

**CITY OF AVON BOARD OF ZONING & BUILDING APPEALS
REGULAR MEETING MINUTES FOR JULY 5, 2023, 7:00 P.M.**

ROLL CALL

The meeting was called to order by Chairman Ladegaard at 7:00 p.m. in Council Chambers.

Present: Michael Bulger, Bill Hricovec, Mark Ladegaard, Chauncey Miller, Kurt Schatschneider, Jill Clements, Zoning Enforcement Officer, Pam Fechter, Econ. Dev./Planning Coordinator, John Gasior, Law Director, Duane Streator, Safety Director, Susan Pintz, Planning Commission & ZBA Secretary

REVIEW & CORRECTION OF MINUTES

Motion to dispense with the reading of the minutes of the regular meeting held on June 7, 2023, and to approve the minutes as published.

Mr. Miller moved, seconded by Mr. Hricovec, to dispense with the reading of the minutes of the regular meeting held on June 7, 2023, and to approve the minutes as published. The vote was: "AYES" all. The Chair declared the motion passed.

REPORTS & CORRESPONDENCE

None

ADDITIONS & DELETIONS

None

APPEALS & REQUESTS

1. **Jesus Vega; 4233 Queens Gate; 23-23**
Proposal consists of roof over existing patio.

The following variance is requested:

1. 13 foot rear yard variance; code requires 15 foot, applicant proposes 2 feet. Section C.O. 1266.05(a)(4) clusters-minimum setback requirements.

Motion to remove from the table the Jesus Vega appeal

Mr. Miller moved, seconded by Mr. Bulger, to remove from the table the Jesus Vega Appeal. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Ladegaard stated this proposal consists of a roof over existing patio.

Mrs. Clements stated that Susan Pintz received a call from the contractor stating that they did not receive their HOA approval, what they have proposed is not going to work therefore they would like to table this until the August meeting. They will potentially revise the plan and resubmit and then present their proposal at the August meeting. Susan Pintz confirmed that this is correct.

Motion to table the Jesus Vega appeal until the August meeting.

Mr. Miller moved, seconded by Mr. Schatschneider to table the Jesus Vega appeal to the August meeting, the vote was: “AYES” all. The Chair declared the motion passed.

2. Concord WP COL, GP Holdings II LLC, 36991 American Way; Jordan Berns, Counsel for Concord WP COL GP; 26-23

Woodsprings Suites Planning Commission Submission

1. Appealing Planning Coordinator’s Decision

Mr. Gasior asked Mr. Berns if anyone will be testifying? Mr. Berns responds yes. Mr. Gasior states anyone that will be testifying will need to be sworn in. He asked that anyone to be sworn in go to the podium and state their name and address and he will swear them in all at one time. He indicates no one is required to speak.

Jack Forstrom, Common Oaks Lodging, Regional Director of Operations, 11274 Estancia Villa Circle, Unit 6, Jacksonville, FL 32246; 11410 Common Oaks Drive, Raleigh, NC 27614

Matt Hook, Concord Development, Entitlements Director, 511 South Mangum Street, Durham, NC 27701; 11410 Common Oaks Drive, Raleigh, NC 27614

Steve Totzke, Concord Hospitality, Development Director, 1353 Royal Oak Drive, Lewis Center, Ohio 43035; 11410 Common Oaks Drive, Raleigh, NC 27614

Mr. Gasior swears in Jack Forstrom, Matt Hook, Steve Totzke and Jordan Berns. Mr. Gasior asked that Mr. Berns approach the podium to speak.

Mr. Berns thanks everyone for being here tonight. Mr. Berns states he is here on behalf of the Appellant, Concord WP COL, GP Holdings II LLC, (further referenced as Appellant) who proposes to develop property for a hotel at 36991 American Way which is part of Avon Point Professional Campus. The property is in the City’s C4 district where hotels are a permitted use. Mr. Berns states we are here, not to have you make as he calls it an ultimate decision about anything having to do with this project. We are here because we are seeking to get on the agenda before the Planning Commission for final plan review, approval, and consideration of a subdivision plat. He further states that this should not be too controversial because the hotel that is proposed is a permitted use. In fact, back in November the Planning Commission considered a general development plan amendment for this hotel without any controversy and without any issue about the fact that it is a full hotel.

Mr. Berns further states the controversy that exists here, that we need the ZBA to weigh in on has to do with the fact that the hotel that is proposed to operate holds itself out as what it is commonly referred to as an “Extended Stay Hotel”. A hotel in that in addition to offering daily rates for guests, that also advertises that its available for longer stays. As the name suggests, an extended stay hotel is a type of hotel by any reasonable measure and under the City’s Zoning Code, it’s a type of hotel. It was determined that extended stay hotels are not a permitted use in the C4 district and therefore the application would

not be put on the agenda for the Planning Commission's consideration. They are not looking for the board to decide that the Final Development Plan should be approved, or the Lot Split Plat should be approved. They just want to get on the Planning Commission agenda. In order to do that they need to establish that the proposed use is a permitted use. Mr. Berns states he has provided the board with a slew of documents (a packet was given to each member prior to the meeting starting). He states he will refer to some of documents and states if there are any questions or comments, they may answer some of the other ones.

Mr. Berns states to the extent that there could be any questions about whether a hotel is a permitted use, that is addressed in the chart on tab 7 of the packet he provided. Hotels and motels are a permitted use in the C4 district. The zoning code includes a definition of hotel, it's defined at tab 8 in section 1222.02(58) as a building containing sleeping accommodations for transient occupancy for compensation at a daily rate, not a particularly remarkable definition. As you will hear from the representatives of the Appellant there is no question that is what the proposed hotel offers. Sleeping accommodations for transient occupancy for compensation at a daily rate. It also offers accommodations on a weekly rate or even a 30-day rate, not unusual from other hotels that don't hold themselves out as extended stay hotels. Mr. Berns further states you will also hear extended stay hotel is really a marketing tool, a way of marketing and distinguishing some hotels from others, but nonetheless it is a building that contains sleeping accommodations for transient occupancy for compensation on daily rate.

Mr. Berns states that the issue that came up that prevented this matter from being put on the Planning Commission agenda revolve around the use of the transient or transient occupancy. That is not a term that the zoning code defines, so now we need to follow a couple of different paths, under the zoning code, this is in section 1222.02A words that aren't defined in the zoning code are just given their ordinary English usage as you would expect and as you have probably encountered in other matters.

Mr. Berns continues to say the first place is to look at what the definition of transient is and to look at the dictionary. In tab 9 they have provided a few dictionary definitions of the word transient. Marion Webster dictionary states: passing through, or by a place with only a brief stay. Oxford Learners dictionary states: staying or working in a place for a short time before moving on. Another dictionary says: remaining in a place for only a brief time. All of them talk about brevity as opposed to permanency. The hotel that is proposed here does not offer permanent residence for anybody. That is not what they are in the business to do. They offer a temporary place for people to stay. Mr. Berns further states; you might say, what is temporary? Is temporary a week? Is temporary 2-weeks? Is it a month?

Mr. Berns says as you look through the materials that have been provided you won't be the first to be wondering that. It's a question that has been presented in court, in tabs 12,13 and 14 are three cases involving the use of the word transient in the zoning code. There was one in Sandusky and another in Toledo. All of them reach the same conclusion, that the word transient is so vague that it really can't be enforced, that the legal terminology is that it is void for vagueness, under the Ohio and U.S. constitution. Because what's transient to one person may not be to another. It's not clear enough. It doesn't give enough guidance to somebody reading that word to know what it means.

Unfortunately, that means that its subject to abuse. It's subject to subjective determination and the idea of laws is certainty, so that somebody can look at the law and know what they must do to comply. If you are looking at transient one might say a week is transient and somebody else might say it's a month or six months. It is just too vague to be enforced, that is what the courts have said. There is a line of cases that says a law that relies on the word transient is too vague to be enforced, ignore that as a limitation. It's a bit harsh perhaps but the first answer here is the definition of hotel relying on transient occupancy is so vague it can't be enforced, and you can't prevent a hotel from operating on the basis that it offers something different from transient occupancy.

Mr. Berns continues to say that the second issue is that even if that weren't the case this hotel does offer accommodations for transient occupancy. In the email that advised us that we weren't going to be put on the agenda for the Planning Commission meeting, Ms. Fechter referred to a definition of transient guests, not in your zoning code, not in your tax code. As you may or may not know the city has a transient occupancy tax, a transient guest tax that it charges for people that stay at certain hotels; it defines hotels differently than your zoning code defines hotels and it defines transient guest which is in tab 10 of the packet he provided, and that definition is section 886.02E. It was based on that definition that it was determined that we are not offering transient occupancy. The problem with that is that definition by the terms of your code only applies to the tax chapter of your codified ordinances and doesn't apply in your zoning code. Under section 1222.02A that is included in tab 8 (paraphrasing a little) words that aren't defined in your zoning code, used in the planning and zoning code are used in their ordinary English usage, not unless they are defined someplace else in the codified ordinances. It could say that, but it doesn't. So, you have to give words that aren't defined in your zoning code their ordinary English usage, that is why you can't look at the definition of transient guest in the tax code.

Mr. Berns further states the other reason is because the tax code goes on to say that the definitions in that chapter are for purposes of that chapter, they can't be used any place else, so you have two provisions that say complimentary things. One says if its not defined in the zoning code look at ordinary English usage, the tax code says if its defined here, use it here, not use it here or any place else. So, there was a mistake made, the mistake was relying on a definition in a different chapter of your code. That is what has led us here. Even if it were a close call, even if it weren't void for vagueness the provision that includes transient occupancy. He further states that what he is saying about how you can't use the definition from the tax code, it is not an original thought on his part, there is a case in the packet he provided from the Court of Appeals in Franklin County, under tab 11.

Mr. Berns continues to say the case in the City of Columbus, had the same definition of transient guest that Avon has in its tax code and there the court said you can't use that definition in interpreting or applying the City's zoning code, which had a similar definition of hotel. There is precedent for the idea that you can't use the definition from one chapter in the other as well. Lastly, he states, even void for vagueness that he described earlier weren't an issue and we were just dealing with an ambiguous term the law in Ohio has been clear for almost 50 years that where there is an ambiguity in a zoning regulation the regulation has to be strictly construed in favor of the property owner. In other words, if there is a judgment call to be made it has to be in favor of what

the property owner is seeking, in favor of the use that the property owner is proposing and that is because zoning regulations conflict with constitution which says we all have the right to life, liberty and property. Those regulations according to the Ohio Supreme Court have to be narrowly construed and if you narrowly construe transient occupancy that means you can't say it's a day, you can't say it's 2 days, you have to construe it in any reasonable way that would be consistent with use of the word transient and in that same Columbus case that he mentioned they reached that conclusion. That even a stay of over 30 days is reasonably construed to be a transient occupancy. It not at unreasonable and that's the final backstop, you have to be reasonable. You have to interpret your ordinances reasonably and if you do that then there is no question that the hotel that is proposed here meets your definition of hotel and therefore you should decide in favor our appeal so that we can be in front of the Planning Commission, and they can consider the application that we have submitted.

Mr. Berns states he will now ask Jack Forstrom to speak and tell you 2 things: Do they charge a daily rate? And is the hotel for transient use? Those are the only facts if you consider the ordinance if you don't throw it out as void for vagueness. Those are the only 2 facts at play here.

Jack Forstrom states the hotel takes reservations. Mr. Gasior asked what is his capacity with the hotel? Mr. Forstrom states he is the Regional Director of Operations of Common Oaks Lodging. They operate 12 Woodsprings Suites. He states they are a subsidiary of Concord and 3 years ago they developed Common Oaks Lodging. They wanted to get into the "Extended Stay Brands", and they then developed Common Oaks. Concord has 150 full service and limited-service properties across the United States. It is a very well known and recognized reputable operator of full service and luxury brand hotels. He states some of the brand names are Hyatt, Marriott, Holiday Inn, and Hilton.

Ms. Fechter states that the hotels that he is part of, are all extended stay, longer term, as part of the all the different brands you have, this one that is being proposed is just the extended stay version. Mr. Forstrom confirms yes.

Mr. Forstrom says they developed Common Oaks Lodging to develop the Woodsprings Suites in addition to the Marriott developing extended stay brand, as well as Hilton is developing an extended stay brand. They didn't want to confuse their full-service customers, so they developed a separate company. Mr. Forstrom states that he works for that company, but they are all part of Concord.

Mr. Gasior confirms that Mr. Forstrom is the Regional Manager, and he is working for Common Oaks Lodging, and one of the products is Woodsprings.

Mr. Forstrom says that is correct.

Mr. Gasior asked what other products do they have?

Mr. Forstrom says they have 12 Woodsprings operating, and they are all brand new properties.

Mr. Gasior asked about the other brands like Hyatt and Marriott, do you have any of those?

Mr. Forstrom states they are developing a Marriott Extended Stay product.

Mr. Gasior asked about a Wyndham hotel? Mr. Forstrom responds no.

Mr. Berns says there is another representative that can talk about that.

Matt Hook steps to the podium. He is the Entitlement Director for Concord Hospitality, and he specifically works in the Developments Division. He can speak a little more to what extended stay brands they are pursuing right now.

Mr. Gasior asked if he is with Concord and as Mr. Forstrom pointed out you have Hyatt, Marriott, Holiday Inn hotel.

Mr. Hook responds yes and explains Concord operates for all the major brands. They operate Fairfield Inns, Autograph Collection, Curio Collection, all the way down to Hampton Inns and everything in between. Anything that is considered a full service down to a select service hotel. He continues to explain that full service would mean having a restaurant and a bar and all of that as opposed to a select service which would be more like off the highway hotels which may be a pull off for a night.

Mr. Gasior asked about a kitchenette to toast a bagel and make coffee.

Mr. Hooks responds yes.

Mr. Gasior confirms that would be a select service.

Mr. Hooks explains further that right now under the Common Oaks side they are working with Woodsprings Suites, Extended Stay America, Marriott and their new products and working with Hilton on their new product.

Mr. Gasior states he thinks that there is an Extended Stay America in Avon right now.

Mr. Hooks states they are not associated with the Woodsprings that was there previously here or the Extended Stay America that is currently here.

Mr. Gasior asked if the Extended Stay America is that under that Concord umbrella?

Mr. Hook states that they develop some of their properties.

Mr. Gasior asked if this one in Avon is owned by Concord.

Mr. Hook states no.

Mr. Gasior asked what happened to that one.

Mr. Hook states he doesn't know.

Mr. Gasior states they have the name Extended Stay American on the building.

Mr. Hooks states think of it like a franchise, it's like a McDonalds.

Mr. Gasior states they have the franchise. It might be owned by Jim Jones; it is using your company name. The McDonalds down the street can be privately owned but they use the McDonalds name.

Mr. Hooks states they don't own the extended stay name. They are not Extended Stay America. They are Concord Hospitality.

Mr. Gasior states he thought it was mentioned that they (Extended Stay America) were under the Concord umbrella.

Mr. Hook states they develop properties for Extended Stay America as a franchisor.

Mr. Gasior is confirming that they develop properties for them, and Mr. Hook says yes as a franchisor.

Mr. Berns clarifies that Extended Stay America would be the franchisor.

Mr. Hooks states they (Extended Stay America) are the franchisor, and we (Concord) are the franchisee.

Mr. Gasior says he assumes there is a contact.

Mr. Hook says yes but they are not associated with that Extended Stay America or that Woodsprings.

Mr. Gasior states that there was a contract that was developed for that property.

Mr. Hooks says yes but not that property though.

Mr. Gasior asked how that Extended Stay America got its name? It used to be Woodsprings.

Mr. Hook says he has no idea.

Mr. Berns states that is an extended stay hotel in the City's C4 district. He believes there is a Residence Inn in the city as well. He also states what we would all commonly recognize as an extended stay hotel and a hotel that markets itself in part for people that are staying longer than a weekend or maybe a week. There is some precedent here in the city for permitting extended stay hotels as hotels, which is again the narrow question that we are here over. Is whether the hotel that is being proposed here is a hotel under the City's definition of hotel? He wanted to point out that there are some other hotels that operate similarly that are hotels and that is why they are operating in that capacity.

Mr. Gasior states he is trying to understand the ownership. He was trying to ascertain what was under that umbrella that Mr. Forstrom was referring to.

Mr. Forstrom states operationally they take reservations, they check guests in for a night, take reservations for 1-3 nights, it really depends on the individual and their circumstances.

Mr. Berns asked what basis do you charge?

Mr. Forstrom states they charge nightly, they require credit cards at the time of the transaction, they do not take cash. They find that helps keep an element out of the hotel that they don't want.

Mr. Berns asked if there are leases with tenants?

Mr. Forstrom says no, our guests are guests, they are not residents, they do not do leases. They can stay if someone is building a house, they see this a lot in certain markets. Their house gets delayed, and they need a place to stay, they have sold their house and need a place to stay. First, it's a week then suddenly, it's a month, it could be 2 months, then they work with them. They are helping fill a void until they can get where they need to go.

Ms. Fechter asked if they have weekly rates? Or just daily rates?

Mr. Forstrom states they have weekly rates as well.

Mr. Gasior asked if they have monthly rates?

Mr. Forstrom states they have monthly rates if the whole month is paid in advance which is 28 days. They get travelling nurses that are working at a hospital for a contract which generally runs 3 months at a time.

Mr. Gasior asked if they have 3-month rates?

Mr. Forstrom states they do not have 3-month rates, they would do it month to month.

Mr. Berns further states that the law is clear here that the City's code is not quite as clear as it could be. Precedent for what is being proposed here exists in the city and again they are not looking for an ultimate decision just looking for a decision so that they can move onto the next step in the review process.

Mr. Gasior states that when Ms. Fechter wrote that opinion, he thinks she was viewing the code and the code says hotel/motel and it says transient guests. Many people in the city are aware of transient guests because there have been some issues with bed tax over the years. All of us understand each department, these are not definitions that we need to search for. We thought and Ms. Fechter thought we had a straightforward definition of what a transient guests would be right there in the tax code. He states if it is good enough for the tax code, it should be good enough for any other reason. Mr. Gasior states that he

supported Ms. Fechter's opinion. He doesn't know if he has seen a lot that would change his mind.

Mr. Gasior further states he knows the Franklin Coalition Case was decided in 1983, that is 40 years. That is an old case. There are a lot of factors in that case, there were a lot of different definitions in that Columbus code. Our city's code is very simple and straightforward, so what the court was getting at here was a little convoluted compared to the situation we have. The other thing is our city has not had a lot of hotels. Fairfield Inn was the first hotel. After that Woodsprings came in advertising a low daily rate, \$35 or something like that. There was never any indication that it was going to be an "extended stay". None of the other places for that matter ever gave anybody any indication that it would be an extended stay. This is the first time that the word "extended stay" has come to light regarding wanting to put up a hotel/motel/extended stay. Our city's code has no definition of extended stay. What we do know hotel/motel is where the word transient came up, but "extended stay" is something the industry has come up with. I don't know if it's necessarily a legal term.

Mr. Berns states that he thinks what you would hear, and he would ask the folks here, it's a marketing tool, which has its pros and cons because to your point it can mean a lot of different things depending on the hotel.

Mr. Gasior states the concern of the city is that you could be operating various types of uses under a banner of "extended stays". Some of the uses that he has come across and he thinks they were in Franklin County. In the Franklin County case it was a drug and alcohol rehabilitation that they were using the facility for that purpose. He says he guesses you could call that an "extended stay" to someone who is trying to rehabilitate from drug or alcohol abuse. It could be an extended stay for battered women or something along those lines. These are great and not condemning the use, but the "extended stay" is not always what everybody thinks it is and that is just somebody that needs a room because their house didn't sell or the house that they are building didn't get completed. There are a few different types of stays that can fall under that category or umbrella. What the City is trying to do is protect our zoning classifications and he thinks that is what this body does here.

Mr. Berns says he doesn't take issue with the goal. He wanted to ask one of the representatives of the Appellant to step back in because Mr. Gasior makes a good point on how extended stay hotel could be used. Extended stay hotel markets for longer term stays. He says just because a hotel does not hold itself out as an "extended stay hotel" doesn't mean it doesn't offer an extended stay. The representatives can testify a little bit about that so you can understand whether you call yourself an extended stay or not you may charge on a different basis than daily, you may offer different services to different guests.

Mr. Forstrom states in his experience he was at a full-service hotel for 18 years with Holiday Inn and then limited service with Holiday Express which you are getting less. You are not getting valet, or those things that you get at a full-service hotel. Mr. Forstrom further states when he was running each one of those hotels he would still work with local churches; if they had somebody that was part of a domestic incident and they

needed a place to stay, they would house them, it didn't matter if it was full service, limited service or extended stay or the time period.

Mr. Berns asks about the rates?

Mr. Forstrom states that they would give them a special rate because we would work with them. We called it a local negotiated rate (LNC) for a longer term. They would do that because they wanted to take care of the folks around them and be a good neighbor.

Mr. Gasior states that is good and admirable, but the problem on the City's end of the argument is, if you would have gone to the local zoning officer in your community at that time and said, "hey I need to house some people for an extended period of time in my hotel" Mr. Gasior states he doesn't know if the zoning officer would have said "sure go ahead". They might have said they don't think you can do that. That might be a violation of the code.

Mr. Berns says it would depend on the code. It depends on the language of the code.

Mr. Gasior says he is just pointing that out. As ultrarealistic is that goal is, we have to following the zoning code.

Mr. Berns states he wants to be clear, subject to the constitutional limitations, that is what we are asking for. We are not asking to stray from your code. For instance, as you said there is a definition of transient guest in your tax code. The term used in the definition of hotel in the zoning code is transient occupancy, it's a little bit different but uses the word transient. If that definition of transient guest were used in the zoning code to define transient as a guest who stays 30 days or less, we would be having a different discussion. We would be subject to that definition. The issue is and I can't say that would necessarily solve all the problems, but we would have a different discussion. The definition in the tax code isn't prohibiting transient guest or hotels with transient guests, it's defining what a hotel is for purposes of your transient guest tax and so its saying hotels are defined differently so they are defined as places that offer accommodations for transient guests. People who are staying for 30 days or less, different definition entirely, and it's saying that in that instance the city charges a tax, doesn't prohibit anything, it simply says that is when the tax is imposed. You could have different language that is aimed at all sorts of concerns that you have raised over the length of the stay instead of saying transient guests it could simply say guests who are not staying more than X days. It's the use of the word transient that is problematic. He understands the point, but the Franklin County case is a bit different in lots of ways but in the important way that it's not different is that it looked at exactly the same definition of transient guest in a different city's tax code and said you can't use that for purposes of the zoning and that is the only point that he is making with respect to that.

Mr. Gasior asked if anyone had any questions. No questions from the board. Attorney Berns is framing the issue accurately, but the only question is he correct, will a court agree for him or agree for us. On the definition of transient it's in the tax code. He further states that there is a legitimate question, legal question, about whether or not we can incorporate that definition as Attorney Berns points out, to solve an ambiguity in our code perhaps, but Mr. Gasior does not see an ambiguity, but Attorney Berns sees an

ambiguity. Even under his own memo he talks about the dictionary definition of transient as brief stay. Mr. Gasior suggests why don't we call them brief stay hotels, why do we call them extended, if the definition of transient is brief.

Mr. Berns states that the city could amend its zoning code to provide a definition of extended stay hotels and prohibit them in your city. We would then be having a different discussion in that instance. It could be a question about the validity, but we are using a one size fits all definition for hotel because that is what the city's code provides. It uses the same definition for hotel and motel, not sure any place calls itself a motel anymore, but he thinks everybody in the room is old enough to remember when places did call themselves motels. Some of those places operated as extended stay facilities, places that people would stay for weeks or for a summer.

Mr. Berns further states that constrained by the definition of, the single definition in the code for hotel and motel and the words it uses, he states he is making these arguments based on law, based on the cases that he has cited. He would caution it that where there is ambiguity, even if that is what we are talking about, that it should be in favor of the property owner, not in favor of the City. If the City wants something more restrictive the city has the tools to amend the zoning code. However, with the definition that the city has in place anything that can be characterized as a hotel under that definition meets that requirement. That is why there are hotels that are operating as extended stay hotels, if they violated the zoning code, there are enforcement tools, and it can be regulated under the zoning enforcement provisions. There are people that get paid by the city to do that.

Mr. Gasior asked if Mr. Forstrom the Regional Manager, does company have an outline of what is an extended stay facility? What type of amenities are offered to the customer? These are hotel rooms, it's an extended stay room, is there a manual? What services are offered?

Steve Totzke, Development Director, Concord Development, states what they ultimately do is sell these different brands that market themselves as marketing tools in different ways, whether it's the Woodsprings Extended Stay brand, or Hampton Inn, not extended stay, all they do is market the brands signature name and that sometimes includes extended stay as part of that brand name. He asked if that made sense.

Mr. Gasior responds, not really.

Steve Totzke states that is what they use as their definition.

Mr. Gasior states it probably makes sense to someone else in that business, he states he is lawyer not in the hotel business.

Mr. Gasior states they talk about a Development Director and marketing, it sounds like you have a client who is looking for a location to build a hotel and you find that location and you sell them naming rights to whatever the place is that they want to construct and then you make a profit in the process and you charge a fee for that and then they construct the hotel and they operate the business.

Mr. Berns states that is not quite so, think of it like a restaurant franchise. He had a neighbor who owned an Arby's franchise and owned some Kentucky Fried Chicken franchises, he was the operator, he found the locations, he entered into a contract to market food under that name, market their menu, but he operated those as Kentucky Fried Chicken and Arby's.

Mr. Gasior states that is not what we are doing with here with the hotels.

Mr. Forstrom agrees and states that there are standards with each hotel company that Woodsprings Suites has.

Mr. Gasior states that we are not looking at the hotel, we are looking at bare land off Chester Road. Somebody owns that land; we know who owns that land and they must have entered into a contract of some sort to sell the land. Mr. Gasior asked is the land being sold to Concord?

Mr. Berns states the Concord entity that is identified as the Appellant.

Mr. Gasior then proceeds to say that Concord will sell or lease it to a hotel?

Mr. Berns says no that Concord will operate it under that name. They will be owner/operator.

Mr. Gasior states ok, that helps.

Mr. Berns states they will be owner/operator under their brand name and their standards.

Mr. Gasior proceeds to say that if it's successful and someone would like to buy it then it could be sold, and it could be operated by someone else. They might pay a lucrative dollar because it is a very successfully run hotel. Someone might say that they want to buy it and then they will take over and now Concord/Woodsprings are out of it and then we (the city) do not know what that operator is going to do when they get there. They may be doing something different from what Concord/Woodsprings were doing for 5 years. That is sort of what happened at the existing Woodsprings.

Mr. Berns clarifies the "former" Woodsprings. Mr. Gasior responds, my point.

Mr. Berns says he doesn't know what happened to that hotel either, but he knows a little bit about the hotel business, having represented other hotel operators. Sometimes what happens is when there is a poor operator, they lose the franchise. They lose the name and the affiliation, the right to hold themselves out as that business, because the franchisor doesn't want to be associated with a poorly run franchise.

Mr. Gasior agrees.

Mr. Berns says so they lose that and sometimes rather than wrapping up the hotel business they will find another franchise that has different standards.

Mr. Gasior says in this day of social media it would be difficult to try and operate with people giving 1 star all the time for the accommodation. He thinks that would be a good reason if you are reputable operator/franchisor otherwise they could be damaging the reputation nationally.

Mr. Berns refers to tab 1 of the packet and he states these are typical newer Woodsprings Suites hotels like the one that would be serviced and proposed in Avon. These are extensive undertakings, they are built to be nice accommodations and stay nice accommodations, and anything is for sale, virtually anything, but the business that Concord is in, and its affiliates is to operate hotels, not developing for sale. The people who are here are all working towards or in operations because that is the bread and butter of what they do.

Mrs. Clements asks if all the rooms the exact same? Do they offer same amenities in every room, or do the rooms vary? Some hotels have basic beds, there is microwave, no mini fridge. Are all the rooms the exact same?

Mr. Forstrom states in terms of amenities: refrigerator, 2 burner cooktops, depending on the location we have put dishwashers in some hotels but not in all. There are queen size beds in handicap facilities based on what the city requires. We generally put in roll in showers.

Mrs. Clements asked if there is housekeeping as well?

Mr. Gasior states that this body will need to look at this, everyone on the panel should look at this and we have 30 days to render a decision. Because the way the calendar falls, the next meeting in person is 28 days from now, August 2, 2023. We will be able to come back at the next meeting and announce the decision if not render one sooner.

Mr. Berns states just to be clear to render a decision you have to meet in public, he wanted to clarify that he understood the process.

Mr. Gasior responds that they can hand down the decision in writing signed by everyone and turn it over to Mr. Berns and then it will be in the public meeting announcement, but you will have it sooner. It would not go into effect until the next announcement. Mr. Berns confirms he understands and says thank you.

Mr. Gasior states to make a motion to take the matter under advisement and then second and we will then go from there.

Chair Ladegaard states to have a motion to take the Concord Appeal under advisement and provide time to review the documents that were submitted.

Mr. Schatschneider moved, seconded by Mr. Miller to take the Concord Appeal under advisement and provide time to review the documents that were submitted. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Gasior tells Mr. Berns he will be in touch with him.

COMMENTS

Mr. Gasior states there is a lot going on. After Ms. Fechter rendered her opinion, Mr. Berns provided us with a memo that he sent to the owner. He then shared that memo with Mr. Gasior. Mr. Berns said the owner requested an opinion from him about their legal status. Mr. Berns then said he would share the memorandum that he provided to the owner. We read it and basically everything Mr. Berns said tonight was in the memorandum. It's a tough situation because he is talking about a case that is 40 years old, there hasn't been a decision in this area since that time. Times have changed and it's not clear if the court would rule in their favor based on what he is claiming the foundation of the Franklin Coalition case is. Mr. Gasior states that everyone can read it, it's in the packet that was provided by Mr. Berns. The name of the case is Franklin Coalition vs. Open Shelter. We are not even talking about a traditional extended stay facility. It was a homeless shelter that was being run. They had the opportunity to house 6 of them. It was a violation of Columbus code. The District Court ruled in favor of Columbus in that case. The case then went to Appeal to the Tenth District Court of Appeals and in that decision the Court of Appeals sent it back to the Common Pleas Court of Columbus and said you need to apply certain tenants to the definition of transient. Mr. Gasior states he is not sure what the end result was, except it was remanded back to the local court. He explains when you get a case sent back from the Court of Appeals and lower court has to make a ruling the parties usually get together and resolve the case, and you don't hear about it again. But there is the Court of Appeal precedent that stands out there that propositioned it, and they can't necessarily look in a different section of codified ordinances to try to find the definition for another section of the codified ordinances. He thinks it is worth pursuing and challenging and again there is this case that seems to say you can't do that.

Mr. Gasior further states that if this panel has questions in the next few weeks and if we want to get together, we can get together there is no sunshine law violation for this body to get together privately to deliberate on the decision that we are going to make. There is a term called a quasi-judicial body that is not subject to the public meetings in Ohio, so we have a right to get together privately to discuss this case and to at least to come to some consensus as to how you want to rule. In the meantime, Mr. Gasior will be talking to Mr. Berns and maybe a possible resolution where we get together with them and see how they want to operate. If they want to operate it as a hotel. They said 28 days stays would be tops, that is still a hotel.

Mrs. Clements states that they could check out for a day.

Mr. Gasior says that is what could happen. We know that could be happening already in Cambria Suites for all we know. Cambria Suites didn't come in and stay they were an extended stay. They are trying to operate as a hotel as far as we know. We do not have any complaints that they are doing anything other than operating as a hotel. They pay bed taxes. It's a tricky area. He tells the panel to read through the packet. Mr. Gasior will be in touch with Mr. Ladegaard and if we need to meet, we can meet at City Hall or Mr. Gasior's office. The board members can give their thoughts and be prepared to announce a decision at the August meeting.

Mr. Gasior added if a decision is not made on this, the Appeal is deemed denied, so they will lose the Appeal if nothing is done. He thinks we come back on August 2 and can announce the decision and put it on the agenda as such, to announce decision. If anyone wants to meet to discuss anything that you see in the documents that is great. Mr. Gasior states he might want to

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get together in case he sees any other information. Right now, it is what it is. You have heard their comments and you have heard the comments that Mr. Gasior has made. If you rule against them, they will file an appeal to Common Pleas Court. Then we will have to go before the Judge, who will make a determination after reviewing the evidence. To approve this then we will be in front of Planning Commission. Being a permitted use at that point, there won't be much at Planning Commission other than some comments about parking or something along those lines. If there is no special use, then there is nothing that goes to Council.

Ms. Fechter states going forward there should be a special use permitted.

Mr. Gasior says that is right and we have been talking about that and it is important to review that. There are some other regulations that he found at the City of Maumee. He doesn't think the city should adopt all of that. There are some things in there that are worth looking at if we do go towards the special use permit.

Mr. Schatschneider states it basically comes down to transient and our code says 30 days is the definition of transient and they consider it more than that? Why would we vote against the City's code.

Mr. Gasior says the law is fine, his point is the word transient was defined in our code for one reason and one reason alone and that is in the tax code, for the extended stay. It has nothing to do with the zoning and planning code. That is something we need to discuss.

Chairman Ladegaard states Mr. Miller has a birthday on July 12. The panel wished him a Happy Birthday. Chairman Ladegaard said he hopes everyone had a good July 4th.

Mr. Bulger-no comments
Mr. Hricovec-no comments
Mr. Miller-no comments
Mr. Schatschneider-no comments
Mr. Ladegaard-no further comments

ADJOURN

Mr. Miller moved, seconded by Mr. Hricovec to adjourn. The vote was: "AYES" all. The Chair declared the motion passed. Meeting adjourned at 8:04 p.m.

Mark Ladegaard, Chair

Susan Pintz, Planning Commission
& ZBA Secretary

Date