

MARIEMONT PLANNING COMMISSION
REGULAR MEETING HELD FEBRUARY 15, 2012

The Mariemont Planning Commission met Wednesday February 15, 2012. Mr. Stich called the meeting to order at 6:30 p.m. Present were Mr. Miller, and Mr. Sturtz and Mayor Policastro. Also in attendance was the Building Commissioner, Dennis Malone.

Mayor Policastro moved, seconded by Mr. Miller to nominate Mr. Stich as Chairman of the Planning Commission. On roll call; four ayes

Mr. Stich moved, seconded by Mr. Miller to nominate Mr. Sturtz as Vice-Chairman of the Planning Commission. On roll call; four ayes, no nays.

Mr. Stich moved, seconded by Mr. Miller to nominate Mr. Savage as Secretary of the Planning Commission. On roll call; four ayes, no nays.

The first request was from Mr. and Mrs. James Biro, 7050 Mt. Vernon Avenue for a Property Variance to allow the installation of a basketball backstop within the Village Right-of-way near the edge of pavement on the north side of Mt. Vernon Avenue.

Finding of the Building Commissioner: The Mariemont Code of Ordinances reserves the right-of-way for public improvements such as highways, streets, utilities and sidewalks. The Mt. Vernon right-of-way is 60 feet in width, rather than the customary 50 feet (this was the original location of Wooster Pike) and extends further than normal into the Biro front yard. A building permit was not secured for the present backstop installation.

Building Commissioner Malone said the property is located at the corner of Mt. Vernon and Petoskey. The fairly large right-of-way is on both the front and side yard of the property. The backstop is clearly on the Village right-of-way by a substantial amount. He does not believe it is a permitted use. He advised Mr. Biro that the backstop would have to be removed or go through the appeal process which he choose to do. He does not know what other mechanism the Village would have to give the Biro's the opportunity to have his decision overruled.

Mayor Policastro asked if the section regarding 'enjoyment of property' refers to the Biro property. Building Commissioner Malone said that is right. It would not apply because it is not on his personal property. There is no prohibition for them to put the backstop anywhere on their personal property.

Mr. Stich said he looked at Building Code Section 151.087 (j) which reads 'Play structures on residential property shall be located no closer than the minimum side yard setback permitted by the Zoning Code for that property to any property line and shall not occupy, overhang, or project into more than the equivalent of 25% of the required rear yard' but that would not apply because it is not in the rear yard.

Mr. Biro thanked the Planning Commission for hearing his request and he apologized for not realizing it was in the Village right-of-way. The intent was to provide a place for the kids to play. It is well used within their area which has minimal traffic. He referred to Section 151.025(3)(b)(a) 'an exceptional narrow, shallow, or irregular lot'. There is an exceptionally large right-of-way in their yard. The area could be enhanced with children playing signs. They made sure all of the neighbors were in favor of installing the backstop. Being in the right-of-way should in the future any work need to be done they would remove it. He had a petition signed by many who supported the installation. He is sensitive to precedent and the conservation of the Village. He said a way to propose it would be to grant the request with caveats such as it must be a low traffic street, concurrence of the neighbors and that it was done in a safe and respectful manner.

Mr. Sturtz said he has lived in the Village both on Elm Street and Indianview Avenue before residing on Miami Bluff 1979. He said it was unfortunate that the backstop is located on the Village right-of-way. In the other areas of the Village he lived in it was his experience that basketball hoops and rims were constantly being taken. Finally they had to all be taken down. It started out like a good idea but people starting complaining. His concern is private play equipment on public property - who is liable? He cannot get past the fact that it is private property on public right-of-way. He believes there is room on their property where the basketball hoop could be on private property and under their control. Where the equipment is presently is not under their control.

Mr. Dave Rogers, 7054 Mt. Vernon, said he is the Biro's neighbor and too do not have a suitable driveway for a basketball hoop. He asked if the concern was safety or maintenance. Mr. Sturtz said both. Mayor Policastro said years ago then Mayor Shanks had all the basketball hoops removed because the children were not able to use them because young adults were playing and cussing. We are talking about people who had been arrested and had warrants out for them. Mr. Rogers said he did not feel we are comparing apples to apples. It appears as if the hoop is on personal property and he does not feel it will attract unwanted individuals.

Mrs. Biro said children are welcome to play but the minute they start misbehaving they will be asked to leave. She believes they can control who plays there and what time they play. Mayor Policastro said that may be hard to do because it would be considered public property. Mr. Biro said they would be the first people who do not want the cul-de-sac getting out of control.

Mr. Miller said he walks the Village and when he saw it had been erected he knew that it had been put up without the Village's knowledge or approval. He asked why it was not put at the garage. Mr. Biro said for safety reasons due to the amount of traffic on Petoskey. The area was marked therefore their understanding was it was not a problem.

Mr. Stich said he would refer all legal and liability concerns to the Village Solicitor. He sees two issues: (1) the variance relating to the set-back areas and (2) is

the Planning Commission in a position to allow construction within the Village right-of-way itself. He agrees with the Building Commissioner that there is no other vehicle but it seems to him that it maybe something that goes before Village Council.

Mayor Policastro suggested a solution could be erecting a basketball hoop area behind the Village office in the parking lot. The plan is to expand the parking area next year. It would be safer because it will deter unwanted individuals being so close to the Police Department. It could then be maintained by the Fire and/or Maintenance Departments. He just does not see anything in the Code that would allow the Planning Commission to grant the variance. The Biros indicated that they would prefer to have the children playing where they could watch and see them.

Mr. Biro argued that a variance could be given based on the exceptional narrow, shallow or irregular lot. Mr. Stich said Planning Commission also has to be able to satisfy Section 151.025(3)(b)(2)(e)(f). The big issue is the possibility of setting precedent. There are other properties within the Village that do not lend themselves to having basketball hoops. The Planning Commission members are limited in their powers as to what they can do. If the request does not pass the next option would be to take the matter to Village Council.

Mrs. Biro indicated that there is a retractable basketball hoop elsewhere in the Village that is always out. She asked if they would be permitted to do the same. Mr. Stich said the Code addresses removable furniture but not play equipment. His thought is if it is moveable it would be a different issue. He suggested that the Building Commissioner look further into the matter. As Mr. Stich sees it the applicant can (1) look into a removable hoop (2) accept the Mayor's proposal or (3) make an appeal to Village Council which will require 5 out of 6 votes.

Mayor Policastro moved to approve the request. The motion was not seconded therefore the request failed.

Mr. Biro said they received a letter stating there would be legal action within 30 days if the hoop was not moved. Building Commissioner Malone said the recourse he outlined was appealing his opinion to the Planning Commission. Mr. Biro said he did not feel the letter was appropriate and certainly did not appreciate it.

The second request was from Robert Steinkamp, 3929 Plainville Road, Mariemont, Ohio 45227 for approval to divide property at 3840, 3842, 3844, 3846 Beech Street, 3860, 3862, 3864, 3866 Beech Street; 3875, 3877 and 3879 Beech Street into single-family attached dwelling units.

Finding of the Building Commissioner: Planning Commission approval is required to change subject property from multi-family dwelling to four single-family attached dwellings per section 151.078 of the Village of Mariemont Zoning Code.

Ms. Denise McCarthy said she is not opposed to the request but asked what the advantage is besides it being an advantage to the property owner. Building Commissioner Malone said four family houses are taxed at a commercial rate. When divided into four single family residences they become taxable at the residential rate. She said it seems to be a win situation for only the property owner. It certainly is not a financially win situation for the Village. Building Commissioner Malone said he has seen many landlords put the savings back into the rental units.

Mr. Mayor moved, seconded by Mr. Miller to approve the request. On roll call; four ayes, no nays.

Mayor Policastro moved, seconded by Mr. Miller to accept the minutes as written for November 16, 2011.. On roll call; four ayes, no nays.

The meeting adjourned at 7:24 p.m.

Respectfully Submitted,

Mr. Dick Savage
Secretary

