

Present: President Stearn; Members: Berndt, Koss, Oen, Peddie and Woodrow

Absent: Pfeifer

Also Present: Manager, Spallasso  
Assistant Manager/Clerk, Marshall  
Building Official, Byrwa  
Village Attorney, Ryan

President Stearn called the Council meeting to order at 7:30 p.m. in the Groves High School Little Theater. The Pledge of Allegiance was recited by those in attendance.

#### **ADDITIONS TO AGENDA/APPROVE AGENDA**

Motion by Woodrow, second by Oen, to approve the agenda as published.

Motion passed (6 – 0).

#### **PUBLIC COMMENTS**

Marcia Gershenson, Oakland County Commissioner representing District 17, reported that she co-hosted a foreclosure seminar with housing counselors, which will be televised on the Village's municipal cable channel. Several Commissioners are working with State Legislators in an attempt to provide relief in terms of designating federal funds for qualified individuals who are struggling with the mortgage situation.

Gershenson attended a Senior Citizens Advisory Council where she learned about a Caregivers Expo to be held on Saturday, October 20 at the Rock Financial Showplace. The event is geared towards people who are caring for aging relatives or friends. Gershenson was also in attendance at a meeting on the topic of mental health parity and noted that Michigan is one of only eight states that do not have mental health parity. If this is an important issue to anyone, they can contact their Legislators about bills in front of the Michigan Senate and House. Further, BASCC (Birmingham Area Seniors Coordinating Council) is having a Senior Expo on Thursday, September 20 at Midvale School.

Oakland County is sponsoring a Bid and Breakfast event on October 3 at the Oakland County Executive Office Building Conference Center. It is a seminar on the topic of becoming a government vendor; those attending will have an opportunity to meet with representatives from a variety of municipal and institutional purchasing departments. Gershenson announced that Beverly School is the first school in Oakland County to receive a "green" designation and national honors.

Sharon Tischler of 21415 Virmar Court, Southfield Township Clerk, announced that Southfield Township will be offering free document shredding on Saturday, September 29 from 10 a.m. until noon at the municipal building parking lot. Tischler publicly thanked J. H. Hart, forestry contractor for Beverly Hills, for tree trimming and removal done at no charge at the Township building site.

Bunker Kelly of 21526 Corsaut Lane spoke favorably of the articles in the recent edition of the Villager Newsletter. He noted that Terri Stearn is organizing the Halloween Hoot this year. Village Homeowner Associations are invited to participate in the event. Kelly asked Council to look into whether a hold harmless agreement is required as a condition for use of Beverly Park for the Halloween Hoot.

Jim Gordon of 17310 Locherbie was concerned with the condition of trees in his neighborhood and the lack of tree trimming in rights-of-way. He asked the Village to consider a program to initiate planting and maintaining of trees in the rights-of-way.

### **CONSENT AGENDA**

Motion by Oen, second by Peddie, to approve the consent agenda as published.

- a. Review/consider approval of minutes of a regular Council meeting held September 4, 2007.
- b. Review and file bills recapped as of Monday, September 17, 2007.

Motion passed (6 – 0).

### **BUSINESS AGENDA**

#### **PUBLIC HEARING REGARDING PROPOSED REZONING CHANGES AND AMENDMENTS TO R2 (AREA EAST OF SOUTHFIELD ROAD), R2A, R2B AND R3 DISTRICTS**

Stearn stated that Brian Borden, planning consultant from LSL Planning Inc., will provide a presentation on the background and content of the proposed zoning changes in the easternmost section of the Village. This has been a topic of discussion in the Village since October of 2004. The previous Council authorized the Planning Board to conduct a neighborhood and housing study of the northeast section of Beverly Hills with the intent of reducing the amount of non-conforming lots in those neighborhoods. Following a comprehensive study, the Planning Board recommended to Council a proposal to amend the Schedule of Regulations and the Zoning Map in order to rezone properties in the northeast section of the Village so that lot area and setback requirements match the character of existing neighborhoods.

Brian Borden stated that a mailing was sent to all residents affected by the proposed rezoning. He pointed out two corrections and clarifications made to the information since the material was mailed. A couple of properties on Bates and a parcel on Thirteen Mile would remain nonconforming as a result of this ordinance amendment. Borden referred to the current zoning map and noted that there are three nonconforming parcels on Allerton that would be rendered conforming as a result of this zoning change.

Borden presented background information on the project and described the process involved in the comprehensive housing and lot study of the northeast portion of the Village. In 2005, Council directed the Planning Board to conduct a neighborhood lot and housing study for the specific area east of Southfield Road between 13 and 14 Mile Roads. The intent of the project was to: 1) study the characteristics of the residential area due to a high number of nonconforming situations and due to a disproportionate number of variance applications for home expansions and modernizations in this particular area; 2) encourage the orderly improvement of the older

housing stock in the Village; 3) implement a goal of the Village Master Plan to maintain and protect the character, quality, and value of residential neighborhoods.

Borden gave a definition of a nonconforming lot or structure and discussed how current Village regulations impact those situations. It was clarified that nonconforming lots were in conformance at the time that the houses were constructed. Following incorporation of the Village of Beverly Hills and adoption of the Zoning Ordinance in 1959, many lots and structures on the east side of the Village became nonconforming. Lots and structures can be nonconforming in terms of lot area, lot width, and lot setbacks. The Village Ordinance allows nonconforming lots and structures to continue, but does not encourage their survival if the structure is removed. If a nonconforming dwelling is destroyed for any reason to an extent of more than 60% of its value, it can only be reconstructed in accordance with current requirements unless a variance is granted by the Zoning Board of Appeals.

The Planning Board established goals for its study: 1) Reduce the amount of nonconformity in the study area; 2) Protect the enforceability of the Zoning Ordinance by reducing the number of requests for side yard setback variances related to expansion and modernization of older dwellings; 3) Protect and preserve the established character of the neighborhoods.

Borden outlined research done by the Planning Board as part of this study. Based on its review, the Planning Board made several findings. The study area contains the highest percentage of older housing in the Village, with 80% of the homes built in the 1940s or 1950s. The majority of the variance requests were side yard setbacks related to home expansion and modernization of the dwellings; almost all of the requests were approved. There was a disproportionate number of variance requests from the study area versus the remainder of the Village.

Borden related that any time there is a large number of similar variance requests approved, it has the potential to weaken the enforceability of the Zoning Ordinance. In order to grant a variance, the Zoning Board has to make a finding of practical difficulty. Nonconformity on its own is not a valid finding to justify granting a variance. Approving variances for the expansion and modernization of nonconforming dwellings goes directly against the intent of the Zoning Ordinance, which is to allow nonconforming situations to continue but not to encourage their survival.

There is a disconnect between the current dimensional regulations of the Zoning Ordinance and past development patterns and current neighborhood design. Review of aerial photos found that most of the structures are nonconforming due to side yard setbacks. Borden presented examples of particular neighborhoods in the study area to demonstrate the high percentage of nonconforming properties.

The Planning Board forwarded its recommendations to the Village Council. Before Council for consideration are Ordinance Amendments to the Schedule of Regulations and to the Zoning Map. Borden outlined changes proposed for the R-2A zoning district, the R-3 Zoning District, and establishment of a new R-3 Zoning District. The goal was to create dimensional standards that are more in keeping with the current dimensions of property in these neighborhoods. Borden referred to a zoning map displayed on the wall entitled “proposed zoning changes”.

Borden discussed some of the issues and concerns presented by the public at previous meetings. He addressed items related to the scope of the study, minimum 5 foot side yard setbacks on both sides in the R-3 district, and unease about the potential for increased density and lot splits. He stated that the majority of nonconforming dwellings are due to side yard setbacks rather than front or rear yard setbacks. The intent was to provide new standards that are consistent with how the area is already developed. Based on review of aerial photos, a five foot minimum side yard is consistent with much of the study area. Borden commented that a five foot setback on either sides provides a ten foot separation between dwellings, which complies with building and fire codes.

Borden affirmed that current land division ordinance regulations related to lot splits state, in part, “The Village Council shall not approve a division of land resulting in a parcel which has a land area less than the average land area of all land parcels of a like zoning classification located within the Village within 500 feet of any portion of the proposed division”. Borden commented that density cannot be significantly increased if we are maintaining what is already there. He pointed out a specific R-3 area and an R-2A area where there are lots that could conceivably be split. Borden noted that these are relatively new homes; someone would have to purchase two homes or multiple homes to create an additional lot, which is unlikely.

Further questions from President Stearn were addressed by Borden, who clarified that a nonconforming dwelling that was destroyed could not be rebuilt as it was without a variance from the Zoning Board of Appeals. The proposed ordinance amendments, if adopted, would decrease the amount of nonconforming lots and dwellings. The only districts impacted by this proposed ordinance amendment are single-family residential districts. The proposed new regulations do not affect front and rear yard setbacks. When asked if five foot setbacks would allow for adequate driveways, Borden responded that it would depend upon the design of the house. Stearn questioned why area requirements for R-3 property is proposed to be changed from 6,000 square feet to 4,000 square feet. Borden responded that the new standards will reduce nonconforming situations.

President Stearn opened the public hearing at 8:25 p.m. on the proposed Zoning Ordinance changes. He advised residents with specific questions about their particular property to contact Building Official Dave Byrwa at the Village office.

President Stearn asked for a show of hands to indicate how many people in the audience were opposed to the proposed zoning change and how many supported the ordinance amendments. A majority of the approximately 150 people present were opposed to the rezoning proposal. There were some residents who were undecided and others who supported portions of the proposal.

Residents voiced questions and/or concerns on the following topics: the cost of planning and zoning studies; the need for modernization of property; whether the number of requests for variances coming before the Zoning Board are problematic; public safety issues related to 10 foot distance between buildings; increased density and impact on sewer capacity; fear of “big foot” houses; maintain character of the neighborhood; potential for lot splits. A few residents were concerned about the perception of conflict of interest of Planning Board members who are involved in the construction industry and Council members who are selling their homes. The planning consultant addressed a number of the questions.

Major topics of concern were related to lot splits, increased density, and downgrading of current zoning restrictions. A number of residents suggested that the Village adopt a grandfather clause for nonconforming lots and structures that would allow a destroyed home to be rebuilt at its previous size. It was the contention of some residents who came forward that the existing nonconformities do not impact the value of those homes. Residents also encouraged Council to relax side yard setback standards as a means of encouraging additions and renovations without decreasing minimum lot width or area.

There were residents who were not opposed to the overall zoning changes but objected to the five foot minimum side yard setback allowed in the amended R-3 zoning district. There was a concern that five foot setbacks would result in no driveways or garages, thereby causing cars to be parked on the street and lessening the aesthetic value of homes. Another consequence might be the need to locate the garage in front of the house. It was noted that there are houses on Birwood built on the lot line. In this instance, reducing the side setback of an adjacent home to five feet would result in only five feet between the homes. Council was urged to revise the R-3 restrictions to require a minimum 5 foot setback on one side and a 10 foot setback on the other side.

Residents who spoke in favor of the proposed zoning changes expressed the need to insure that people will continue to purchase homes in Beverly Hill and maintain them in harmony with the character of the neighborhood. It was noted that the livability of the current housing stock does not suit today's lifestyle. Future residents should not be restricted from improving the homes to render them more livable. A few residents on the west side of the Village thought that they should be able to use their property under the same standards as those who would benefit by the zoning change.

Borden clarified that "grandfathering" is not a planning and zoning term. The nonconforming parcels are grandfathered in that they are allowed to be maintained and continue as nonconforming. The issue is the potential for expansion or destruction of the dwelling. A nonconforming dwelling cannot be expanded without a variance from the Zoning Board of Appeals.

The following people spoke at the public hearing:

Lois Appledorn	17251 Locherbie
Kathleen Tootell	Kirkshire
Lawrence Needham	15588 Kirkshire
Kay Michael	15767 Kirkshire
Edward Toth	17500 Kirkshire
Maurice Lefford	16007 Madoline
Paul Donohue	31020 Huntley Square East
Bruce Wayne	25 Riverbank
Ann O'Connell	17500 Kirkshire
Pam Rijnovean	Evergreen
Mary Jane Roddy	31279 Rutland
Bob Walsh	20655 Smallwood Ct.
Rukni Abboud	18207 Gould Court

Kenneth Vanorden	16994 Kinross
Jean Martell	Verona Circle
Jim Gordon	17310 Locherbie
Jeff Pynnonen	31724 Allerton
John Schamante	18051 Kinross
Robert Deneweth	32321 Arlington
Kathleen Berwick	31381 Kennoway Court
Sandra Lajoie	16045 Dunblaine
Michelle Kramer	16281 Birwood
Steven Bechtolt	17124 Beechwood
Randy Munguia	31716 S. Verona Circle
Pat Westerlund	18540 Devonshire
Bunker Kelly	21526 Corsaut
Tim Mercer	17400 Locherbie
Leann Toth	21605 W. Thirteen Mile Road

No one else wished to be heard; therefore, the public hearing was closed at 10:15 p.m.

### **FIRST READING OF AN ORDINANCE AMENDING CHAPTER 22 ZONING ORDINANCE – REZONING R2 DISTRICT EAST OF SOUTHFIELD ROAD AND ALL R2A, R2B AND R3 DISTRICTS**

Berndt conducted the first reading of an Ordinance to Amend Chapter 22 of the Municipal Code of the Village of Beverly Hills. He outlined each section of the ordinance. Section 1 amends Section 22.24, Schedule of Regulations to define the R-2A Zone District; Section 2.01 defines the R-3 Zone District; Section 3.01 amends multiple sections of Chapter 22 in order to create the R-2B Zone District classification; Section 4.01 amends the Zoning Map. The remaining sections consist of a Repealer clause, Severability and Savings Clause, Penalty and Effective Date.

Attorney Ryan explained that every Village ordinance must have two readings before adoption by the majority of Council. There will be public discussion and debate at a public meeting prior to a second reading of this ordinance and a vote by Council.

Stearn stated that notice of the second reading on the proposed ordinance will be published on the Village web site and displayed on the sign outside the municipal building. Administration will request that the notice of meeting be published in the Eccentric newspaper. Stearn thanked everyone who attended the public hearing.

### **PUBLIC COMMENTS**

Pam Rijnovean on Evergreen suggested that Village meeting notices be published in the Eagle newspaper, which is widely distributed in Beverly Hills.

### **REPORTS – MANAGER**

Spallasso reported that the 2007 resurfacing project is underway, and residents along the affected segments are being notified. Fourteen Mile and Lahser Roads will be resurfaced first and should be completed by the end of this month. Thirteen Mile Road will follow along with the remainder of the local streets. The project should be completed by the end of October, weather permitting.

The Village is preparing to commence the Water Meter Replacement project at the southwest corner of the Village and will progress northeast. Residents will be notified directly by the contractor, Rudder Limited.

The new trash collection schedule has been in effect for three months, and the transition has gone well. Spallasso thanked residents for their cooperation and reminded them to put their trash out on time.

### **COUNCIL COMMENTS**

Peddie reported on a meeting of the Baldwin Library Board last night, September 17.

Oen announced that, at its September 11, 2007 meeting, the Southfield Township Board accepted the resignation of Whit Jones from the Township Board of Trustees. He will be missed. Applications for the vacant Township Trustee position are due on October 1 at the close of business.

Woodrow reported on his attendance at the MAPERS (Michigan Association of Public Employee Retirement Systems) Conference in Grand Rapids. He received a lot of good information about retirement systems at the event.

Woodrow noted that a flyer was distributed to residents with the heading, “Beverly Hills Notice of Public Hearing”. He advised residents that this was not an official notice from the Village offices. Woodrow expressed the view that the sheet contained misinformation and personal opinions. Residents can call the Village office to determine whether material received is an official notice produced by the Village.

Woodrow announced that the Birmingham Bloomfield Community Coalition is holding its Summit 2007 on September 28 at 7:30 a.m. at the Christian Living Center of the First United Methodist Church in Birmingham. The Birmingham Youth Assistance Committee is sponsoring a breakfast on Thursday, October 11. He suggested that the Village be represented at this function.

Stearn reminded residents that September 24 is Family Day and urged people to eat dinner as a family on that day.

Motion by Koss, second by Oen, to adjourn the meeting at 10:30 p.m.

Motion passed (6 – 0).

**Todd Stearn**  
**Council President**

**Ellen E. Marshall**  
**Village Clerk**

**Susan Bernard**  
**Recording Secretary**