

Oakwood, Ohio  
June 6, 2018

The Planning Commission of the city of Oakwood met in regular session at 4:30 p.m., in the council chambers of the City of Oakwood, 30 Park Avenue, Oakwood, Ohio 45419.

The Chair, Mr. Jeffrey Shulman, presided and the Clerk, Lori Stacel, recorded.

Upon call of the roll, the following members responded to their names:

MR. JEFFREY B. SHULMAN .....	PRESENT
MR. ANDREW AIDT .....	PRESENT
MRS. HARRISON GOWDY .....	PRESENT
MRS. E. HEALY JACKSON.....	PRESENT
MR. STEVE BYINGTON.....	PRESENT

Officers of the city present were the following:

Mr. Norbert S. Klopsch, City Manager  
Mr. Robert F. Jacques, City Attorney  
Mrs. Jennifer S. Wilder, Personnel and Properties Director

The following visitors were present:

Mr. Shulman called the meeting to order at 4:30 p.m. He asked if there were any questions or concerns with the minutes from the May 2, 2018 meeting. There being none, it was moved by Mr. Aidt and seconded by Mrs. Gowdy that the minutes of the Planning Commission meeting held May 2, 2018 be approved as submitted and the reading thereof be dispensed with at this session. Upon a viva voce vote on the question of the motion, the same passed unanimously and it was so ordered.

Mr. Shulman opened the public hearing for Application #18-2 to consider proposed Zoning Code text amendments to update the variance standards. He asked city staff to provide their report.

Mr. Klopsch shared that Code Enforcement Officer Ethan Kroger is on his honeymoon in Africa. Personnel and Properties Director Jennifer Wilder is assisting with property maintenance, housing inspections and zoning related tasks until Mr. Kroger returns. Law Director Rob Jacques will be providing the staff report since the proposed changes are legally related.

Mr. Jacques referenced a PowerPoint presentation and explained that he will discuss the nature of the application, related Ohio Supreme Court decisions and proposed changes to the Oakwood ordinance.

Mr. Jacques asked the Planning Commission to follow the decision standard as listed in Section 1003.6(B) of the Oakwood Zoning Code. The Code states "Text amendments shall be reviewed for consistency with the purposes of this (Zoning) Ordinance, the Comprehensive Plan, and the interests of the City of Oakwood as a whole."

Mr. Jacques shared that there were two Ohio Supreme Court cases where variance standards were evaluated: *Kisil v. Sandusky* and *Duncan v. Middlefield*.

*Kisil v. Sandusky* concluded to two main factors. The first factor is that there is a distinction between a use variance and an area variance. Mr. Jacques noted that the majority of variances in Oakwood are area variances. The second factor is that there are two different standards to be applied: an "unnecessary hardship standard" applies to use variances and "practical difficulties", a lesser standard, applies to area variances.

Duncan v. Middlefield concluded that ultimately, variances are intended to be a relief-valve for avoiding an “unconstitutional as applied” challenge. Variances help prevent the argument that the Zoning Code is being applied in an “arbitrary and capricious” manner. As a result, the decision provides seven factors to consider in an effort to help guide the Planning Commission/Board of Zoning Appeals determination of what is or is not reasonable for a particular property, and that no single factor can control the decision. Mr. Jacques shared that the current Oakwood variance standards state that the applicant needs to meet each criteria. The seven factors are: 1) Whether property will yield reasonable return or whether there can be any beneficial use of the property without the variance; 2) Whether the variance is substantial; 3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; 4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage); 5) Whether the property owner purchased the property with knowledge of the zoning restriction; 6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; 7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; and, 8) (BONUS FACTOR!) Any other relevant factor.

Mr. Jacques then reviewed the proposed ordinance changes.

The proposed ordinance will eliminate all references to “unnecessary hardship” or “particular hardship” standard, and be replaced with practical difficulties standard. The existing standards will be replaced with the factors that were introduced in the Duncan v. Middlefield case. The “must meet all” standards approach will be eliminated and the deciding body will weigh and consider all of the factors of the application. The new ordinance will add some material that is not clear in the current code. The Standard of Review will be based on application, staff report, and any relevant and credible public testimony and evidence presented. The applicant will show practical difficulties sufficient to grant the variance by a preponderance of reliable, probative, and substantial testimony and evidence.

Mr. Jacques shared that he will be conducting a training session for the Planning Commission and Board of Zoning Appeals to review how the new standards will be applied.

Mr. Shulman thanked Mr. Jacques for the thorough presentation. He then asked how old the current standards are.

Mr. Jacques said that the standards date back to at least 2000, possibly earlier.

Mrs. Jackson asked if she was comparing the old standards to the new standards correctly.

Mr. Jacques looked at what Mrs. Jackson was referencing, and confirmed that she was. He added that the existing standards are more specific and they need to be broader to allow for the Planning Commission and Board of Zoning Appeals to gather their own information to make an informed decision.

Mrs. Jackson added that she feels it is easier for the applicant to come to a conclusion on the outcome of their application with the existing standards.

Mr. Jacques responded that the standards need to be made broader because each application is not a one size fits all.

Mr. Shulman added that the new proposed ordinance is removing the all or nothing approach.

Mr. Jacques confirmed yes, and said that in a lot of ways it will work to the applicants benefit.

Mr. Aidt shared that he likes the proposed standards better because they are more objective.

Mr. Klopsch said that it is usually preferable to have more concrete guidance, but for the Planning Commission, Board of Zoning Appeals and City Council, they use their judgement and consideration to determine the outcome of the applications.

Mr. Shulman shared that the proposed changes provides flexibility allowing for a better result for Oakwood citizens.

Mr. Byington added that at the end of the day it comes down to the deciding body making a decision based on the information presented.

Mr. Jacques explained that he prepared a form for Planning Commission to submit their written findings of fact to City Council along with their recommendation. He prepared it as a fill-in-the-blank form so they could decide either way and write in their specific factual findings.

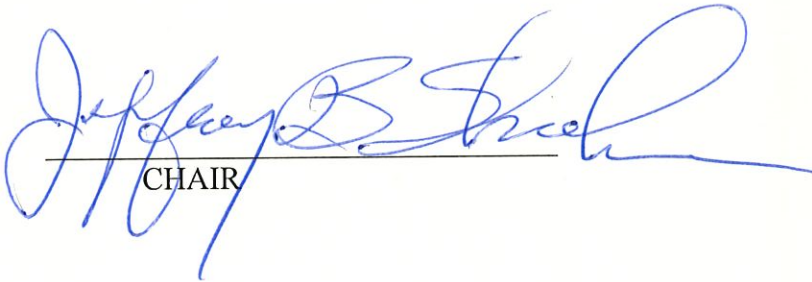
It was then moved by Mr. Aidt and seconded by Mrs. Gowdy that application #18-2, for Zoning Code text amendments to update the variance standards, be recommended for approval to Oakwood City Council. The Planning Commission has considered the evidence and has reviewed the proposal for consistency with the purposes of the Zoning Code, the 2004 Comprehensive Plan, and the interests of the city of Oakwood as a whole, and finds that that same is consistent therewith for the following reasons: 1.) Consistent with the two Ohio Supreme Court decisions; 2.) Provides flexibility that Oakwood citizens deserve; and, 3.) Preserves public health, safety and welfare.

Upon call of the roll on the question of the motion, the following vote was recorded:

MR. JEFFREY B. SHULMAN .....	YEA
MR. ANDREW AIDT .....	YEA
MRS. HARRISON GOWDY .....	YEA
MRS. E. HEALY JACKSON .....	YEA
MR. STEVE BYINGTON.....	YEA


There being five (5) YEA votes, thereon, said motion carried.

There being no further business, the Planning Commission adjourned. The public meeting concluded at 5:09 p.m.



CHAIR

ATTEST:

  
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 CLERK

**FINDINGS OF FACT AND DECISION**

Whereas, Oakwood City Staff initiated a proposal for text amendments to update variance standards; and

Whereas, on June 6, 2018, the Oakwood Planning Commission conducted a public hearing thereon for the purpose of reviewing the same, with notice and an opportunity to present testimony as provided by law; and

Whereas, pursuant to Section 1003.6(B) of the Zoning Code, the Planning Commission has considered the evidence and has reviewed the proposal for consistency with the purposes of the Zoning Code, the 2004 Comprehensive Plan, and the interests of the city of Oakwood as a whole, and finds that the same  **IS** /  **IS NOT** consistent therewith for the following reason(s):

- Consistent w/ 2 Ohio Supreme Court decisions;
  - Provides flexibility that Oakwood citizens deserve;
  - Protects public health, safety & welfare;
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**IT IS HEREBY MOVED:**

1. Pursuant to Section 1003.6 of the Zoning Code, the foregoing recitals are hereby adopted as the factual findings of the Oakwood Planning Commission.
2. The Oakwood Planning Commission hereby recommends  **APPROVAL** /  **DENIAL** of the proposed text amendment, and directs City Staff to forward a copy of this recommendation to Oakwood City Council. The original shall be appended to the approved minutes of the Commission's June 6, 2018 meeting.

Adopted by a vote of 5-0, on June 6, 2018.

**OAKWOOD PLANNING COMMISSION**

By: Jeffrey B. Shulman  
Jeffrey B. Shulman, Chair