



**CITY OF LAKE OSWEGO
Planning Commission Minutes
June 22, 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 Ed Brockman (arrived at 7:30 p.m.), and Commissioners Adrienne Brockman, Robert Heape, John LaMotte and Bill Ward. Commissioner William Gaar was excused. Council Liaison Joe Buck was also present.

Staff present were Scot Siegel, Planning and Building Services Director; Debra Andreades, Senior Planner; Sarah Selden, Senior Planner; 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 announced that a new link had been added to the Planning Commission webpage for sending e-mails to the Commission. He encouraged neighborhood associations to use this e-mail link for inviting the Commission on neighborhood tours as well as community groups wanting to meet with the Commission. Chair Arthur clarified that written comments/testimony related to land use cases being considered by the Commission during the public hearing process should be directed to the e-mail address noted on the "Notice of Public Hearing." Additional announcements included the next Mayor's meeting with neighborhood chairs on September 19; and open positions on City advisory boards. Councilor Buck and the Commissioners discussed the concept of creating a program to further involve youth in City government.

5. CITIZEN COMMENT – Regarding issues not on the agenda

None.

6. MINUTES

6.1 April 27, 2015

Action on the minutes was deferred to a future meeting.

7. FINDINGS CONCLUSIONS AND ORDER

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

The Commission considered final approval of its May 11, 2015, recommendation to adopt the proposed code text, with revisions, for Ordinance 2666, and approval of its findings. (The proposed code amendments submitted to the Commission included staff's recommendation to refine the scope of the prohibition of variances related to substandard lots).

Staff Update

Staff provided draft Findings, Conclusions and Order (version 06/11/15), draft Ordinance No. 2666 (version 05/26/15) and draft code text (Attachment 2). Mr. Boone provided his June 11, 2015, Memorandum regarding the reasoning behind allowing certain types of variances on substandard lots.

Mr. Boone asked the Commission to clarify the scope of their previous direction to not permit variances for development on substandard lots. Would they permit a Minor Variance to address surveyor's errors; a Minor Variance when it was necessary to comply with state or federal law; and a Major Variance from the requirements of the Code? The Commissioners indicated that certain minor variances might be acceptable; they then focused on the question of a Major Variance.

Staff explained that one criterion for a Major Variance was that it was necessary to prevent unnecessary hardship based on the physical circumstances of the property. Staff did not consider substandard lot size to be an "unnecessary hardship" because the owner had either purchased the lot or created the lot that way; they proposed to add language to clarify that the Major Variance process looked at "unnecessary hardship" with regard to "*The physical circumstances of the property involved excluding substandard lot size or dimensions.*"

Commissioner A. Brockman did not support allowing Major Variances on substandard lots. She discussed the example of someone who had built one house over two substandard lots and now wanted to tear it down and replace it with two houses. She noted that they had created their own hardship when they made a choice to put two houses on the property but could not meet the setback requirements because of a slope, creek or big tree. She pointed out that a Major Variance might allow them to put the two houses on the lots. Chair Arthur observed consensus that the Commission did not want to recommend allowing Major Variances on substandard lots.

Commissioner A. Brockman discussed not allowing what she called "height bonuses" that allowed certain roof features to project up to six feet beyond the zone's height limitation because allowing them impacted privacy, bulk and compatibility. Commissioner Ward suggested applying the height-averaging standard that already applied to Flag Lot development such that the height of the new development was based on the averaged heights of surrounding homes.

Staff advised that existing code allowed the "height bonus" and that it was a clear and objective standard, not a variance or adjustment. They stated that it helped create a more articulated roofline and building mass. Staff advised that the Flag Lot height standard was 22 feet or the averaged heights of all the dwellings surrounding the site if that was higher (but no higher than the height limitation of the zone). They explained that the existing code connects height to lot coverage - not height to lot size. Staff recalled that architect Ralph Tahrn had advised there was a sweet spot where the standards for height and lot coverage worked

together with all the other site development limitations of the zone to provide sufficient living space.

Commissioners A. Brockman, Ward and E. Brockman each indicated that there should be no height bonus. Commissioners A. Brockman and E. Brockman each recalled seeing buildings where the projections made the buildings look too high in relation to what was around them.

Commissioner E. Brockman mentioned that the height cap would apply to some substandard lots that were only slightly below the required size, for example, 5,500 sf lots in First Addition Neighbors-Forest Hills Neighborhood Association (FAN-FH) where the minimum lot size was 6,000 sf. With regard to using the averaging method he discussed that it might initially make the new house compatible with surrounding existing older homes but after the older homes were replaced with taller houses it might not be compatible. Chair Arthur observed consensus to not allow height bonuses on substandard lots.

Mr. Boone then discussed why this was an opportunity to correct “or” to “and” at the end of a list of items that could be processed as Ministerial Development.

The Commission had previously voted to not allow the Residential Infill Design (RID) review process for development on a substandard lot. Commissioner E. Brockman discussed why he did not agree with that. His example was a site where the RID process could allow changes that would be more aesthetically pleasing than the result of strictly following the code. Commissioner A. Brockman stated that the RID process could be used to change every standard. Commissioner Ward said that RID review was not appropriate on substandard lots because it tended to result in increased size of buildings. Chair Arthur observed that the majority did not want to overturn their prior recommendation.

The Commissioners looked at draft Findings, Conclusions and Order, Section 3. Lot Line Adjustments. They had ended their previous hearing without discussing this topic. They wanted to clarify what this section of the findings meant. They mentioned they wanted to be sure the very narrow right-of-way situation on Bickner Street could never be repeated.

Staff advised that current code did not allow a lot line adjustment that increased the degree of nonconformity. They noted that the findings did not change that, and did not reflect that the resulting lots had to be the minimum lot size of the zone because the Commission had not made that recommendation at the previous hearing. However, staff pointed out that the findings did include a requirement that lot line adjustments were to be processed as Minor Developments because that process allowed conditions of approval to be imposed to mitigate the impacts resulting from development on a lot that was still substandard. Staff noted that in the case involving Bickner Street, Minor Development review of development on substandard lots would have given the City the ability to look at the infrastructure to potentially require public improvements and would have provided for public notice and opportunity for comment and appeal.

The Commissioners discussed setting a size or width threshold that determined whether a lot of record was too small to build on. Commissioner E. Brockman discussed that when “sliver” lots were created by deed, there should be a minimum required lot size, because at some point those lots were not large enough to build on.

With regard to prohibiting lot line adjustments where the result would still be an undersized lot, staff cautioned that someone who was not allowed to make the adjustment might attempt to develop the substandard lot based on the standards. Staff pointed out that the result might be

a house that was less compatible with the neighborhood and zone than if the lot line adjustment were allowed. The Commissioners recalled one of the Bickner Street lots was the result of expanding lots via a lot line adjustment, but it was still a substandard sized lot.

With regard to the question of how small a lot had to be to not be allowed to be developed, the Commission recalled that Mr. Tahrán had advised there was some size or width that was too small to develop under the standards. Commissioner E. Brockman suggested they should not allow lots narrower than 25 feet wide that had been created by deed to be built on or to have their lot lines adjusted because it was not practical to site a structure on lots that small, and a lot line adjustment would just be used to make sliver lots a little bit larger so they were buildable. He recalled that this was what had happened at the Bickner Street development. He suggested that they say that the lot line adjustment process could be used to expand a substandard lot to a size that was at least a certain percentage of what was required by the zone. Mr. Siegel advised the Commissioners to review testimony on aggregation because setting a minimum developable lot size would in some instances force aggregation.

Chair Arthur **moved** to continue LU 15-0017 to July 13, 2015, and reopen the public hearing to testimony on the issues of lot line adjustments and height only. Commissioner A. Brockman **seconded** the motion and it **passed 6:0.**

8. PUBLIC HEARING

8.1 Multiple Duplexes – Community Development Code Amendments (LU 15-0010)

A request from the City of Lake Oswego for an amendment to the Community Development Code definition of "Duplex" to specify that it is a single detached building on its own lot. The Commission also considered code amendments related to a new residential use category, multi-dwelling development (which would be permitted in zones that permit multi-family dwellings); the clear and objective Building Design standards (for multi-dwelling development); and the open space set aside in the R-0 zone; and to make corrections to the Residential Use Table. The hearing was continued from April 27, 2015. Staff coordinator was Sarah Selden, Senior Planner.

Chair Arthur opened the public hearing. Mr. Boone outlined the applicable criteria and procedure. At time of declarations Commissioner E. Brockman related he was a real estate broker. During the hearing he recused himself from hearing the matter.

Staff Report

Ms. Selden recalled that the neighborhood association had been concerned that four-duplexes on one lot had been allowed in the R-0 zone at 1st/D Avenue using a ministerial process that did not include public notice/comment and that applied single-family/duplex instead of multi-family development standards. The Commission had responded by adopting interim code specifying that ministerial review only applied to single duplex development. She reported that the Planning Director had issued an informal code interpretation that 'Duplex' was a single detached building on its own lot designed to contain two dwelling units; and, that multiple duplexes was not a use category.

Ms. Selden advised that the proposal would define 'Duplex' to codify the Director's interpretation and that a proposed new definition and use category 'Multi-Dwelling Development' would close a gap in the code where there was currently no use category for multiple structures on a commonly owned lot, where each structure had less than three dwelling units. Ms. Selden explained that staff proposed to reflect the new use in the Residential Use Table so if approved it would permit Multi-Dwelling Development in the same