



**CITY OF LAKE OSWEGO
Planning Commission Minutes
May 11, 2015**

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 E. Brockman and Commissioners Adrienne Brockman, William Gaar, John LaMotte, Todd Prager and Bill Ward. Council Liaison Joe Buck was also present.

Staff present were Scot Siegel, Planning and Building Services Director; Debra Andreades, Senior Planner; Anne MacDonald, Stormwater Quality Coordinator; Evan Boone, Deputy City Attorney; and Iris McCaleb, Administrative Support.

3. COUNCIL UPDATE

Councilor Buck updated the Commission on Council activities and actions.

4. COMMISSION FOR CITIZEN INVOLVEMENT

Chair Arthur related that Commissioners had attended meetings of the Lake Grove Business Association and the Evergreen Neighborhood Association. He announced the upcoming First Addition Neighbors-Forest Hills Neighborhood Association (FAN-FH) meeting and the Lake Oswego Urban Forestry Summit. Commissioner LaMotte announced the Lake Grove Village Center Parking Management Advisory Committee open house.

5. CITIZEN COMMENT – Regarding issues not on the agenda

Comments related to Item 8.1 (Sensitive Lands and Natural Resources - Work Session #7) were accepted during this portion of the meeting.

Charles 'Skip' Ormsby, SW Birdshill Road, Portland, 97219, Co-Chair of the Birdshill CPO/Neighborhood Association, discussed his concerns about LU 15-0019: it was not understandable; the City needed to get more information from entities such as the Environmental Protection Agency (EPA), US Army Corps of Engineers and the railroad; and that Birdshill was not invited to participate in discussions. He asked for a process chart because it would help him understand what was proposed. When asked what he recommended, he indicated they needed to find a way to communicate. He referred to an email he had sent the Commission that afternoon.

Dianne Cassidy, Wren Street, Lake Oswego, 97034, held that the Sensitive Lands program was not a scientific, fact-based, program, but an unfair program based on political and economic interests. She cited the example that the City pretended there were no resources on the West End Building (WEB) property because that would make the property more saleable.

Mr. Siegel was asked to discuss the WEB example. He related after natural resources on the property had been proposed for designation in 1997 the owners had contested the designations but the matter had never been adjudicated and resolved. He reported that for some years the designation still appeared on the Sensitive Lands map and he clarified that the marketing materials disclosed to potential buyers that the resources would have to be analyzed and delineated if the property were redeveloped. He clarified that it would be subject to the regulations that predated Sensitive Lands, LODS 3 and 4, which in some respects were less flexible than Sensitive Lands.

Lisa Volpel, 5655 Kenny Street, Lake Oswego, 97035, discussed that Rosewood Neighborhood had unmapped stream and tree grove resources. She suggested there was a happy medium to be reached between property rights and protecting hard-to-replace habitat.

6. MINUTES

Commissioner A. Brockman **moved** to approve the Minutes of April 13, 2015, as amended by Chair Randy Arthur and Commissioner LaMotte. Commissioner Ward **seconded** the motion and it **passed 7:0**.

Commissioner E. Brockman **moved** to approve the Minutes of April 19, 2015. Commissioner LaMotte **seconded** the motion and it **passed 5:0:2**. Commissioners Gaar and A. Brockman abstained.

7. CONTINUED PUBLIC HEARING

7.1 Substandard Lots - Community Development Code Amendments (LU 15-0017)

Request from the City of Lake Oswego for an amendment to the Community Development Code definition of "Lot" to specify when development may occur on substandard lots. The Commission considered amendments to other sections of the Code that would add criteria for development on substandard lots and requirements regarding lot line adjustments involving substandard lots. This public hearing was continued from April 27, 2015, for deliberations only. Staff coordinator is Debra Andreades, Senior Planner.

Questions of Staff/Staff Recap

At the end of the last hearing staff had asked the Commissioners to consider the questions listed in a 'Decision Points for the Commission' outline. Commissioners A. Brockman and E. Brockman had each provided written comments.

Staff now proposed the definition of 'Lot' Mr. Boone had presented at the last hearing during discussion with the Commission. He advised that it called for a lot to meet minimum zone size in order to be developed; if it was a substandard size lot an attempt was to be made to expand it by aggregating it with any other contiguous commonly-owned parcels to create a lot that met minimum zone size. He anticipated that there were going to be many instances where that was not possible and the lot would remain a single substandard lot. Mr. Boone advised that the Commission should consider whether a substandard lot could be developed; and, if so, what the development standards should be.

The Commissioners and Mr. Boone discussed how the definition would apply in various situations involving substandard lots:

- In the case of three contiguous commonly-owned, 2,500 sf lots in the R-5 zone, the definition would require aggregation of two lots into one lot that met zone minimum size and the third lot would continue to be a substandard size lot.
- If an existing house that was going to be demolished straddled two lots only one building permit would be issued. The Commission discussed that the proposed language would need to be revised so it also applied to a situation where the house was across three lots.
- In the situation of a series of three vacant 5,000 sf lots in the R-7.5 zone the aggregation requirement would mean aggregating two of them into a 10,000 sf lot and leaving a substandard lot that was undevelopable. Commissioner E. Brockman observed that the three lots could be made into two 7,500 sf lots using lot line adjustments. He cautioned the Commissioners not to change the lot line adjustment standard so it did not allow that.
- Regarding a discussion of a situation where someone had purchased a parcel in Hallinan Heights that was composed of two adjacent existing 5,000 sf lots with one existing house on it, intending to build two houses on two lots, Mr. Boone advised that having an aggregation requirement was a policy decision.

The Commissioners discussed the option to not allow any development on substandard lots. Mr. Boone related that there currently were lots that were too small to accommodate development because, for example, there was not enough room inside required setbacks to fit a building footprint or the footprint would be too small for it to be marketable as a buildable lot. He mentioned that an owner might file a Measure 49 claim asking to be exempted from this requirement.

Examples of other jurisdictions' code requirements included a post adoption deadline for consolidating lots. Mr. Boone advised that freezing commonality of ownership after a certain date would be a policy decision.

Mr. Boone clarified that the proposed code did not prohibit the sale of nonstandard lots. In the three-lot example he thought the owner could aggregate two of the lots to create a conforming lot, develop it, and then sell the third, substandard, lot to someone else, who could develop it because it would no longer be under contiguous ownership. Commissioner Ward related that his experiences in other jurisdictions where he was not allowed to build a house on his property made him question why Lake Oswego could not have code that prohibited building on certain substandard sized lots.

Mr. Siegel was asked what the Comprehensive Plan directed. He cited Land Use Planning, Development Review, Policy B-8: *Allow development of permitted uses on legally created nonconforming lots subject to all applicable land use regulations.* Mr. Boone noted the current question was how the Commission wanted to define 'Lot.'

Commissioner E. Brockman recommended taking no action with regard to substandard lots because the problem to be addressed was unique to the Hallinan Heights Neighborhood; taking action that applied to the entire City could have unintended consequences and no overall benefit; the City Council supported private property rights; and when a lot was too small nothing could be built on it per current zoning code anyway.

Commissioner LaMotte recalled testimony asking for action to subject development on substandard lots to the Minor Development review process. He suggested putting two topics into the Commission's parking lot of issues to be addressed in the future: Giving staff the

ability to mitigate the impacts of development by requiring streets to be fixed, and reconsidering how many subdivision lots there could be before the developer was required to build a public street.

Commissioner A. Brockman disagreed that just having the zone standards apply addressed the problem of substandard lots. She pointed out that the Residential Infill Design (RID) process was available and allowed every standard to be modified. She anticipated that redevelopment on existing substandard lots would affect the current look of the Hallinan Heights neighborhood and questioned whether that was fair to the owners of conforming lots around the substandard lots.

Chair Arthur observed the majority of the Commission had concluded the Commission should act and make appropriate recommendations on the substandard lot issues.

With regard to the aggregation requirement Commissioner LaMotte contrasted that the owner of a 5,000 sf lot in the R-7.5 zone would be able to build a pinched-down house per the zoning standards but the owner of the parcel across the street with a house straddling two 5,000 sf lots could not develop two houses on those two lots as they would have to aggregate them. He recalled testimony of people who wanted to build two houses on their two contiguous lots.

Mr. Boone confirmed that the proposed aggregation requirement meant that if one owner owned a conforming 6,000 sf lot and an adjacent substandard 4,000 sf lot in FAN they could only develop one residence. If the Commission wanted to only require aggregation of nonconforming lots (which would mean the example substandard lot could be built on) that would be a policy choice. He discussed that ownership was key to the aggregation requirement and the proposal did not include a prohibition on the sale of substandard lots so the owner could sell the substandard lot to a third party and that party could develop it if they did not own any contiguous lot.

With regard to the issue of people trying to avoid required aggregation by putting land in alternative ownerships, Mr. Boone mentioned using imputation rules to address it or Tigard's approach of locking in common ownership on a specific date after adoption of the code; after that date it did not matter if someone else owned the substandard lot. He clarified that it could be sold, but it could not be developed. Commissioner Prager supported setting a deadline so someone could not create a substandard lot by selling off properties and the community could move toward lot sizes that met the zoning. He noted there was a loophole that owners could sell to a relative. Mr. Siegel advised that in any event there would be isolated substandard lots with no possibility of aggregation and the Comprehensive Plan called for a path for permitted use on those lots.

Commissioner Gaar indicated that he did not support an aggregation requirement, referring to the Comprehensive Plan directive, the effect on estate planning, and that the market would do some regulating as people liked the square footage allowed when the minimum lot size of the R-7.5 zone was met. He indicated that he would remove the requirement from the definition and focus on addressing how development on substandard lots impacted the neighborhood and how to gain reasonable and necessary mitigation from the developer to address the impacts.

Commissioner E. Brockman recalled the testimony of Candice Bonner that neighborhood character had been destroyed by filling big lots with big homes. He suggested that the aggregation requirement would result in more of that and be the opposite of a solution to the problem.

Commissioner LaMotte **moved** to amend the definition of 'Lot' to:

A legal or legalized unit of land which meets the minimum lot dimensions of the zone. If the unit of land does not meet the minimum lot dimensions of the zone, the lot shall be considered a substandard lot, which must meet the bulk and design requirements of the zone and must be considered a minor development for community review.

During the ensuing discussion the Commissioners discussed and suggested revisions to the language of the motion. Commissioner LaMotte confirmed that 'must meet' meant the setbacks, etc. could not be varied through the RID process. Commissioner Gaar commented that he would apply the proposed Nonconforming Lots criteria regarding impacts on the neighborhood (LOC 50.01.06.5.a).

Part of the discussion was with regard to whether development on a substandard lot should be processed as a ministerial or minor development review. Commissioner A. Brockman recalled that citizens did not want a discretionary review process because they did not trust the City. She reasoned that if development on substandard lots had to meet the same zoning code requirements as development on other lots, and the Variance and RID processes were not available for substandard lot development, the review could be a ministerial review. Other commissioners favored minor development review for reasons that included that it provided for notice and opportunity to comment which would bring an issue to light if there was one; that even if the building envelope and setbacks could not be varied through the Variance and RID processes the issue of impacts like traffic and parking needed to be considered; that it should not be an easy process to develop a substandard lot because it was outside of the norm; and that the minor development review process allowed interested parties to look at the impacts to public systems such as the street system.

There was a question regarding how stringent the review would be of a replacement house after an existing house burned down. Mr. Boone confirmed if it was an unintended event the house could be rebuilt within the same foundation/envelope.

Commissioner LaMotte **revised his motion** to:

- Amend the proposed definition of 'Lot' to read:

A legal or legalized unit of land which meets the minimum lot dimensions of the zone. If the unit of land does not meet the minimum lot dimensions of the zone, the lot shall be considered a substandard lot, which must meet the minimum requirements of the zone.

- Development on a substandard lot was to be subject to the Minor Development review process;
- Development on a substandard lot was not allowed to use Variance processes, including RID.

Commissioner A. Brockman **seconded**.

Commissioner Prager clarified that he would vote against the motion because the definition no longer required aggregation. Commissioner A. Brockman clarified that she would vote yes, but only because she thought it was the best they could get. She advised that it was going against the Comprehensive Plan and zoning which set a standard for the community and there were people who had bought into the community not knowing there were substandard lots there. The **motion passed 5:2** with Commissioners E. Brockman and Prager voting no.

The Commission then addressed the questions in the 'Decisions for the Commission' outline from staff. There was general agreement that the definition of 'Lot' was to specify that lots in a Planned Development were not considered substandard lots and a substandard lot was to be limited to one dwelling unit. They had already determined that the zoning standards would determine the allowed height and building envelope and that development on substandard lots was not eligible for Variance processes.

The Commission had a substantial discussion with regard to the garage Floor Area Ratio (FAR) allowance on a substandard lot and whether development should be required to provide more than one off-street parking space.

Commissioner A. Brockman did not support an automatic garage allowance because people tended to not use their garages for parking and because of the limited amount of street frontage substandard lots had available for on street parking. She had surveyed her street and found only one of nine garages was used for parking, but people parked in their carports. She suggested eliminating the garage allowance and requiring two off-street parking spaces (that could be made into a carport) so guests could park in the driveway and not on the street and not impact the neighborhood.

Mr. Boone clarified that 'Garage' was defined to include Carport. Chair Arthur stated he felt a garage was an important part of a house. Commissioner Ward suggested they reduce the garage allowance on a substandard lot to 400 sf, (a 20' x 20' two-car garage) and also require two off-street parking spots. Staff advised that the current code does not allow parking spaces in the required yard setbacks so these could not be counted as spaces, although people often did park in the driveway (in a yard setback) that led to the garage.

Commissioner A. Brockman **moved** to amend the code to make the garage allowance for substandard homes 400 sf and to require two off-street parking spaces. Commissioner Ward **seconded** the motion.

During the discussion of the motion Commissioner Prager related he would prefer to just require development on a substandard lot to meet the zoning standards. He indicated more study was needed to understand what the result of the changed requirement would look like on a substandard lot. Commissioner E. Brockman recalled most two-car garages were now 22' x 22'. Mr. Boone clarified the FAR bonus square footage allowance for a garage was not a limitation on the size of the garage; if the owners wanted a larger garage than the bonus amount, the additional garage area would reduce the floor area for the overall house. The vote was conducted and the **motion passed 5:2** with Commissioners E. Brockman and Prager voting no.

Commissioner A. Brockman **moved** to not permit Secondary Dwelling Units or Duplexes on substandard lots. Commissioner E. Brockman **seconded** the motion and it **passed 7:0**.

Commissioner A. Brockman suggested considering the questions about lot line adjustments at the next meeting. She **moved** to continue LU 15-0017 to June 22, 2015, at 6:30 p.m. when staff was to bring back findings and the revised draft code for consideration. Commissioner Gaar **seconded** and the motion **passed 7:0**.