



City of Lake Oswego Planning Commission Minutes

March 10, 2003

I. CALL TO ORDER

Chair Daniel Vizzini, called the Planning Commission meeting of Monday, March 10, 2003 to order at 7:05 p.m. in the Council Chambers of City Hall, 380 A Avenue, Lake Oswego, Oregon.

II. ROLL CALL

Commission members present were Chair Daniel Vizzini and Vice Chair Frank Groznik and Commissioners James Johnson, Mark Stayer and Alison Webster. Commissioner Sandblast was absent.

Staff present were Dennis Egner, Long Range Planning Manager; Hamid Pishvaie, Development Review Manager; Evan Boone, Deputy City Attorney; Susan Millhauser, Assistant Planner and Iris Treinen, Senior Secretary.

III. CITIZEN COMMENT – Regarding issues not on the agenda.

None.

IV. APPROVAL OF MINUTES

Vice Chair Groznik moved for approval of the Minutes of November 25, 2002. Commissioner Johnson seconded the motion and it passed with Vice Chair Groznik and Commissioners Johnson, and Webster voting yes. Chair Vizzini recused himself from the vote and Commissioner Stayer abstained from the vote. Commissioner Sandblast was not present. There were no votes against.

Vice Chair Groznik moved for approval of the Minutes of December 9, 2002. Commissioner Webster seconded the motion and it passed with Chair Vizzini, Vice Chair Groznik and Commissioner Webster voting yes. Commissioner Johnson recused himself from the vote and Commissioner Stayer abstained from the vote. Commissioner Sandblast was not present. There were no votes against.

V. PUBLIC HEARING

Residential Infill Development - Proposed Ordinance 2333/LU 02-0018

An amendment to portions of the Community Development Code, Chapter 50 to:

- A. Add new regulations in the R-15, R-10, R-7.5, R-6 and R-5 zones affecting single-family detached development regarding floor area, front setback plane, maximum side yard wall plane and garage setbacks, size and location.
- B. Revise regulations in the R-15, R-10, R-7.5, R-6 and R-5 zones affecting single-family detached development regarding setbacks, lot coverage, accessory structures and calculation of height on flag lots.
- C. Amend methodology for measuring height in all city zones from the mid-point of the roof to the peak of the roof.
- D. Add a new, optional design review process for review of single-family structures in R-15, R-10, R-7.5, R-6 and R-5 that do not meet the clear and objective standards outlined in A and B above.
- E. Add clear and objective standards for exceptions to meeting development standards for single-family detached dwellings.

This hearing had been continued from November 25 and December 9, 2002 and January 13 and February 10, 2003. Staff Coordinator was *Dennis Egner, Long Range Planning Manager*.

Vice Chair Groznik moved to reopen the hearing of LU 02-0018 and limit public testimony to the issues addressed in the most recent staff report. Commissioner Webster seconded the motion and it **passed** with Chair Vizzini, Vice Chair Groznik and Commissioners Stayer and Webster voting yes. Commissioner Johnson voted no. Commissioner Sandblast was not present. Chair Vizzini announced the procedure and time limits to be followed. He asked the Commissioners to report any conflicts of interest or ex parte contacts. None were reported.

Dennis Egner, Long Range Planning Manager, presented the staff report and distributed a three-sheet supplement to the staff report that contained pages that had been omitted from the report when it was first issued. He presented options and a staff recommendation regarding each of the following issues:

Flag Lot Height

Mr. Egner noted that the draft ordinance raised the base allowable height on a flag lot to 22 feet and then allowed the owner to apply to modify that height based on a calculation of an averaged surrounding height. He presented different methods to calculate average height for a flag lot. He reported that the staff recommended setting a base 22-foot height for a flag lot and then allowing an owner to apply for a modification based on a calculation of average height that attributed the maximum allowable height of the zone to abutting vacant land or land that contained structures that were more than 100 feet from the subject site. He noted the modification process would include notification of neighbors.

Floor Area Ratio (FAR) Applied to Conditional Uses

Mr. Egner asked the Commissioners if the ordinance should set a specific FAR for each Conditional Use allowable in each zone, or allow FAR to be established through the Conditional Use process. He also asked if parking should be excluded from the FAR calculation. He cautioned that if the ordinance set FAR for each use, then the ordinance might be construed to set the threshold of compatibility for a Conditional Use. He reported that the consultants advising the Infill Development Ad Hoc Task Force had assumed that parking was excluded from FAR calculations. He deleted Option (2)(c) Parking from page 3 of the staff report. He indicated that the staff was flexible regarding the maximum ratio of 1:1 they had recommended in the staff report. He said they had inserted that ratio in the draft based on what they had observed in the community. He reported that the staff had received emailed comments from Avamere representative, Bill Horning, who had advised them that his client could work with a ratio of 1.2:1, but not 1:1. He observed that the types of uses at issue included residential care, assisted living, public uses, and churches located in residential zones. He asked what the appropriate threshold should be for compatibility of Conditional Uses in neighborhoods where the FAR of the surrounding uses was .5:1.

Chair Vizzini asked if the existing design standards that the Development Review Commission (DRC) utilized to shape a building envelope would act as appropriate controls on Conditional Uses if FAR were not considered. **Evan Boone, Deputy City Attorney**, advised that setting a specific FAR would override the DRC's authority to determine what level of Conditional Use impact on a neighborhood was acceptable. **Hamid Pishvaie, Development Review Manager**, said he could not recall any Conditional Use application heard by the DRC in which FAR was an issue. He advised that a Conditional Use project was required to meet Design Standards and satisfy specific Conditional Use Standards that related to the size, scale and "fit" of the development in the neighborhood. He confirmed that previously approved Conditional Uses had FARs of less than 1:1.

Accessory Structures

Mr. Egner pointed out the draft ordinance included a size and height limit for accessory structures that limited a single-story structure to 800 square feet and a structure over 18 feet high to a 600-square-foot footprint. He recalled the Commissioners had previously voted against increasing the allowable size and height. He noted that they had another option to eliminate the limits because they would not apply anyway if the accessory structure were attached to the main building by a breezeway. He reported that that staff recommended keeping the draft limitations because they reflected the intent of the Infill Development Ad Hoc Task Force.

Height on Sloped Lots

Mr. Egner presented options for determining allowable height on sloped lots. He said the Commissioners could decide to keep the drafted regulations that reflected the current methodology for measuring height on a sloped lot; they could decide to increase allowable height on very steep lots; or they could change the methodology for measuring height on sloped lots. He explained that the definition of “sloped lot” – one where there was at least 10 feet elevation change from the front building line to the rear building line – would allow an owner to build a 35-foot high building. He reminded the Commissioners that the Variance process was available to allow the owner of a very steep lot to apply for increased height. He noted that although the street-facing portion of a house on a very steep lot might be allowed to be 35 feet tall, the front setback plane requirement would apply there and step the building back from the street.

Garages

Mr. Egner reported that the staff recommended that all four of the following provisions should be applied to garages:

1. The garage was not to be any closer to the street than the front of the house.
2. The garage was to take up no more of the façade than 60% of the house width.
3. Multiple garage openings were to be set back from each other at least two feet.
4. The owner was to chose two or more of the following menu options:
 - a. Set the garage back two feet from the house.
 - b. Install individual garage doors, each of which cannot exceed 75 sq. ft.
 - c. No garage door to exceed 50% of the house façade.
 - d. Install decorative architectural relief, such as a trellis, at the garage doors.

He confirmed for Chair Vizzini that the draft included a provision allowing a front porch to encroach into the front setback.

Front Setback Plane

Mr. Egner reported that the staff had received comments that indicated the term “front setback plane” should be clarified. He pointed out the staff report suggested other terms that might be used instead.

Special Garage Setback Standards that Apply to FAN

Mr. Egner reported receiving comments that the requirement to set a garage back by 15 feet and to set a FAN garage back at least two feet from the house was confusing when it was applied to a corner lot in the First Addition Neighbors (FAN), where a 10-foot side yard setback was required on a corner lot. He recalled that some people had interpreted the standard to mean that the garage there could be set back 13 feet; however, he advised that the 15-foot setback would apply. He explained that if, for example, the house was set back 15 feet from the street, then the garage was to be set

back 17 feet from the street. He said that if the Commissioners believed the regulations were confusing they could eliminate the requirement for the garage to be set back two feet from the house.

Public Testimony

Ed Christensen, 293 SW Cervantes, Lake Oswego, 97035, explained that he was a civil engineer and a development consultant working with a client to partition a flag lot for a house in an R-10 Zone in the Uplands area off of Egan Way. He presented an illustration of the parcel and adjacent lots. He said his clients could not build the two-story design they wanted on the lot because a calculation of averaged surrounding heights in that neighborhood of lower 1980's vintage houses would not allow two stories and because the proposed flag lot standard height of 22 feet would not be high enough. He suggested that the ordinance allow averaging using the maximum allowable zone height for abutting properties that featured a dwelling that was separated by more than 50 feet (contrasted with the staff suggested 100 feet) from the site. He suggested that the separation language specify "from dwelling to dwelling" instead of "from dwelling to development." The staff clarified they proposed a 100-foot distance from the property line of the subject site to an adjacent lot's dwelling.

Mr. Pishvaie recalled for the Commissioners that the DRC had previously approved variances to flag lot height when the averaged height was less than the current 16-foot standard height on a flag lot. He advised that in the situation Mr. Christensen described there was a self-created hardship and it would not meet variance criteria. He observed, however, that there was an opportunity to extend a public street past the property and make the subject lot a regular lot, and not a flag lot. In that case the owners would be allowed to build to the maximum allowable zone height. Mr. Christensen indicated his clients could not accomplish that and he suggested that setback requirements be increased for an oversized lot.

Commissioner Johnson clarified for the record that Mr. Christensen represented a private corporation, and not a public interest group.

Bill Horning, Western Planning Associates, 4621 SW Kelly Avenue, Portland, Oregon, 97239, questioned the necessity of applying FAR limits to non-residential facilities. He said existing setbacks, Planned Development requirements for open space, landscaping standards, and height restrictions combined to regulate the FAR for most facilities in any zone. He advised that it was not realistic to expect different types of facilities, including assisted living and Alzheimer units, to use the same FAR. He suggested that if a specific FAR was to be applied it should be 1.2:1, which he said was typical for multifamily zones.

Duncan Whitfield, 21 Nansen Summit, Lake Oswego, 97035, asked for clarification of the allowable height of a house on a steep slope. Mr. Egner advised the structure would be subject to a 35-foot height limit measured from any point on the slope around

the house. Mr. Whitfield observed that the current standard required houses on slopes to have more stairs. He suggested that the downslope wall of a house be allowed to be higher in order to allow the primary floor to be larger and to reduce the need for stairs.

Gary Buford, 415 N. State Street, Lake Oswego, 97034, urged the Commissioners not to limit the size and height of accessory structures. He said the proposed regulations were not reasonable or realistic on large lots. He said that under the proposed limitations he would not have been allowed to construct his 2,000 sq. ft. garage, but he would have had to build three separate garages. He also observed that under the proposed ordinance he could construct larger accessory structures as long as he built a breezeway between them and the primary house.

Jim Hinzdel, 1250 Wells Street, Lake Oswego, 97034, stated that he supported the flag lot height provisions in the current draft of the ordinance.

Chair Vizzini closed the public testimony portion of the hearing and opened deliberations.

Deliberations

Flag Lot Height

The Commissioners asked the staff how they had arrived at 22 feet as standard flag lot height. Mr. Pishvaie explained that the staff had observed that the existing standard of 16 feet was not realistic and that a 22-foot height limit would accommodate a one- or one-and-a-half-story house. He pointed out that height averaging could allow an owner to build an even taller house. He explained for the Commissioners that the rationale for requiring flag lot height to be determined at the time of lot creation was to provide certainty to the neighborhood about what would be built on the flag lot. He pointed out that during any subsequent modification process the neighbors would be able to participate in the hearing. He advised that if the height were to be determined at the time of development, the builder would apply for a Building Permit, which was a ministerial decision, and the neighbors would have no opportunity to participate in the process. Vice Chair Groznik recalled the Infill Development Ad Hoc Task Force members had wanted to ensure that infill on a flag lot complemented the surrounding homes. Commissioner Johnson questioned the requirement to set flag lot height at the time of lot creation. He observed that on a non-flag lot height was determined at the time of development. He said he supported height averaging because it helped to maintain the character of an existing neighborhood. He cautioned the Commissioners against fashioning policy based on testimony related to individual situations. Chair Vizzini observed that development on abutting properties could change average height between the time of lot creation and development and that trend might result in incremental height increases around the edge of a neighborhood.

Commissioner Johnson moved to adopt the staff recommendation for determining the height of flag lots. Vice Chair Groznik seconded the motion and discussion followed. The Commissioners clarified that if it was only vacant property within 100 feet, the allowable flag lot height would be the maximum allowable in the zone and that height would be set at the time of creation of the lot. **The motion passed** with Chair Vizzini, Vice Chair Groznik and Commissioners Johnson, Stayer, Waring, Webster voting yes. Commissioner Sandblast was not present. There were no votes against.

Floor Area Ratio (FAR) for Conditional Uses

Chair Vizzini recalled that the staff had recommended that specific FARs be set for different types of Conditional Uses up to 1:1, and parking was to be excluded from the calculation. He said that he was inclined to both cap FAR at 1.2:1 for any Conditional Use and to rely on Conditional Use standards to protect the neighborhood. Mr. Pishvaie confirmed for the Commissioners that the DRC was very sensitive to the issues of compatibility and good design and when those issues were addressed the FAR tended to shrink. He also confirmed from his experience that a FAR limit of 1.2:1 would not be a problem.

Vice Chair Groznik moved to allow Floor Area Ratio for Conditional Uses to be established as part of the Conditional Use hearing process. Commissioner Johnson seconded the motion and discussion followed. Chair Vizzini explained that he believed that other Conditional Use standards besides FAR would shape the building envelope, but he had supported the FAR limitation because the staff had indicated they desired to have a FAR cap. **The motion passed** with Chair Vizzini, Vice Chair Groznik and Commissioners Johnson, Stayer and Webster voting yes. Commissioner Sandblast was not present. There were no votes against. Chair Vizzini subsequently observed a consensus to exclude parking from the FAR calculation.

Accessory Structures

Chair Vizzini recalled that the staff had recommended that the size and height limitations on accessory structures be retained. Commissioner Johnson observed that their recommendation was consistent with the overall objective of the infill project. He anticipated situations where it could be more appropriate for a property owner to construct several small accessory buildings rather than one very large one. Mr. Egner explained for the Commissioners that the staff had contemplated an option to eliminate the limitations on accessory structures because other standards could define the building envelope and the restrictions could be bypassed if the accessory structure were connected to the primary structure by a breezeway. Commissioner Johnson observed that if there were no limitations, an accessory building might be constructed that was larger than the primary building and totally out of character with the neighborhood. Chair Vizzini commented that although the proposed standards helped to promote compatibility, the City had more work to do to ensure that development was at a size that was compatible with a neighborhood.

Commissioner Johnson moved to adopt the staff recommendation related to accessory structures (Option 1). Commissioner Webster seconded the motion and it passed with Chair Vizzini, Vice Chair Groznik and Commissioners Johnson, Stayer and Webster voting yes. Commissioner Sandblast was not present. There were no votes against.

Height on Sloped Lot

Chair Vizzini recalled the staff had recommended that the current definition not be changed. He said he supported the staff position. He recalled testimony that asked for increased height in order to maximize the primary floor area at the top of a hillside. He observed that would create a taller downhill wall that would adversely impact the neighbors.

Vice Chair Groznik moved to adopt the staff recommendation to not change the definition of a sloped lot and the way height was measured on sloping lots. Commissioner Stayer seconded the motion and it passed with Chair Vizzini, Vice Chair Groznik and Commissioners Johnson, Stayer and Webster voting yes. Commissioner Sandblast was not present. There were no votes against.

Garages

Vice Chair Groznik moved to accept Option 1, to require the garage to be no closer to the street than the house; and Option 2, to limit the garage to no more than 60% of the width of the facade. He said Option 3 seemed overly restrictive and Option 4 was redundant. The motion **failed** for lack of a second. Vice Chair Groznik then acknowledged that he could accept Option 3 because he had observed that three-car garage homes where the third garage opening was stepped back were more pleasing. He explained that he did not favor Option 4 because it changed the allowable garage percentage of the façade from 60% to 50% and required individual garage doors. Mr. Egner explained that the staff had intended that Option 4 would be an additional standard that offered a set of choices a developer could follow.

Commissioner Johnson moved to accept the staff recommended Options 1 through 4. Commissioner Stayer seconded the motion and it passed with Chair Vizzini and Commissioners Johnson, Stayer and Webster voting yes. Vice Chair Groznik voted no. Commissioner Sandblast was not present.

Other Issues

The Commissioners discussed other issues raised by the staff in Section F. of the staff report. They generally agreed to retain the term “front setback plane” because that term had been used by the Task Force and in previous Commission discussion. They decided not to change draft provisions related to the FAN garage setback after they observed that confusion about FAN garage setbacks was primarily due to a misunderstanding of the ordinance. The staff explained that many existing FAN

garages were located closer to the street than the house and the proposed ordinance would ensure that future garages would not dominate the streetscape. The staff confirmed that they had already inserted the word “yard” in the draft ordinance.

Vice Chair Groznik moved to direct the staff to prepare the final text and findings for LU 02-0018 to reflect changes made by the Commissioners at the hearing. Commissioner Johnson seconded the motion and it **passed** with Chair Vizzini, Vice Chair Groznik and Commissioners Johnson, Stayer and Webster voting yes. Commissioner Sandblast was not present. There were no votes against. Chair Vizzini announced that the vote on the findings, conclusions and order was to be held on April 14, 2003.

Annual Community Development Code Housekeeping Update - Proposed Ordinance 2338/File LU 02-0051:

Amendment of portions of the Lake Oswego Community Development Code, Article 50, and LOC 45.15.020, .025 for the purpose of clarifying, correcting, and updating:

- Fence height and material standards within the Old Town neighborhood.
- Standards for fences located on top of or near retaining walls throughout the City.
- Applicability and standards for review of temporary structures and uses.
- Process and criteria for adjusting setbacks, lot coverage, and building height restrictions upon partition (including flag lot partition) and subdivisions when an existing dwelling would thereby render the new lot to be non-complying.
- Applicability of building design requirements to major public facilities and minor public facilities.
- Lighting standards for parking lots and revise residential street lighting requirements.
- Lot depth methodology and related definitions.

The hearing had been continued from November 25, 2002 and February 10, 2003. Staff Coordinator was *Susan Millhauser, Assistant Planner*.

Chair Vizzini opened the public hearing and explained the procedures and time limits to be followed. He asked the Commissioners to report any conflict of interest or ex parte contacts. None were reported.

Susan Millhauser, Assistant Planner, presented the staff report. She pointed out that the staff report included an illustration of how tandem retaining wall and fence height was measured. She reported that the staff had incorporated language into the section related to retaining walls/fences that reflected adopted administrative policy. She reported that the staff had added language to exempt noise-buffering fences from the height limitations, but they desired the Commissioners to clarify along what categories of roadways the exceptions were to be applied. She pointed out that the staff had clarified language related to the provision for a setback reduction on a partitioned lot so that the reduction could be applied when there was an *existing* dwelling on the partitioned parcel. She explained that Section 8 proposed minor text-editing changes.

John B. Crowell, Jr., 1185 Hallinan Circle, Lake Oswego, 97034, explained that although he was not affected by the proposed fence regulations, he opposed any regulation of fence height because he believed that a property owner should be allowed to choose his own fence design without City regulation. He indicated he did not see any good public reason to regulate fence height and setback, but he could think of many reasons why an owner would want a high fence.

The staff explained that the proposed ordinance was for “housekeeping” purposes and was intended to clarify text and omissions related to an existing ordinance that regulated fence height. They recalled the City Council had taken the position that fences along public rights-of-way should be regulated so they would not seem to intrude on the public sphere. They advised that fences that separated private properties were not regulated. They also advised that the Code required the structural side of a fence to face the private property, and not the public area. They reported the Council had received many complaints about fences that were too tall or where the structural side faced the public or the neighbors. They advised residents who wished to see the existing ordinance repealed could take the issue before the City Council.

Chair Vizzini then closed the public testimony portion of the hearing and opened discussion and deliberations.

Deliberations

The staff clarified for the Commissioners that if a property owner desired to install a 6-foot-tall, noise-buffering fence along McVey Avenue, the required 10-foot setback would be measured from the public right of way to the private property line. They observed that in situations where the owners found that the contour of the land required additional screening they could also plant a vegetative wall (such as an arborvitae hedge) between the property line and the fence. Staff confirmed there was no height restriction placed on arborvitae.

Commissioner Johnson moved to recommend LU 02-0051 to the City Council. Vice Chair Groznik seconded the motion and it passed with Chair Vizzini, Vice Chair Groznik and Commissioners Johnson, Stayer and Webster voting yes. Commissioner Sandblast was not present. There were no votes against.

VI. OTHER BUSINESS

Series Partitions

The Commissioners generally agreed to direct the Planning Department staff to respond to a letter from Robin Bolton to Chair Vizzini regarding the potential for series partitioning of a parcel at 17060 Chapin Way into four lots. Staff reported that the Code currently did not address such sequential partitioning of land and some property owners were accomplishing multiple partitions in order to avoid having to plan a public

street or provide open space in a subdivision. Commissioner Johnson related that some jurisdictions banned series partitions. Chair Vizzini anticipated the Commission would discuss the issue when they discussed growth management.

VII. ADJOURNMENT

There being no other business, Chair Vizzini adjourned the meeting at approximately 9:50 p.m.

Respectfully submitted,

Iris Treinen
Senior Secretary