

PLANNING COMMISSION MEETING
March 12, 2013
7:00 P.M.

I. CALL MEETING TO ORDER

The meeting was called to order at 7:00 p.m. by Chairman Don Darby.

II. ROLL CALL

Members Present: Carolyn Ghantous, David Okum, Richard Bauer, Tom Vanover, Robert Diehl, Marge Boice and Don Darby

Others Present: Anne McBride, City Planner; Don Shvegza, City Engineer; William McErlane, Building Official

III. MINUTES OF THE REGULAR MEETING OF JANUARY 8, 2013

(Mr. Vanover moved to adopt the minutes of the January 8th, 2013 Planning Commission Meeting; Mr. Okum seconded the motion, with six “aye” votes from the Planning Commission Members and one Member, Mrs. Boice being absent from the January 8th, 2013 meeting, abstained and the minutes were approved as written.)

IV. REPORT ON COUNCIL

(Mr. Vanover reported that Council is waiting for the input from the Planning Commission meeting tonight concerning the discussions on the RV's and the special event banners.)

V. CORRESPONDENCE

Chairman Darby: There is no correspondence, so we can move on to the items of discussion.

VI. OLD BUSINESS

(No Old Business presented at this meeting.)

VII. NEW BUSINESS

(No New Business presented at this meeting.)

VIII. DISCUSSION

- A. Chairman Darby: Our first topic for discussion is the Zoning Code text amendment extension of Special Event Signs.

Mr. McErlane: I gave the Members some information relative to how the special event signs have been utilized over the past year; there have been two instances or two locations where banners have been up pretty much the entire year; one being Rib City and the other is the Springdale Elementary School. There have been thirty-one businesses utilizing banners; a number of those were one time users like we would normally see if we had a two week instance of them. Seventy-two percent of those left them up for two to five month periods. There are instances

where they have renewed them with different banners but those are few and far between. I guess there are a number of options, as far as recommendations from the Planning Commission: one would be to do what we have done for the last four years, and that would be to extend it for an additional year; one would be to let it lapse and go back to the fourteen days, four times a year, with a month in-between; another would be to extend the current requirements for a longer period; and another would be to do it permanently. If that is the case, it tends to not be a special event banner anymore but it becomes additional permanent signage they can have. So, it is up to Planning Commission to consider what they want to do with this. The language that I attached to the memo is basically extending it another year as we have done the last four years.

Chairman Darby: Are there any comments?

Mrs. Boice: When we talked about the economic turn-down, I know there are a lot of things in the paper that want to tell you that we are pulling out of it; but I don't think we are pulling out of it as quickly as we would like. We still have a lot of empty storefronts in Springdale and if we have a new occupant moving in, I would like them to have as long benefit of a banner when they are opening as possible; at least until things tighten up and we get back to where we have agendas that go on here until two in the morning because we have so many businesses wanting to come in. I really would like to continue with getting a little more than that two week period.

Mr. Bauer: I guess I remember when we first started talking about this, because of the economy and the situation we were in and that is why we decided to come up with this temporary measure and I would have to agree with Mrs. Boice that it is starting to go the other way but we are still not there yet. I would look to go for at least another year with this wording that we have.

Mr. Vanover: I am not, at this point, willing to make this permanent. I think it has been a benefit to those that have taken advantage of it. If we go another year and weigh it out hopefully one of these days, as Mrs. Boice pointed out, we can get back to the two-week special event. My feeling is to continue it on for another year and then look at it again next year.

Chairman Darby: I am in agreement with the other folks.

Mr. Diehl: I am in agreement also.

Chairman Darby: I think we are about ready for a decision here.

Mrs. Boice: I would be happy to make a motion, if that is what we are waiting for.

Chairman Darby: Mr. McErlane, what do you need?

Mr. McErlane: The language that is attached to the memo is the language that extends it for another year. You can make a motion to refer to Council this amendment for temporary special event signs; that you want to extend it for an additional year.

Mrs. Boice: I would make a motion that the material that is attached to our memo would remain for another year, the same that we have had in the past year, to help with the new businesses.

(Mr. Vanover seconded the motion and with seven "aye" votes from the Planning Commission Members, the motion to refer to Council was approved.)

B. Chairman Darby: The next topic is Political Signs, text amendment.

Mr. McErlane: In our Zoning Code, we currently have two sections; one that deals with political signs, and generally you can think of those as free speech signs; and we also have another section that talks about campaign signs. The free speech signs

are pretty straight forward, there are no time limits on them; there are some size restrictions and that is about the only limitation other than you can't put them in the right of way. The campaign sign restrictions have some size limitations and you can't have more than one per candidate or issue on a piece of property. No one particular sign can exceed 32 s.f.; and then there are some time restrictions as to when you can put them up and when you can take them down. We have been told from the law director not to enforce a number of those things, such as when you can take them down and when you can put them up, and more recently not to restrict how many for any particular candidate that you can put on the property. What we asked them to do is give us something that we can enforce, so that we are not totally disregarding that section of the code. What he has done is, based on case law, taking the campaign signs and lumped them in with the political signs so that there is no distinction between the two and it has the same restrictions as the political signs did before. There is a limit of 32 s.f. per sign and there is no limitation on the number; there is some restriction on setback. The other restriction that he put on it is that the total cumulative square footage of all your political signs cannot exceed 64 s.f. The only limitations are the total square footage, the size of an individual sign and where it can be located and those are all based on case law that he has researched. He believes the City can restrict the size of it and location based on safety concerns and visual blight. Ms. McBride has some new case law that has dealt with the size on signs. My recommendation is that maybe we delay this for another month until the Law Director can take a look at that and see if that impacts it. After just briefly looking at it, the restrictions that were being appealed were very overly restrictive. They limited a particular political sign to 6 s.f. maximum and it couldn't be more than 4' tall. We know if you feel strongly about something you are going to want something more than 6 s.f.; maybe that makes a difference but that is the Law Director's call on that.

Ms. McBride: The case that I provided to Mr. McErlane and Mr. Forbes, just today, was really what we were involved with up in Northern Ohio; we were the expert witnesses for. What the judge found is, that particular community was very restrictive in terms of the size of the sign and he found that they were going after content, which as you all know is a big "no no", particularly when you are talking about political and free speech signs, it is hugely a problem. What you might want to do is go forward with Mr. Forbes' recommendations this evening. I did send him that case and if he has questions or whatever, we could modify it later on; but at least you would have that in play.

Mrs. Boice: I find it interesting that the courts are always telling various cities what they should do and not do. I am interested to see if they have something to say about removal of these signs, I don't see the courts ruling on that. Let's face it, some of them stay up, after a general election, forever and a day. I find it a bit amusing that this is coming down out of the courts telling Springdale what they can or cannot do with signs, but no mention of removal. To say the least, this irritates me.

Mr. McErlane: I think the Law Director has indicated in his text, he has taken that out. I think we would have a problem with that in a primary election because typically the winner of a primary is continuing to campaign through to the general election. Maybe we have some standing after a general election because the elections are basically finished at that point. I could ask him about that.

Mrs. Boice: Does this mean campaign signs in our local elections can go up at any time?

Mr. McErlane: Correct.

Mrs. Boice: I think the homeowner is the one that controls this because I am sure that there are not homeowners out there that want signs on their yards for three to four to five months; I would kind of depend on that.

Mr. McErlane: During the last election, we had signs that stayed up from the primary to the general election; which is a lot more than 45 days.

Mrs. Boice: I am talking about our local people who are always very good about removing their signs. Somebody new who was not used to how we do it, could put signs up 90 days ahead or 120 days ahead?

Mr. McErlane: Right.

Mrs. Boice: Not good.

Mr. Vanover: On page three, in section "G", it has that "they cannot be placed on a property earlier than 45 days and must be removed no later than 5 days".

Mr. McErlane: That is current language that deals with non-profit events that are occurring in the community, like a church festival or something of that nature.

Mr. Vanover: I would echo Mrs. Boice's concerns and I would applaud all of our candidates locally because they have always done a good job. If we can restrict a non-profit, then why can't we restrict a political candidate?

Ms. McBride: I don't want to speak for the Law Director, but I believe what Mr. Forbes is getting to, is that it revolves around content and if you want to have a sign up that says "Support the Troops"; it is very difficult to distinguish between that sign and a "Vanover for King" sign. It is my understanding that is where the courts are having the problem; in differentiating on content and how it relates to free speech. That is why so many communities have gotten into trouble regulating the number of signs for a particular candidate, how long they can stay up is an issue, and even to some extent, the number or size has also been found to be issues. It seems to me, in my research and exposure, everything tends to go back to the content with the courts.

Mr. Vanover: Like Mrs. Boice, I completely disagree with it.

Ms. McBride: Mr. Forbes will be at the Council meeting, so obviously you could have additional discussion with him; that doesn't help Members of the Commission that aren't on Council.

Mr. Okum: At Hamilton County Regional Planning Commission last week, we reviewed Colerain Township's revisions to their sign package. Included in that revision is a section under temporary political signs and the thing that stuck out to me was this adjustment in our language applies to 153.529 "signs in residential districts". According to Colerain, it says "temporary political signs are permitted in all districts and must be located in accordance with the setbacks identified in their section 15.10.1 and in accordance with the following"; and then they go into a number of items, things that we have discussed this evening: "there shall be no maximum sign area requirements, there shall be no maximum number of signs." "While case law does not permit time limitations on the display of political signs, property owners should repair, remove and replace such signs periodically to prevent such temporary signs from deteriorating to waste." "Property owners, candidates and advocates for a ballot issue are encouraged to remove the signs after the election to prevent unnecessary clutter." The one thing that they did request for those that are placing signs in all districts, is that they contact the zoning administrator to allow for appropriate contact with the candidate or committee if the signs which deteriorate to waste must be removed to storage. Right now, the signs go there and you don't know how to get hold of anybody. So, again it is not mandatory because it is a political sign. Are political signs allowed to be placed in the public right of way?

Mr. McErlane: No, they are not.

Mr. Okum: So, there is that restriction and the court has not changed that position. I guess the section located in accordance with the setbacks identified, we should apply those same setbacks in regards to our zoning.

Mr. McErlane: It specifically says 10' from a right of way.

Mr. Okum: I was thinking that you don't want to obstruct someone's vision from turning on a corner.

Ms. McBride: 10' outside the right of way.

Mr. Okum: I think we should address all zoning districts with this because I think it applies; maybe Mr. Forbes didn't capture that but I think Colerain did. I think it has to apply to all of our zoning districts.

Mr. McErlane: We have asked the question about other zoning districts in the past and the Law Director said we have no restrictions on them in other districts, only in residential districts.

Mr. Okum: So, he says this case law applies to residential districts?

Mr. McErlane: No, he is just saying that is the way our code is written.

Mr. Okum: So, we don't have to do it across the board?

Mr. McErlane: Well, we can, if we want to. Right now our code does not restrict the number, square footage or anything, other than residential districts.

Mr. Bauer: In regards to the square footage of the temporary political signs, where does that number originate from?

Mr. McErlane: We have always had 32 s.f. and I am sure they picked it from a 4 X 8 sheet of plywood; Jeff Forbes, I guess is looking at two of those signs as a lot of square footage. If you think about a small residential lot, those are two big signs for a residential lot. I don't think there is anything more scientific than that.

Mr. Diehl: The 32', basically 4 X 8 sign; and you allow them to have two of them, now we have two - 4 X 8; if we take a councilman, like I am, and you can vote for three people, then you could have six of these signs in the front yard at 4 X 8. I think that is way too big.

Mr. McErlane: Well, the way it reads, you would have to cut those signs up to something smaller than 4 X 8 if you wanted more than two.

Mr. Diehl: Well, they said per candidate, did they not?

Mr. McErlane: Well, there is no restriction per candidate; your accumulative square footage can't exceed 64 s.f., so if you have more they have to be smaller signs.

Mr. Diehl: O.K. I misread that. I still go back and think 4 X 8 signage as too big. When you drive through Mason during political season, it looks like billboards; I would like to cut that down.

Ms. McBride: I think we are getting into an area where you are starting to restrict size and so forth; I think maybe you should postpone this decision and ask Mr. Forbes to come to the meeting because he is really the only one that can answer these questions.

Mr. Vanover: We have three at large candidates; are we not restricting, because if there are four or five candidates running you are saying you can only have two 32 square footers, thereby some unhappy "legal beagle" could say, "you are restricting my freedom of speech".
I was going to offer, if anybody has any questions, you could email me or Mr. Diehl and we could take those to Mr. Forbes.

Mr. Okum: According to, at least Colerain Township's research on this issue, "there shall be no maximum number sign area requirements and there shall be no maximum number of signs". That is the way they interpret the law to read, I don't agree with it but it is another interpretation.

Mr. McErlane: In regard to Colerain's language, that is obviously the safer course for them.

Because it is on the agenda, you would need to make a motion to table.

Mr. Okum: I move to table.

(Mr. Vanover seconded the motion and with a unanimous "aye" vote the discussion was tabled.)

C. Chairman Darby: The final item for discussion is Recreational Vehicle Regulations.

Mr. McErlane: At the November Board of Zoning Appeals meeting, there were two requests for recreational vehicles that are larger than what our zoning code permitted; both of them were in excess of 12' in height and our zoning code limits them to 11' and both were in excess of the 30' length that we restrict recreational vehicles to. One was a motor home that was 12'-6" X 40' long and another was a travel trailer, fifth wheeler which essentially hitches into the bed of a pick-up truck and they typically have an area over the top of that hitch that has a sleeper berth in it so they are generally higher than most travel trailers. That one was 12'-11" X 33' long. One of the applicants came to Council and asked if Council would consider allowing larger recreational vehicles because there are larger size vehicles today. I gave a little bit of information based on research I did as to normal recreational vehicle sizes; you will note that there are only the travel trailers that are not fifth wheel and the class "C" motor homes that will meet our current height requirements for new RV's; none of the fifth wheels meet them and none of the class "A" motor homes. To distinguish between the class "C" motor homes and the class "A", the class "C" motor homes are the ones that look like they have a truck cab or a van cab on the front of them and the class "A" motor homes look like a bus. As far as the recreational vehicles of those types that are out there, there are only those two types that will meet current code with regard to height. The lengths vary quite a bit; with the exception of the class "A" motor homes that are diesel type motor homes. There are really only the class "C" motor homes and the travel trailers that will meet our length requirements. With that I am offering up for discussion whether Planning Commission would want to consider changing the maximum dimensions for recreational vehicles. I did summarize what sixteen jurisdictions have as far as limitations; only six of those restrict size. The sizes vary in height from 10' to 14', in length from 24' to 40'. The asterisk next to the 40' is Sharonville's legislation which currently says you can have up to 24' and if you want something longer than that then you would have to come before Planning Commission for a conditional use permit. The advantage to that, to some degree, is that Planning Commission can consider location of the RV, screening, the size, where it is located on the lot and how it impacts the neighbor. Out of those 16 jurisdictions only three of them, including Springdale, allow the RV to be in the front yard. There are two jurisdictions that require the RV's to be screened from view. Going back to the front yard issue, there are two additional jurisdictions that say if you can't get it in the side or rear yard, you can park it in the front yard. I don't know if Mrs. Boice was on Council at the time this was discussed?

Mrs. Boice: I was and I was the one that made the statement that I would retract at this point; I have no objection to side yard or back yard. When they are parked in the front driveway, we have one on Lawnview Avenue and I don't think that thing is off of that driveway more than 20 days a year. I am just looking at it personally because I would not want to live next door to a camper parked on a driveway. I was the one that said originally that if you have one I would think you could afford storage. I have done some research recently on storage and it is a bit pricey. Size does not bother me. We are only one of three that allow it in the front yard; when you look at all of these surrounding cities that say "no, you cannot have that"; well I

think that we have been more than generous. If we were going to do any changes other than size then I would love to see that front yard situation removed.

Mr. McErlane: Let me give you a little more information about history and Mr. Okum could probably add some to this. I went back and looked at our current ordinance and a majority of our language has been there since 1983. It looked like it took 2½ years to get it to be adopted. From what I could tell, it was brought before Council and then there were a lot of comments from the audience at that meeting. Then a committee was formed, including some of the people in the audience and I think 1½ years later it came back for adoption. So, there was a lot of input into the current ordinance, the way it is. I offer it up to Planning Commission how they want to amend the ordinance, if they want to amend it.

Mrs. Ghantous: At that particular Board of Zoning Appeals meeting, both of those variances were declined due to the size. Really that is not the only issue. Both of the applicants that we had, their RV's were well kept and their yards were well kept. I think the question comes in if it is a crappy rusted RV in a crappy yard. So we are talking more than whether we are going to increase the size that is allowable. I think it is a bigger topic than just saying we can have bigger vehicles stored. Mrs. Boice's comment, is the front yard ever the right place for it; especially if there is going to be a loophole that allows a big rusty crappy RV parked somewhere? I think it is more than that and I don't think we can decide all of those things here and now.

Mr. Vanover: Couldn't we cover some of those issues under our property maintenance?

Mr. McErlane: We have tried to deal with that relative to vehicles if they are currently licensed, as long as they are not missing parts and the tires aren't flat and that type of thing. We have found with vehicles, that we have tried to address, a lot of times the owners will go out and get historical plates for them and they don't have to get new stickers for it every year so they sit there and we tell them to pump the tires up every once in awhile. It is difficult to do that with vehicles unless they are missing the essential parts to the vehicle or you can definitely say they are inoperable.

Mr. Vanover: It almost sounds like we need to do something as far as property maintenance; if we can send letters about shutters down or siding fading onto the brick. I agree with Ms. Ghantous because I had a neighbor a number of years ago that we lovingly referred to as "the cattle wagon"; it was a little Winnebago type. I agree as far as the size issue, we are coming behind the curve on that because the manufacturers have changed and unfortunately we are in a reactive rather than a proactive position. Some of the class "A" and fifth wheels too, there aren't any of them that are cheap. This is a huge investment by somebody that likes to do this. What we do when we get those that don't want to take care of them; that is a more pressing issue, to me, than the size. If it is well kept and the yard is well kept then I don't have much of a problem with that.

Chairman Darby: I have been informed that we have a couple of visitors here for this particular topic. Unless there is any strong opposition from Members, I would like to ask these gentlemen if they would like to come forward and make comments; I have no idea where either of them stand on this issue.

Mr. Dan Tudor: I live at 519 Lafayette Avenue. I am one of them that had the fifth wheel and had the issue of removing it off of my property, and I am the one who proposed to have the ordinance changed. As far as the concern in the front yard I agree with you wholeheartedly, I wouldn't want to look out my front door and see somebody's camper and that be all I see; that is not right. As long as it is on the side of the house or behind the house and well maintained. My issue is to keep it there to keep it well maintained; if you put it in storage, stuff happens, you can't maintain it and things get stolen off of it. They have security cameras but usually where they make you park your RV the security cameras don't cover that area, they

usually cover their main entrance or around their buildings. They stick the RV's out further away from the buildings. You are right that it is a big investment; if anybody has one they should take care of it, you would think. As far as the campers that are run down, we have houses that are run down in Springdale that are not being taken care of. Some people take care of stuff and some people don't.

Chairman Darby: This is not a public hearing but does anyone have any further comments?

Mr. Okum: One of the things that I think that Board of Zoning Appeals finds difficult is once the variance is granted then that variance stays with the property forever. So, even though you are a caring person and you have a lovely fifth wheel then somebody else may take the front end chassis off of a school bus and put a hitch on the front end of it and call it a fifth wheel and put it in their yard. I think that is what Mrs. Ghantous is referring to and that is where the difficulty runs because at the Board of Zoning Appeals level they are looking at it as being permanent and even though you are the resident there today, five years from now you may not be; ten years from now you may not be, twenty years from now you may not be but that variance stays with the property.

Mr. Dan Tudor: Right.

Mr. Okum: What you have brought up is that obviously we have evolved and things have changed a little bit. I think the position of the front yard may need to be looked at. I would be very interested in seeing how Sharonville dealt with it under a conditional use permit because then there is a way of maintenance and issues and deterioration and neighborhood complaints, and so forth that can be handled through this body and it doesn't latch to the property and the deed, as a variance would. So, that might be an avenue if what they have generated in law can be defensible. I think that might be a consideration. I do appreciate your comments and I do understand and it is difficult. The one thing that you have brought forward is obviously the size issue has changed from twenty years ago. I think it is very valid but I would hate to see us hastily move to make change; I think it takes a small committee of this body to exercise a couple meetings to figure it out and maybe bring about some change. In the front yard situation, the conditional use variance permit might be a better alternative for dealing with that situation especially because a lot of our neighborhoods in Heritage Hill, the Terrace, the yards are actually too narrow for most people to get a motor home or travel trailer of 11', 10', 8' in width even between the properties.

Mr. Dan Tudor: That is one reason why I bought my house because of the driveway, to fit my camper. I figured as long as it was behind the house; it has been there for four years.

Mr. Vanover: Thank you for your comments. These things are as much a target of copper theft as anything and he is exactly right, they always get pushed to the perimeter of the storage facility; they are parked along the back rails. It doesn't take much; you could quite possibly total one of these just from one theft issue. It is a viable defense for having it close to home so that you can keep an eye on it. Mr. Okum, I hadn't really thought about the conditional use permit but that might be a good catch clause for us to use. That may be our best resource and give us some control too of the condition of the vehicle.

Chairman Darby: In essence the route of the conditional use does in fact give us more control with the ability to look at every case in an individual basis and make decisions based upon that particular address and not just the shotgun approach.

Mr. Okum: If it would be o.k., I would certainly be willing to serve on an ad hoc committee of Planning Commission to address this and possibly package some things together. Cost wise it would be better to tie some loose ends together; if we are going to have an ad hoc committee of zoning issues, maybe do some key items. I mentioned several months ago regarding digital service station signs being a

consideration for the City. There has also been a ruling, I don't know if it has been challenged yet, regarding human signs. Colerain addressed that; West Chester, I believe, won their case.

Ms. McBride: They did but it is on appeal.

Mr. Okum: I would certainly be willing to do that along with a Member of Board of Zoning Appeals being involved, Mrs. Ghantous if she has the time, and another Member would be helpful.

Chairman Darby: What is the model for that?

Mr. Okum: Three people.

Mr. McErlane: If you get into four you might get into Sunshine Law.

Chairman Darby: And they would be assisted by Staff?

Mr. Okum: Yes.

Chairman Darby: Mr. Diehl?

(Mr. Diehl also motioned that he would be willing to serve on the committee.)

Chairman Darby: The action, at this time, as we await input would be to table.

Mr. Okum: I move to table.

(Mr. Vanover seconded the motion to table and with a unanimous "aye" vote from the Planning Commission Members the item was tabled.)

Chairman Darby: In the interim period we will be getting input from the recently identified ad hoc committee.

IX. CHAIRMAN'S REPORT

Chairman Darby: As you notice there were a number of signs approved, since we last met.

Mr. Okum: Do we have a permit applied for the old Frisch's Building?

Mr. McErlane: No. I did talk to them last week and they were asking about fees, so I think they are about ready.

X. ADJOURNMENT

Mr. Vanover moved to adjourn; Mrs. Boice seconded the motion and the meeting adjourned at 7:56 p.m.

Respectfully submitted,

_____, 2013 _____

Don Darby, Chairman

_____, 2013 _____

Richard Bauer, Secretary