

Service Committee Minutes

Honorable Council
City of Newark, Ohio
August 1, 2017

The Service Committee met in Council Chambers on Monday July 31, 2017 following the Finance Committee with these members in attendance:

Jeff Rath
Bill Cost Jr
Mark Fraizer
Carol Floyd
Ryan Bubb

We wish to report:

1. **Ordinance No. 17-31** changing the zoning classification of certain real property generally described as 847 West Locust Street, City of Newark, Licking County, Ohio, from that of Single-Family Residence RL- Low Density District, to GO- General Office District was considered.

Director Rhodes- I normally speak to these but I see Mrs. Avila is here so I'd ask her if she'd come up here and speak to it.

Mr. Rath- would that be the property owners?

Director Rhodes- that would be the property owners.

Mrs. Avila, 847 W Locust Street- I am the one who does childcare there. We purchased our house in 2006. I have done childcare since 1995, I have done it in a daycare center and I have done it at home. I had a type B license when we moved to the home which is one adult to 6 children then in 2013 the County and State did some changing and I had requested about a type A home license. I do have the license with me to show you that it says home, it is not a daycare center. It is not a commercial setting, it is for a home. After I spoke to Mr. Morehead and the Engineer's/Zoning office as I am going through the process with the State of Ohio. Since we had been there since 2006 and done childcare for many years before that they didn't see an issue with type A home which is two adults up to 12 children. They also sent me the section of code 7.1.1 stating in so many words that something can continue since it has already happened in a place. I'm not asking to expand, I don't have a sign in my yard, I don't need a sign in my yard. We have second generation children, children that have been on our waiting list since before they were born. We wish to continue what we are doing.

Mr. Rath- what is the difference between you trying to change this to GO today versus you trying to change this to GO June 9, 2015?

Mrs. Avila- to my understanding that was through a different board and advised by Nate at the Zoning Office.

Mr. Rath- no that was this board, I have the minutes of that meeting and I could read my statement which I most likely will before this meeting is over. You also went through the Board of Zoning Appeals. When you went through this committee on June 9, 2015 it was voted down 5-0. Then when you went through the Board of Zoning Appeals you were denied a second time and now you are here a third time so my question to you is what has changed with your application between now and the last two times you have been here?

Mrs. Avila- I was just going by what the office advised me I didn't realize you were the same board, I apologize.

Mr. Rath- is there anybody else here that is in favor of changing this property to General Office?

Mrs. Avila- I don't wish to change anything that is just what they said had to happen.

Mr. Rath- except the zoning of the property which is what our concern is.

Mrs. Avila- I would just like to continue to do what I do, I'm not interested in changing that is just what I was advised.

Mr. Rath- to change your piece of property which is a residential house, in the middle of a residential neighborhood surrounded by residential homes that would allow you or whoever owned the property from now until eternity would allow them to put in an insurance agency, broker or realtor agency, engineering and architectural services, attorney of law, accounting, auditing or other bookkeeping services, social service agencies, government offices, a hospital or a clinic. So if you were to change to that zoning whether it be you or the future owner it would allow them to do any of those things. On June 9, 2015 I and four other committee members including Mr. Cost who sits here with me turned you down. My reasoning at the time was that this is spot zoning, it is absolutely spot zoning and we absolutely do not do spot zoning in the City of Newark. Unless something has changed or somebody else is here to speak in favor of this I am going to move on to the next issue.

Mrs. Avila- I was just with the Zoning office and I wouldn't have said General Office because I wouldn't have known that. That is what Nate said it had to be. I just want to be able to continue the care that I do now. This will negatively affect families by having to tell them to go away and make other arrangements. What I do in my home by taking care of children doesn't affect anybody; it doesn't affect our neighbors or anyone around us.

Mr. Rath- apparently it does because there are laws prohibiting it. The law is there to protect their interests. For a lack of a better way of saying it you are breaking the law.

Mrs. Avila- but I do have a state license

Mr. Rath – the only thing you don't have is the piece of property to do it legal.

Mrs. Avila- but I received a letter from the Engineer's office before I did it. I went through the steps and did it properly and asked if this was ok, if I could do this.

Mr. Rath- you can operate a daycare but you can't exceed 6 children. That is the law that is the way the property is zoned and that is the way it is going to be zoned.

Mrs. Avila- with the 7.1.1 and I'm not trying to come against you, I am simply asking questions, that it could continue because we were there since 2006 and doing care there.

Mr. Rath- I am under the understanding that you can't continue and the reason that I say that is because Director Sassen who is the city's Law Director stated on June 9, 2015, "just for clarification our office has received complaints about this because the current zoning allows up to 6 children, we have made movement in the direction of prosecution pending this zoning application. I think this zoning application is the result of the Zoning Inspector making contact and explaining what the current zoning allows. We have held off on filing any charges pending what City Council expresses its opinion on the changing of the zoning." So they were withholding prosecution until they heard what the opinion of this Council was. The opinion of this Council on June 9 2015 was that your zoning change was denied. I have asked repeatedly if there is anybody in favor to speak to this and nobody has come forward. I am also asking the people on this committee.

Mrs. Avila- I could bring people here but I was told this was just to pass it on

Mr. Fraizer- what is the impact to your business, you say that you have been operating like this by that you mean you have been operating above 6 child level and is that what the impact to the business is? Can you give some clarification around that?

Mrs. Avila- the license is for up to 12 children. I'm not saying that I want 12 children 1st shift, 2nd shift and 3rd shift. We only work Monday through Thursday we are closed Friday, Saturday and Sunday. This would allow for that fluctuation above 6 children if someone had to work late or go to work early or unexpectedly we could have more than the 6. There aren't 12 children there all the time, that's not the case. I'm not asking for that I am asking so that if parents who have that availability or low income families that are on the Title 20 program through the county are asked to pull a double or work over are able to do that for their family. That gives them more money for their family.

Mrs. Floyd- Mr. Mangus has spoken to some neighbors and has some information pertaining to this discussion.

Mr. Cost- the license that you hold for 12 children can I assume that one of the requirements of that license is that you be in compliance with the local zoning?

Mrs. Avila- and that is why I contacted the Zoning and Engineer's office to get the letter before I did it.

Mr. Cost- I guess what is being said is that you are not in compliance with local zoning and this is one of the requirements of the state license unless I am mistaken.

Mrs. Avila- that is why I got the letter before I did this license and it approved me to go forth with the license. If Brian Morehead or the Engineer's office would have said no I wouldn't have went for the type A and the state wouldn't have approved the type A but because I have the letter he gave to me that is why everything passed through.

Mr. Rath- Mr. Mangus were you here to speak in favor of the zoning change?

Mr. Mangus- last evening I spoke with 9 neighbors and I can give you their reacting to the zoning change.

Mr. Rath- were they in favor of the zoning change?

Mr. Mangus- of the 9 there was 1 person who was in favor, 1 said he didn't care either way, 1 person was shocked that it was coming before zoning again and the remaining said absolutely not. These were people on Locust and Church Street.

Mr. Rath- as am I

Mrs. Avila- can I ask how it affects the neighbors what I do in my home?

Mr. Rath- that is why we have zoning and neighborhoods, do you want a hospital in your neighborhood or a clinic?

Mrs. Avila- there are main streets all around the hospital so I guess it doesn't really matter. That's not my choice, it depends on where you purchase and choose to live.

Mr. Rath- that is the purpose of zoning to be able to design what goes where. It's no different than if I wanted to put a strip club in next to your house. We wouldn't allow because it wouldn't be appropriate at that location nor would this be appropriate at this location. You have gone through this committee prior and you have gone through the Board of Zoning Appeals prior and now you are here to see me again. Do we want to have a vote on this or should we just move on? Does anybody want to make a motion?

Mr. Fraizer- I am not going to make a motion

Mr. Rath- we've discussed we've voted we've discussed, you're welcome to come back again but as I told you on the phone last week your answer is going to be the same, it will be spot zoning.

Mrs. Avila- can I ask what the zoning would need to be then? Am I being advised wrong?

Mr. Rath- the zoning would need to be General Office and you would need to find a location outside of your neighborhood.

Mrs. Avila- even though the license is for in home?

Mr. Rath- yes

Mrs. Avila- not a commercial setting that is not at all what the licensing is.

Mr. Rath- it doesn't allow you to operate in home with more than 6 children in the City of Newark in a residential neighborhood.

Mr. Marmie- I am going to take it even further to tell you what would occur. It is spot zoning and not only that you get General Office and now you have to have your entire home ADA certified because it is General Office; it is now a commercial property and you are going to have to comply with all ADA standards which means handicapped ramps and handicap access to all restrooms. All of that would have to be in compliance when you go to a business operation.

Mr. Rath- not to mention you'd have to have a certain number of parking spots per the square footage of the house.

Mrs. Avila- but people don't park there and stay.

Mr. Rath- it doesn't matter that is what the law is. If you are going to be General Office you have to comply with General Office fully. If you are going to operate a daycare center you need to comply with the laws fully. That is one of the reasons we won't put that in a residential neighborhood.

Mrs. Avila- can I ask you is there any way to continue to do what I do without changing? I was advised general office I didn't say that.

Mr. Rath- sure have 6 children or less.

Mrs. Avila- at one time?

Mr. Rath- yes

Mrs. Avila- different parents can move their schedules around to where I can do the three shifts just like I do now but I can have 6, 6 and 6. I'm sure neighbors will complain because not all neighbors will like it because children are playing outside at night time or anything just so they can be heard.

Mr. Rath- they can complain all they want but you're well within your rights.

Mrs. Avila- so I can do that as long as all I have is 6 at one time I have no issues?

Mr. Rath- as far as I'm concerned yes. I'm not an expert on the law, from what I understand yes. You have property rights as well so you have the right to operate a daycare center with 6 children.

Mrs. Avila- it's not daycare it is child care in home. There is a totally different thing from commercial daycare center.

Mr. Rath- whatever it is you call it you have the right to operate whatever you call it with 6 children. They can complain all they want you have the right to do that just like they have a right not to have a hospital right next door to them or a daycare with 12 kids or child care center or whatever it is called. They have the right to move into a residential neighborhood and expect that neighborhood to remain residential.

Mrs. Avila- why would they have sent the code 7.1.1 to me?

Mr. Rath- I can't answer that, I don't know.

2. **Ordinance No. 17-32** an ordinance amending Chapter 1234.02 of the codified ordinances of the City of Newark, Ohio relative to the residency requirement of members of the Board of Zoning Adjustment/Appeals was considered.

Director Rhodes- this is a housekeeping issue we randomly go through the Charter and double check to make sure things line up. To be a part of the Planning Commission it speaks to a residency requirement in the Charter but it is silent on that issue for the Board of Zoning Appeals. At this time we would like to pass this so if someone owns a business in the city or works in the city they might have an opportunity to serve on the Board of Zoning Appeals. They are in conflict right now.

Motion by Mr. Bubb to send to full Council, second by Mr. Fraizer

Mr. Fraizer- the citizens of Newark part is a concern. Are they able to get a waiver from Council?

Director Rhodes- I don't know that would be a good question for the Law Director.

Mr. Fraizer- similar to our requirement with Director positions where they have to be a resident.

Director Rhodes- it's a good question, I'd have to look at the Charter. It really is a good question.

Mr. Fraizer- it is just like the Director position to encourage for residents/citizens of Newark to be included there.

Director Rhodes- this would be a good issue for the Charter next time around. It is an item that I think we should bring up and bring it in line with the Planning Commission because they are in conflict right now.

Mr. Fraizer- the other housekeeping item is just changing appeals to adjustment right?

Director Rhodes- yes

Mr. Fraizer- would you be opposed if we corrected that but we kept the residency requirement?

Director Rhodes- I think because it is in conflict with the Charter I would like to bring it in line with the Charter because the Charter really kind of guides the city.

Mr. Fraizer- how is it in conflict?

Director Rhodes- it is silent on the issue, on the residency issue but on the Planning Commission it speaks to it. I just think that it is a housekeeping issue is all.

Mr. Rath- changing this from citizens to members brings it consistent with our Charter?

Director Rhodes- I got with Doug Sassen on this issue and we felt this was the best way to bring them in line together.

Mr. Cost- so will there be any kind of requirement?

Director Rhodes- let's put it this way if we were going to appoint someone to the Board like we do it comes to City Council. If we were to appoint someone who doesn't live in

the city I would think that we have a fair enough amount of reasons why we think it is important enough board appointment. You guys ultimately confirm the appointments.

Mr. Fraizer- my thought is to pass it out of committee, talk to the Law Director see what we can do to encourage a residency or a property ownership requirement that way we go in line with the Charter that way we can still offer a waiver if there is a qualified applicant. I would probably lean on the residency and using the waiver process.

Mr. Rath- let me ask Mr. Fraizer a question. You talked about the property owner and a bunch of other things, would you be satisfied if we said a business owner as well?

Mr. Fraizer- I think saying resident would be the easiest way that is what our requirement for Directors is right?

Director Rhodes- yes but that is spoke to in the Charter and this is silent. Those are the real differences. If you went to a property owner at least you'd have somebody who is invested in the city.

Mr. Rath- but I would want to include business owners as well. There are business owners that own businesses in the city of Newark but may not own the property; they may be leasing the building.

Director Rhodes- that is a good point but again as we walk through these appointments we bring them to Council. Let's use Bill Cost as an example, let's say he didn't live in Newark but he has been on West Main for 30 years running a successful business well maybe Bill had a little more time and he wanted to give to the city with his expertise and the love of the city but he might live two houses out of the city limits then at that point I would make a recommendation that we appoint Bill and I would give Council reasons why then you guys could either confirm or not. I think the word business owner Jeff is fair. It is a housekeeping issue and in 5 years when we do the Charter we should determine the language we would like to have.

Mr. Fraizer- why didn't this come up on the Charter Review?

Director Rhodes- I don't know. I would think it was fair to say they missed it, they get five individuals together who really don't know each other and some of them have more knowledge about the city than others and unless we give them a predetermined list of things that we want them to look at they come in with their own individual ideas. They could suggest going from 2 directors instead of 4 or get rid of the At Large Councilmen. It is a little wide open I wouldn't want to say they missed it I would say it wasn't brought to their attention.

Mr. Lang- I pulled up the Charter and there is no residency requirement in the Charter and it also looks like the terms are four years not five.

Director Rhodes- yes I believe off the top of my head the appointments are four years.

Mr. Lang- in the back page of the legislation it says five. I think that is something else that needs cleaned up when you talk to Director Sassen.

Director Rhodes- again just a housekeeping issue. Feel free to call Doug, I have spoken with Doug about this and that is how we came up with this.

Mr. Fraizer- so at a minimum we will have an amendment for the 5 years and the residency issue.

Director Rhodes- I like Jeff's idea about the business owner because it does capture someone who is invested in the city.

Mr. Rath- we want 5 members who are property or business owners.

Motion passed by a vote of 5-0.

3. **Resolution No. 17-52** authorizing participation by the City of Newark in the U.S. Communities Government Purchasing Alliance was considered.

Director Rhodes- I will start with the short version then I will explain how we got here. We want to be able to be a part of the U.S. Communities Government Purchasing Alliance. That is an alliance that has been bid out, it has been vetted and pricing has been approved at a higher level for municipalities. It is a buying group; people have to sell things at certain prices that have been bid out. The long version is if you look at the City of Newark's utility bills which we have looked at very hard there are 605 highways lights, on ramp and off ramp lights and under bridge lights. To operate those lights every year it cost the city \$205,000.00 and it costs the city \$24,000.00 in maintenance costs. If I upgrade those to LED then I would have to come back to you guys and ask to borrow some money my cost to operate those lights would go down to \$56,000.00 a year from \$205,000.00 and my maintenance costs would go down to right around \$10,000.00. We screened a couple of different groups and when I say we I want to identify we, myself, Mayor, Auditor, Law Director and I believe Mark Mauter sat in with us and we interviewed different groups who came in and gave us proposals for LED lights. If you are headed east on the highway and you come through Granville to the new section of the interchange there those are all LED lights then you go into the sodium lights which are yellow. Those sodium lights are very expensive to operate. What our proposal would be if this passes would be to enter into contract with the group that does the government purchasing alliance and then come back to Council and ask to borrow somewhere in the area of \$350,000.00 and I would put it in my budget like we have for the past couple of years for highway lighting and I would pay in about 2.2 years. We would have 605 new LED lights in the city that are guaranteed for somewhere around 15 years. All I am asking for tonight is the ability to participate in a group like this and if that is passed through Council I will come back with a power point presentation showing you the actual numbers. I would probably do that in Finance Committee. I want to save some money and have brighter lights in the City of Newark and frankly having less guys changing out lights in center lanes on the highway which is not all that safe for our employees.

Motion by Mrs. Floyd to send to full Council, second by Mr. Bubb

Mr. Fraizer- I love saving money so great job working on this. Is this a private Organization working on this?

Director Rhodes- no it's a larger company and I will get all the information for you guys and will do a nice power point when we get to that level.

Mr. Fraizer- they partner with other municipalities?

Director Rhodes- yes they do. I will have them come in and give you a nice presentation so you can see what we saw. We this thing came to my attention and we vetted people I felt that before I brought it to you it should be vetted in front of the Mayor, Economic Development Director, Auditor and the Law Director of which they did do and Doug Sassen did a lot of work on this to say yes this is something that you can participate in and yes this is something that I think is good. The Auditor came out in favor of it too. That is why we are here tonight to ask you guys to allow me to participate with that then I will bring you the legislation allowing me to enter into contract in addition to allowing the Auditor to borrow money. We would be participating with local companies for lights and things like that.

Motion passed by a vote of 5-0.

Jeff Rath, Chair