

Present: Chairperson Jensen; Vice-Chair Ostrowski; Members: Abboud, Borowski
Freedman, Wayne and Westerlund

Absent: Prew and Stempien

Also Present: Village Manager, Wilson
Assistant Manager, Marshall
Planning consultants, Borden and Cramer
Council liaison, Oen
Council members – Berndt, Briggs, Mooney

Chairperson Jensen called the meeting to order at 7:30 p.m. at Beverly Elementary School at 18305 Beverly Road.

APPROVE AGENDA

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

Motion passed.

PUBLIC COMMENTS

None

APPROVE MINUTES OF SEPTEMBER 23, 2009 PLANNING BOARD MEETING

Motion by Ostrowski, second by Freedman, that the minutes of a regular Planning Board meeting held on September 23, 2009 be approved as submitted.

Motion passed.

PUBLIC HEARING – ZONING ORDINANCE AMENDMENT FOR PROPERTIES WEST OF SOUTHFIELD ROAD

Jensen stated that the Planning Board has been engaged in a nonconforming lot study west of Southfield Road for a couple of years. This meeting will provide an opportunity for the Planning Board to communicate the results of its study and to receive input from the public.

Board member Patrick Westerlund related that the purpose of today's meeting is to discuss the possible rezoning of a portion of Beverly Hills. The presentation is a culmination of many months of research by the Planning Board and Village planning consultants from LSL Planning, Inc. The Council directed the Planning Board in 2007 to take a look at nonconforming lots west of Southfield Road following Council's approval of changes to the zoning map for property east of Southfield Road.

What is at issue is that part of the community where homes were built prior to Beverly Hills incorporating as a village in 1958. Soon thereafter, the Village Zoning Ordinance was adopted defining lot sizes and front, side and rear yard setbacks for new construction. Existing homes were not evaluated or considered at that time, creating a unique situation where zoning was established after development had occurred. This resulted in many homes and properties that do not meet certain size and dimensional requirements set forth in the Village Ordinance. Those lots are referred to as nonconforming, meaning that they do not match the requirements and the

regulations established in 1958. These dimensional obstacles can make it difficult for a homeowner to construct an addition or rebuild their home if necessary.

The Planning Board has attempted to correct this nonconforming situation. The study confirmed that there were a high percentage of homes and properties in West Beverly and Beverly Woods subdivisions that needed attention. The Planning Board analyzed existing setbacks and property sizes to determine the best zoning category that would match what was already built. This Board has developed a plan that it believes would maintain the character of the neighborhoods by matching the zoning to the established density and development patterns of the area while greatly reducing the number of nonconforming homes and properties.

Cramer explained how the planning consultants used the Graphic Information System (GIS) to examine the parcels in the area, record measurements, and identify current nonconformities. They analyzed the study area using GIS mapping to determine how many parcels would no longer remain nonconforming under various zoning districts. This technology will assist in understanding the effect of a new district and explain to residents what this zoning change means. The intent is to eliminate as many nonconforming situations as possible without overcorrecting the problem.

Brian Borden from LSL Planning described a nonconformity as an existing situation that does not meet the standards of the Village Zoning Ordinance. A nonconforming situation is either a use of property or a building that was lawful at one time, but has since fallen out of conformity either by enactment of a new ordinance or by amending an existing ordinance. The types of nonconformities include side yard setback, lot width, or lot area.

In terms of the study area, the majority of the lots are zoned R-1, which requires a minimum side yard of 15 feet. Most of this area provides side yard setbacks of 5 and 10 feet. R-1 zoning designates a 16,000 sq. ft. minimum lot size; most of the lots in the study area are about 9,000 square feet. In terms of lot width, the majority of lots were established at a 75 ft. lot width while the current zoning requires a lot width of 100 feet. These nonconformities are allowed to continue; however, there are ramifications. A nonconforming situation may impact the homeowner's ability to improve their property.

Borden stated that the Village Master Plan, which was updated and adopted in 2007, is a long-range guide to aid the Planning Board and Council in planning and zoning decisions within a 5-10-20 year time frame. State law currently requires that zoning be based on the foundations of a municipal master plan. The plan adopted in 2007 does identify the area under consideration as high-density single-family residential (6,000-12,000 sq. ft. lots). There is a disconnect between what the Village Master Plan calls for versus how the area is currently zoned. Council's direction to the Planning Board to research nonconforming lots west of Southfield Road was based on the adopted master plan.

Borden addressed frequently asked questions about the proposed rezoning. The zoning change should not affect property values; it should remove potential encumbrances to improvements and sale of property. The proposed rezoning will not affect the character of the neighborhood or overall density of the area. The intent is to match zoning to the development pattern of the neighborhood.

It has been questioned whether a potential rezoning would allow lot splits. It was determined that there are only 14 lots out of the study area of 600 lots that would be wide enough to split under the new standards; there are existing homes on all 14 of the lots. Under Village subdivision regulations, only two of the 14 lots would meet the minimum average area and could potentially be split. Borden stated that the rezoning would have no effect on land use; all lots would remain single family.

Borden said that the proposed zoning changes should ease the ability of homeowners to improve their property and possibly sell their home; the proposed rezoning is consistent with the Village Master Plan; the R2-B zoning designation only changes setback and lot sizes and does not change the use from single family; 88% of homeowners in the study area have non-conforming lots or buildings; the zoning changes would reduce the nonconforming lots/buildings to 26% without affecting the character of the area.

Robert Cramer explained in some depth how the Graphic Information System was used to inventory existing conditions and analyze data in this process to arrive at the recommended zoning district. A PowerPoint presentation was used to display examples of GIS mapping and illustrate how the aerial maps were used to identify nonconforming lots. By adjusting numbers, the benefits of shifting to a different zoning category were determined.

Cramer summarized statistics associated with the study area consisting of 593 parcels. The zoning in the area is R-1 and R-2. Of the 593 parcels, 522 (88%) have nonconforming building and/or lots based on lot area, setbacks, or lot width. The best rezoning derived from the analysis would be R2-B. If the proposed R2-B zoning was implemented, 158 lots (26%) would remain nonconforming. The planning consultants seriously considered the potential for lot splits under the proposed new zoning district. It was determined that 14 (2%) of the parcels were wide enough to split. All 14 of these parcels are already developed as single-family lots. Only 2 (0.3%) of the lots meet the minimum lot area based on a 500 ft. radius average requirement.

Chairperson Jensen opened the public hearing at 8:02 p.m.

Patrick Labarbera of 18953 Bedford questioned the reason for the zoning change. He was informed that almost 90% of the property or structures in the study area are nonconforming. This means that a homeowner has to go before the Zoning Board of Appeals and request a variance in order to make improvements such as an addition to their home. The Planning Board was asked by the Village Council to conduct this study. Mr. Labarbera indicated that he had no issues with the rezoning proposal if there was no cost to the residents.

Hildreth Buterbaugh on Dunblaine stated that he lives on a nonconforming lot. He related that the developer who built homes in his area was denied variances by the Zoning Board of Appeals; the ZBA's decision was overturned by Circuit Court. Buterbaugh remarked that his house could probably not be rebuilt within the same dimensions if it was torn down or destroyed by fire. He believed that his house would not be worth as much and may be less marketable if the rezoning proposal were approved.

Sara Davis of 18882 Beverly questioned why it should be made easier for people to construct additions to their homes that could result in less open space and privacy. She was concerned

about Beverly Hills looking like Birmingham with large houses close together on small lots and large garages. Davis cautioned against changing the character of Beverly Hills.

Robert Bliven of 31633 Nixon objected to allowing 5 ft. side yard setbacks for homes in the R2-B district. He proposed retaining a side setback of at least 10'-12' to be consistent with existing homes and property in his area.

Bob Daykin of 18245 Buckingham commented that he made improvements to his home so that his family could remain in this community. He said that homes designed and built in the 1950s do not fit the lifestyle of the 2009 era. While the Village should not dissuade people from improving their homes, Daykin suggested that there needs to be oversight to prevent people from overbuilding on their lots.

Ostrowski commented that it is not the intent of the rezoning to place a burden on property owners. If a house was built in the 1950s, its setbacks are probably in line with the setbacks proposed under the new zoning classification. Prior to the rezoning on the east side of Southfield Road, 75% of the lots were nonconforming. This is an anomaly that needs to be addressed for the reason that the Zoning Ordinance dictates that nonconformities should not be continued. The Planning Board is trying to roll back the setbacks so that the majority of homes in the subject area comply with the ordinance.

A resident expressed concern about overbuilding on a lot and objected to decreasing the side yard setbacks to 5 feet.

Ron Berndt of E. Rutland stated that the adjusted setback restrictions are intended to match the zoning ordinance to the position of existing houses based on measurements taken in the study. He affirmed that nonconformities are allowed to continue. Berndt referred to the lot of record rule stating that a nonconforming home can be rebuilt on an undersized lot, but has to match the required setbacks.

Tom Straith of 18870 Riverside observed that the map on display shows his lot as being nonconforming. He informed the Board that he tore down and rebuilt his house in 2004 in full compliance with zoning restrictions. He asked the planning consultants to recheck the GIS information relative to his parcel. Straith thinks that the proposed rezoning is a good idea and will provide opportunity for residents to improve their homes.

Terry Koller of 18136 Birwood said that she was interested in adding onto her home. She is in favor of the zoning change if it will save her money. Koller hoped that people would be considerate and not build additions too close to their neighbor's homes.

Dave Fusella of 32371 Mayfair questioned the onus on the homeowner of a nonconforming lot if the rezoning is approved.

Borden responded that, if a lot remains nonconforming after the rezoning is approved, the homeowner is in the same position he is in today. It would probably be to that person's benefit that some of the restrictions were relaxed. Borden added that the intent of the zoning ordinance is to gradually get rid of nonconforming uses over time.

Anita Flory of 18217 Beverly Road thought that the rezoning proposal would probably be beneficial to her. Borowski stated that Ms. Flory's property was not within the study area, and she would not be affected by the rezoning proposal.

Hildreth Buterbaugh asked for clarification on a statement made by Borden regarding the intent of the zoning regulations regarding nonconforming lots. He expressed the view that the proposed zoning change would decrease the value of his house.

Borden quoted from the Zoning Ordinance, Section 22.30.010 Nonconforming Use Limitations, which states, "It is the intent of this Ordinance to permit legal nonconforming lots, structures, or uses to continue until they are removed but not to encourage their survival."

Ron Herman of 18663 Warwick questioned the motivation behind the proposed zoning change. Permitting larger homes on small lots would result in an increased tax base and more tax revenue. Herman was opposed to the zoning proposal if that was the motivation.

Borden responded that the zoning change is being proposed because zoning restrictions were misapplied to this neighborhood many years ago. The rezoning proposal is in keeping with the Village Master Plan.

Ron Berndt invited residents to drive through the east side of the Village where property was rezoned about a year ago. They will observe no change in the character of the neighborhood.

No one else wished to be heard; the public hearing was closed at 8:35 p.m.

Freedman clarified that applicants requesting a variance from the Zoning Board of Appeals are not required to obtain the approval of their neighbors. It is a courteous gesture; however, the law is interpreted by the Zoning Board.

Westerlund stressed that the Planning Board looked carefully at the way these neighborhoods currently exist and based the new zoning on the setbacks that are there today. He explained how rebuilding a nonconforming house in accordance with the current zoning ordinance would result in a very narrow structure. The changes proposed would allow an existing house to be in compliance with the zoning ordinance.

Ostrowski mentioned that a member of the public said that the Zoning Board serves as an extra step in terms of granting a variance from ordinance requirements. The reality is that the ZBA is intended to operate as a quasi-judicial body. Their task is to follow strict interpretation of the law and only grant a variance based on a hardship as defined in the Village Code. In effect, the Village Zoning Board acts as an architectural review committee in that this body allows variances for expansions. Ostrowski believed that it was in the Village's best interest to bring ordinances in line with existing property.

Bruce Wayne commented that the marketability of houses in the Village should be considered. He affirmed that the intent of the rezoning proposal is not to change the character of the Village or encourage expansion.

Borowski commented that one the most common concerns expressed this evening appeared to be setback size. Bob Bliven indicated that lots on Nixon do not have side setbacks that are less than 20 ft. Borowski questioned the implication of not reducing the side yard setback to 5 ft. in the R-1 zoned neighborhood south of Beverly Road.

Borden commented that proposing another district where a greater setback is required would affect the width and area. Another option would be to create an entirely new district, which was done on property east of Southfield Road. The planning consultants would have to evaluate and apply different zoning designations to determine the affect on the entire study area. LSL could re-evaluate another zoning designation for a block of property south of Beverly Road and present those findings to the Board at its next meeting.

Abboud commented that he favors 100% compliance or leaving things the way they are.

It was the consensus of the Planning Board to postpone its recommendation to Council on the rezoning proposal until after the Board meets again to consider the planning consultants' analysis of the area south of Beverly Road.

PLANNING CONSULTANT'S COMMENTS

None

PUBLIC COMMENTS

None

BOARD COMMENTS

It was pointed out that the next regularly scheduled Planning Board meeting date falls on the day before Thanksgiving and the December meeting would be on the day before Christmas Eve.

Motion by Borowski, second by Abboud, to schedule the next Planning Board meeting on Wednesday, December 9, 2009.

Motion passed.

The meeting was adjourned at 8:53 p.m.

David Jensen, Chair
Planning Board

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary