

DECISION
OFFICE OF THE ZONING HEARING EXAMINER
CITY OF CINCINNATI
DATE OF DECISION: AUGUST 13, 2021

APPLICANT: OPDYKE, INC.
8162 CHESTERSHIRE DRIVE
WEST CHESTER, OHIO 45241

OWNER: SEAN & TRACY CONWAY
4196 JAREDS WAY
BLUE ASH, OHIO 45242

CASE TYPE: CONDITONAL USE

CASE NO.: ZH20210087

PROPERTY: 3980 ROSE HILL AVENUE

SUMMARY OF REQUEST:

Sean and Tracy Conway (“Owners”) own the property commonly known as 3980 Rose Hill Avenue, Cincinnati, Ohio (“Property”). Opdyke, Inc. (“Applicant”) requests conditional use approval to allow a Convent and Monastery use on the Property.

SUMMARY OF DECISION:

The Applicant’s request for conditional use approval is **DENIED**.

PUBLIC HEARING:

After reviewing the application and materials submitted by Applicant and other concerned persons, and viewing the Property and surrounding area, David Sturkey, the Zoning Hearing Examiner, conducted a public hearing on the application, prior notice of the time and place of the hearing having been published in *The City Bulletin* and mailed to the Applicant and to all abutting property owners and other interested parties.

The hearing was held on July 7, 2021 at 2:00 pm and July 29, 2021 at 10:00 am. A recording was made of the hearing and is available for review and transcription.

THE RECORD:

1. Application, Written Statement, Supplemental Statement, and Email Correspondence from Applicant Representatives
2. Site Plan and Drawings
3. Testimony of Ryan Carlin, LC, Father John Bullock, Bob Bernet, Chip Williamson, Maria Gaviria, Ken Geis
4. Testimony of Tim Spitzmueller, Dr. Melvin Nizny, Remco Dejong, Thais Morata, Phillip Pierce, Sarah King, Jack Emery, Thomas Cochill, Heather Herr, Jason Rich, Jeffrey Herr, Ellery Lewis, Grace Spencer, Jolene Struebbe, Jack Wolking, Alan Rafferty, Doug van der Zee, Pamela Shaffer, Tim Harkavy, Jim Miller, Kenneth Shaw, Robert Doak, Margherita Melegari, Matthew Amos, Marvin Kraus, Gerry Kraus, Maria Czyzyk-Krzeska, Patrice Watson, Elizabeth Tye, Walter Koucky
5. Testimony of Doug Owen
6. Email and Written Correspondence from Neighboring Property Owners in Opposition to the Application
7. Letter in Opposition from North Avondale Neighborhood Association
8. Email Correspondence from Neighboring Property Owners in Support of the Application
9. Written Arguments and Motions from Attorney Sean Suder in Opposition to the Application
10. Written Arguments from Attorney Joe Trauth in Support of the Application
11. MSD Comment – No Objection
12. Department of Buildings and Inspections Staff Report
13. Recording of Hearing Held on July 7, 2021 and July 29, 2021

FINDINGS OF FACT:

1. The Property is located in a SF-20 (“Single-Family”) Zoning District in the North Avondale neighborhood.¹
2. The Property currently contains a 7,586 square foot single-family dwelling built in 1903. The Property also contains a surface parking pad and a detached accessory structure with a garage and living space in the rear yard.
3. The surrounding land uses are primarily single family residential with OL (“Office Limited”) and CN-P (“Commercial Neighborhood-Pedestrian”) zoning districts to the south of the Property along Reading Road.
4. The Applicant proposes converting the existing single-family home into a residence for approximately 7-10 non-related individuals associated with the Legionaires of Christ religious organization (the “Application”). The residents will consist of ordained priests, religious brothers studying for the priesthood, and two to three lay missionaries affiliated with the Legionaires of Christ religious organization that will reside in the home for one to two years. The Applicant is proposing that the home be

¹ Cincinnati Municipal Code 1400-17 and Map 1400-17.

used strictly as a residence and is not proposing that the Property be used for any type of public ministry or public religious services. The Applicant does not propose any significant structural changes to the Property or the residential dwelling. The proposed use is classified as a Convent and Monastery use under the Zoning Code.²

5. A Convent and Monastery use is listed as a conditional use in the SF-20 Zoning District land use regulations. Thus, the Applicant is requesting conditional use approval of the Application.
6. At the start of the hearing on July 7, the North Avondale Neighborhood Association and attorney Sean Suder, on behalf of his clients, requested a continuance in order for the community to spend more time reviewing the Application and applicable law. The continuance was granted over the Applicant's objection and continued to July 29.
7. At the hearing on July 29, the North Avondale Neighborhood Association and attorney Sean Suder presented motions for dismissal on the basis that the Application was never perfected. The motions were denied.
8. The record contains the Applicant's argument outlining why the requested relief is appropriate. The Applicant's argument is outlined within the application materials and the Applicant's supplemental letters and correspondence. The Applicant also introduced several witnesses during the hearing that provided testimony in support of the application.
9. A large number of neighboring property owners and members of the North Avondale Neighborhood Association testified in opposition to the Application. Arguments from members of the community in opposition to the project are detailed in letters, emails, and oral testimony from the hearing and included as an official part of this record.
10. The Department of Buildings and Inspections provided a staff report on the Applicant's application for zoning relief and recommended approval of the requested relief.

CONCLUSIONS OF LAW:

Standards for Zoning Relief

1. The Zoning Code establishes that a conditional use is a use that has potential adverse impacts on the immediate neighborhood. Such impacts may interfere with the use and enjoyment of adjacent property and uses. The process for review of conditional use applications is designed to address such adverse impacts and minimize them where possible. A conditional use requires a careful review of its location, design, configuration and special impact to determine, against specific standards, the desirability of permitting its establishment on a particular site.³

² Cincinnati Municipal Code 1401-01-C22.

³ Cincinnati Municipal Code 1445-05.

2. Under the Zoning Code, a property owner seeking a conditional use must make two showings. First, the property owner must demonstrate that its project conforms to all applicable laws, ordinances, and regulations, and is in the public interest. The determination is made after weighing the factors established by the Zoning Code.⁴
3. Those seeking conditional use approval must then demonstrate that:
 - a. The proposed use is listed in the applicable zoning district use regulations;
 - b. The proposed use is appropriately located, designed, and configured; and
 - c. Any adverse impacts on the surrounding area have been minimized.⁵
4. This decision first addresses whether the Applicant’s project conforms to all applicable laws, ordinances, and regulations, and is in the public interest.

The Public Interest

5. Taking into consideration the relevant factors outlined in the Zoning Code, the Applicant failed to demonstrate that the project conforms to all applicable laws, ordinances, and regulations, and is in the public interest.

Spirit and Intent of the Zoning Code and Neighborhood Compatibility (Cincinnati Municipal Code 1445-13(a and h)).

The purposes of the SF-20 Zoning District are to create, maintain and enhance neighborhood residential areas that are characterized by low density, single-family housing.⁶ The Zoning Code encourages quality and compatibility in use and form in these districts.⁷ Future development in these districts must remain single-family residential in character, although some public and non-residential uses may be permitted in certain districts.⁸

The Applicant did not demonstrate that the Application conforms to the general intent and purposes of the Zoning Code or the SF-20 Zoning District. The Zoning Code was adopted to preserve the character and quality of residential neighborhoods. This requires not only an analysis of the general provisions of SF-20 Zoning Districts, but also a careful review of the distinct individual neighborhoods within SF-20 Zoning Districts and their characteristics. The Property is located in a SF-20 Zoning District in a residential neighborhood outlined by Rose Hill Avenue and Beechwood Avenue and extends to Betula Avenue, Red Bud Avenue, and Avon Fields Lane to the north (the “Neighborhood”). Unlike many other SF-20 Zoning Districts, the Neighborhood is exclusively single-family residential. Neighboring property owners, some that have lived in the Neighborhood for many decades, testified that years of careful planning

⁴ Cincinnati Municipal Code 1445-13.

⁵ Cincinnati Municipal Code 1445-05 and 1445-21.

⁶ Cincinnati Municipal Code 1403-03.

⁷ Cincinnati Municipal Code 1403-01.

⁸ *Id.*

and advocacy from the community has allowed the Neighborhood to remain exclusively single-family. No evidence was presented that there is another non-single-family use in the Neighborhood. In addition to this inconsistency in use, the proposed use will also be, to some extent, transitional in nature. The Applicant's proposal includes housing two to three lay missionaries that will only reside in the home for one to two years and residents that are religious brothers studying for the priesthood that will also presumably transition out of the home when their studies are complete. The transitional nature of these residents further exacerbates the non-conformity of the proposed use. Further, the Zoning Code defines Convent and Monastery use as "group dwellings for members of religious orders."⁹ There was testimony introduced at the hearing that calls into question to what degree the lay missionaries are affiliated with the Applicant's religious order. It is the burden of the Applicant to adequately demonstrate that the residents of the home will be members of the religious order. That burden was not met.

The Applicant's argument relied primarily on the general assertion that the residents of the Property will be good neighbors and that there is precedent for Convent and Monastery use in other single-family zoning districts in the City of Cincinnati. While this may be true, the Applicant must present evidence that the proposed use is compatible and consistent with the surrounding neighborhood. A general promise of collegiality with neighbors and stewardship of the Property falls short of that standard and the standards outlined in the Zoning Code. Further, while the Applicant presented evidence of similar Convent and Monastery uses in other single-family neighborhoods, the Applicant failed to present any evidence that those uses were permitted after the creation of the modern Zoning Code in 2004 which was created to provide a guide for *future* development of the city.

The Zoning Code encourages public input and testimony as a part of zoning relief analysis. Therefore, it is important to consider that the overwhelming amount of public engagement in response to the Applicant's proposal has been in opposition. The record contains approximately 90 pieces of written correspondence in opposition to this proposal from dozens of neighboring property owners of which nearly all live in the Neighborhood. To some degree, a determination of the public interest must be made, in part, by the people that make up the public. In this case, the public is overwhelmingly opposed.

Although many of the neighboring property owners in opposition to this application referred to the Applicant's religion and religious order as one of the reasons this Application should be denied, it is important to note that it would be unreasonable, improper and unlawful to consider or decide the appropriateness of this application based on the Applicant's religion, religious order, or religious practices and the rationale for this decision is based exclusively on the factual, legal and zoning analysis outlined within.

⁹ Cincinnati Municipal Code 1401-01-C22.

Traffic, Economic Benefits, Tax Evaluation, Blight, Adverse Effects, Public Benefits and Private Benefits (Cincinnati Municipal Code 1445-13(d, l, n, k, j, o, and p).

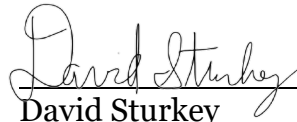
While the Applicant's proposal will provide certain obvious benefits for the Owner and Applicant, the evidence does not demonstrate that the proposed change of use will have any measurable impact on the promotion of the Cincinnati economy, job creation, tax evaluation, removal of blight or other public benefits. No significant traffic, visual, sonic or odorous impacts are expected as result of the Applicant's proposal.

The Applicant failed to demonstrate that the proposed use is compatible with the neighborhood and is in the public interest. For this reason and the reasons outlined above, the Applicant's request for conditional use approval is not appropriate.

DECISION:

1. The Applicant's request for conditional use approval for a Convent and Monastery use on the Property is hereby **DENIED**.

ORDERED THIS 13th day of August, 2021.



David Sturkey
Zoning Hearing Examiner

APPEALS:

This decision may be appealed to the Zoning Board of Appeals, pursuant to Chapter 1449 of the Zoning Code. Appeals must be filed within 30 days of the date of the mailing of this decision.

TRANSMITTED this 13th day of August, 2021, by regular mail to:

**OPDYKE, INC.
8162 CHESTERSHIRE DRIVE
WEST CHESTER, OHIO 45241**

TRANSMITTED this 13th day of August, 2021, by interdepartmental mail to Rodney Ringer at the Permit Center.