



SHAKER HEIGHTS

**Board of Zoning Appeals and City Planning Commission
Tuesday, April 2, 2019
7 P.M.
City Hall Council Chambers**

Members Present: David Weiss, Mayor, Chair
John J. Boyle III, Member
Joanna Ganning, Member

Others Present: Joyce Braverman, Director of Planning
William M. Gruber, Director of Law
Dan Feinstein, Senior Planner

The meeting was called to order by Mayor Weiss at 7:00 p.m.

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Approval of the March 5, 2019 Meeting Minutes

It was moved by Dr. Ganning and seconded by Mr. Boyle to approve the Minutes.

Roll Call: Ayes: Weiss, Boyle, Ganning
Nays: None

Motion Carried

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CITY PLANNING COMMISSION

#FERNWAY SCHOOL – 17420 FERNWAY ROAD:

A Public Hearing was held on the request of Chris Dewey, Van Auken Akins Architects, on behalf of the Shaker Heights School District, Fernway School, 17420 Fernway Road, to the City Planning Commission for subdivision of land in order to create a new parcel on the southern portion of the site. The applicant proposes to create a new parcel of land that is 120 feet by 260 feet for a total of 31,200 square feet. The parcel encompasses what is proposed to be the new playground and field. The City Planning Commission reviews subdivision of land.

Mr. Feinstein showed slides of the site. He stated this is a request for subdivision of land in order to create a new parcel on the southern portion of the site. The applicant

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proposes that parcel be created out of the parcel 736-09-106 that is 120 feet by 260 feet for a 31,200 square foot lot from Dorchester Road to Ardmore Road. The parcel is proposed to encompass a new playground and park. The new parcel meets zoning requirements. The City Planning Commission reviews all subdivisions of land. Staff supports the proposed subdivision.

Mike Maglic, Van Auken Akins Architects, explained the overall project is to renovate Fernway School after the fire last summer. This is aimed at creating a separate parcel on the south end of the property, out of the original parcel that includes the school building. He showed a schematic design of that parcel. He showed a preliminary plat of the size and scale of that parcel. This is only a subdivision of land. It does not tackle the future design of the playground. That topic will be addressed at a future meeting.

Ms. Braverman said the City will be applying to the Ohio Department of Natural Resources for a grant in order to help redevelop the new parcel with a playground and a public park. The actual playground, and its layout, is not being reviewed this evening. The land subdivision is the first step. The playground and park layout will come back to the Board for site plan review at a future meeting.

Dr. Ganning asked if the subdivision is long-term.

Mr. Gruber explained the city and school will enter into an agreement where the City will own the land and apply for the grant to the state. If the grant is not awarded by the state, the land will revert back to the school district. If the grant is awarded by the state, the school district will design the playground and public park. This design will be reviewed by the City Planning Commission. The school district will lease the property back from the city and be responsible for all maintenance and upkeep. This will be spelled out in a sale/lease agreement between the city and the school district. If the grant is not received, the land will revert back to the school district to be re-joined with the school property.

Mr. Boyle asked if the parking lot is included in this.

Mr. Gruber said yes, for the purposes of it being used as public parking after school hours.

Mayor Weiss said there has been an ongoing discussion between the city and school district to facilitate any additional grant funding that is available to help the school district develop the school property. He noted there is not another park in the Fernway neighborhood available to the residents.

Mayor Weiss opened the Public Hearing.

Brendan Daly, 3289 Ardmore Road, said he lives in the house next door. He understands this action is not about the layout of the park and playground, but he would like to speak to that anyway. The activity of the playground will be brought around to his side of the property. He understands this will consolidate where the children are on the property. He understands it will be a public park. He would like to ask for any future consideration in the planning of the park and playground that there be a natural barrier for sound and sight to this playground and park.

1263.09, Conditional Uses, the districts that allow both Type A and B daycares are listed. It then refers back to the Accessory Use section for the remainder of the requirements. Substantial additional standards for Type A day care homes were added in Section 1263.09 D. Type A day care homes care for 7 to 12 children at a time. These were divided into standards that apply before the applicant applies, during the application process, and after approval. These requirements were outlined by Mr. Feinstein in his presentation.

Mayor Weiss said the legal conclusion is that Type B day care homes cannot be eliminated. They can be regulated slightly. The city has added registration to Type B day care homes. Type A day care homes the city has added the same types of requirements that were required when the city's first Type A day care home was approved on Aberdeen Road in fall of 2018.

Mr. Gruber said putting the additional Type A requirements in the code allows any applicant to know what the requirements are that the City Planning Commission and Council will be looking at before they make application. These requirements allow consistent application across the board from applicants for Type A day care homes.

Mayor Weiss said the review process for a Type A day care still includes a Conditional Use Permit process, which goes before the City Planning Commission for a public hearing and before Council.

Mayor Weiss opened the Public Hearing.

Celeste Terry, 17414 Scottsdale Boulevard, asked if the Board members had been advised of some of their past concerns. She is a homeowner. She thinks a homeowner or landlord that has a day care in the home should notify neighboring residents. The day care parents cross over her front yard and destroy the grass. They should be made to keep off the grass during their pick up and drop off. She wants the grass re-seeded so it will grow again. She asked that at a home day care that they cover the driveway area in the back of the house with a soft surface. This will soften the noise of the vehicles and toys that the children use.

Barbara Franzen, 3303 Aberdeen Road, asked if outlawing Type A day care homes had been discussed. Cleveland, Warrensville Heights, Beachwood, and South Euclid do not allow Type A day care homes. Cleveland only allows them when they are more than 30 feet away from a property line. Why does Shaker Heights have to allow them? A Type A day care can have 20 to 30 children in and out in a day, with cars coming and going. There are plenty of day care homes in Shaker Heights to meet the demand. She disagrees that Type A day care homes should be allowed in the city. They are risky to property values in the neighborhood.

Vanessa Ball, 17406 Scottsdale Boulevard, said the hours between 9:00 a.m. and 7:00 p.m. for outdoor play on Saturday and Sunday are a concern. She lives next to a day care. It is like a playground in the back yard. The neighbors have to deal with the noise. The 6 foot tall solid fence does not help the noise. It does not quiet the children. Their children are grown and out of the house. They want a quiet neighborhood.

Debbie Schechtman, 3294 Aberdeen Road, asked if the choice of not allowing Type A day care homes was considered. Just changing the regulations has been discussed, but

outright denial has not been. She asked what a “violation” is referring to in the section that talks about a day care having any violations. She asked that this be clarified. She said noise and traffic congestion are a real concern.

Ms. Braverman said in 1986 the state regulations and Ohio Revised Code said that day care homes are an important use in the state. Local zoning law was pre-empted, particularly for Type B day care homes, so that they can exist in the state without regulation and cannot be overturned. The regulations that are under review today were discussed in the Neighborhood Revitalization Committee and at a City Planning Commission work session. It was decided to keep Type A day care homes, but to limit them. This decision was not unanimous. Those Boards and Commissions came to that conclusion.

Mr. Gruber said the term violation as questioned in the regulations could be clarified to read “without violation to the regulations in the code”. He will work on revised language.

Mayor Weiss said there were previous discussions regarding day care homes both before Council and before the Neighborhood Revitalization Committee and City Planning Commission. Staff was tasked with updating the ordinances to reflect the conditions that were required as part of the Type A day care home approved on Aberdeen Road. This Board discussed changes to the regulations at a work session prior to this meeting. A Type B day care cannot be eliminated. It is regulated now. The proposal is to regulate Type A day care homes more formally. They will look into the idea of driveway material and lawn maintenance as was questioned by the resident. There was a good deal of discussion about whether or not to allow Type A day care homes at the original Council meetings last fall.

Ms. Schechtman asked when those meetings were held.

Mr. Gruber said Council meetings were held several times in October. The Neighborhood Revitalization Committee held a work session on November 18. The City Planning Commission held a work session on January 8. All city meetings are listed as required by the Ohio Sunshine Law and are on the calendar on the website.

Mayor Weiss indicated that Council is interested in this topic as well. This topic will be heard at future Council meetings if this proposal is recommended by the City Planning Commission to move forward. He noted Councilwoman Moore is in the audience. He is sure she will help with the discussion at the Council meeting.

Mr. Boyle said a Type A day care home is not only regulated by the additional requirements proposed in the code, it is also regulated by the conditional use process. It is substantially regulated and could be regulated even further through that process. There is nothing that prohibits the additional regulations and conditions on a Conditional Use Permit. He suggested any future issue could be dealt with during the Conditional Use Permit process.

Mayor Weiss agreed that there is a robust review and approval process in place for Type A day care homes by both the City Planning Commission and Council.

