeper of the Zoning Code and if he feels uncomfortable, he is allowed to say no and have the Planning Commission weigh-in on the matter.

Mr. Holloway said the original application indented for this to be a playroom space. The application was withdrawn when the applicant understood that he was not allowed to have an inhabitable space. Since that time the plans have been altered to not show it as an inhabitable space, but it included bathroom space. In his opinion, the HVAC system was starting to cross the line of what is really needed for a storage shed.

Mayor Brown said there were a lot of plan submissions with each being altered – sometimes one week to the next.

Mr. Burke said he does a lot of home rehab work and has extensive tools. They also do a great deal of gardening in the South 80 and his wife restores furniture. Along with 3 kids they have the need for a large storage area. He intends to conform to the code and zoning requirements. He is willing to sign and notarize his intentions. He has spoken with his neighbors. When they took possession, there was termite damage. They had to replace 75% of the walls to keep the building from collapsing.

Mr. Van Stone read the following email dated December 12, 2022:

To the Building Inspector and Planning Commission,

My husband and I received the appeal from the village concerning an HVAC installation for our neighbors, the Burke's, at 6769 Fieldhouse Way. We have spoken to Gregg Burke, and he assured us that he just wants to use the space for storage and be able to control the temperature within the building. I trust that is his intention as they are good neighbors.

However, my concern is with the plans that we're presented with this appeal. It very much looks like a two-bedroom apartment. I am concerned that in the future, if the Burkes were to sell their property that a new owner would be able to use that space for an in-law suite, VRBO, or such. If is already set up as a heated air conditioned 2-bedroom apartment, what is stopping anyone from using it that way!

Thanks,
Denise Scholtz
3731 West Street

Mr. Holloway said he did receive another note from a neighbor who did not want to share it publicly, but it echoed the email sent by Ms. Scholtz.

Mr. Burke said the HVAC will provide ventilation when his wife is working on projects. He also feels it would be more cost effective than running space heaters.

Solicitor McTigue suggested that both parties execute a restricted deed that highlights the accessory structure as a non-habitual space. It would be recorded at the Hamilton County Courthouse that the owners of 6769 Fieldhouse Way applied for a building permit for the out structure. It is acknowledged that it is not zoned properly for a habitual space, and they hereby say they shall not use it in that fashion. If the owners do use it in that fashion, they violate the Mariemont Zoning Code. Those who may buy the house in the future are taking it subject to this admission.

Mr. Deters said his client would find that agreeable. However, they are trying to understand the legal basis in the law as to where the Village has the authority to deny the permit application when there is nothing written in law that this is breaking any rules. Perhaps the Village should change the code to not allow HVAC in storage areas, but currently it does not place restrictions.

Mayor Brown was concerned that it may set precedent for other homes in the Village. It puts the Village in a position to have to monitor and judge.

Mr. Van Stone asked why the HVAC was not listed in the August 7th plans? As a woodworker the last thing you want is to have sawdust in a HVAC system. A ventilation fan would be more appropriate. Mr. Burke said he did not know he needed it.

Mr. Rich believes the way the building is being described is unfair to the homeowner. It is an existing building that he went farther to restore than most would. He believes it is unfair to grill the applicant that he may not be using this property other than what he says he will use it for. We need a fair process and should make the judgement based on the code, not on what we feel may happen in the future. It is the Village's responsibility to monitor on how the building is used in the future.

Mr. Rich referenced the timeline prepared by the Mr. Holloway and noted that on January 19, 2022, there were no conditions placed on the homeowner in the meeting for conditional use. Mr. Holloway's recollection was that several members of the Planning Commission wanted to regulate the use of the playroom. Because it was a non-permitted use it required two-thirds of the Council to approve – and that never took place because the applicant withdrew the application on February 2, 2022. There was activity going on in the accessory structure that was not permitted. It was more than demo work. Mr. Rich said on February 15, 2022, there was a meeting to reject the application for conditional use that had been withdrawn. Mr. Rich said he was simply trying to clarify events he does not believe are not as exact as they are described. The minutes for January 19th were approved with only two of the members being present at that meeting.

Mr. Rich said according to the timeline on August 7, 2022, approval was given for a shower/toilet. Mr. Holloway said he wanted the applicant to understand that he would likely need to have a variance for any work he wanted to do based on January 2022 discussion.

Mr. Rich said on October 21, 2022, Mr. Holloway received an email and application for the accessory building and asked when the applicant was notified that the permit was denied in writing. Mr. Holloway said he did not tell him until Mr. Burke asked him. They had a discussion and Mr. Burke asked that he calibrate with other members of

the Planning Commission whether or not his interpretation of what a storage/accessory structure is. There was email exchange, and all thought it would be a good topic to have further discussion. Mr. Rich stated that section 151.020(B) states that the applicant needs to be notified in writing.

Discussion ensued regarding the permit process, HVAC installation, conditional use and the appeal of the zoning code issue.

Mr. Rich asked if the Ohio Residential Code was in effect on this project. Mr. Holloway said yes. Mr. Rich asked if Ohio Resident Code Section 102.8 had an effect on this project. Mr. Holloway said he would have to study. Mr. Rich said the reason Mr. Holloway rejected the application was because it was not required by the Building Code. He does not feel it is fair to the homeowner to extend the perception that the building could be used for another purpose in the future. Further discussion ensued with Mr. Rich stating that there was no actual zoning code violation. A building element not required by the code does not constitute non-compliance per Ohio Residential Code Section 102.89. Denying permit to condition the building created harm to the owner and compromises both the longevity and the safety of the building. It can also diminish the resale value of the property as the condition of the out building will decline. The enforcement is the responsibility of the Village, not the homeowner. He does not want to set precedent on how future applicants may be judged.

The process of violations and punishment was discussed. It was suggested in the future that the applicant be transparent with the Building Department on work to be completed.

It was agreed that the attorney for Mr. Burke and the Village of Mariemont would prepare the paperwork and the deed would be recorded by said legal team with the Village of Mariemont receiving a copy stating that it is clearly defined that this is not a livable, inhabitable space and will not be used by the current owner or future owners. The Planning Commission therefore took no action.

The meeting adjourned at 7:40 p.m.

Respectfully Submitted,

Ms. Shelly Reed, Secretary