

"A Historic Past"



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CITY OF DELAWARE CITY
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**MINUTES
REGULAR MEETING OF THE PLANNING COMMISSION
CITY OF DELAWARE CITY
Monday, September 11, 2017**

CALL TO ORDER

Commissioner Snow called to order the regular meeting of the Planning Commission (PC) at 7:00 p.m. Those present included Commissioners West, Hendry, Snow, McKinley, and Smith. City Manager Houck and Code Enforcement Officer Adam Poplos were also in attendance.

ACTION ON THE PREVIOUS MINUTES

Commissioner Smith noted item #38 needed clarification as to what it is referencing. It was suggested to add, "Refer to #7". Commissioner Hendry made a motion to accept the minutes of the August 7, 2017 meeting with the correction. Commissioner Smith seconded the motion. There was no discussion. A vote was taken, all ayes, motion carried.

312 Adams Street - Carolos Leon - Variance Side Setback from 5' to 0' for Driveway

City Manager Houck recapped the events from the August 7th Planning Commission Meeting. Mr. Leon's request was for an after the fact variance to allow the recently added driveway expansion to remain in place even though it does not meet Delaware City's code for a 5' setback. Mr. Leon's request was tabled until the Code Enforcement Officer, Adam Poplos, could be present and other information could be gathered.

At the August 7th meeting Mr. Leon provided the Commissioners with a signed petition from neighbors stating they have no objection to the driveway as it is. However, there is one neighbor, Ms. Yetter of 320 Adams Street who objects. Ms. Yetter addresses her reasons in a letter sent to City Manager

Houck because she wasn't sure if she would be able to attend the September 11th meeting. Her letter states there exists a contentious relationship between them. From this letter, the Commissioners requested a summary of the police reports filed by Ms. Yetter.

Mr. Leon said he had the driveway expanded because of complaints from Ms. Yetter about cars being parked on the street. Other neighbors have extended driveways and he wants the same. Commissioner Hendry asked him if his neighbors had received variances and he replied he did not look into that. A neighbor, Mr. Crutchley, spoke up that his driveway is extended but is grandfathered in. He sees the advantage in keeping cars off the street.

Re: Obtaining the Permit

Mr. Leon stated the contractor procured the building permit and it was his understanding that the contractor knew what the City's codes are and would follow them. City Manager Houck said she was in the outer office when the contractor came in for the permit and she heard him being told about the 5' setback.

Mr. Leon was asked if he has spoken with the contractor since the driveway was done. He replied the contractor has not returned his calls. City Manager Houck and Code Enforcement Officer Poplos made phone calls to the contractor, Smith Paving, that also went unanswered. The company's owner, Mr. Smith, did respond after receiving a certified letter from City Manager and he met with City Manager and Code Enforcement Officer at the site. Knowing the driveway was over, Mr. Smith said he fully intended to follow through with saw cutting but thought it was Delaware City who would be contacting him as to when to do it.

Adhering to the Code

Ms. Yetter's letter to City Manager Houck outlines the events of the day when the driveway was being laid. There was much discussion and questions to Mr. Leon about what was discussed between he and the contractor. Mr. Leon believes the contractor knew the codes and if he had been aware a 5' setback was required he would not have spent the money to expand the driveway he would have used alternative methods. Mr. Leon does admit that the expansion did put his driveway on the property line between he and Ms. Yetter.

Commissioner Snow explained to Mr. Leon that the issue is the codes and rules that are in effect now. Changing the code is not an issue at this time nor is setting a precedent. She knows from speaking with other contractors they do adhere to the codes on their projects. The point Commissioner Snow was making is the contractor is at fault for not laying the driveway as described in the permit.

Commissioner Smith questioned Mr. Leon about how was the property line determined. Code Enforcement Officer Poplos said it was based on Ms. Yetter saying her fence is 6" in on her property therefore the fence was used as the barometer. Commissioner Smith also brought up the discrepancy between

the 800 sq. ft. on the plot plan to dig out and 1,000 sq. ft. of asphalt that was poured. The math and drawings do not match.

Commissioners' Comments

Commissioner McKinley and Commissioner West discussed the credibility of the contractor and what the permit allows. Noted especially was what the permit itself states: *This approval does not grant authority to violate any applicable codes.* Commissioner West said she checked out Smith Paving and it has been in business since the 1950's and has a 5-star rating. Commissioner McKinley feels the fault lies with the contractor. Commissioner Hendry added that ignorance of the law is no excuse and does not see a reason to grant a variance.

Commissioner Snow asks City Manager if there are any other options. City Manager replied the process to change the law has to go through a Council process: first reading, second reading, etc. but that can't be decided today. She agrees there are driveways that are closer than 5' and possibly the closest neighbor did not object. However, there is a homeowner who says she is directly impacted by Mr. Leon's driveway and this has to be taken into consideration.

Re: the Variance

City Manager Houck reminded the Commissioners they serve in an advisory role to make recommendations to the Board of Adjustment. They will schedule a meeting. There is a 15-day notice requirement. This meeting will be presided over our City Solicitor, Max Walton.

Commissioner Snow feels the fault lies with the contractor. The permit was granted with the understanding that the code requires a 5' setback. That is the law.

City Manager Houck feels this matter does not meet the criteria for a variance. She gives two (2) reasons:

- It was the obligation of the homeowner and the contractor to know what the code requires before the driveway was placed and again at the time of construction
- The variance, typically when two (2) property owners are at odds, requires one to establish an exceptional practical difficulty (harm done).

City Manager Houck continued to add that she is not sure, wanting a wider driveway or a self-imposed hardship establishes an exceptional practical difficulty and defers to the Commissioners' thoughts and that of the Board of Adjustment.

In City Manager's summation she stated:

- We have a 5' setback requirement
- She feels the property owner and the contractor were properly advised
- The most impacted property owner advises that she opposes the variance
- The contractor is willing to make the corrections
- The expectations of the homeowner and what the contractor did are between them and needs to be settled outside of our purview.
- Your vote will be a recommendation to the Board of Adjustment

There was discussion on how to phrase the motion. Assistant City Clerk Clifford advised the Commissioners that the motion had to be phrased in a positive manner.

The Motion

Commissioner Hendry: *I make a motion to accept the side setback variance from 5 feet to 0 feet.*

Roll Call was taken:

Commissioner West - *Nay*; Commissioner Hendry - *Nay*;

Commissioner Snow - *Nay*; Commissioner Smith - *Nay*;

Commissioner McKinley - *Nay*

Commissioner Snow: The motion has been made, roll call was taken and the motion has been denied.

City Manager Houck explains the next step is to contact the Board of Adjustment and the City Solicitor to set a date. All this information will be given to them and they will make the final decision. There is a 15-day notice so pending on their schedule; the hearing may be 20 days out.

ADJOURNMENT

Commissioner Smith made a motion to adjourn the meeting.

Commissioner McKinley seconded the motion. A vote was taken, all ayes.

Meeting adjourned at 7:44 pm.

Respectfully submitted,

Bonnie Lynn Hanna

City Secretary