

VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW GROUP REPORT

TO: Lombard Plan Commission HEARING DATE: September 20, 2010
FROM: Department of PREPARED BY: Christopher Stilling, AICP
 Community Development Assistant Director

TITLE

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

GENERAL INFORMATION

Petitioner: Fred Huber
 90 S. Highland Avenue, Unit A
 Lombard, IL 60148

PROPERTY INFORMATION

Existing Zoning: R2 Single-Family Residence District
Existing Land Use: Legal nonconforming duplex
Size of Property: Approximately 9,800 square feet total (both lots)
Comprehensive Plan: Recommends Low-Density Residential

SURROUNDING ZONING AND LAND USE

North: R2 Single-Family Residence District, developed as Single Family Residences.
South: R2 Single-Family Residence District, developed as legal nonconforming duplexes.
East: R2 Single-Family Residence District developed as Single Family Residences.
West: R2 Single-Family Residence District developed as Single Family Residences.

ANALYSIS

SUBMITTALS

This report is based on the following documents filed with the Department of Community Development on August 30, 2010:

1. Public Hearing Application.
2. Response to Standards.
3. Plat of Survey, prepared by ARS dated June 30, 2010.
4. Property appraisal, prepared by American Real Estate Appraisals, LTD, dated June 28, 2010.
5. Photographs of the subject property, submitted by the petitioner.

DESCRIPTION

The petitioner is the owner of the property at 90 S. Highland Avenue, Unit A. The property is 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 petitioner is seeking a conditional use to continue the use "as is" and have the ability to re-establish the legal conforming status of the property if it is ever damaged or destroyed. No changes or improvements are proposed.

Special Note: This petition assumes approval of PC 10-17. If PC 10-17 is not approved, this petition cannot be considered as it is currently proposed.

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 offers the following comment in reference to **PC 10-18**;

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, 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.

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.

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.

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”.

Compatibility with the Zoning Ordinance

The existing property is improved with a legal nonconforming duplex located on two lots, via an assessment division. Each unit is approximately 900 square feet in area. The petitioner has provided a recent plat of survey of the property showing their specific unit and lot. Although there are 2 lots, for the purposes of this report, staff considers the overall site as one lot since the parcel is not a lot of record. Therefore the total lot size is approximately 9,800 square feet in area, the petitioner’s lot is 4,342 square feet. The following tables shows how the existing property (both lots) complies with the provisions in the R2 district:

	R2 Regulations	Existing Site
Min. Lot Area	7500 sq. ft.	9800 sq. ft.
Min. Lot Width	60 feet	66 feet
Min. Front Yard Setback	30 feet	33 feet
Min. Interior Side Yard Setback	6 feet	13.7 feet
Min. Rear Yard Setback	30 feet	51 feet
Max. Building Height	3 stories or 40 feet	1 story
Min. Open Space	50%	58%

Parking

A two-car detached garage provides parking for each unit. Easements have been provided for access and use for the garage to both unit owners. The Zoning Ordinance requires two (2) spaces for each unit. Since each unit has 1 garage space and adequate room for an additional parking space in front of the garage unit, the parking requirements meet Village Code.

Compatibility with the Comprehensive Plan

The Comprehensive Plan identifies this area for low density residential. The area is predominantly single-family detached with the exception of the approximately 11 non-conforming two-family dwellings. The area is wholly surrounded by R2 Single Family in all directions, with the exception of Westmore Woods to the east which is zoned CR. When uses and structures do not meet the provisions of the Zoning Ordinance and are considered legal nonconforming, Section 155.303 of the

Zoning Ordinance specifies those circumstances and conditions under which nonconforming buildings, structures, and uses shall be permitted to continue. The reason for having nonconforming provisions is that over time, those uses would cease and only permitted/conditional uses would be allowed. If the property were to receive the conditional use approval, the property would still be considered legal nonconforming. Therefore the underlying zoning, which is consistent with the Comprehensive Plan, would govern the site.

Compatibility with Surrounding Land Uses

The area is predominantly single-family detached with the exception of the approximately 11 non-conforming two-family dwellings. The area is wholly surrounded by R2 Single Family in all directions, with the exception of Westmore Woods to the east which is zoned CR. Staff finds that although two-family dwellings are not consistent with the R2 district, unless abutting property in the B3, B4 or B4A Districts, the proposed conditional use does not change the overall use and intensity of the property. The duplex has been there for over 50 years. In addition, if the property were to receive the conditional use approval, the property would still be considered legal nonconforming. Therefore the underlying zoning, which is consistent with the surrounding land uses, would still govern the site.

Standards for Conditional Uses

For a conditional use to be approved, the standards for conditional uses must be met. Staff has reviewed the petitioner's plan and the standards and offers the following comments:

1. That the establishment, maintenance, or operation of the conditional use will not be detrimental to, or endanger the public health, safety, morals, comfort, or general welfare;

The conditional use process allows staff the opportunity to review each applicable petition in context with the surrounding area in regards to health, safety, and general welfare. As indicated in the submittal package, the petitioner is only seeking the opportunity to maintain the legal nonconforming status of the property in the event it were destroyed more than fifty percent (50%) of its fair market value. Staff finds that maintaining the legal nonconforming status of the property will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.

2. That the conditional use will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, not substantially diminish and impair property values within the neighborhood in which it is to be located;

As the use already exists, along with ten (10) others in the immediate area, staff finds that this standard has been met.

3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;

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. In addition, since the use already exists, along with ten (10) others in the immediate area, staff finds that this standard has been met.

4. That the adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;

As the use already exists, along with ten (10) others in the immediate area, staff finds that this standard has been met.

5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;

As the use already exists, along with ten (10) others in the immediate area, staff finds that this standard has been met. Furthermore, the use does meet all the parking requirements.

6. That the proposed conditional use is not contrary to the objectives of the current Comprehensive Plan for the Village of Lombard; and,

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”.

7. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified pursuant to the recommendations of the Plan Commission.

The site conforms to all requirements set forth in the Zoning Ordinance, with the exception of its use. Although the legal nonconforming use as a duplex could continue, any new building construction would have to adhere to the current Building, Electric, Plumbing, Mechanical and Energy codes.

FINDINGS AND RECOMMENDATIONS

Based on the above findings, the Inter-Departmental Review Committee recommends that the petition as presented does meet the standards for Conditional Use as 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 for Conditional Use as 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 10-18, 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.

Inter-Departmental Review Group Report Approved By:

William J. Heniff, AICP
Director of Community Development