

**MARIEMONT PLANNING COMMISSION**  
**REGULAR MEETING HELD FEBRUARY 23, 2022**

The Mariemont Planning Commission met February 23, 2022. Mr. Van Stone called the meeting to order at 5:30 p.m. Present were Mayor Brown and Ms. Geldbaugh. Mr. Rod Holloway was in attendance as the Village Building Zoning Officer. He displayed the notice electronically on the screen which was requested by Mr. Rich.

Mayor Brown moved, seconded by Ms. Geldbaugh to accept the minutes as written for January 19, 2022. On roll call; three ayes, no nays.

The first item of business was an update on the request from Gregg & Casey Burke of 2 Sheldon Close, Cincinnati, OH 45227 for a conditional use permit for an accessory building. On Thursday February 3, 2022 the Building Department received updated plans from the Burke's for the accessory building noting it is now planned to be used for storage purposes only and no longer as a playroom area.

Findings from the Building Department as Follows:

**Item 1:**

**§ 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 locate

**§ 151.051 NON-CONFORMING USE**

(D) Nothing contained in this chapter shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the Building Commissioner or prevent compliance with the lawful requirements of the Building Commissioner.

(F) No existing building or premises devoted to a use not permitted by this chapter for the district in which such building or premises is located, except when required to do so by law or ordinance, shall be enlarged, extended, reconstructed, or structurally altered, unless such use is changed to a use permitted in the district in which such building or premises is located.

(G) Any nonconforming or conditional use of a building or premises shall not be changed unless such use is changed to a use permitted in the district in which such building or premises is located.

Mr. Holloway said a building for storage of tools, equipment, supplies, etc. is a permitted use within Residence “A” and no longer a non-conforming use. The plans do not show a garage door or playroom. The applicant indicated that they would cap the existing sewer and water lines.

Mayor Brown moved, seconded by Ms. Geldbaugh to withdraw the Planning Commission’s recommendation from the January 19, 2022 meeting for the conditional use permit as a playroom. It was left at the last meeting that the recommendation would go before Council. It was not done because of the ruling by Gerry Stoker of XPEX which indicated that the playroom is an inhabitable space and per Ohio Building Code must be heated, and have insulation and drywall.

Ms. Geldbaugh moved, seconded by Mayor Brown to withdraw the conditional use permit as a playroom.

Mr. Van Stone noted that due to the new drawing no further action is required, however he suggested that in the iWorq system it be noted the accessory structure is inly currently approved to be a storage area”

**Item 2:**

The second matter of business was an update on the request from Christopher Leonidas of 4110 Grove Ave, Cincinnati, OH 45227 for a variance locate a section of new fencing outside his defined property lot. On January 25, 2022 the Building Department received an email from Ed McTigue to clarify the Village’s authority to grant variances for fencing and other structures in the public right of way. From Village Solicitor McTigue: The Planning Commission does not have the authority to grant variances, only the legislative authority, Village Council, has the authority to grant such a request.

Mr. Van Stone moved, seconded by Ms. Geldbaugh to deny the variance for the fence because the Planning Commission does not have the authority to authorize outside said lot. On roll call; three ayes, no nays.

Mr. Van Stone asked that the Solicitor’s legal opinion be made part of the permanent minutes.

From Solicitor McTigue, email dated January 25, 2022:

“As briefly discussed last evening, we have done the research relative to your question of whether or not Planning Commission has the authority to grant a variance to a homeowner who requests the installation of a fence in the public right-of-way. Short answer to this is no, Planning Commission does not have the authority. The longer answer would be that the legislative authority, i.e., Village Council, has the authority to grant such a request, but it should only do so in extremely rare circumstances. I think you can understand the precedent that it may establish.

Under R.C. §723.121, council may grant an easement on publicly owned property to a private party, but under R.C. §721.03, it would arguably have to make that easement available to any and

all interested parties through the public bidding process. See *Halstead v. Ohio One Corp*, 2007-Ohio-1389 (7th Dist.) (remanding to the trial court for a determination of whether public bidding was required where easement had merely been quit claimed).

The legislative authority of any municipal corporation may convey the fee simple estate or any lesser estate or interest in, or permit the use of, for such period as it shall determine, any lands owned by such municipal corporation and acquired or used for public highways, streets, avenues, sidewalks, public grounds, [etc.]... provided that it shall determine, and enter its determination in the minutes of its proceedings, that the property or interest so to be conveyed or be permitted to be used is not needed by the municipal corporation for any of such purposes. If you will recall, we enacted a similar ordinance when we donated the vacated street down by the swimming pool.

Any such conveyance or permit to use ... shall be of such portion of such lands as such legislative authority determines, which shall be described in the deed or other instrument of conveyance and in any permit to use (R.C. §723.121).

No contract, except as provided in §721.28 of the Revised Code, for the sale or lease of real estate belonging to a municipal corporation shall be made unless authorized by an ordinance, approved by a two-thirds vote of the members of the legislative authority of such municipal corporation, and by the board or officer having supervision or management of such real estate. When the contract is so authorized, it must be in writing. Also, it must be to the highest bidder. I can imagine the number of problems that would take place if we had to put this property out for public bid.

I hope that this answer helps you. Again, the short answer is no, Planning Commission does not have the approval, and the longer answer is still the same, no, Village Council probably should not grant any request to install any type of private property onto a public piece of real estate.”

Mr. Van Stone said the fence has been constructed without a permit, and now that it has been determined that it is not allowed, he asked when will it be removed? His recommendation is 30 days.

Discussion ensued regarding similar instances of fences installed incorrectly. The Planning Commission said many of those were installed with a permit (though there was no authority to do so) granted by the Village. The Solicitor’s ruling stands on a “going forward basis” from here on. There are many violators, but now that we have clarity, the resident would have to bring the fence back to their lot line.

The meeting adjourned at 5:55 p.m.

Respectfully Submitted,

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Ms. Shelly Reed, Secretary