

Present: Chairperson Jensen; Vice-Chair Ostrowski; Members: Borowski, Freedman, Liberty, Tillman, Stempien and Westerlund

Absent: Wayne

Also Present: Building Official, Byrwa
Planning Consultant, Borden
Council member, Oen

Chairperson Jensen called the meeting to order at 7:34 p.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

APPROVE AGENDA

Motion by Freedman, second by Ostrowski, to approve the agenda as published.

Motion passed.

PUBLIC COMMENTS

Dennis Page of 30470 Lincolnshire East questioned whether sidewalks were brought up as part of a discussion that occurred at the last Planning Board meeting relative to review of the special use approval and site plan for a middle school gymnasium at Detroit Country Day School. Page thought that sidewalks should have been included on the Country Day site plan and that the School should have been required to seek a waiver from the Zoning Board of Appeals from the requirement to construct sidewalks on the perimeter of their property as part of the site plan and special use approval.

Jensen responded that sidewalks were discussed at the time the Board recommended Council approval of the site plan and special use for the new Middle School gymnasium. He remarked that this site has been developed for 50 years, and the sidewalk requirement has been waived by Council upon approval of previous construction projects.

Jensen voiced his belief that the Village has an illegal ordinance in that case law demonstrates that a community cannot require improvements that may benefit the public but have no direct benefit to a developer's project. To require a petitioner to install sidewalks that have nothing to do with the proposed project is essentially a violation of the Fourteenth Amendment, which provides equal protection under the law. He added that the majority of the Beverly Hills electorate voted not to approve financing for sidewalks along major roads.

Page did not think that Village Attorney Ryan offered an opinion that the ordinance was illegal. He maintained that it would be difficult to argue that a sidewalk offers no benefit to the School.

Jensen referred to a 24-page Supreme Court ruling against a municipality requiring a bicycle path that benefits the public as a condition for approval of a project. The Country Day proposal will be heard by the Village Zoning Board of Appeals, at which time the law will be set forth and reviewed.

APPROVE MINUTES OF REGULAR PLANNING BOARD MEETING HELD ON WEDNESDAY, OCTOBER 24, 2007

Motion by Freedman, second by Ostrowski, that the minutes of a regular Planning Board meeting held on October 24, 2007 be approved as submitted.

Motion passed.

REVIEW INFORMATION FROM LSL ON ORDINANCE LANGUAGE FOR ACCESSORY BUILDINGS

Borden reviewed that an amendment to the Zoning Ordinance related to accessory buildings has been a topic of Planning Board discussion for some time. He provided background information on the concern with outsized accessory buildings in the community and summarized the Board's attempts at formulating an appropriate ordinance amendment.

Council asked the Planning Board to look into what other communities do in terms of regulating accessory building sizes. Specific instances were brought to the attention of the Village by residents who thought that an existing garage was out of character with the dwelling and the neighborhood. Borden stated that communities regulate accessory building size differently in terms of considering maximum square footage, maximum coverage, height, use, and whether the structure is attached or detached. The Planning Board has reviewed the regulations of other communities.

Borden stated that the Village's current ordinance regulates accessory building size using the definition of private garage. There is a need to establish a regulation in lieu of enforcing a definition as a general provision. The draft amendment before the Planning Board is a result of several revisions. The Board has been discussing amendments to the Zoning Ordinance related to accessory buildings that would improve existing regulations to meet defined goals for preserving the character of the community while balancing the need to keep the Village's residential market current.

Borden reviewed the draft language. The definition of accessory building has been modified. The definition of private garage was eliminated; the regulations included in that definition were incorporated into the general provisions of Section 22.08.100 (Accessory Buildings, Structures and Uses in Residential Zone Districts).

The most debate has been with subsection 'e', which relates to regulating the square footage allowed for an accessory building whether it is an attached garage, detached garage, accessory shed, etc. The draft proposes that "the total floor area of accessory buildings shall not be greater than 50% of the usable floor area of the principal building, except that a minimum of 500 square feet is permitted by right where this requirement would result in a lesser area". Borden discussed the deliberation involved in arriving at this language.

Board member Ostrowski distributed graphics that illustrate how alternative area and bulk regulations function in various sections of the community. The sheet indicates potential allowable accessory structure sizes by zoning district based on proposed ordinance changes.

Subsection 'f' states that "Garage doors facing the street shall not exceed a total length of 24 feet and shall not exceed a height of 9 feet". The last item 'g' states: "Accessory buildings intended as garages are to be used for the storage of noncommercial vehicles, except that no more than one commercial vehicle of up to 10,000 pounds of gross vehicle weight may also be stored".

There was discussion of the subsection regulating the size of garage doors facing the street. The Board considered several aspects of this regulation: storing of large vehicles on residential property; whether the intent is to regulate aesthetics; the impact of the regulation on a large lot versus a smaller lot; and whether to restrict the size of garage door located on the side of the structure. The majority of Board members were in favor of applying the restriction only to garage doors facing the street.

Freedman suggested that adding a depth-to-width ratio in subsection 'g' would restrict someone from building the type of oversized garage that has been deemed to be objectionable.

Jensen said that this draft ordinance came about as a result of someone in the community who decided to build more garage than house. The Board has been attempting to limit the size of accessory structures and has become more restrictive in the process. He was not comfortable with creating design guidelines for accessory buildings.

There was further discussion on the draft language. Board members discussed a formula based versus a percentage based restriction. It was mentioned that the Planning Board is required to hold a public hearing on a proposed ordinance amendment before forwarding a recommendation to Council.

Jensen asked Freedman if she would like to offer an amendment to the draft language and seek agreement from the Board. He would like to have a consensus of the Board going forward to the public hearing. Freedman agreed to prepare an amendment. It was suggested that consideration of the draft ordinance amendment be held over until the next meeting.

Motion by Stempien, second by Westerlund, to table consideration of the draft ordinance language for accessory buildings.

Motion passed (8 – 0).

DISCUSS ZONING WEST OF SOUTHFIELD ROAD

Council adopted an ordinance on October 2, 2007 to amend the Schedule of Regulations and the Zoning Map in order to rezone properties in the northeast section of the Village. There was interest in directing the Planning Board to continue its study in terms of determining whether there are nonconforming lots in neighborhoods west of Southfield Road. It was determined during the Neighborhood Study that there are portions of the east side where nonconforming property extended into subdivisions on the west side of Southfield Road. At its November meeting, Council took action to refer the zoning of property on the west side of Southfield Road to the Planning Board for review and recommendation.

Byrwa distributed a map of the west side of the Village that is color-coded to show nonconforming lots in terms of lot area and width. It was noted that there could be additional nonconformities in the area in terms of side yard setbacks.

Jensen questioned whether Council has set a budget for this work. Planning consultant Borden was requested to provide the Village with a work plan, scope of project, and cost estimate from LSL Planning for review and approval by Council. It was suggested that the planner submit a budget including a range of options if possible.

Oen confirmed that Council wanted the Planning Board to determine the scope of the project and provide estimates on the cost of studying the zoning of property west of Southfield Road.

DISCUSS GOALS, OBJECTIVES AND PROCEDURE FOR SOUTHFIELD ROAD CORRIDOR PLAN

Jensen reviewed that he and Ostrowski met with Brian Borden and Brad Strader from LSL Planning almost a year ago to discuss a proposed Southfield Road Corridor study. It was determined at that time that the Village required the assistance of an expert who can develop a vision for the business district. The Planning Board has collected data on the Southfield Road corridor in terms of ownership of the property, available parking spaces, access points, etc.

Jensen has met with Robert Gibbs of Gibbs Planning Group and received a proposal from his firm to explore the potential of a Southfield Road Corridor study and establish a vision. The Planning Board will have to solicit Requests for Proposals (RFP) on this project. Byrwa indicated that \$7500 has been authorized for a Southfield Road Corridor Plan.

It was clarified that an independent firm will prepare the Southfield Road Corridor Plan, and LSL Planning will act as the Board's consultant on the project. Brian Borden was asked to draft a RFP for this project for distribution to qualified firms and for publication. He will be provided with a copy of the quote and scope of work submitted by Robert Gibbs.

PLANNING BOARD COMMENTS

Borowski observed that there is no December Planning Board meeting listed on the 2007 Village calendar. The fourth Wednesday of the month falls on December 26. The next Planning Board meeting is scheduled for January 23, 2008. A joint meeting of the Planning Board and Council is scheduled on February 13, 2008 to be followed by the regular Planning Board meeting on Wednesday, February 27.

Stempien thought that the new signage on the Premier Pet building looks large even though it does not exceed ordinance requirements. He recalled that the Planning Board approved signage for the Metro/Sprint Wireless store at the Thirteen Mile and Southfield Road shopping center. Stempien has observed that an abundance of interior signage has been added to the store front. Byrwa will take a look at this.

Tillman updated the Planning Board on action taken by the Zoning Board of Appeals to approve a variance request from Ascension of Christ Lutheran Church to erect a 4 foot high fence in the side yard along Pierce Street and to allow a play structure to be located in the side yard. At its

next meeting, Council will set a public hearing for final site plan and special use approval for the proposal from Ascension of Christ Lutheran Church.

Tillman commented that she received phone calls from former sidewalk committee members asking her how the Planning Board could approve a site plan for Country Day without sidewalks. Tillman explained that the site plan and special use approval for construction of a gymnasium on Country Day property was going before Council for review and approval and that Council has the authority to waive sidewalk requirements.

Jensen distributed a copy of memo he wrote to Council member Jon Oen prior to the November 20, 2007 Council meeting. The memo summarized the Planning Board's viewpoint along with Jensen's opinion on the recent Detroit Country Day School request for site plan and special land use approval. It states that the Planning Board was aware of a section of the Village Ordinance that allows the Village to require improvements such as sidewalks as a condition of site plan approval. That requirement has been waived throughout the history of improvements on the Country Day campus.

Jensen stated that, as a developer, he is aware of case law relative to conditional approvals for development. There is well established case law at every level including the United States Supreme Court that prevents communities from demanding or exacting a public benefit from a developer that is not a direct benefit to the development itself. Jensen commented on the Fourteenth Amendment, which provides equal protection. In his opinion, the Village exists with a set of laws that are out of date and illegal. He believed that the ordinance will be changed at some point.

Jensen offered to make copies of a 1994 Supreme Court ruling on this particular subject matter for interested Board members. There was a case in Michigan where a community attempted to require a bike path in the public right-of-way. That case demonstrated that a community cannot require improvements that benefit the public as a requirement for approval of a project. Jensen presumed that Detroit Country Day will provide a number of legal opinions when they come before the Zoning Board of Appeals. Freedman concurred that the Village is putting Country Day through an unnecessary process as a result of an ordinance that should not be on its books.

Jolie Kaufmann of 30720 Georgetown Drive referred to Beverly Hills Ordinance Section 22.08.410, which requires public sidewalks along major streets for all developments requiring site plan approval. She noted that other developments have complied with this ordinance. Kaufmann was of the view that sidewalks should have been included in the proposal from Country Day and that the ordinance should be enforced to require the School to construct sidewalks along the perimeter of their property.

Jensen responded that he thought it was inappropriate to require Country Day to construct a sidewalk 50 years later when the School already has site plan approval. The request before the Village was to add a gymnasium and other improvements.

Dennis Page made reference to sidewalks along Thirteen Mile Road, Fourteen Mile Road, and other major roads throughout the Village. He believed that those sidewalks were constructed

because there was an ordinance requiring sidewalks. Page contended that there are many examples where the ordinance was followed.

Jensen clarified that the Fourteen Mile Road sidewalk was installed in the last ten years when representatives of that subdivision came before Council with a petition to create a special assessment district to construct sidewalk along the perimeter of their subdivision.

Page was of the opinion that a sidewalk can be required if it has a benefit to the abutting property owner. He argued that the debate never took place as to whether sidewalks would or would not benefit Detroit Country Day School.

Motion by Freedman, second by Borowski, to adjourn the meeting at 9:28 p.m.

Motion passed (8 – 0).

David Jensen, Chair
Planning Board

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary