

March 4, 2010

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

**Subject: PC 10-02: 1010 E. North Broadway**

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner requests the following actions on the property located within the R2 Single-Family Residence District:

1. Approval of a Comprehensive Plan amendment from Low-Density Residential to Medium-Density Residential;
2. Approval of a map amendment (rezoning) from the R2 Single Family Residence District to the R4 Limited General Residence District;
3. A variation from Section 155.409(F)(4)(c) to reduce the required minimum interior side yard from 15 feet to 9 feet;
4. A variation from Section 155.409(I) to reduce the required minimum transitional building setback from 50 feet to 9 feet; and
5. Variations from Section 155.409(J) and Section 155.707 to eliminate the required 30-foot transitional landscape yard and associated landscaping.

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on February 15, 2010.

Gina Rukower, 4501 Black Partridge Lane, Lisle, IL, presented the petition. She stated that she and her husband are in the process of selling the property. The property was in its current state when they took ownership in 2003 and they were unaware of the zoning issue. They discovered the zoning issue upon applying for an electric permit. They immediately contacted the Village to resolve the matter and were told what they needed to do and what the process was, and they allowed the Village to access the third unit for review.

They want to be approved to move from R2 to R4. They believe the use to be compatible as it is adjacent to multifamily and commercial property. The use will not jeopardize anyone, has been in this condition for 30 years and there is sufficient parking on the property. She noted that once they were made aware of the problem, they took all the necessary steps on their own to ensure that they are working to be compliant and safe. They have hired an architect and verified that should they receive approval, the project is workable.

Commissioner Olbrysh asked if there is a tenant living in the basement apartment. The petitioner confirmed that there is.

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.

Jennifer Henaghan, Senior Planner, presented the staff report. The subject property is a nonconforming residential three-flat that was built in 1972-1973. At that time, the property was zoned R2 Single Family. However, building permit records indicate that a court order was issued to permit the construction of a two-family residence. At some point following construction, likely during the 1980s, the basement of the building was built-out into a third dwelling unit. No building permit applications were ever submitted in conjunction with this work. The third dwelling unit was discovered by the Village in January 2010 when the current owners applied for an electrical permit.

The third unit is not permitted by the underlying zoning (which permits detached single-family residences only) or the court order (which permits a two-flat). Therefore, in order to achieve compliance with Village Code, the third unit would need to be removed or zoning relief would need to be granted to address the nonconforming use and bulk nonconformities.

The Private Engineering Services Division noted that the change in zoning will trigger the need for stormwater detention for any future site improvements. The Building Division noted that there is one set of requirements if the rezoning is approved and two options if the rezoning is not approved. Both of these scenarios have been reviewed with the petitioner.

The Comprehensive Plan recommends Low-Density Residential uses at this location. Low density is defined within the Comprehensive Plan as a net density of six or fewer dwelling units per acre. The proposed three-flat use would have a net density of 14.6 units per acre, placing it into the Medium-Density Residential category. (The court-ordered two-family use has a net density of 9.8 units per acre, placing it in the Low-Medium Density category.)

The plan states that “medium-density residential environments are appropriate within or near high activity centers including commercial and business areas.” With the exception of the two Neighborhood Commercial properties at the corner of Westmore/Meyers Road and North Broadway, the entirety of the block on which the subject property is located is recommended for Low-Density Residential uses. The proposed use and proposed relief are therefore inconsistent with the recommendations of the Comprehensive Plan.

In addition, the Comprehensive Plan sets forth specific criteria for any Plan amendments. The proposed change is clearly at odds with the Plan recommendation for the neighborhood of Low-Density Residential uses as it would result in a single property being recommended for Medium-Density Residential uses. Furthermore, the proposed plan does not meet the housing and residential land use objectives outlined in the Plan. The proposed Medium-Density Residential area would not be near a high activity center (as called for in the Comprehensive Plan) and would instead be located upon a local street with single-family and two-family land uses.

Of the 27 properties on this block, only one property appears to be used legally for multiple-family residences. There is one commercial use and the remaining 25 properties appear to be either single-family residences, two-family residences, or undeveloped. Along North Broadway there are zero properties zoned for multiple-family uses. The proposed use is therefore incompatible with the surrounding land uses.

Although the conversion of the subject property into a multiple-family dwelling was not done by the petitioners, the consideration of this petition must be based upon the standards set forth within the Zoning Ordinance. The proposed Comprehensive Plan amendment, map amendment, and associated variations are inconsistent with previous Village actions. They would also set a precedent for allowing additional single-family properties in the neighborhood to be converted to multiple-family uses, thereby altering the essential character of the neighborhood.

The R4 District is significantly different from the R2 District in that it has specific setback regulations for each permitted land use. While the subject building was built under the more permissive R2 regulations, the change of zoning and change of use to the R4 District kick in the need for greater side yard setbacks, additional transitional building setbacks, and transitional landscape yards. These provisions are in place to ensure that there is adequate separation between single-family and denser, multiple-family uses. Allowing a high-density use to be located in such close proximity to single-family would be a significant departure from the desired separation of uses that is set forth within the Zoning Ordinance.

With regard to the Standards for Map Amendments, staff finds that although there is an abutting property with multiple-family uses, the predominant land use on the block is single-family with some two-family. The proposed multiple-family use is incompatible with the general area. The subject property abuts a property to the north that is zoned R4 and fronts directly on Westmore-Meyers Road. There is a clear demarcation between the multiple-family zoned area on Westmore-Meyers Road and the single-family neighborhood along North Broadway. As currently zoned, the property meets all setback requirements for a single-family residence. It has approximately 46 percent open space, which is slightly below the minimum required 50 percent. The remaining properties along North Broadway are of the same size of the subject property. They are suitable for single-family uses, but none are large enough to accommodate the transitional yards and setback requirements for multiple-family uses. As detailed previously, the proposed rezoning is inconsistent with the recommendations of the Comprehensive Plan. The property is not sufficiently large to accommodate the required 50-foot transitional building setbacks and 30-foot transitional landscape yard. These provisions are in place to ensure that there is adequate separation between single-family

and multiple-family uses. Waiving or reducing these requirements places an undue burden upon the neighboring single-family property.

With regard to the Standards for Variations, staff finds that the subject property is not physically unique or substantially different from its neighboring properties. The stated hardship is of a financial nature. The petitioner has created the need for the variation for their own financial gain. The reduction of required setbacks and landscaping improvements would set a precedent to allow further zoning relief on neighboring properties, creating a denser environment than that allowed by the underlying zoning or recommended by the Comprehensive Plan. The reduction of required setbacks and landscaping improvements would set a precedent to allow further zoning relief on neighboring properties, creating a denser environment than that allowed by the underlying zoning or recommended by the Comprehensive Plan.

Staff is recommending denial of this petition.

Chairperson Ryan then opened the meeting for comments among the Commissioners.

Commissioner Olbrysh asked when the conversion was done. Ms. Henaghan stated that, based upon their inspection of the basement unit, the Building Division estimated that it was converted sometime during the 1980s.

Commission Olbrysh asked why there was a court order issued instead of the property coming before the Plan Commission. Ms. Henaghan stated that we don't have information on what happened in that court case. The court order could not be found by the Clerk of Court although they are currently searching their archives. Since we don't know what the complaint was, we don't know what the process was at that time.

Commissioner Burke stated that he was sympathetic to the petitioner especially since they were not aware of the problem. However, he agreed with staff that the quantity and the size of the relief for building setbacks, landscaping and transitional setbacks was too great and they would have to deny the petition.

Commission Olbrysh stated that this is a bureaucratic nightmare for the petitioners because when they purchased the property they assumed it was a legal three-unit complex. If the petitioner were denied, there would be a hardship on two innocent parties, the petitioner and the tenant in the basement. He asked if, aside from the zoning, there was some equitable relief that could be granted. He didn't see anyone in the audience that was objecting to the petition.

Chairperson Ryan stated that approving this petition would set precedents for other neighbors. The Village can give the petitioners some time to come into compliance, and the petitioner can go back to the realty company that sold them the property under false pretenses. They need to think for the future of the neighbors in the area.

Commissioner Olbrysh asked how Division Street is zoned. Ms. Henaghan stated that Division Street is south of the Illinois Prairie Path and is zoned for multiple-family uses, but she did not know the precise designation.

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Commissioner Olbrysh stated that there are apartments north of Westmore Liquors. Ms. Henaghan confirmed that those apartments are zoned R4.

Commissioner Cooper asked if the property could be grandfathered in. Looking at the site, it fits in nicely with the current land use plan to fit in with the higher density plan. She stated that she sees both sides of coin and the stormwater and landscaping relief is a big issue.

Commissioner Burke asked when the lease is up. The petitioner stated that the lease runs through July.

Commissioner Burke asked what flexibility the Village Board and staff gave with transitioning this property from three-family to two-family. Chris Stilling, Assistant Director of Community Development, stated that the building matters need to be resolved regardless of the zoning actions. If the petition is denied, the petitioner will need to draw up revised plans, which will take some time. The permit review itself will also take time. Staff can work with the petitioner on a reasonable timeline to accommodate them. George Wagner stated that enforcement is a staff issue. The Plan Commission's flexibility lies in granting the requested relief or not. Unless the property is in compliance with zoning the Village cannot issue a permit for the basement to be compliant with building regulations.

Commissioner Burke stated that the petitioner is looking to sell the property and any delay in enforcement will complicate the sale as well as the enforcement.

Commissioner Olbrysh stated that he did not wish to see the zoning change but wished there was some sort of relief for the petitioner, perhaps something only the Village Board can approve.

Chairperson Ryan asked if the Plan Commission recommended denial, could they recommend for staff to work with the petitioner and tenant to achieve a July compliance date.

The petitioner stated that she knows that financial burden isn't the Village's concern, but they do not wish to proceed with any of the two-family solutions recommended by the Building Division. She understands the concern with setting a precedent, but her property is unique because it has been this way for years and has not caused any problems. She doesn't believe a precedent would be set because the situation is extreme. They are doing their best to comply with a situation they didn't create.

Commissioner Olbrysh stated that he sympathizes with the petitioner but doesn't think that the Plan Commission can grant any relief.

Commissioner Cooper asked if this was not a unique scenario to not set a precedent, given the length of time the use has been in place.

Chairperson Ryan stated that approving a rezoning request in violation of the Comprehensive Plan recommendations would open the Village up for others to come in and ask for similar relief.

Commissioner Burke stated that, if approved, the sheer scale and significance of the requested variations could be applied piecemeal to other cases as the Plan Commission has seen in other zoning petitions.

On a motion by Commissioner Burke and a second by Chairperson Ryan, the Plan Commission voted 4 to 0 that the Village Board **deny** the rezoning, variations and Comprehensive Plan amendment based on the finding that the petitioner had met not the required Standards as set forth in the Zoning Ordinance and the Comprehensive Plan.

In addition, the Plan Commission recommended that the Village work with the property owner and the existing tenant to ease the transition from an illegal non-conforming three-unit apartment to a conforming two-unit apartment.

Respectfully,

**VILLAGE OF LOMBARD**

Donald Ryan, Chairperson  
Lombard Plan Commission

c. Petitioner  
Lombard Plan Commission