RECORD OF PROCEEDINGS
HYBRID PUBLIC HEARING – ZONING CODE AMENDMENTS
JULY 12, 2021 6:00 P.M. VILLAGE HALL
MAYOR WILLIAM G. KOONS PRESIDING

MEMBERS PRESENT: Berger, Canton, Galicki, Porter

MEMBERS ABSENT: Carroll and Nairn

OFFICIALS PRESENT: Fiscal Officer Romanowski, Police Chief Rizzo, Solicitor Matheney, Fire Prevention Officer Davis

VISITORS: Michael Sparger, Greg Heilman, Gaela Witter, Kathy McClure, Jim's iphone, Lorraine Sevich

The Mayor called the public hearing to order to discuss changes to the Zoning Code. The first change to the code pertained to fence location. The present code requires fences to be three feet from the property line. Council and the Planning Commission had investigated different ideas to possibly change the code. The second item addresses the zoning of the plaza area that currently contains restaurants where restaurants are not permitted. The third item pertains to food trucks. The Fire Prevention Officer discovered the Village's code lacks enforcement of food trucks even though they have been used for many years, to include at the Fall Festival.

The Mayor proposed that the changes involving the fences and the plaza be discussed and have a first reading on the ordinances. This would enable residents who were not able to participate in the current meeting to be heard at the Council meeting on August 9th before possibly adopting the ordinances on September 13th. Residents would also have the option of reviewing the meeting minutes containing the discussion. The Mayor recommended that readings be waived and an emergency declared on the food truck ordinances so that there could be food trucks at an event to be held on August 1st.

The Solicitor explained that on April 12th, Council initiated the following amendment: Section 4.01(b)(4) of the Zoning Code which allows fences to be on the boundary lines and to delete the requirement that they be set back at least three feet from the actual boundary line. On May 13, 2021, Planning Commission (PC) recommended modification of the proposed initiated amendment from Council. The modification kept the setback of the three feet from the actual boundary line but gave an exception for split rail fences. At the end of Section 4.01(b)(4) of the Zoning Code, it stated that no fences are permitted along front lot lines with the exception of split rail fences which shall not exceed four feet in height. These were the modifications and recommendations from PC that were submitted to Council on a four to one vote. On May 24th, Council set the Public Hearing to discuss the proposed PC recommendation.

The Solicitor stated that within 30 days after the completion of the required readings or any waiver thereof, Council shall by ordinance adopt, modify, or deny the amendment. No Council action, however, shall overrule a Commission recommendation except by affirmative vote of 3/4ths of the Council members. She explained that this meant that Council must either adopt the

modification, modify it, or deny the modification. It would require five members of Council to either modify or deny the modification.

Galicki noted that he was a bit confused by the Mayor referring to the proposed amendments as Building Department issues, versus PC or zoning issues. Galicki wanted to reiterate that it was still the stance of PC that the three-foot stand-off remained for all fences except for split rail fences. This is the understanding of PC. He clarified that if it were to be modified, PC supported the exception of split rail fences as read by the Solicitor, but all other fences would be excluded. The Solicitor clarified that any modification to the amendment would require approval of five of six Council members.

The Mayor stated that in Bainbridge, fences can be on the lot line with a minimum of 25% opening required. In Chagrin Falls, fences can be on the lot line, but if less than a 25% opening, it must be three feet from the lot line. In Moreland Hills, fences can be on the lot line, but a legacy survey has been required with a minimum of 50% opening. Pepper Pike allows fences to be on the lot line and no survey is required. A permit is issued with the disclaimer that it is the applicant's responsibility to ensure all fencing is on the property. Previously, the fence was required to be one foot from the lot line, but problems arose with neighboring properties having fences and a two-foot area between them to maintain. In Hunting Valley, fences must be a minimum of one foot off the property line, surveyed, and staked for inspection and must be reviewed by the Architectural Review Board.

Berger asked if affixing wire mesh to the split rail fence on a property line would be permissible. He feared residents would do this in order to make it an enclosure. He suspected this was why other communities had a 25% opening requirement. When the fence line matter was brought to his attention through the Building Department, it involved neighborhoods in the west section of South Russell where a three-foot set-back would be a big piece of a small lot. Residents wanted fencing but did not want to give up this space. This was why he brought it to Council and deferred to the PC. He did not have an opinion as to which way to go and was just asking questions to see what other people thought.

Canton stated that relative to the potential for wire mesh on the split rail fences, there were one or two complaints on the west side of town concerning chicken wire. It was not very appealing. He could understand the history of having the three-foot setback where a fence could be maintained without being on someone else's property. He could also understand where if it were less than three feet and your neighbor had a fence, this could also be a problem. Canton thought PC's suggestion might be a good compromise.

Porter stated that as long as the vertical surface is open to light and air, the fence on the rear or side lots is acceptable. If it were a split rail fence with wire mesh, it would be open to light and air and would not be in violation. The Solicitor thought this would be a fair reading. Porter did not take exception with a split rail fence on the lot line, and chicken wire would seem to be the way to go for people who wished to keep pets secure. The alternative would be to have a regular fence which was three feet off the property line and not in violation of height.

Galicki stated that the issue of chicken wire should go back to PC because the intent was to adhere to the strict interpretation of a split rail fence with no additions to them like chain link or chicken wire. Although surrounding communities have regulations pertaining to 25% and 50% openings in fences, Galicki believed that many residents of South Russell utilize electronic fencing systems to contain their pets. While he understood Porter's interpretation of chicken wire being acceptable, Galicki questioned how this would impact the visual appearance to the neighbors. He would defer this issue back to PC. Porter asked if this issue came up in PC, and Galicki stated it had not. He thought that in discussing the split rail fence issue, the view was more in line with those in Kensington Green with no appendages or additions on them, hence the open nature of the fence.

The Solicitor explained that five members of Council could ask for a modification of what was recommended. However, the next Council meeting would be occurring before the next PC meeting. Galicki proposed that a special PC meeting could be called. Porter asked about rejecting the changes, and the Solicitor explained that five members of Council would be required and then it would go back to PC for review. Porter and the Solicitor discussed how to proceed with the proposed legislation. The Solicitor clarified that Council had to take action within 30 days and stated that Council's options were to approve, deny, or modify the legislation. In the spirit of maintaining a collegial atmosphere with PC and to get a compromised position, Galicki recommended more discussion. Porter suggested tabling it for further input from PC.

The Mayor thought no one would want chicken wire hanging on a split rail fence.

Gordon Friel, Bell Rd., said he has a split rail fence three feet inside his property line. If his neighbor were to put a fence on the property line itself, this would leave him with a three-foot section of property to maintain and it would look cluttered. The Mayor agreed. Friel stated that he has wire inside his fencing. To weed whack, he must go outside the fence. If his neighbor were to have a fence on the property line with mesh on the inside, the neighbor would have to go onto Friel's property to weed whack. He saw it as a maintenance issue on both sides. The Mayor surmised that this was why it had been three feet for all these years.

Lynette Friel, Bell Rd. suggested that the type of mesh wire could be delineated in order to avoid materials that would be an eyesore to neighbors.

Lorraine Sevich, Ridgecrest Dr., stated that she had used chicken wire on fencing and it blended in and was not very visible. She would not be offended if a neighbor were to use it. Sevich added that with large breed dogs, most breeders will not allow the sale of a puppy to an individual without a fenced-in yard. They will not sell the dog to an individual with an invisible fence.

Galicki offered that the matter required further discussion. The Mayor had just mentioned that he did not think anyone would put chicken wire on a split rail fence, but there were two residents present who discussed using it. It should be determined to be either authorized or unauthorized. He added that he understood the issue of keeping pets in and other animals out, which could be a challenge. Regarding the comment by Mr. Feil, Galicki stated that the discussions by PC

involved respecting the property of neighbors and the issues surrounding the maintenance of fences. The three-foot set-back eliminated the issue with trespassing.

The Solicitor addressed the definition of split rail fencing. She read that in Section 2.01(44) it states that a split rail fence is one in which fence rails split from logs are arranged horizontally, spaced apart, and linked by stationary wooden posts. There is no inclusion of wire, mesh, etc. However, Section 4.01 indicates that 25% must be open to light and air.

The Solicitor provided options on how to handle the legislation.

Canton stated that the definition of a split rail fence read by the Solicitor omitted anything about mesh. She verified that there was no mention of mesh. He asked if this meant a resident could add it, and the Solicitor stated this was the question. She agreed with Porter's interpretation because in Section 4.01 it specified that it would still qualify as having 25% open to light and air. Porter suggested changing the definition to include, "without obstruction between the horizontal rails." He thought PC should weigh in on this rather than Council. Canton asked about residents who already had such fences with mesh and asked if they would be grandfathered. Berger explained that the fences would already be three feet off the property line, so it was ok. Galicki added that it was never an issue before there was discussion of extending fences to the boundary lines.

Galicki offered to contact PC regarding a special meeting to consider the fence issue.

The Solicitor stated that there was a proposed recommendation from the PC to rezone three parcels in the B-2 District to make them B-1. This area is located at the corner of Chillicothe Rd. and Bell Rd. where there are businesses operating in an area currently classified as a B-2 limited business district. Of the three parcels, one is the Village's vacant corner lot, the second is the plaza across from Village Hall, and the other is the Village campus. There are violations and current uses that do not fit within the B-2 District. PC recommended a zoning map change for these three parcels to B-1 so that the uses would be in conformance with the Zoning Code.

Berger asked the Solicitor if there were other B-2 Sections in the Village beyond the three parcels, and the Solicitor stated there were. Berger asked if any of them had restaurants, and the Solicitor stated not that she was aware. Berger stated there had been a restaurant in the plaza for about 40 years and asked how they were allowed to exist under a B-2 District if Zoning did not allow restaurants. Porter suggested it could have been there before the Zoning Code was adopted. Berger thought perhaps it was grandfathered, and the Solicitor stated possibly but she stated she did not know this to be a fact. Regardless, Berger stated that the Sleepy Rooster would not be grandfathered and is in a B-2 Section. He asked if a variance had been granted. The Solicitor stated it had not, and explained that this was one of the many applications that did not get caught with regard to what permitted use was allowed in that district. It was then Berger's understanding that the amendment to the ordinance was to correct the record. The Solicitor explained that this was the case in part. She explained that there were activities that have occurred on three of the parcels that were not necessarily in accordance with the Zoning Code. She clarified that it was to correct some of the permitted uses that had been going on.

Canton asked if the modification would allow Augie's to develop a patio. The Solicitor stated it had nothing to do with it. She further explained that this had to do with not only restaurants but with retail as well, which is not permitted in the current business district in which they are located. Canton asked what was permitted, and the Solicitor stated personal services, which include daycare, grooming, tanning, medical offices, etc. Porter questioned whether Sal's would be a permitted use. Porter stated that the legislation seemed to be legitimizing businesses that were there through no fault of their own that had been operating to make their use legal going forward. Council members offered examples of similar businesses which had previously operated in the plaza and Porter suggested that all these businesses may have been grandfathered. The Solicitor offered that such records had not been located to show this for certain.

Galicki explained that this was action on the part of the PC to correct a long-standing error. It was speculative to say that the uses had been grandfathered. There were no records that had been found from Boards of Zoning Appeals (BZA) and PC's of decades ago. The question came up within the past few months with PC, and they took a look at businesses like the Sleepy Rooster, Sals Place, and Augie's, etc. and determined that the non-permitted uses had been going on for decades. Instead of closing the businesses, PC opted to change the zoning for those parcels to permit the use.

The Mayor gave the Zoom meeting participants the opportunity to speak on the topic of changing the zoning from B2 to B1. Jim Flaiz, Planning Commission, added that the other reason the Village campus parcel was included was because retail was not permitted in the B-2 District and technically the Farmers' Market activity was not operating legally under the current zoning.

The Solicitor addressed the operation of food trucks in the Village. She presented PC recommendations to enact a new Zoning Code chapter, Chapter 13, regarding food truck regulations. It was also meant to amend section 2.01 (106)(2) of the Zoning Code where it defines retail and it exempts out the uses in the new Chapter 13 as recommended by PC. A change to the first sentence of Section 3.01 of the Zoning Code was being recommended by PC to ensure that zoning permits were not required for food trucks as long as they complied with the food truck regulations.

The Mayor asked if the ice cream truck that drives up and down the streets is a food truck. The Solicitor said it was not because technically it usually applied to where the food was being prepared.

Fire Prevention Officer Davis reiterated that the ice cream truck was not a food truck because food was not being cooked. He described food trucks as being mobile kitchens. Davis explained that the legislation was meant to ensure that the food trucks were operating safely so as not to put residents and visitors at risk. Local restaurants are required to undergo significant testing to kitchen appliances, etc. and the legislation would ensure that there was oversight of similar maintenance for food trucks. The Mayor stated that previously at the Farmers Market, there was a truck providing coffee and pastry and wanted to know if this was a food truck. Davis said it was not and explained that the food was not being prepared in the truck in this case. Davis further explained that the proposed ordinances take into consideration the utilization of the

current inspection and tagging process that exists in the City of Cleveland. This inspection process is required by many municipalities in Cuyahoga and Geauga Counties. Otherwise, local fire inspectors would be required to perform these inspections which would be labor intensive and costly. With the certification, the Fire Prevention Officer would only need to conduct a minimal inspection and ensure that the food truck had its annual inspection from Cleveland.

The Mayor asked Flaiz to address the legislation. Flaiz explained that PC discussed being able to have the food trucks at community events, special events, festivals, and neighborhood parties. What PC was trying to do was restrict it from private only events if it were in a residentially zoned area. The only areas where 'for sale to the public' would be allowed would be on Village owned property like the South Russell Village Park or events on the Village campus. The School District property was also included just in case the schools ever wanted to utilize the food trucks for community events. If the food truck were providing food for sale to the public, which was restricted to Village owned property or school owned property, Village Council must approve it beforehand. PC felt it was important for Council to weigh in on these situations. Additionally, PC did not want food trucks in commercial areas which could create parking, crowd, and capacity issues. The legislation prohibits this activity.

Berger noted the verbiage of the legislation and indicated that the word "dispensed" could be a stand-alone situation which did not mean that the food must be prepared, and therefore the ice cream truck or donut truck would fall under the definition of food truck. He was not objecting to the ordinance, but thought the language needed to be corrected in the definition to avoid ambiguity. Porter reviewed the verbiage and concurred with Berger. He suggested changing "or" to "and" to make the definition all inclusive. The Solicitor thought it sounded fine.

Porter observed that food trucks would be prohibited in the B-1 and B-2 districts, which included Village Hall. Berger and the Solicitor advised Porter should refer to the exception in 1305. Galicki explained that having a food truck at the Car Show on the Village campus was discussed by PC.

The Mayor indicated that this change should have been made years ago. He added that with the abundance of food trucks, there was the possibility of a serious accident.

Sevich clarified that food trucks would be allowed on South Russell Village campus to include the park as well as the school and/or private residences. They would not be allowed in B-1 or B-2 Districts. Sevich asked if a travelling ice cream truck was allowed. Porter noted that the legislation under 1301 should read, "used for mobile food vending in which food is processed, prepared, and dispensed," which would be changing the "or dispensed" to "and dispensed" to allow the ice cream man who does not make the ice cream in his truck to operate. Sevich stated she had researched food trucks some years ago and believed that food trucks were under the purview of the Geauga County Health Department for licensing and inspections. The Mayor relayed that the Fire Prevention Officer indicated how exemplary the standards and enforcement were by the City of Cleveland. The Solicitor indicated that in the ordinance, the food truck operators must have a current valid license or certificate issued by any of the four entities, which included the Geauga County Health Department, Cuyahoga County Health District, City of Cleveland Health Department, and any other Health Department in the State of Ohio that

possesses the appropriate licensing. Sevich asked if it would be permissible if a resident wanted to have a food truck for a party at their home. Galicki said yes and added that it would also apply if the Homeowners' Association (HOA) arranged for one. Sevich asked if permission would be required in this situation, and Galicki replied that no permit was required. The Mayor stated then that it was theoretically possible that somebody from out of the area could bring a food truck into the Village and he asked if it blew up or had an issue, how the Village could know if the truck was inspected. Sevich shared that in her research she found that if the truck were operating in Geauga County regardless of where it was from, it must be inspected by the Geauga County Health Department. Different counties had different standards. The Mayor presented a hypothetical situation where a food truck came in from Canton and blew up and had never been inspected. The Solicitor stated this would definitely be a violation. Porter concurred it would be a violation of the Village's ordinance. The Mayor stated that the truck operator could still sneak in and do it. The Solicitor stated that this could also be done now.

Galicki stated that there was nothing that would preclude a catastrophe if a rogue truck came in and decided to set up shop. However, the fact that the Village would have an ordinance, guidelines, and certifications that were expected before the truck could conduct business demonstrates the Village's effort to take some reasonable precautions without being overly restrictive. The Solicitor added that there is an allowance to have a food truck park on a public or private street if it meets certain criteria. This includes the host of the party obtaining written permission from the Chief of Police in some instances specified by the ordinance. Sevich thought this was good.

The Mayor asked for the Chief's input on the matter. The Chief had nothing to add, but advised that to his knowledge, most food trucks have the City of Cleveland certification, and he had no issue if they were complying with these standards.

The Solicitor addressed the retail aspect to the zoning changes with regard to food trucks. She explained that as currently defined in the Village's code, consumption of food and beverages that did not occur within a building may be permitted if a conditional use permit were granted. The new change would read, "except for the use set forth in the new Chapter 13." In other words, it would not be necessary to get a conditional use permit or zoning permit. This would also apply to 1301 where "no structure or sign shall be erected, enlarged, or moved in whole, or part and no use shall be established or changed prior to the issuance of a zoning permit except for the use set forth in Chapter 13."

Porter made a motion to adjourn the Public Hearing at 7:01 p.m., seconded by Galicki. Voice vote – ayes, all. Motion carried.

William G. Koons

William G. Koons, Mayor

Danielle Romanowski

Danielle Romanowski, Fiscal Officer

Prepared by Leslie Galicki