

Architectural Design Review Board
Tuesday, October 18, 2016
4:30 p.m.

Planning Commission	At-Large		Council	Chamber of Commerce	Rossville
Tom Alf	Steve Beckman	Armand Bloch <input type="checkbox"/>	Robert Brown <input type="checkbox"/>	Madam Chair Mary Pat Essman	Pauline Fairbanks <input type="checkbox"/>
Joshua Smith				Rob Weigel	Jane Jacobs
SID	Dayton Lane	Architect	German Village	Historic Hamilton	
Larry Fiehrer <input type="checkbox"/>	Dan Graham	Todd Palechek <input type="checkbox"/>	Debbie Ripperger	Karen Whalen <input type="checkbox"/>	
Rick Demmel	Thomas O'Neill		Ann Brown	Shi O'Neill	

Staff: Mr. Ed Wilson, Ms. Kathy Dudley (Assistant Law Director), Mrs. Heather Hodges, and Ms. Kim Kirsch.

Guests: Mr. Taylor Welch and Mr. Mike Dingeldein.

With the absence of Madam Chair Essman, Mr. Wilson called the meeting to order at 4:30 p.m.

Ms. Whalen made a Motion to appoint Mr. Fiehrer as Acting Chair. With a 2nd by Mr. Bloch and all "ayes", the Motion was accepted.

I. Roll Call

Present were Mr. Armond Bloch, Mr. Bob Brown, Ms. Pauline Fairbanks, Mr. Larry Fiehrer, Mr. Todd Palechek, and Ms. Karen Whalen.

II. Swearing in of Those Providing Testimony to the Board:

Members in the audience were sworn in by Ms. Kathy Dudley, Assistant Law Director.

III. Approval of Meeting Minutes – Written Summary and Audio Recording for these dates:

- A. October 4, 2016 - Motion to accept by Mr. Bloch, 2nd by Ms. Whalen. With all “ayes” except Mr. Palechek (abstain), the Motion passes with a vote of 5-0-1, and the minutes are approved.

IV. Properties Seeking COA – New Business

1. 226 Main Street (Rossville) – Painting, Roof – Rear Addition

Introduction:

The Applicant, Community Design Alliance / Hamilton CORE Fund, has submitted a Certificate of Appropriateness Application for the property of 226 Main Street. The proposal involves the Painting of the Siding of the Structure and Roofing of the Back Addition of the main building.

The subject property of 226 Main Street is part of the Rossville Historic District and is Zoned “MS-1”, Main Street Core Form-Based Zoning
Mr. Wilson gave a summary of the proposal.

Mr. Taylor Welch was in the audience, and he presented samples of the colors to the Board for review, as well as a sample rendering of the colors next to the brick that exists on the front of the building. The brick on the side of the building will stay unpainted, but will be sealed. Ms. Whalen asked if there was a sample of the roof sample, and Ms. Hodges got that for the Board to review. Mr. Dingeldein also spoke and said that the store fronts are temporary until there is a tenant. The CORE fund will come back to the Board at that time with a request for approval.

Proposal:

The Applicant brought in samples of the following Sherwin Williams colors for the Board to review at the meeting:

- **Painting of the Siding at the rear of the Structure**
 - Rookwood Terra Cotta – SW2803
- **Trim**
 - Restrained Gold – SW6129

Roofing – proposed for rear addition

- **New Shingles**

- “Teak” Owens Corning Duration Series

After a brief discussion between the applicants and the Board, Mr. Palechek made a Motion to close the Public Hearing. With a 2nd by Mr. Bloch and all “ayes” to roll call vote, the Public Hearing was closed.

Mr. Bloch made a Motion to approve the colors as presented. With a 2nd by Ms. Whalen and a roll call vote of 6-0, the Motion passes and the COA is approved.

V. **Miscellaneous/Discussion/On the Radar**

Property Inquiries:

- 300 High Street (*Downtown / Central Building Inventory*) – Roof - Like-for-Like COA

Meeting with StreetSpark and ADRB’s Mural Sub-group

- October 14, 2016
- StreetSpark forwarded documents regarding mural selection process for review by the Sub-Group (Ms. Fairbanks, Mr. Bloch, Ms. O’Neill, and Madam Chair Essman) and ADRB
- Sub-Group to fashion possible Mural Guidelines for inclusion in ADRB Policies-Guidelines
- Next Meeting for Sub-Group: October 28, 2016, 10 A.M. – True West Coffee (313 Main Street)

Ms. Whalen asked if the ADRB would vote on everything once it was completed, and Ms. Dudley replied that they will, in addition to it going to Council for approval.

Acting Chair Fiehrer then asked if the Board had any further business.

Ms. Whalen said that she did have one thing that she wanted to discuss. She said that she has followed some of the things that the Board has denied (example: lavender front door) (window change on “E” Street, Ross Avenue house) that nothing happened afterward. She said that she is thinking that maybe they need to start working with City government/council to get some “teeth”. She continued by giving an example that she could paint her house on Ross Avenue purple, someone could turn her in, she would come before the Board, get turned down, and then nothing happens.

Acting Chair Fiehrer responded that he thinks the “teeth” belong to the City of Hamilton to do something about it. Ms. Whalen responded that nothing happens, and would like to know what the “teeth” are. Mr. Bloch said that it states in the

Guidelines that there is a daily fine. Acting Chair Fiehrer said that using Kris (Kris Hartkemeyer) (lavender front door & porch – denied at October 4 meeting), as an example, she contacted Mr. Fiehrer and wanted to know what she could do once she was denied. Mr. Fiehrer gave her the options, and he said that her comment to him was “You know what, forget it. I’m going to sell the place. I’m not going to stay in German Village if this is what I have to deal with”.

Acting Chair Fiehrer then went on and gave his opinion that it’s hard to find a color to put with “Chocolate Brown”, and that he thought the color that she chose was appropriate to put with a “Chocolate Brown” house. He went on to say that “it’s got some snap to it, and the door lit up”. He said that he asked her if they left the door the color it was, would she consider doing something different on her porch and she said that she would not. He concluded by saying that the house is done, it’s finished, and he’s not sure where it’s going to go now.

Ms. Whalen said that she’s sorry that she used that as an example because Ms. Hartkemeyer was just there and even if she was going to do something, she probably hasn’t had time to do anything yet.

She then gave several other examples (one of which Mr. Wilson advised that the Applicant still had 6 months to do the work), and said that she doesn’t think that a lot of people who are denied don’t make changes, and what can they do about it?

Acting Chair Fiehrer deferred to Mr. Wilson, using Ms. Hartkemeyer’s property as an example. He asked what the City would do, and Mr. Wilson replied that he’s honestly can’t answer. The question then followed as to what would happen if she does sell the house and it falls on the new owner, and the Board discussed that.

Ms. Whalen then went on, saying that she doesn’t think that we have a lot of teeth, or if we do, she doesn’t think that we use them. Mr. Brown asked Mr. Wilson if he ever follows up, such as the denial on the windows. Mr. Wilson replied that he does follow up. A Stop Work order was issued because of the work on the windows as a result of someone calling in and him following up. He went on to say that it also falls to the historic district representatives and the neighbors.

Ms. Whalen then asked Mr. Wilson what he would do if someone did come back and say that it had been 6 months and nothing has been done, and Mr. Wilson said that he would contact the person in question. Ms. Whalen said that she’s not blaming Mr. Wilson, she’s just trying to figure out the process, and that she thinks that people ignore them a lot of the time.

Acting Chair Fiehrer then said that if someone doesn’t like the results from the ADRB, is the next step for them to go to the BZA, and Ms. Dudley said that it was. He then asked if there was a time limit that they have to appeal, and Mr.

Wilson replied that his letter to the Applicant has no time limit. Their options are to file a new COA application and come back before the ADRB Board, or they can appeal to the Board of Zoning Appeals.

Mr. Bloch asked if Zoning is the point of Appeal for someone who doesn't like an ADRB decision, can they be the enforcement for violations of guidelines. Acting Chair Fiehrer replied that the ADRB Board is a result of an ordinance and the ordinance gives the limitations on powers. Ms. Dudley added that the ordinance makes the Board an "advisory group", it does not make it an "enforcement group". She then gave a bit more information about the powers of Zoning, and said that the issue is whether or not someone is considered a criminal because they painted their front door lavender.

She added that the other option is that if you take them to court, it would potentially end up in Common Pleas Court for paint on a door. Acting Chair Fiehrer asked why it wouldn't be Municipal Court, and she answered his question. She said that once it ended up in Common Pleas Court, they would have to decide whether or not the City ordinance, as it's written, can force somebody with a paint color.

Acting Chair Fiehrer asked her if it's ever been litigated, and she said that it had not. In other jurisdictions, color is usually considered a temporary thing, and not all ADRB Boards address the color issue. She then gave the history of the Board and how it's determined who is on the Board. She said that some cities just have Staff do the approvals, and then the ADRB Board does a review of that.

She went on to say that virtually every ADRB Board, except this one, limits what an ADRB Board does, by taking into account whether or not this is an "unlawful taking of property". She said that it's contained in Cincinnati's website. She and Acting Chair Fiehrer then had a bit more discussion about the "unlawful taking of property", and how that fits into the enforcement issue and whether it's a criminal or a civil matter.

Mr. Bloch asked Ms. Dudley if other ADRB Boards around Ohio are as limited as the one is for the city. She replied that it depends on their enabling legislation, and she gave a little more information about that.

Mr. Bloch asked if the Board should be looking at other larger communities to see what they're doing (ex. Columbus). Ms. Hodges said that she has been to Charleston and Savannah, and she contacted both of their Staff that handles their ADRB Board. She said that in both cities, Staff approves color. Also, both cities replied (in an e-mail) that they very rarely turn down color because color changes are not permanent and because they want to encourage people to take ownership of their home and their property. She said that she also contacted the City of Cincinnati and Staff approves color there as well.

Mr. Bloch asked what they do as far as enforcement, and Ms. Hodges replied that she doesn't know. She went on to say that she lives in a historic home on Dayton Street and she was interested to see how they did theirs after the "purple door", so she checked then. He said that he thought it would be interesting to see how other communities are letting their Boards enforce the edicts that they hand out.

Ms. Dudley said that no Board can enforce a criminal statute. That has to be enforced by a Prosecutor. The Zoning official would file the charge, but it's up to the Prosecutor whether or not to go forward. She then gave the process from there, including that there would have to be "probable cause" determined. He asked if it had to be "criminal" and she said that it did, even if it's a minor misdemeanor or an M-1. He then gave a hypothetical situation, and he and Ms. Dudley discussed it.

Acting Chair Fiehrer then asked Ms. Dudley her opinion on what will happen if Ms. Hartkemeyer does nothing to her purple door and porch. Ms. Dudley said that she would suggest that the Zoning official work with the owner if he has probable cause to believe that she has defied the Board's order before he files any charges.

Acting Chair Fiehrer then asked Ms. Dudley what her opinion would be if she was looking at it as a prosecutor. She replied that she believes it's an unlawful taking of the property. She added that she believes that the evidence before the ADRB Board was that the color is a "historic color". The question became "do you think it is consistent with Federalist Style House" and Mr. Dingeldein said that it was. Ms. Dudley said that she's not sure the brown color of the house is consistent with a Federalist Style House. The testimony from Mr. Wilson was that is a color that has precedent under the historic model and it was one of the approved colors from previous guidelines. Mr. Wilson added that the property had been a CORE/CDA property that came before the present Board and the house color was approved with very little deliberation. He then gave a little more information about the COA application.

Ms. Whalen interjected that Ms. Hartkemeyer did the work without getting a COA. She then went on to say that "in her mind, after being on the ADRB Board for awhile and having a home in a historic neighborhood, you're better off to just go do what you want to do. One of the neighbors might tell Ed, and he would issue a Stop work and then you might come and they might say "no" and nothing is really going to happen."

She continued "Forget that particular incident (purple door). It almost seems easier to do the work, you may or may not get caught, and then come and take your chances." Ms. Fairbanks interjected "and then don't do anything anyway". Ms. Whalen continued "and don't do anything anyway if you're happy with what you did".

Acting Chair Fiehrer said “knowing that, should our charge be a little more flexible with people when it comes to something like this?” and he and Ms. Whalen continued their conversation a little bit more.

Mr. Bloch said that with what has been said about the colors, it sounds like they made an erroneous judgment on the color because the color purple is one of the colors that were “sort of” approved for a Federalist Style House. Ms. Whalen reminded the Board that Debbie Ripperger, the German Village representative, was at the meeting and said that four (4) people had come to her complaining. Acting Chair Fiehrer asked about the rest of the people that hadn’t complained, and they continued their conversation. She pointed out that they are there to “protect” the people in the historic neighborhood (according to the Guidelines) so that someone doesn’t come in and do something really weird to their house.

She continued on, saying that she really wasn’t talking about that particular case, but in general, what does the Board do if they make a ruling and the resident doesn’t comply. Mr. Wilson suggested that the Board try “understanding”. He said “sometimes we refuse to understand others, why people want their property to be a certain color.” He went on to say that “sometimes we don’t understand, or even accept that it is their property”. He said that there were a few Board members that at least consider the property owner’s rights. It’s not just about people’s taste; it’s about people wanting to be in these neighborhoods, wanting to improve it the way they feel is best”. Ms. Whalen responded that the people should then bring the matter before the Board to make their case to get a COA, and not just do the work.

Mr. Bloch then made a comment that this conversation reminded him of an “HOA”, and Ms. Dudley pointed out the difference in being on an “HOA” and being able to enforce guidelines in a neighborhood, vs. being an advisory board.

The Board then had a bit more conversation, including the fact that Mr. Wilks’ property just down the street had a door trim in a purple color that was approved. Ms. Whalen reminded the Board that it was actually a different color on the sample that they approved.

Mr. Bloch asked if they could review their decision regarding Ms. Hartkemeyer’s property. Acting Chair Fiehrer said that it has never happened, so he’s not sure. He asked Ms. Dudley, and she said that there is nothing in the guidelines that deals with Motions to reconsider, but she feels that it should be left for when Madam Chair Essman returns as Chair. Acting Chair Fiehrer said that he would abstain from any vote again on this matter due to his personal involvement with the Applicant. Ms. Dudley said that she feels that other members who made that decision should be on notice that it might be reconsidered.

Ms. Fairbanks added that just because the color is an approved color as far as a historic color of that time, doesn't mean that it's appropriate on that house in that way, just as you wouldn't put orange with purple. She continued, giving a formula that is used, generally speaking, for picking colors. She said that to her, the purple is too bold for that house to be done in that way. That's why she turned it down before and she would again. She said that it would be okay to use it on a smaller area or in an area that's not a front door. Also, in her opinion, colors have to complement each other and she doesn't think they do.

Ms. Fairbanks and Mr. Wilson had a bit more conversation about colors that complement each other, and what could be considered as "subjective" vs. "objective". Ms. Whalen said that she understands owners' rights, but she also understands the rights of people that live on either side of the house.

Mr. Wilson and Acting Chair Fiehrer had a bit of conversation about when the next meeting is set for, and when Mr. Fiehrer's term expires.

VI. Adjourn

Mr. Bloch made a Motion to adjourn. With all "ayes", the meeting is adjourned.

Submitted by:



Ed Wilson
Secretary, ADRB



Mary Pat Essman
Madam Chair, ADRB
By Lauren G. Fiehrer,
Acting Chair