

APPROVED MINUTES

VILLAGE OF DOWNERS GROVE PLAN COMMISSION MEETING

January 31, 2022, 7:00 P.M.

Chairman Rickard called the January 31, 2022 meeting of the Downers Grove Plan Commission to order at 7:00 p.m. and led the Plan Commissioners and public in the recital of the Pledge of Allegiance.

ROLL CALL:

PRESENT: Chairman Rickard, Commissioners Rector, Boyle, Dmytryszyn, Johnson, Patel, Roche, Toth

ABSENT: Commissioners Maurer, Johnson

STAFF: Community Development Director Stan Popovich and Planning Manager Jason Zawila

OTHERS

PRESENT: Marshall Schmitt, Terry Mahoney, Julie Brethauer, Richard DeMink, Sarah DeMink, Patricia Grippando, Amy Grippando Robert Smith, Pam Johnson, Roman Gesior, Kim McNultty, Tom Schroder, Mary Braatz, Richard Braatz, Melodee Miller, Chris Weaver, Rhiannon Weaver, Paul Barker, Beth Barker, Dan Apel-Ander, Sharon Apel-Ander, Bridgett Dougherty, John MacManally, Abby MacManally, Laura Fedak, Irene Hogstrom, Troy Hawkins, Doug Wysocki, Joe Leo, Mary Ann Badke, Matthew Clauss, Mary Ann Einarson, David Rose

APPROVAL OF MINUTES

Chairman Rickard entertained a motion to approve the minutes.

MINUTES OF THE JANUARY 10, 2022 PLAN COMMISSION MEETING WERE APPROVED ON MOTION BY COMMISSIONER BOYLE, SECOND BY COMMISSIONER TOTH, MOTION PASSED BY VOICE VOTE OF 7-0.

PUBLIC HEARING

Chairman Rickard explained the protocol for the public hearing process and swore in those individuals that would be speaking during the public hearing.

FILE 21-PLC-0028: A PETITION SEEKING MULTIPLE TEXT AMENDMENTS TO VARIOUS ARTICLES WITHIN CHAPTER 28 (ZONING ORDINANCE) OF THE MUNICIPAL CODE. VILLAGE OF DOWNERS GROVE, PETITIONER

Community Development Director Popovich explained the text amendments were broken into two categories: 1) new regulations including donation drop boxes and 2) minor modifications to the

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zoning ordinance. The text amendments appear in front of the Plan Commission about every 12 to 18 months, with the last time amendments were approved was in September 2020.

Director Popovich then reviewed the proposed text amendments related to donation boxes. Currently, donation boxes are prohibited in the Village. There have been some recent challenges to donation box prohibition, as the courts have found that donation drop boxes are a form of charitable solicitation that are protected under the First Amendment. The proposed amendments allow these donation boxes to be located in various commercial districts and institutional districts. He then highlighted the location requirements and enforcement provisions.

Next, Director Popovich addressed the second category of amendments. Over time and through practice, staff has identified code sections where further clarification and minor adjustments in language would prove useful to both the practitioner and residents. A summary of the proposed amendments and their changes followed which included: clarifying provisions that apply to nonconforming lots; added a definition for buildings that are attached to a principal structure; added provisions limiting one carport per lot in R zoning district; clarified provisions regarding building-mounted solar energy systems; added drive aisles as an exception when paving within setbacks for fueling stations; added provisions for telecommunication tower height in the Downtown and Institutional Zoning Districts; added provisions for electrical vehicle parking; clarified a provision regarding the width of a driveway on the private and public side of the lot line; added a provision regarding nonconforming driveways; added a provision for hammerheads associated with driveways off an arterial road; modified provisions regarding open-design fences; clarified provisions regarding nonconforming lots; clarified provisions regarding nonconforming structures; added provisions referencing compliance with the Downtown Design Guidelines; added provisions referencing compliance with the Downtown Design Guidelines and the Comprehensive Plan; removed setback requirements in the DB and DC districts when it comes to architectural building features, dog house or dog run, steps, retaining walls, and yard features; clarified setback requirements for driveways and uncovered walk; and added provisions for vegetable gardens.

Next, Director Popovich provided additional clarification as it relates to non-conforming lots. As with all other clarifying amendments, the non-conforming lot section can also benefit from clarification. It was noted that the Comprehensive Plan is an aspirational document and the Zoning Ordinance is a regulatory document. The proposed text amendment is applicable to all properties in the Village and consistent application of permitting construction of single detached homes on non-conforming lots. It was further noted that the Zoning Ordinance provides regulations for existing, previously subdivided conforming and non-conforming lots and the Subdivision Ordinance provides regulations for proposed lots. With the Zoning Ordinance a single detached home may be constructed on a residential lot regardless of whether the lot is conforming or non-conforming; consolidation is only required when construction goes over a common lot line and demolition does not trigger consolidation requirement.

Director Popovich continued with further clarification on what may be constructed on non-conforming lot. It was specifically stated that the Village requirement for lot consolidations has been consistently applied in nearly 160 lot consolidation applications since 2014. A vast majority of these cases include a structure over a common property line. It was further referenced that a single detached home may be constructed on a non-conforming lot. A vacant residential lot can also be developed with a single detached house regardless of how long the lot has been vacant.

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Demolition does not trigger the consolidation requirement and the purchase of an adjacent lot and demolition of adjacent structure does not require lot consolidation.

Director Popovich offered two examples on how non-conforming lots are reviewed. The first example included properties located at Sherman and Maple. This example demonstrated that the original private owner owned five lots of record, had a structure on the property and sold it to the Downers Grove Park District. The Downers Grove Park District demolished the structure and used the property for a number of years. The Downers Grove Park District then sold all five lots of record to a private developer. The private developer requested a building permit for a single family home on one of the legal non-conforming lots and the Village issued a permit for one of the legal non-conforming lots. In this example the home was not constructed over the common property line, and therefore a lot consolidation was not required. Director Popovich also pointed out that the Comprehensive Plan's Future Land Use Plan changed for this property based on the uses that were on the property.

Director Popovich then provided an example on the presentation screen for 540 Prairie Avenue. This example demonstrated when a lot consolidation was required, because a new home was proposed to be constructed over the common lot line.

Director Popovich commented that the proposed text amendments met the standards as provided in the Zoning Ordinance and are in conformity with the policy and intent of the Comprehensive Plan and referenced the various applicable Comprehensive Plan recommendations. The proposed text amendments also corrects errors or inconsistencies in the zoning ordinance, or meets the challenge of a changing condition or are necessary to implement established policy. In regards to the clarifying amendments, specifically with non-conforming lots, it was stated under oath that all requests are consistent with how this has been practiced and will not change the current policy and its application and implements an established policy. It was stated that over 160 lot consolidations have been completed, and the text amendment is consistent with the current Village practices. This proposed clarification language to lot consolidations is no different than the other clarifying amendments that were presented tonight. The proposed language is to provide additional clarity in our zoning ordinance. Since 2014, and since 2015 when Director Popovich has been the Community Development Director, the Village has consistently applied this ordinance. He could not state enough that the Village has applied this consistently since 2014. The Village has demonstrated that this is how the regulation has been applied. When this came to the Village's attention that this section of the code could benefit from clarification, staff proposed this clarification. Staff is implementing an established policy with these clarifications. Staff recommended that the Plan Commission provide a positive recommendation to the Village Council and welcomed any questions.

Commissioner Dmytryszyn requested clarifications on the interior setbacks required for the Sherman and Maple example. The setbacks were confirmed by staff.

Commissioner Boyle inquired about the reason that the non-conforming section of the ordinance was being reviewed. He appreciated another look at this, as he was one of the dissenting Plan Commissioners at the last meeting that wanted more time to review. He sought clarification that homes that need lot consolidation are not reviewed by the Plan Commission and must follow the bulk regulations. Director Popovich confirmed his summary was accurate and commented that an additional hearing was being provided as several Plan Commission members did not feel

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comfortable voting on the text amendments, in addition to allowing additional public comments. Mr. Boyle then further inquired if there was a difference with how stormwater management is applied for either lot consolidations or a new subdivision. Director Popovich stated that the stormwater management ordinance is its own ordinance and will remain unaffected with the proposed clarifying language. Lastly, it was Commissioner Boyle's understanding that a landowner retains their rights for the land use, whether it was 10 years or 100 years ago. Staff confirmed that was correct.

Commissioner Toth confirmed that the text amendments related to non-conforming lots matches our interpretation and confirmed with staff that we would still consistently apply the ordinance, even if this amendment was not approved. Staff replied that was correct.

Chairman Rickard opened up the meeting to public discussion.

Marshall Schmitt, 4923 Seeley, provided his understanding of the history of the lot width requirements, stating the Zoning Ordinance updated in 2014 extended lot width to 75 feet for certain districts while others were required to have a 100 foot width. Lots that were less than 75 feet, would be approached differently; the code unequivocally requires that you need to consolidate to meet the zoning requirements. He further stated that there is no language in there about building over a common line. That would be a very narrow, very restrictive ordinance. What this was designed to do was to prevent exactly what's happening at Longfellow and he realized this applies to all lots of all areas of the village. If you owned two properties adjacent to each other the 75 foot rule applies. Referencing, when Village Council discussed this in 2014, members of the Council wanted confirmation that non-conforming provisions would not negatively affect lot consolidations and disincentivise property owners meeting the goals of ordinance to eliminate or reduce. Again the ordinance had nothing to do with building over lot lines. In the concordance of ordinance changes to Village Council, it was stated that the ordinance was drafted to provide flexibility to implement the new lot with requirements, while being fair to property owners. It was a balance between getting wider lots, when you were building on lots that were owned, or that were in common ownership and adjoining. So the notion that the lot was only applied to new plats of subdivisions are false.

Mr. Schmitt went on to further comment that staff identifying that the Comprehensive Plan is not binding and only provides guidance is an admission that the text amendment does not meet the Comprehensive Plan. He claimed that there was a third example that was mentioned at the last meeting that has been dropped entirely. He claimed that it was because the timing of the new ordinance was in place. It's unclear from the timing, whether or not the new or the old ordinance applied. He stated that he specifically asked in a FOIA request, to provide documents regarding all the examples that the staff intended to rely on tonight. He then referred to the 160 consolidations and that the Plan Commission has only seen two examples tonight. He went on to further state that the examples provided are not relevant. He further commented that the planners are not following the ordinance when they do not identify ownership of adjacent lots to non-conforming lots and staff ignoring the ordinance is not a reason to support the proposed text changes. He concluded his presentation stating that the Plan Commission has the power to separate this provision from others. He claimed that the amendment is not correcting ambiguity and confusion and that the Plan Commission should hold the Village Council accountable to the language and intent of the Zoning Ordinance.

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Doug Wysocki said he attended the November coffee with the Council and Council stated that the developer for the Longfellow property would need to follow zoning and there is nothing they can do about it. He felt the Village was sliding in the change as clarification and that he is concerned about the flooding in the neighborhood.

Pam Johnson, 4833 Montgomery, recommended that the PC vote no and that 540 Prairie example is irrelevant. She further commented that the text amendment was not following the Comprehensive Plan recommendations. If this text amendment passes there will be no hearings for the Longfellow property and additionally provided comments on the historic attributes of the property and the destruction of trees will go unchecked.

Amy Grippando, 4836 Montgomery, indicated that she is on the lowest spot on the block and shared a picture of her flooded backyard. She commented that she has stormwater concerns about the development of the Longfellow property.

Matthew Clauss, 4821 Montgomery, stated he is a 42 year resident and provided a summary of his family history. He commented that he purchased a lot to the north and wanted to place an outdoor fire pit, but was told by the Village that he could not. He then subsequently tried to install one on the lot with his house on it and was not able to because of stormwater concerns. He felt like the Village was using a double standard.

Chairman Rickard stated that he wanted to remind everybody that the public hearing is on the text amendments to the zoning ordinance and understand most people were here because of one affected area.

Paul Barker, 4400 Woodward, stated that just because the Village didn't follow their rules, they should follow them now.

Terry Mahoney, 4832 Montgomery, stated that he appreciates the changes that have occurred in the community, while preserving neighborhoods. The 60 foot wide lots made sense when homes were smaller, but the developer is proposing 4,600 square foot homes. The existing code is clear and what is being proposed is a change. The Plan Commission should also reject the 160 examples of lot consolidations that were mentioned by staff as there was no supporting documentation.. He also commented on concerns about stormwater and that the Plan Commission should reject the proposed text amendment.

Joe Leo, 4820 Montgomery, commented that the Comprehensive Plan is aspirational and that demands Downers Grove achieves a high level of success. He recommends that the community is offered sufficient time to identify how the 75 foot measurement should be interpreted.

Irene Hogstrom, 1232 Gibert agreed with Mr. Schmitt and that not being consistent with ordinance is not a reason to change the ordinance. She further commented her concerns regarding flooding and the proposed text amendment would allow a significant increase in housing density.

Troy Hawkins, 4824 Seeley, agreed with the previous comments and that this is not a text clarification, but a material change. He further commented that he does not believe the stormwater will work for the proposed development and if the developer wanted to request variances for the development there is a process for that.

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Julie Brethauer, 4909 Montgomery, agreed that that is a material change and that the Village should stay true to the Comprehensive Plan.

Mary Ann Einarson, agreed with all that has been said. She commented that more homes on less land will encourage flooding and removal of trees. She further commented that the stormwater issue is something that all residents have to pay for and the proposed amendment only helps developers and not residents.

Robert Smith, 4837 Seeley, commented that the Comprehensive Plan is an aspirational plan, but as Justice Potter Stewart said, when asked about obscenity, you'll know it when you see it. The outcomes that have already been experienced by the residents in the area, and in many, many places in Downers Grove, where stormwater, water retention, and let's face it, shadows cast by neighbors homes, the privacy issues that were mentioned, are all things that don't seem to me aligned with an aspirational vision.. He requested that the Plan Commission vote no on this text amendment.

David Rose concurred with Mr. Schmitt and commented that the Village's failures to uphold the Comprehensive Plan should not be ignored. He further commented that the Village continues to ignore financial considerations, and these discussions should have occurred before District 58 sold the property. He further commented how environmental concerns are not taken into consideration with economic development decisions.

Mary Anne Badke, 5408 Carpenter, concurs with the previous speakers.

Roman Geisler, lives on the 4800 block of Linscott, and more concerned about the process and tried reading the code, but relies on the Plan Commission to protect resident from inappropriate development

Sarah DeMink, 4904 Seeley is concerned about stormwater and when the Zoning Ordinance was put in place in 2014 it was intended to prevent over development.

Director Popovich returned to the podium to offer additional clarification. The proposal in front of the Plan Commission does not change anything in the stormwater ordinance. That is a regulatory ordinance that is reviewed during the building permit process. Any development still must meet the stormwater ordinance. He stated that contrary to what residents say staff still considers that the text amendments related to non-conforming clarifies the language and reflects current practices by staff. This is how we've been practicing since 2014. And since the changes that happened in 2014, there are a lot of recorded lots in town that are not 75 feet wide, that are developable. These are non conforming lots and when they were platted back whenever they were planned, whether it's the 1920s, 1940s, 1960s, or 1970s, they were all conforming at the time. He further clarified that the Park District example was offered because that is a case where a home permit was issued on a non-conforming lot that was adjacent to another non-conforming lot and demonstrates that staff consistently applies the ordinance. He further stated that a reconfiguration occurred with three of the five lots to offer better access onto Sherman. That is an administrative process that did not require Plan Commission approval. The proposed text amendments make it crystal clear in terms of when somebody has to consolidate. A property owner can own one lot that has a house on it and the adjacent lot. If the property owner wanted to come in for a permit to build a house on the adjacent lot, that would not be required to consolidate those lots as long as the permit for that house was on a

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lot by itself. The property owner wanted to demolish their house and build a house across the common lot line, as this example here shows, then we would require consolidation.

Commissioner Roche inquired if a majority of examples like Prairie are what the Village typically sees with lot consolidation requests. Staff stated that is correct.

Commissioner Dmytryszyn clarified why they did not have to consolidate in the Sherman example and why the code was proposed to remove the lot width requirement with non-residential non-conforming lots. Staff stated that there is no minimum lot width requirement with non-residential properties and it was unnecessary. The Sherman example did not have to consolidate because the home did not cross the common property line and is consistent with the Village's practice.

Chairman Rickard then offered the public another opportunity to provide comment on the additional discussion.

Marshall Schmitt returned to comment that the existing ordinance is clear and unambiguous. This is a change and that the language is crystal clear.

David Rose, returned to inquire about the procedure for staff to respond to the comments stated.

Troy Hawkins, returned to state that there are 43 people here who do not want this changed.

Irene Hogstrom, returned to comment why we are even here if this is the way the Village has been operating.

Chairman Rickard noted that the Plan Commission will move into deliberation.

Commissioner Toth commented that members of the community were present this evening about a very specific project and with the petition in front of them he was evaluating how this will affect future development.

Chairman Rickard commented that he has been on the Plan Commission since 2012 and it is his recollection that how staff is presenting the text amendment is how it has always been done. He then referenced that the 75 foot requirement was necessary with newly platted lots, but legally divided properties can be built as long as the zoning requirements are met.

Commissioner Dmytryszyn commented that there has been a lot of discussion, and appreciates the community coming out and staff's work on this. He feels however that the change is more substantial than a clarification.

Commissioner Rector commented that there was a lot of discussion on this and is more in depth than she originally thought.

Marshall Schmitt returned to the podium to state that the Plan Commission has the power to make a recommendation and treat this as a material change.

Discussion followed on breaking up the recommendation into two motions similar to the last meeting.

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BASED ON THE PETITIONER'S SUBMITTAL, THE STAFF REPORT, AND THE TESTIMONY PRESENTED, I FIND THAT THE PETITIONER HAS MET THE STANDARDS OF APPROVAL FOR A ZONING TEXT AMENDMENT AS REQUIRED BY THE VILLAGE OF DOWNERS GROVE ZONING ORDINANCE AND IS IN THE PUBLIC INTEREST AND THEREFORE, DMYTRYSZYN MOVED THAT THE PLAN COMMISSION RECOMMEND TO THE VILLAGE COUNCIL APPROVAL OF 21-PLC-0028 REGARDING THE PROPOSED AMENDMENTS TO ARTICLES 2, 6, 7, 10, 11, 12, 14 AND 15 OF THE ZONING ORDINANCE, *WITH THE EXCEPTION OF SECTION 28.11.020(b)*

SECOND BY COMMISSIONER BOYLE. ROLL CALL:

AYE: COMMISSIONERS BOYLE, DMYTRYSZYN, JOHNSON, PATEL, ROCHE, TOTH, RECTOR
NAY: NONE

MOTION PASSED. VOTE: 7-0

Planning Manager Jason Zawila commented that if the Plan Commission felt that a finding was not met that staff would like an understanding of their vote for the record. Mr. Schmitt returned to the podium and stated that the Plan Commission does not have to offer a reason. Community Development Director Popovich further stated that this is not a requirement, but is consistent with past cases and helps provide a record for the case.

Prior to the vote the Plan Commission offered the following commentary: Commissioners Dymytrysn felt the text amendment changes the intent of the code. Commissioners Rector, Roche, Patel believe that the second standard is not met as the language does not provide enough clarity. Commissioner Boyle and Toth stated that they would vote no because based on the input from residents here today that text amendment was not in the interest of the community.

BASED ON THE PETITIONER'S SUBMITTAL, THE STAFF REPORT, AND THE TESTIMONY PRESENTED, I FIND THAT THE PETITIONER HAS MET THE STANDARDS OF APPROVAL FOR A ZONING TEXT AMENDMENT AS REQUIRED BY THE VILLAGE OF DOWNERS GROVE ZONING ORDINANCE AND IS IN THE PUBLIC INTEREST AND THEREFORE, DMYTRYSZYN MOVED THAT THE PLAN COMMISSION RECOMMEND TO THE VILLAGE COUNCIL APPROVAL OF 21-PLC-0028 REGARDING THE PROPOSED AMENDMENTS TO SECTION 28.11.020(b) OF THE VILLAGE CODE

SECOND BY COMMISSIONER RECTOR. ROLL CALL:

AYE: NONE
NAY: BOYLE, DMYTRYSZYN, PATEL, ROCHE, RECTOR, TOTH, RICKARD

MOTION FAILED. VOTE: 0-7

Planning Manager Zawila indicated that there were two agenda items scheduled for next Monday night's meeting and that the Village will hold two meetings in March.

THE MEETING WAS ADJOURNED AT 9:13 P.M. UPON MOTION BY COMMISSIONER RECTOR. SECOND BY COMMISSIONER DMYTRYSZYN. A VOICE VOTE FOLLOWED AND THE MOTION PASSED UNANIMOUSLY.

/s/ _____ Village Staff
Recording Secretary
(As transcribed by MP-3 audio)