

October 7, 2010

Mr. William J. Mueller,
Village President, and
Board of Trustees
Village of Lombard

Subject: PC 10-18; 90 S. Highland Avenue, Unit A

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner requests that the Village grant a conditional use, pursuant to amended Section 155.305 allowing for 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 to continue or be re-established as a legal nonconforming use prior to being subject to elimination under the terms of this ordinance.

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on September 20, 2010.

Fred Huber, 90 S Highland Avenue, Lombard, IL presented the petition. He stated that he purchased the property back in 2002. He stated that the home was too small for his family and needed to sell it. In June, 2010, he said he found a buyer for the unit; however the buyer's loan was rejected because the home was legal nonconforming and the buyers lender needed assurance that the home could be rebuilt if it were destroyed. He said that he has been working with staff to find a resolution. He feels that the proposed solution will work and he has confirmed with a few lenders that this approach should work.

Chairperson Ryan asked if anyone was present to speak in favor or against the petition. No one spoke in favor or against.

Chairperson Ryan then requested the staff report.

Christopher Stilling, Assistant Director of Community Development, presented the staff report. 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, as outlined in PC 10-17, staff has proposed 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 this property would meet the provisions of the proposed text amendment, the property owner is seeking a conditional use.

Mr. Stilling provided background on the request stating that 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.

The property owner recently entered in a contract to sell their unit to a buyer who was using a FHA loan to purchase the property. During the loan approval process, the lender became aware that the existing property was considered legal nonconforming. Unfortunately the lender would not approve the loan without written assurance from the Village that the structure could be rebuilt if it were destroyed beyond 50% of its value. Staff did inform them that Section 155.305 of the Zoning Ordinance sets forth a provision which allows the owner of a nonconforming structure that has been destroyed more than fifty percent (50%) of its fair market value to apply for a Public Hearing before the Plan Commission for a conditional use to allow such building to be re-established. Since there was no guarantee that the Village would grant the conditional use, their lender denied the loan.

Mr. Stilling highlighted the specifics of the property stating that the existing structure does meet the setback and parking requirements of the R2 District. Mr. Stilling also stated that the petitioner has provided a response to the standards for a conditional use. Specifically, Mr. Stilling called attention to standard #3 stating that in the unfortunate event that the subject site

were destroyed, two options would be available – either grant zoning relief for the property or grant approval of a conditional use to reestablish the legal non-conforming status for the damaged building. Staff believes that if the Village is interested in allowing the duplex to be reoccupied, reestablishing the non-conforming status would be preferred, as the request would only relate to the building at its present location and would not run with the land. Therefore staff supports granting the conditional use now. Mr. Stilling said that the required standards have been met and staff recommends approval.

Chairperson Ryan then opened the meeting for comments among the Commissioners. There were no comments from the Commissioners.

On a motion by Commissioner Burke and a second by Commissioner Nelson, the Plan Commission voted 5 to 0 that the Village Board **approve** the conditional use based on the finding that the petitioner had met the required Standards as set forth in the Zoning Ordinance.

Based on the submitted petition and the testimony presented, the proposed conditional use complies with the standards required by the Lombard Zoning Ordinance; and, therefore, I move that the Plan Commission adopt the findings included within the Inter-department Group Report, as the findings of the Lombard Plan Commission, and recommend **approval** of PC 10-18 to the Corporate Authorities subject to the following conditions:

1. The conditional use approval to continue and/or re-established a legal nonconforming use prior to being subject to elimination is granted solely to the property located 90 S. Highland Avenue, Unit A, as depicted and legally described by the plat of survey prepared by ARS, dated June 30, 2010.
2. Any future improvements or changes to the property shall meet all the provisions of the Lombard Zoning Ordinance.
3. The petitioner shall satisfactorily address all comments within the IDRC report.

Respectfully,

VILLAGE OF LOMBARD

Donald Ryan, Chairperson
Lombard Plan Commission

c. Petitioner
Lombard Plan Commission