



**CITY OF LAKE OSWEGO
Planning Commission Minutes
July 28, 2014**

1. CALL TO ORDER

Chair Randy Arthur called the meeting to order at 6:30 p.m. in the Council Chamber of City Hall, 380 A Avenue, Lake Oswego, Oregon.

2. ROLL CALL

Members present were Chair Randy Arthur, Vice Chair Ed Brockman and Commissioners Adrienne Brockman, John LaMotte and Bill Ward. Commissioners William Gaar and Todd Prager were excused. Council Liaison Jeff Gudman was also present.

Staff present were Scot Siegel, Planning and Building Services Director; Andrea Christenson, Natural Resources Planner; Jessica Numanoglu, Senior Planner; Evan Boone, Deputy City Attorney; and Iris McCaleb, Administrative Support.

Housekeeping Items: The Commissioners discussed changing the meeting time to 6:00 p.m. and put it on the next agenda for further discussion. It was clarified that Commissioners A. Brockman and E. Brockman were not related.

3. COUNCIL UPDATE

Councilor Gudman reported that the Council would recess during August. He discussed the change in City debt policy. He noted the Council had reviewed the League of Oregon Cities priorities. He indicated that the Council would be discussing filling of Council vacancies and the number of ballot measure signatures necessary for a road widening project. He advised that the Council had also directed the Commission to examine lot line adjustments in situations where the legal lots that predated zoning were smaller than the zone allowed.

4. CITIZEN COMMENT (Regarding issues not on the agenda)

None.

5. PUBLIC HEARINGS

5.1 Annual Code Updates (LU 14-0014B)

A request from the City of Lake Oswego for amendments to the Community Development Code to correct errors, eliminate text ambiguity or redundancy, and clarify text to reflect existing code interpretations. Key amendments address solar panel height; front porches and street side yard setbacks in the R-6 zone; the prohibition of invasive plant species in required landscaping and tree mitigation; clarify required bike parking should be covered; clarify that certain minor developments must be located within 100 feet from a collector or arterial street; and clarify how Park and Open Space land is identified. The following code sections are affected: LOC 50.04, Dimensional Table, Exceptions, Projections and Encroachments; LOC 50.05, Overlay and Design Districts; LOC 50.06, Development Standards.

Staff recommended that the Commission continue this hearing. ~~Commissioner E. Brockman moved to continue LU 14-0014B to August 25, 2014. Commissioner Ward seconded the motion and it passed 5:0.~~

5.2 Nonconforming and Variance Code Amendments (LU 14-0018)

A request from the City of Lake Oswego for amendments that update, streamline and simplify sections of the Community Development Code that allow adjustments or variances to code standards and regulate nonconforming structures and uses. The following code sections are affected: LOC 50.01.006, Nonconforming Structures; LOC 50.08, Adjustments, Alternatives and Variances; LOC 50.04.003, Exceptions, Projections and Encroachments; LOC 50.05.007, Lake Gove Village Center Overlay District; LOC 50.07, Review and Approval Procedures; and LOC 50.10.003, Definitions.

Chair Arthur opened the public hearing. Mr. Boone outlined the applicable criteria and procedure. There were no declarations.

Staff Report

Ms. Numanoglu highlighted that the City Council had directed staff to deal with policy issues identified during the code audit project; and, that the amendments aligned with Council goals and policies related to making the development code more user-friendly and business-friendly. She described public outreach activities. She offered an overview of the amendments.

Ms. Numanoglu explained that the nonconforming amendments added provisions to address lots and site features, clarified terminology and codified current practice. She clarified that there would be no need for a conditional use permit if non-conforming industrial, commercial and multifamily structures with permitted uses were expanded in a conforming manner. She advised that variance-related amendments consolidated and clarified procedures and moved some clear and objective procedures out of the variance section. She indicated that staff had found that the First Addition Neighbors/Forest Hills Neighborhood Association supported an amendment that eliminated the R-6 administrative procedure. She pointed out that re-categorization made it clearer what Minor, Major and Design variances were intended for; for example, Residential Infill Design (RID) was under Design variance. She noted that the Summary Procedures Table had been corrected and updated since the work session with the Commission.

Ms. Numanoglu advised that staff had made some changes to the proposal based mainly on Commission direction. She pointed out that they no longer proposed separate standards for nonconforming structures based on whether they were in or not in a design district; the Lake Grove Village Center Overlay District (LGVCO) nonconforming standards would continue to supersede general nonconforming standards, with a new definition of 'remodel'. She explained that the issue of whether changes between nonconforming uses in the same use category could be made without a conditional use permit was deferred to a future Commercial Code Streamlining Project. She advised that a new provision allowed an extension of time for reconstructing a nonconforming structure that had a pending insurance claim or litigation. She indicated that staff no longer proposed to move the Sensitive Lands modification procedure under Major Variance.

Key Nonconforming Issues

Definition: Remodel (in regard to the Lake Grove Village Center Overlay District).

Ms. Numanoglu indicated that 'Remodel' would be differentiated from reconstruction based on the extent of structural changes. She advised that the trigger to full compliance with all LGVCO standards was the removal of 50% of exterior structural wall elements, or removal of more than 50% of the principal support structures. She pointed out that the pros were that it would provide more certainty and require less staff interpretation and that alterations to bring the building into compliance with requirements related to things like seismic and Americans with Disabilities Act (ADA) upgrades would not count towards the 50%. She indicated that it also allowed an unlimited amount of nonstructural interior or exterior improvements that did not trigger new construction standards. She explained that the cons were that the applicant would have to identify and quantify the changes to structural components and some level of staff interpretation and expertise would still be needed, including from Building Division staff. In response to public feedback, she stated that staff had chosen not to recommend using the percentage of the value of improvements to the market value of the existing building; it was risky for a business to start a remodel in which unforeseen issues could mean they passed the value threshold. She said they had learned from the Lake Grove Shopping Center owner that they had only modified 15-20% of the structural components in their remodel.

Commissioner Ward referred to the proposed definition 'remodel' and advised staff to remove the term 'cripple wall' because it was not structural, and to clarify the wording to 'on a partially developed or fully developed site.' Commissioner LaMotte was concerned about the complexity of interpreting what was or was not load-bearing. He asked if they could simplify the definition to allow, for example, a restaurant to remodel with an addition that expanded it up to 50%.

A new provision would allow portions of a development that were erroneously approved through the Minor or Major Development procedure and constructed to the approved plans to be deemed nonconforming instead of illegal.

Ms. Numanoglu recalled the Commissioners had mixed perspectives on this. Comments included that this should not be in a code and no other cities did it; this could encourage sloppy work by the applicant and/or staff; and, the owner would bear the burden of an oversight by staff even though the previous review had been subject to public notice and appeal so there had been opportunities for the errors to be identified.

Key Variance Policy Issues

Variance/adjustments criteria consolidated.

Ms. Numanoglu advised that staff proposed a set of general criteria applicable to all design variances. She explained that most procedures would be subject to both general criteria as well as criteria specific to a particular design district or the RID process. She pointed out that the LGVCO Minor Adjustments were moved to the Minor Variance category, which changed some of the criteria. She reported that the Downtown Redevelopment Design District (DRDD) had always allowed adjustments to any Chapter 50 standard as well as to DRDD standards so they could be dealt with in one process and the proposed amendments would allow that in the LGVCO district. She clarified that hardship criteria would be deleted from LGVCO Major Adjustments. She pointed out that the applicant had to comply with a long list of very detailed standards required by the LGVCO district and that an applicant often seeks a variance because one or more of the standards conflict with one another or prevents otherwise compatible development. She noted that to force an applicant requesting a variance to also

show that the variance is the minimum necessary and that if the variance were not approved, it would constitute a regulatory taking, was too high a bar to meet.

Ms. Numanoglu reported the proposed amendments complied with all levels of applicable plans, policies and goals. She asked the Commission to recommend the Council approve them.

Public Testimony

Carol Radich, Ellis Avenue, Lake Oswego, 97034, and Diana Boom, 557 Evergreen Road, Lake Oswego, 97034, testified on behalf of the Evergreen Neighborhood Association. They referred to the Summary Procedures Table and pointed out that no public hearing was required under Major Variance and the RID process. They asked that those processes include a public hearing. They indicated the language under General Design Variance Criteria was confusing and should be rewritten so it was clearer how the criteria related to each other and what vague phrases like 'an alternative design'; 'exceptional detailing or materials'; and 'a positive, unique, relationship' meant.

Carolyn Krebs, Denney Court, Lake Oswego, 97035, stated that she was the Co-Chair of the Lake Oswego Neighborhood Action Coalition (LONAC).

Ms. Krebs submitted LONAC's written testimony. She reported that LONAC opposed changes to the LGVCO Adjustments because the changes were substantive and decreased protections to residential properties surrounding the District. She explained that the difference between current LGVCO Minor Adjustment criteria and the general Minor Variance Criteria was that the LGVCO looked for "hardship" related to the physical constraints on the site and required the adjustment to be the minimum necessary. LONAC questioned staff's position that the hardship criterion was difficult to meet, noting that adjustments had been granted for developments such as Lake Grove Market and First Citizen's Bank. She advised that reclassifying Major Adjustments as Design Variances seemed unnecessary and it seemed contradictory to put hardship criteria there instead of under Minor Variances. She reported that LONAC was requesting that the criterion that specified that 'Granting the adjustment results in a site plan or building design that equally or better meets the purpose of the standard(s) being adjusted' be put back in both types of adjustments. LONAC wanted to keep approval of Major and Minor Variances/Adjustments subject to Development Review Commission (DRC) review and give surrounding neighbors that were impacted a chance to be heard.

During the questioning period Ms. Krebs confirmed that the Lake Grove Village Center was the result of a lengthy planning process involving business and residential property owners; the goal was to balance the needs; and it reflected the consensus of the advisory committee members and stakeholders who had worked on the plan. She asked the Commission to take into account the uniqueness of the Village Center in that it was a one-property-deep district with residential properties right behind it.

Carolyn Jones, Poplar Way, Lake Oswego, 97034, stated that she was representing the Citizens for Stewardship of Lake Oswego Lands (LO Stewards). Ms. Jones explained that she had just learned that Sensitive Lands amendments were not included but she wanted her testimony to be in the record. She indicated they should not be included in the Nonconforming and Variance Code Amendments because they were at cross purposes and contradictory to the proposed Sensitive Lands revisions; and, to include them would increase the regulatory burden on Sensitive Lands property owners. She did not agree with the staff recommendation to move Sensitive Lands nonconformity provisions to one general nonconforming section of

the code after Sensitive Lands was updated. She had questions regarding what staff meant when they reported that no changes to the nonconforming provisions applicable to Resource Protection (RP) and Resource Conservation (RC) districts were proposed and recommended revising those provisions to align with the nonconforming provisions in Chapter 50 if the Council amended the Sensitive Lands section. She said Statewide planning Goal 5 and Metro Titles 3 and 13 did not require nonconforming use, so the proposal was overreaching and unnecessary.

Staff explained that they were adding a cross reference to the existing nonconforming section of the Sensitive Lands Ordinance, but not proposing any changes to it. They were suggesting that section be put into the consolidated nonconforming section of the code in the future, if Sensitive Lands was changed and that it could be dealt with at the time the Commission examined the Sensitive Lands package.

Dianne Cassidy, Wren Street, Lake Oswego, 97034, submitted written testimony. She asked the City to require notice and opportunity for comment and/or appeal on all items with appeal possibilities, even if a hearing was not required and it should also be posted on the City website. She commented that there would be no surprises and the neighbors could file an appeal within the appeal period. She suggested there should be one planning page where people could look and find everything that had been submitted. She agreed that public hearings should be required for major variances and indicated that ministerial decisions that required no notice or review and did not allow public appeals should be restricted to clear and objective standards cases. In regard to granting nonconforming rights due to errors made when a development was approved, she agreed public notice provided more opportunities to discover and prevent errors, but she commented that she did not want to be responsible for doing staff's job. She referred to the provisions in the Minor Adjustments section that talked about allowing 20% or four-foot variances in the Lake Grove Village Center District, but not adjacent to R-7.5 and R-10 parcels. She asked that it also include NC/R-0 zoned properties such as the one her condominium complex was on so they had the same consideration and predictability the other two zones had.

Cheryl Uchida, Quarry Road, Lake Oswego, 97035, related that she had served on the Lake Grove Village Center Advisory Committee. She indicated she agreed with Ms. Krebs' testimony. She offered a general statement to the effect that the LGVCO included neighborhood associations, businesses, high-density residential and single-family residential and they would be affected. She said she did not want any development, such as a remodel or new development that was minor, major, or ministerial, to by-pass the usual process of including her neighborhood association. They wanted to know about everything and they should be included in pre-application conferences. She recounted that the exceptions and adjustments clause had been inserted in the LGVCO at the last minute and over the objections of her neighborhood association. She believed a minority report was included in the record. She said she believed the whole process for code streamlining for this particular part of the code needed to begin with the Village Center Advisory Committee and work its way up. She recalled attending pre-application conferences where Planning staff varied in their interpretation of the overlay code and how it applied to the application. She recommended that someone who had been on the Advisory Committee should always be included in those conferences.

Deliberations

Chair Arthur opened deliberations. The Commission discussed issues raised in testimony starting with whether a public hearing should be required in the Major Variance and RID processes. Commissioner A. Brockman supported it because they wanted to be open and

inclusive; and, because the applicant had the option of varying every single code standard, which could impact neighbors who deserved to know what was going to happen. Ms. Numanoglu advised public hearings had never been required for those processes and the neighbors did receive notice. She advised that staff had always had the option to send a Major (hardship) Variance case directly to the DRC if it was controversial or when staff was going to recommend denial. She indicated that having the option seemed to have worked well. She clarified that they were not allowed to refer RID applications to the DRC and those applications were not subject to a public hearing. She pointed out that the proposed changes meant the RID process would be aligned with the Minor Development process and staff would have the option of referring them to the DRC.

Commissioner LaMotte observed that neighborhoods were automatically noticed now, whether the matter was major or minor, so they would be aware of proposed development plans. He suggested a process of waiting to see if someone raised an issue; if no issue was raised the application could be approved without a hearing. Mr. Boone clarified the notice went out 300' or to at least 50 properties and adjoining neighborhood associations were notified as well as the immediate neighborhood association. Commissioner A. Brockman inquired and heard that the appeal fee was waived for neighborhood associations. She commented that it was not right to make an individual neighbor pay the \$563 appeal fee. She raised the points that the RID process could modify every single standard; the neighbors got notice, but staff rendered the decision; and if the neighbors wanted to appeal it they had to pay an appeal fee.

Commissioner E. Brockman's points were that the RID-related proposal would increase the notice from 200' to 300'; the RID process had been used for quite some time; staff had said if the application looked controversial they would send it to the DRC; and there was potential for the DRC schedule to become too full if everything of that nature required a hearing.

Commissioner Ward indicated he agreed there should be public hearings for Major Variances, but he did not agree in regard to the RID process. He understood that in the RID process the applicant ended up making his design more like those around it, so it was less likely that the neighbors would object and less likely to create negative impacts.

Chair Arthur observed the consensus was to recommend requiring public hearings for Major Variances. He did not see consensus in regard to the RID process. However, he anticipated the Commissioners were going to review the RID process in the future; for now, their recommendation was to leave the RID process as outlined in the Summary Procedures Table.

The Commission recalled Evergreen Neighborhood representatives were concerned General Design Variance Criteria was too vague:

The reviewing authority shall only approve a design variance if it determines that the following criteria have been met.

- a. The applicant demonstrates that:
 - i. Compliance with the applicable standard is not practicable due to the physical characteristics of the site or existing structure; or
 - ii. An alternative design will better accomplish the purposes, goals, or objectives of the base district and any adopted plan or overlay district applicable to the property.
- b. The proposed variance will result in a project that is exceptional in the quality of detailing, appearance or materials and/or creates a positive unique relationship to other nearby structures, views or open space.

In regard to (b.) Commissioner LaMotte noted he would change 'and/or' to 'and' because otherwise someone might propose quality materials and bad design. He noted 'quality' and

'positive unique relationship' were open to interpretation by someone. Mr. Boone advised this was a discretionary process and the DRC and City Council would decide what it was. He related that he generally interpreted 'and/or' to mean 'or.' Commissioner Ward questioned how much detail they needed here because they already had styles and overlays and a lot of design code to guide them. In regard to ambiguous terms, Chair Arthur noted this was a discretionary process. Commissioner LaMotte summarized they just needed to tighten (b.) up by changing 'and/or' to 'and.' Ms. Numanoglu confirmed staff would do that.

The Commissioners discussed the policy issue described in a footnote under Minor Variance Criteria in regard to reclassifying LGVCO Minor Adjustment as Minor Variance. The related code provisions were as follows:

- a. [LGVCO] Criteria for Minor and Major Adjustments
Except as provided in LOC 50.08.006.5.b, both minor adjustments and major adjustment applications shall satisfy all of the following criteria:
 - i. Granting the adjustment results in a site plan or building design that equally or better meets the purpose of the standard(s) being adjusted;
 - ii. The property has special circumstances or conditions involving site configuration, natural or topographic features, existing improvements, or relationships to abutting or adjacent properties which would result in the inability of the applicant to comply if the standards were applied to the property without an adjustment;

Commissioner A. Brockman said she would not make the change in respect for all of the time and effort of the advisory committee to achieve harmony in regards to the Village Center Plan. Commissioner Ward agreed, noting they intended it to be beneficial to both the business community and surrounding residential areas. When asked why staff proposed the change Ms. Numanoglu explained the challenge of applying hardship criteria that did not apply to many sites in Lake Grove. She explained that even if the neighborhood supported a proposed variance and was not concerned about the lack of a hardship, staff might have to recommend denial under the existing code. She and Mr. Siegel clarified the provision would not just be moved, but it would be different; and, there would be a public hearing. Mr. Boone explained the policy difference he saw was that LGVCO Minor Adjustment criteria (a.ii.) called for the site to have certain types of special circumstances or conditions that a Minor Variance did not require. He advised that the question related to a Minor Variance was whether it was materially injurious to surrounding properties and whether it would have an impact on the streetscape.

Chair Arthur indicated his position was that he needed to learn more about it and would probably leave it the way it was. He noted the Commission was divided in regard to a recommendation to the City Council on this point; they had not reached consensus; and not all Commissioners were present.

The Commissioners recalled Ms. Jones had talked about Sensitive Lands as a nonconforming use and staff had clarified that was not proposed. Ms. Cassidy had commented on RID noticing and staff had clarified they did notify the neighbors. Ms. Cassidy had suggested having a central place for neighborhoods to look for notifications/applications. Mr. Siegel said people could see the list of cases and their status on the City website under Planning Department/Development Review/Current Projects and they could call Planning Division staff. Commissioner E. Brockman suggested training on how to find what they needed on the website.

Chair Arthur recalled Ms. Cassidy had referred to the Summary Procedure Table and recommended that a ministerial development should be restricted to clear and objective

standards. Commissioner A. Brockman noted that ministerial decisions had to be restricted to clear and objective standards that everyone could agree were either met or not met. Staff related they sent neighborhood associations a courtesy notice letting them know the application had been received. Commissioner E. Brockman agreed it was important for people to know what was going on in their neighborhood. Chair Arthur saw consensus to take no action.

Chair Arthur recalled Ms. Cassidy had talked about Nonconforming Structures; Illegal use. Commissioner A. Brockman recalled the case of a developer who sued a city because the City had approved something in error and then required him to make it right. She reported that the courts said as a professional he had as much of a burden to make sure it was correct and he knew or should have known he was not in compliance with the code. Mr. Boone related that such a problem did not arise very often; he could recall two or three instances over about 14 years. He asked what was to happen ten years after construction when the developer was no longer there and there was a successor owner who wanted to do something totally unrelated to the deck, if the deck was the violation. He pointed out that the code did not allow the City to grant permits until illegalities were addressed.

Commissioner A. Brockman did not support the proposed change. She cautioned it would mean that staff did not have to be as concerned about making errors. She noted the applicant could ask for a variance. Commissioner LaMotte deferred to Mr. Boone but Mr. Boone saw it as a policy issue for the Planning Commission to decide. He confirmed that it did not happen that often and the applicant might be able to obtain a variance; otherwise they would have to remove the illegality. He advised that it was possible the City might get sued. Chair Arthur announced he did not sense support for the proposed change.

The Commissioners discussed Ms. Cassidy's concern that a provision under Minor Variance Classifications protected R-7.5 and R-10 parcels, but not her condominium, which was in the NC/R-0 zone. They observed that the code said Minor variances included:

- q. A variance to one or more of the following standards established by the Lake Grove Village Center Overlay District (LGVCO) or a base zone district underlying the LGVCO by up to 20% or four feet, whichever is less:
 - i. Yard setbacks in LOC 50.05.007.4.d, but not including Village Transition yard setbacks adjacent to R-7.5 and R-10 parcels;

Staff clarified this was existing code language and was only being relocated to this section. Commissioner LaMotte suggested adding the words, 'and residential uses' to the end of q.i. and the Commissioners agreed to that.

Chair Arthur recalled that Ms. Uchida had emphasized the importance of the neighborhood association being completely included in the process. Commissioner LaMotte recalled staff had clarified that they went an extra step and notified them.

Commissioner A. Brockman **moved** to continue LU 14-0018 to August 25, 2014.
Commissioner E. Brockman **seconded** the motion and it **passed 5:0.**

6. WORK SESSION

6.1 Sensitive Lands: Habitat Protection Areas Overlay District (PP 12-0002)

~~The Planning Commission was to review and provide feedback on draft code concepts for the Habitat Protection Areas overlay district. The HPA overlay is one component of the City's~~