

**VILLAGE OF LOMBARD**  
**INTER-DEPARTMENTAL REVIEW GROUP REPORT**

TO: Lombard Plan Commission

HEARING DATE: September 20, 2010

FROM: Department of  
Community Development

PREPARED BY: Christopher Stilling, AICP  
Assistant Director

**TITLE**

**PC 10-17; Text Amendments to the Zoning Ordinance:** The Village of Lombard requests text amendments to Section 155.305 of the Lombard Zoning Ordinance related to legal nonconforming two-family dwellings that were lawfully established prior to January 1, 1960 and are located in the R2 Single Family Residence District.

**GENERAL INFORMATION**

Petitioner: Village of Lombard  
255 E. Wilson Ave  
Lombard, IL 60148

**ANALYSIS**

**DESCRIPTION**

The Village of Lombard is proposing text amendments to Section 155.305 of the Lombard Zoning Ordinance related to legal nonconforming two-family dwellings that were lawfully established prior to January 1, 1960 and are located in the R2 Single Family Residence District. The proposed text amendments are in response to a recent issue pertaining to a legal nonconforming two-family dwelling that was denied an FHA loan because of the legal nonconforming status of the property. There is a companion conditional use request (PC 10-18) for the property at 90 S. Highland Avenue.

**INTER-DEPARTMENTAL REVIEW COMMENTS**

**PUBLIC WORKS**

Public Works Engineering has no comments at this time.

### **PRIVATE ENGINEERING SERVICES**

The Private Engineering Services Division of Community Development has no comments.

### **BUILDING DIVISION**

The Building Division would offer the following comment in reference to **PC 10-17**;

1. Any proposed reconstruction of a structure would require adherence to current applicable Building, Electric, Plumbing, Mechanical and Energy codes at least at the areas to be rebuilt.

### **FIRE**

The Fire Department has no comments at this time

### **PLANNING**

Village staff was contacted by the property owner at 90 S. Highland Avenue and their attorney with reference to their legal nonconforming two-family dwelling in the R2 Single Family District. The property owner of unit A recently entered into a contract to sell the unit, however just prior to closing, the FHA loan underwriter for the buyer would not approve the loan because it was considered legal nonconforming. To address this issue, staff is proposing a text amendment to allow property owners of a legal nonconforming two-family dwelling that was lawfully established prior to January 1, 1960 and is located in the R2 Single Family Residence District the ability to proactively seek a conditional use to re-establish the legal conforming status of the property before it is ever damaged or destroyed. As a companion to this request, the property owner of 90 S. Highland Avenue is seeking conditional use approval. Should this petition be approved, the companion petition can be considered for approval as well.

#### **Background/History**

The subject property is located in the R2 – Single Family District and improved with a two-family dwelling. The property is also not on a lot of record and is divided by an assessment division. The property is in the middle of a large single family neighborhood all zoned R2. There are also several other two-family dwellings scattered throughout the neighborhood. Attached as Exhibit “A” is a map showing ten (10) other nonconforming two-family dwellings in the area. According to Village and County records, all of those units were constructed prior to 1960.

The subject property did receive a building permit for a two-family dwelling in 1956 and at that time two-family dwellings were permitted uses in the R2 District. Subsequent to the construction of the property, the Village amended its Zoning Ordinance as part of the 1960 Zoning Ordinance amendments which no longer permitted two-family dwellings in the R2 District. More recently, the Zoning Ordinance has since been relaxed to allow two-family dwellings on those properties that are on a lot of record and abutting property in the B3, B4 or B4A Districts, through a conditional use

approval process. As such, two-family structures are not permitted as of right within the R2 District. Since the property is not on a lot of record and does not abut property in the B3, B4 or B4A Districts, it is considered a legal nonconforming use.

### **Workshop Findings**

At the August 19, 2010 Plan Commission, staff did introduce this item as a workshop for the Commissioners. The Plan Commission unanimously supported the concept of a text amendment; however a few Commissioners expressed a concern about notification to other legal nonconforming two-family dwellings. Staff would like to point out that this proposed text amendment does not require property owners of legal nonconforming two-family dwellings to petition for the conditional use. Rather the amendment allows the property owner, at their discretion, the ability to proactively seek the conditional use to re-establish the legal conforming status of the property before it is ever damaged or destroyed. Whether or not a property owner seeks to utilize this provision is entirely up to them. The proposed text amendment allows a property owner to have the assurance that the conditional use to re-establish the legal nonconforming status has already been “pre-approved”.

### **PROPOSED TEXT AMENDMENTS**

The proposed text amendments to the Lombard Zoning Ordinance are listed below. Any new additions and/or changes are underlined while any information that is to be removed is marked with a strikethrough.

#### **155.305 RELIEF**

The owner of any building, structure or use which is subject to elimination under the terms of this ordinance may apply to the Plan Commission for a conditional use to allow such building, structure or use to continue or be re-established. Any legal nonconforming two-family dwelling that was lawfully established prior to January 1, 1960 and is located in the R2 Single Family Residence District may apply to the Plan Commission for a conditional use to allow such use to continue or be re-established as a permitted legal nonconforming use prior to being subject to elimination under the terms of this ordinance. In such event, the procedures, terms, conditions, and standards for conditional uses set forth in Section 155.103 (F) of this Ordinance shall be used to evaluate the application.

Staff supports this approach because the property would still remain legal nonconforming, while the property owner now has the assurance that the conditional use to re-establish the legal nonconforming status has already been “pre-approved”. In addition, this could address the several other properties we have identified who may encounter a similar issue.

### **Standards for Text Amendments**

For any change to the Zoning Ordinance, the standards for text amendments must be affirmed. Staff’s response to Standards for Text Amendments are noted below:

- 1. The degree to which the proposed amendment has general applicability within the Village at large and not intended to benefit specific property;*

The proposed amendments would be uniformly applied to all applicable properties. As staff has noted there are also several other two-family dwellings scattered throughout the neighborhood. Attached as Exhibit “A” is a map showing ten (10) other nonconforming two-family dwellings in the area. According to Village and County records, all of those units were constructed prior to 1960. There are likely several other locations throughout the Village that could benefit from this amendment.

2. *The consistency of the proposed amendment with the objectives of this ordinance and the intent of the applicable zoning district regulations;*

The proposed amendment is consistent with the objectives and intent of the R2 district. The proposed amendment provides a property owner in the R2 District the ability to proactively seek the conditional use to re-establish the legal conforming status of the property before it is ever damaged or destroyed. Staff supports this approach because the property would still remain legal nonconforming, while the property owner now has the assurance that the conditional use to re-establish the legal nonconforming status has already been “pre-approved”.

3. *The degree to which the proposed amendment would create nonconformity;*

The proposed text amendment would not create any non-conforming situations. It simply allows a property owner to proactively seek the conditional use to re-establish the legal conforming status of the property before it is ever damaged or destroyed.

4. *The degree to which the proposed amendment would make this ordinance more permissive;*

The proposed amendment will not make the ordinance more permissive by right; however, the amendments will allow any similar use proposals to petition for a conditional use without requiring the companion text amendment approval.

5. *The consistency of the proposed amendment with the Comprehensive Plan;*

Two-family dwellings are not consistent with the R2 district, unless abutting property in the B3, B4 or B4A Districts. However staff feels that the proposed text amendment does not impact the goals and objectives of the Comprehensive Plan because the property seeking the conditional use would be legal nonconforming.

6. *The degree to which the proposed amendment is consistent with village policy as established in previous rulings on petitions involving similar circumstances.*

The Village has a history of amending its Zoning Ordinance to address evolving circumstances presented by petition or to clarify the intent of the Ordinance provisions. The provision to allow any legal nonconforming to be reestablished already exists within Section 155.301 of the Zoning Ordinance. The proposed text amendments allows a property owner to proactively seek the conditional use to re-establish the legal conforming status of the property before it is ever damaged or destroyed.

## **FINDINGS AND RECOMMENDATIONS**

Based on the above findings, the Inter-Departmental Review Committee recommends that the petition as presented does meet the standards set forth in the Zoning Ordinance and recommends that Plan Commission make the following motion recommending **approval** of this petition:

Based on the submitted petition and the testimony presented the requested text amendments **complies** with the standards required by the Lombard Zoning Ordinance; and, therefore, I move that the Plan Commission accept the findings and recommendations of the Inter-Departmental Report as the findings of the Plan Commission and I recommend to the Corporate Authorities **approval** of PC 10-17.

Inter-Departmental Review Group Report Approved By:

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William J. Heniff, AICP  
Director of Community Development