



**CITY OF LAKE OSWEGO  
Planning Commission Minutes  
July 13, 2015**

**1. CALL TO ORDER**

Chair Randy Arthur called the meeting to order at 6:30 p.m. in the Council Chambers 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, William Gaar, Robert Heape, John LaMotte and Bill Ward. Councilor Jeff Gudman was also present.

Staff present were Scot Siegel, Director of Planning and Building Services; Debra Andreades, Senior Planner; Leslie Hamilton, Senior Planner; Evan Boone, Deputy City Attorney; and Iris McCaleb, Administrative Support.

**3. COUNCIL UPDATE**

Councilor Jeff Gudman, substituting for Councilor Joe Buck who was excused, updated the Commission on Council actions and activities.

**4. COMMISSION FOR CITIZEN INVOLVEMENT**

Announcements included the City Attorney's ethics presentation (July 27); Backyard Habitat Open House (July 18); a tree protection workshop (July 30) and openings on City boards.

**5. CITIZEN COMMENT – Regarding issues not on the agenda**

Susan Heichel, Lund Street, Lake Oswego, 97034. discussed noise from Highway 43 paving equipment.

**6. MINUTES**

**6.1 April 27, 2015**

Commissioner A. Brockman **moved** to approve the Minutes of April 27, 2015, as corrected by Chair Arthur and Commissioner LaMotte. Commissioner LaMotte **seconded** the motion and it **passed 7:0**.

**7. FINDINGS, CONCLUSIONS AND ORDER**

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

On June 22, 2015, the Planning Commission made a preliminary recommendation that the City Council approve the proposed amendments with changes as discussed during deliberations. Staff coordinator was Sarah Selden, Senior Planner.

Commissioner E. Brockman recused himself from this discussion and vote. Mr. Siegel confirmed that approval meant the use table would list 'Duplex' and 'Multi-Family' uses and that there was no use category for "Multi-dwelling" use. He clarified that there could not be multiple duplexes on one lot; however, multiple structures which each contained three or more dwelling units was permitted on one lot as Multi-Family use.

Commissioner A. Brockman **moved** to approve LU 15-0010-1871 Findings, Conclusions and Order as edited by Chair Arthur. Commissioner Gaar **seconded** the motion and it **passed 6:0**

## 8. PUBLIC HEARINGS

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

This hearing was continued from June 22, 2015 and reopened for public testimony on the following two issues only:

- Whether there should be height limitations on substandard lots beyond the zone height limitations, e.g., determination of maximum building height similar to flag lots; and
- Whether there should be minimum lot area requirements for lot line adjustments involving a substandard lot or whether a minimum "developable lot" area should apply to all substandard lots.

Chair Arthur opened the hearing and Mr. Boone outlined the applicable criteria and procedure.

#### ***Staff Report***

Debra Andreades, Senior Planner, advised that the proposed code language meant that if someone wanted to add onto their existing development on a substandard lot, the addition would be subject to minor development review. She highlighted aspects the Commission had previously discussed:

- Although current code allowed up to six feet additional height for certain roof forms the Commission had decided not to allow the extra height on substandard lots.
- The Commission was considering requiring that substandard lots use the method of calculating average height on abutting lots currently used to determine the height limitation on Flag Lots.
- The Commission decided to classify a lot line adjustment involving a substandard lot as minor development. Minor development review allowed the City to impose conditions of approval to offset the impacts of development.
- The Commission was considering whether to prohibit lot line adjustments that did not result in lots that met the zone's minimum size or a certain threshold size. Commissioners E. Brockman and A. Brockman had circulated a proposal related to lot line adjustments and staff had drafted a streamlined version of the proposal.

#### ***Questions of Staff***

During the questioning period Ms. Andreades indicated that architect Ralph Tahran had not used the code's full height allowance in his study of potential development on a 3,000 sf lot. She recalled that he had indicated that all of the zone regulations worked together to reduce the size of a structure on a smaller lot. As an example, she noted that the Floor Area Ratio (FAR) was based on lot size and lot coverage was based on height. She advised that if the Commission wanted to further reduce height by applying the height averaging method they

would need to also determine how that affects lot coverage and analyze the potential results. She confirmed that a lot line adjustment and the subsequent development proposal would each be subject to minor development review, as proposed.

Commissioner A. Brockman discussed that they were considering the proposal because of reaction to a particular development. She pointed out that because all those homes had been built within current code limits (such as setbacks and height) the proposal would not change that development. She stated that the proposal did not address the Comprehensive Plan policy related to retention of neighborhood character. She recalled that they had only heard testimony from one designer, however another respected local designer had advised her that it was possible to build a nicely designed house on a substandard lot even if the Commission limited the height.

Commissioner Ward discussed that applying the Flag Lot height standard was the best way to address neighborhood compatibility. He indicated that people who wanted to build a house on a substandard lot should be prepared to build a substandard-sized house instead of a big house on a little lot.

Mr. Boone clarified that issuing a building permit to build on a standard-sized lot was a ministerial decision and that process did not allow the City to require street improvements. Commissioner LaMotte suggested that the Commissioners think about addressing that issue in the future. When asked if the Fire Department could have required Bickner Street to be widened, Mr. Siegel related that the Fire Department had tested the access when the City reviewed the proposed subdivision.

### ***Public Testimony***

Susan Heichel, Lund Street, Lake Oswego, 97034, advised that her property consisted of two 50-foot x 100-foot platted lots in the R-7.5 zone. She discussed why she opposed requiring such lots to be combined: the Urban Growth Boundary necessitated infill development; people now wanted modest homes with small yards; large yards required lots of water; and, a requirement to combine lots was a taking of property without compensation. She opined it was better to have two modest-sized houses for two families instead of one big home on a big lot. When asked for her opinion about placing height limits on substandard lots she indicated she liked Commissioner Ward's idea: the development should blend into and be compatible with the neighborhood. She thought there were ways it could be done with graceful design and that Lake Oswego could be a leader with regard to small houses on small lots.

Liz Martin, Cedar Street, Lake Oswego, 97034, representing the Hallinan Heights Neighborhood Association, submitted and discussed photographs of development occurring in her neighborhood. She indicated the proposal did not change any of the things that were affecting neighborhood character and livability, so the problem developments on Bickner and Cedar Streets could happen again and again. She referred to the photographs, discussing the impacts to both new and existing neighbors with regard to parking, privacy, blocked views, loss of vegetation, and construction noise, traffic and parked trucks. She discussed that code interpretations had been used as "shortcuts." She indicated the City should prioritize neighborhood livability and citizens' rights, and concerns. She advised that what the City was allowing now was precedent-setting and permanent and the neighborhood was paying the price in terms of quality of life. She discussed that even with the changes the Commission was considering the neighborhood did not feel they had real support; allowing development on smaller lots changed the existing neighborhood character of smaller homes on larger lots. When asked for her opinion regarding not allowing the "height bonus" on a substandard lot Ms. Martin indicated she thought there was a way to use height restrictions well in a neighborhood.

Staff clarified that the Hallinan Heights subdivision (at the end of Cedar Street), as approved, contained flag lots because most of the lots did not directly front on a public street. They discussed how the height limit for the flag lots had been determined – by using the average height of structures abutting the lot at the time of application for the subdivision and that it would remain fixed even if surrounding lots were redeveloped with taller structures. Staff clarified that the zone height limit was used for abutting lots that had no structure.

Linda Rudawitz, 6<sup>th</sup> Street, Lake Oswego, 97034, indicated she owned a conforming lot with a house on it that met the zone setback and height requirements, and a separate, 3,000 sf lot. She discussed allowing a reasonable amount of architectural flexibility with regard to height so that a small home on a small lot in the midst of taller infill homes could be more interesting and make density more tolerable. She anticipated that in ten years First Addition Neighbors-Forest Hills Neighborhood Association (FAN-FH) would no longer have many single story houses. She noted that the FAN-FH Neighborhood Plan allowed extra height of roof planes if the design was interesting.

Ms. Rudawitz discussed that the zone standards would tend to scale down development on a substandard lot but she was not sure further scaling down of height using a flag lot standard would achieve the result they wanted for infill along a street. She did not favor making it easy to do lot line adjustments that resulted in smaller lots and more substandard lots. She indicated she wished that after someone put a house over two substandard lots they became one lot that the owner could not split up again. She noted there were neighborhoods where one house on two lots reasonably fit the zone. Ms. Rudawitz commented that FAN-FH was different because each of the two lots typically met the zoning. She indicated that if her small lot was no longer developable it would have significant financial impact on her in the future if she needed to liquidate her properties because they no longer met her life needs.

When asked if current code allowed using lot line adjustments to turn two 5,000 sf lots into three lots Ms. Andreades advised that this could not happen with existing non-conforming lots because the code did not allow an adjustment if it would create greater nonconformity than already existed. She clarified that a lot line adjustment could not create an additional lot; that would be a minor partition, which would have to meet the minimum lot area of the zone.

Wendy McLennan, 1107 Spruce Street, Lake Oswego, 97034, discussed her concerns and related requests. She noted that her first concern was that the Deputy City Attorney's informal legal interpretation related to substandard legal lots of record at 1028 Cedar Street set the stage for lot line adjustment on substandard lots but it could not be challenged. She asked the City to hire an objective, independent land use attorney to determine the number of legal lots of record on that property. Her second concern was that Planning Department staff did not respect the rights of residents and neighborhood character. She asked the Commission to provide leadership, treat the Comprehensive Plan as the ruling document, and take on that culture. Because of the Hallinan Heights development she questioned that staff would ask for mitigation even if the code was changed to allow that. She related that the neighborhood had discussed the development with the Fire Marshal and that he did not like having such a narrow street; he did not support making it a walking path for safety reasons; and he did not like that it was a flag lot development, but he did not have the ability to do anything about it. She discussed that the allowed height of the flag lot development had been determined after adjacent existing one-story homes had been demolished. Ms. McLennan advised that it would have been respecting the character of the neighborhood to factor the height of those houses into the calculation.

Carol Radich, Ellis Street, Lake Oswego, 97034, supported using the Flag Lot standard of averaging height in order to make a new building compatible.

Richard White, PO Box 1454, Lake Oswego, 97035, a designer and owner of the White House Collection, testified that the properties they had developed thus far all met the code. He advised that as a lot got smaller the code standards made the house smaller and that they had eliminated one of the four lots at Cedar and Spruce Streets because one was too small to build a house on and receive a return on the investment. He indicated that they had reoriented the remaining three lots in a pragmatic way to keep the entry off of Bickner Street. He commented that the homes sold quickly and the people who moved there liked them. He advised it was common for a fire marshal to find middle ground and require a house to include sprinklers. He pointed out that they were seeing a lot of Prairie style houses in FAN-FH because the lower pitch allowed developers to push the lot coverage. He advised that many jurisdictions' codes allowed multiple planes to protrude past the height limit in order to have interesting architecture. He cautioned that the City might be forcing an architectural style of flat-roofed designs that looked like miniature gas stations.

Mr. White confirmed he had designed all of the new houses on Bickner Street but was not the builder. When asked about the 13-foot wide street he indicated that it was still drivable but not the best solution. When asked if he wanted to see a cap on height he indicated he did not think it hurt to allow exceptions on a substandard lot. When asked about the height of the houses, he responded that some were at 28 feet (the zone height limit) and some went above it, such as a house on the large lot at the corner of Cedar/Bickner which was 30.33 feet. Staff advised that on a lot with sloping topography the code permitted up to 4 feet of additional height and a developer could also use the height exceptions. Staff clarified that these were all objective code standards so staff was not exercising discretion and it was not a variance.

Christian Manz, Laurel Street, Lake Oswego, 97034, indicated that house height should fit the neighborhood and that exemptions for height were not necessary. He talked about the unnecessary complexity of using the Flag Lot standard and that it might have unintended consequences. He discussed two houses at the corner of Hallinan and Laurel Streets that fit the neighborhood with regard to height and space in between.

### ***Deliberations***

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

Commissioner Ward **moved** to apply a height limitation specific to substandard lots similar to what was applied to flag lots. Commissioner A. Brockman **seconded** the motion and discussion followed.

Commissioner Gaar discussed why he thought using the zone standards to shrink development on a substandard lot was a clearer, simpler and more appropriate approach than applying the flag lot standard's complicated formula. He discussed that the formula required interpretation of neighborhood character and put planners in the position of trying to understand which heights to use. He recalled testimony about new homes being built that were not architecturally pleasing. He discussed that imposing existing ranch style home height affected the ability to design an architecturally pleasing home and affected planning for the future.

Commissioner E. Brockman discussed that he thought approval of the motion would be going in the opposite direction from the direction the code had been going, which was toward interesting architecture. He cited the example of code that required articulation of long blank

walls. He recalled Mr. White's testimony. He recalled testimony that infill was going to continue to happen and that not many of the single-story homes would remain in FAN-FH in future years. He discussed that they should be thinking about future consequences and that after the height of a house was established using the flag lot height standard the surrounding houses might be replaced. He clarified that ten years from now the house might look out of place because higher homes with the extra 6 feet of height allowance had been built around it.

Commissioner A. Brockman noted that the Comprehensive Plan talked about neighborhood character. She cautioned that houses could be built on substandard lots that met the code in every way.

Staff was asked to clarify what current code called for with regard to height and to clarify the code provisions that allowed up to 4 feet and 6 feet of additional height. Ms. Andreades and Mr. Boone discussed that the Commission had already decided not to allow development on a substandard lot to use the additional 6-foot height that the current code allowed for certain roof forms. Ms. Andreades explained that this meant that on a flat, substandard lot in the R-7.5 zone the house could go up to 28 feet (the zone height limit) and no portion of it could be higher. She clarified that on a flag lot the height limit was either the zone height limit or the average height of surrounding homes, whichever was lower, but no lower than 22 feet. Staff clarified that development on a flag lot that was a lot with sloping topography could use the additional 4 feet the code allowed for these types of lots. The proposed code did not include any provisions that addressed topography.

Staff was asked to clarify what consulting architect Ralph Tahran had found with regard to height in his studies of potential designs for substandard lots. Ms. Andreades clarified that his designs were all on level lots and that they had not gone up to 28 feet because of all of the code requirements he had to factor. She clarified that the designs' heights were in the range of 24 feet to 26 feet high, depending on the lot size.

Staff was asked what the potential height of a house on a sloped substandard lot could be if the flag lot height standard did not apply. They clarified that how much more height was allowed depended on the zone because each zone specified how high a house could be if there was a 10-foot grade change within the building footprint.

With regard to when to measure and determine the allowable height average, Commissioner Ward confirmed that if his motion passed it would be at the time of development application. He discussed that he did not think passage of the motion would be limiting architectural style and variety - it would just limit the size of the houses and it would be moving towards neighborhood compatibility. He indicated that they might be asking designers to be a little more creative than they had been and to use a lower roof pitch in certain instances. He advised that his experience was that he was capable of drawing a two-story house 22 foot in height with a sloped roof. He indicated he believed that smaller-sized lots should have smaller-sized homes on them.

The vote was conducted and **the motion passed 4:3**. Commissioners Heape, Ward, A. Brockman and Chair Arthur voted yes. Commissioners Gaar, LaMotte and E. Brockman voted no. Mr. Boone recalled that the Commission had answered the question about timing: height was to be determined at time of development.

Staff asked if the height of properties across the street should be factored into the averaged height calculation. They advised that the code definition of 'abutting' properties did not include properties across the street. They clarified that if there was no dwelling on an abutting lot the

height limit of the underlying zone was used, because the dwelling built on it could be built to zone height if it was not a flag lot.

Commissioner Gaar discussed that if this was about neighborhood character they should include properties across the street; however, doing so made the process more complex as there would need to be an interpretation of how far out across the street and how far up and down the street. He questioned if that was good planning. Commissioner A. Brockman indicated that she was looking to create a flow of buildings that were of similar heights and it was not necessary to go across the street to achieve that. Commissioner E. Brockman cautioned there could be unintended consequences. He pointed out that the staff report said "limiting height in the same manner as required for flag lots would not necessarily achieve what was intended and it would complicate the development code contrary to the City Council's goal of code streamlining." Chair Arthur observed consensus to not factor in properties across the street when averaging height.

Mr. Boone and Mr. Siegel discussed how the proposed code would affect remodels. They recalled that the Commission had decided to make development on substandard lots subject to minor development review. They advised that minor development was 'construction and exterior modification' so additions to existing houses on substandard lots would be minor development. They clarified that an application to put an addition on an existing house on a substandard lot would be subject to minor development review. Staff explained that the process included notification and would allow the City to exact public improvements if mitigation was necessary. They pointed out that the applicant had to meet the new development standards the Commission was moving towards such as the requirement to have two on-site parking spaces.

Chair Arthur observed consensus to make remodels minor development after Commissioners A. Brockman, Gaar and LaMotte each discussed how remodels could impact adjoining properties and Commissioners Gaar and LaMotte each mentioned the concept that because it was a substandard lot the owner should have to build within the more restrictive substandard lot framework.

Commissioners A. Brockman and E. Brockman had provided a proposal regarding lot line adjustments (Exhibit F-2). Mr. Boone had provided another version of it (Exhibit F-3) which he advised was similar except that he had made some non-policy-related code text changes to streamline the code language.

Commissioners E. and A. Brockman discussed their proposal. They pointed out that there were many 5,000 sf lots in the R-7.5 zone and that the first provision would allow owners to move excess land from a lot that was larger than minimum zone size to an adjoining substandard lot. They explained that the lot that was enlarged would have to be increased to at least 67% of minimum zone size. They suggested 67% because they felt it would allow a good house to fit on the lot and it would create a more consistent pattern in a zone. They explained that the second provision allowed the owner of adjoining narrow lots to eliminate the common property line. They noted there were a number of areas where there were narrow lots and that if three narrow lots were combined and made into two lots the new lots might not necessarily be a standard size. They concluded that they would have eliminated one substandard lot and the two remaining lots would be larger and could have bigger houses on them. Commissioner E. Brockman indicated he agreed with the language in Mr. Boone's version.

There was discussion ending with consensus to agree to the proposal. Points offered during the discussion were that this would help to make substandard lots a little bigger and perhaps lessen impacts on the neighborhood. Staff reminded the commissioners that they had already decided not to allow variances for development on substandard lots. Mr. Boone clarified that a zone-complying lot and a substandard lot could be combined, but could only be adjusted if the results met the 67% test. He explained that the provision that allowed elimination of the common property line would result in a bigger lot but it would not be subject to the 67% limitation. He clarified that lots could be combined even if they were not in common ownership and a lot line adjustment could happen (and often did happen) between different owners. Commissioner A. Brockman related that she had examined the lotting patterns in Evergreen and in certain areas along the lake and this provision was essential to making this work.

Commissioner E. Brockman then suggested the Commission could establish minimum size and width (e.g., 2,500 sf and 25 feet) thresholds for developing a substandard lot. He advised that was the size of some existing platted lots in Evergreen. He suggested that would have solved the problem in Hallinan where a 17-foot lot was used.

Mr. Boone discussed the suggested text in Exhibit F-3 which he thought was substantially the same as what Commissioners E. and A. Brockman had proposed. Commissioner A. Brockman agreed and indicated she could accept it with one word eliminated because it was redundant. Mr. Boone agreed to strike it.

Commissioner A. Brockman **moved to adopt the text version proposed by Mr. Boone.** Commissioner Ward **seconded** and discussion followed.

Commissioner LaMotte indicated he could not support the motion because of the 67% limit; he stated that there should be an opportunity to add to and beef up substandard lots under 67% to make them better to develop. He noted someone could develop a lot as small as 3,000 sf anyway so allowing them to add 500 sf would result in more room between houses. Commissioner A. Brockman discussed that this change was a way to try to achieve consistency and keep some neighborhood character. Commissioner Gaar noted the flag lot height limit was going to shrink development on very small lots even further and there would likely be less development on them. The Commission did not address Commissioner E. Brockman's suggestion of a minimum size/width for a developable lot as it was outside the scope of the current hearing.

The vote was conducted and the motion **passed 6:1**. Commissioner LaMotte voted no. The vote on the findings, conclusions and order was scheduled for July 27, 2015.

8.2 Community Development Code Text Amendments – Annual Maintenance (LU 15-0011)

A request from the City of Lake Oswego for amendments to the Community Development Code (CDC) for the purpose of clarifying and updating various code provisions. Amendments included clarification of screening for parking, updates and additions of cross-references, restoration of text, and the addition of a definition for Lot Depth.

~~Chair Arthur~~ opened the hearing. Mr. Boone outlined the applicable criteria and procedure.