

**PLEASANT PRAIRIE PLAN COMMISSION MEETING
VILLAGE HALL AUDITORIUM
9915 39TH AVENUE
PLEASANT PRAIRIE, WISCONSIN
5:00 P.M.
July 10, 2006**

A regular meeting for the Pleasant Prairie Plan Commission convened at 5:00 p.m. on July 10, 2006. Those in attendance were Thomas Terwall; Michael Serpe; Donald Hackbarth; Wayne Koessler; Andrea Rode; Jim Bandura; John Braig; Larry Zarletti; and Judy Juliana. Also in attendance were Michael Pollocoff-Village Administrator; Jean Werbie, Community Development Director; Peggy Herrick-Asst. Planner/Zoning Administrator and Tom Shircel-Asst. Planner/Zoning Administrator.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. ELECTION OF OFFICERS.**

Mike Pollocoff:

We need a nomination for Vice Chairman and Secretary.

Wayne Koessler:

I move we nominate the existing persons for Vice Chairman and Secretary.

Tom Terwall:

Who are the Vice Chairman and Secretary at this point?

Jean Werbie:

Vice Chairman is Mike Serpe and Secretary is Don Hackbarth. Jan Petrovic is the Recording Secretary and Don is the official Secretary of the Plan Commission.

Tom Terwall:

Any other nominations?

Wayne Koessler:

A unanimous vote to cast.

Tom Terwall:

There's been a motion. Is there a second?

John Braig:

I'll second.

Tom Terwall:

MOTION BY WAYNE KOESSL AND A SECOND BY JOHN BRAIG TO CAST A UNANIMOUS BALLOT FOR DON HACKBARTH AS SECRETARY AND MIKE SERPE AS VICE CHAIR. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

Mike Serpe:

I wish the April elections would go that easy.

4. CORRESPONDENCE.

5. CITIZEN COMMENTS.

Tom Terwall:

If you're here tonight to talk about Items Old Business A or New Business A those are public hearings. We would ask that your comments be held until the public hearing is held so we can incorporate your comments as an integral part of the public hearing. If you're here to discuss Items B or C or an item not on the agenda, now would be your opportunity to do so. We would ask that you step to the microphone and begin by giving us your name and address. Is there anybody wishing to speak under citizens' comments? Anybody wishing to speak?

6. OLD BUSINESS

A. TABLED PUBLIC HEARING AND CONSIDERATION OF A ZONING MAP AMENDMENT: The request of Richard Steffes, agent for Laurel Steffes & Georgette Bates owners of the vacant property generally located on the west side of 3rd Avenue and south of 110th Street to rezone a 15 foot portion of the field delineated wetlands seven (7) feet from the south property line from C-1, Lowland Resource Conservancy District to the R-5, Urban Single Family Residential District as a result of the Wisconsin Department of Natural Resources permit to allow the owners to fill the area for the installation of a driveway from 3rd Avenue to the non-wetland portion of the site. The LUSA, Limited Use Service Area Overlay District will remain on the property.

Wayne Koessl:

Mr. Chairman, I move that we take Item A off the table under Old Business.

Tom Terwall:

Is there a second?

Jim Bandura:

Second.

Tom Terwall:

MOVED BY WAYNE KOESSL AND SECONDED BY JIM BANDURA TO REMOVE ITEM 6A OFF THE TABLE. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

Jean Werbie:

Mr. Chairman and members of the Plan Commission, this is a request by Richard Steffes, agent for Laurel Steffes and Georgette Bates, owners of the vacant property generally located on the west side of 3rd Avenue south of 110th Street to rezone a 15 foot portion of the field delineated wetlands seven feet from the south property line. They would be rezoning it from the C-1, Lowland Resource Conservancy Zoning District, to the R-5, Urban Single Family Residential District. This is as a result of a Wisconsin Department of Natural Resources permit to allow the owner to fill the area for the installation of a driveway from 3rd Avenue to the non-wetland portion of the site. The LUSA, or Limited Use Service Area Overlay District would remain on the property.

The petitioner is requesting that the Village amend the zoning map to remove the 15-foot wide portion of the property generally located on the west side of 3rd Avenue, south of 110th Street, and further identified as Tax Parcel Number 93-4-123-304-0240-0. It's also identified as Lot 3, Block 20, Carol Beach Estates Subdivision Unit No. 2. The entire property as I had indicated would remain in the LUSA, and only that portion that we discussed, that 15 foot wide area, would be removed from that C-1 designation.

On September 12, 2005, the Plan Commission voted to table this rezoning request until the October 24, 2005 Plan Commission meeting. On October 24, 2005, the Plan Commission voted to table this request until the November 14, 2005 Plan Commission meeting. The Plan Commission tabled the Zoning Map Amendment request for two reasons. First, they tabled the request in order for the Village Board to hold a public hearing regarding the Village's proposed Carol Beach Estates Unit No. 2 Storm Water Management Plan. The Storm Water Management Plan was intended to alleviate storm water drainage issues in the Unit No. 2 Subdivision. Second, they tabled the request to allow for the Wisconsin Department of Natural Resources to hold a

contested case hearing related to a WI DNR permit issued to fill a small portion of the wetlands for a driveway on the referenced property. A letter to that effect is attached to the comments.

On December 5, 2005, the Village Board held a public hearing related to the proposed Storm Water Management Plan for Carol Beach Unit 2. The Village Board tabled the public hearing until January 16, 2006 so that another notice could be sent out to affected property owners due to low turnout of the residents at the hearing. On January 16, 2006, the public hearing was continued and the Village Board denied the storm water project. Pursuant to the minutes of the meeting, nine property owners were supportive of the project and 24 property owners were against the project.

Also, in response to the second reason for tabling it, the Wisconsin Division of Hearing and Appeals held a public hearing on May 1, 2006, and the Administrative Law Judge issued his decision to allow the area of wetlands to be filled where that driveway is proposed to be located. So the reasons for initially tabling this particular request for the rezoning are no longer in existence.

The rest of the information in the staff comments, or actually the next three pages really reflects everything that happened at that September 12th Plan Commission meeting. I will for the record include it as part of the record. I think most of you can recall and remember what this particular request was about. But, again, the property owner is requesting, based on a fill permit issued by the Wisconsin DNR, to fill in a small portion of wetlands for a driveway in order to access the lot, the non-wetland portion of the lot to build a home. This is a matter for continued public hearing, and if there are any additional concerns or questions the staff would be happy to answer those questions.

Tom Terwall:

I'll open the public hearing. Is there anybody wishing to speak on this matter? Yes, sir, you're first.

Dick Steffes:

Good evening. I appreciate the opportunity to address the Plan Commission. I'm Dick Steffes. I'm from 33 Stacey Lane, Madison, Wisconsin here representing the owners. I just want to support the approval of the Plan Commission for the action that's recommended to allow us to put a driveway in. We've followed all the rules as best we could. I got the Army Corps approval, the DNR approval, and the Village installed a culvert. As you heard from the lady here there was a contested case of the DNR hearing and we went through that hearing up in Kenosha, and the Judge ruled in our favor that the permit from the DNR is valid. So at this point there's nothing more to add.

I just would mention when the culvert was put in it appears to be too wide and we might have to, assuming the Village approves the rezone, we may have to lop off a foot or two of this thing. The DNR permit is only good for 15 feet.

Tom Terwall:

Thank you. Is there anybody else wishing to speak?

Bob Babcock:

Bob Babcock, 11336 Lakeshore Drive. I understand that the Judge ruled that this could go through which is fine. The Judge's ruling stands, but this 15 foot section is covering up 20 percent of the wetlands that are in the front of this property, and I would ask the Village to make sure that they adhere to the 15 foot. The driveway was talked about by the Judge and he said that has to go back down to 15 feet also. And then the neighbors would ask the Village not to allow any other variances on this piece of property. Thank you.

Tom Terwall:

Thank you. Anybody else wishing to speak? Anybody else wishing to speak? Anybody else? Hearing none, I'll open it up to comments and questions from Commissioners and staff.

Don Hackbarth:

I take it there is a pipe that's going to run underneath the driveway for flowage?

Jean Werbie:

Actually there was one already installed by the Village's public works department. We will need to work with the property owner, but that culvert is going to need to be removed and a shorter culvert is going to need to be installed.

Don Hackbarth:

The other question I have is what kind of precedence does this set? We don't have to keep going back to judges?

Jean Werbie:

It doesn't set any precedence. The decision was made by the Wisconsin DNR to allow this to happen and we're following the State's ruling.

Tom Terwall:

Anybody else? If not, what's your pleasure?

Mike Serpe:

Mr. Chairman, I'd move approval of the zoning map amendment.

Jim Bandura:

I second.

Tom Terwall:

Motion by Mike Serpe and a second by Jim Bandura to send a favorable recommendation to the Village Board to approve the zoning map amendment. We would request that Mr. Babcock's comments also be forwarded to the Village Board that the driveway be limited to 15 feet which is required by the Court's decision and that it's his request that no further variance be granted on this parcel. So that could be included.

Jean Werbie:

And we will do that in your packets, and included with the Board's information is the Division of Hearings and Appeals findings of fact. In fact, comment number four specifically identifies the order and the authorization that's being granted with respect to that. So that is part of the conditions of this approval. And with respect to any variances granted, I certainly will keep that in mind. However, variances are not granted by the Village Plan Commission or the Village Board. That would be a separate Board of this Village, the Zoning Board of Appeals, but the staff certainly keeps that in mind as we move forward.

Tom Terwall:

Thank you. It's been moved and seconded to send a favorable recommendation subject to the terms and conditions outlined in the staff memorandum. All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. It's good to see that the process works. There haven't been very many of these that's for sure.

7. NEW BUSINESS

A. PUBLIC HEARING AND CONSIDERATION OF A ZONING TEXT AMENDMENT to Section 420-129 E of the Village Zoning Ordinance related to lot size and width requirements in the C-2, Upland Resource Conservancy District.

Jean Werbie:

Mr. Chairman and members of the Plan Commission, on May 22, 2006, the Village Plan Commission adopted Resolution #06-13 to initiate a zoning text amendment related to minimum lot and width requirements in the C-2, Upland Resource Conservancy District, for wooded areas that are less than five acres in size. The C-2 District currently requires that new lots shall be a minimum of five acres with 300 feet of frontage on a street which can be reduced to 150 feet if on a curve or a cul-de-sac.

The following amendments are proposed to Section 420-129 E of the Village Zoning Ordinance:

E Lot size and width

(1) Lot size: five acres minimum, except as provided below in subsection E(2):

- (2) If a tree survey which has identified and surveyed all trees 8-inches or larger in diameter shows that the tree area is less than five acres, then the Village Board may allow for a new lot to be created in the C-2 District to be reduced to the size of the tree area; however, the lot size shall not be less than 20,000 square feet.

What that means precisely is that when the Village under a County jurisdiction in 1983 underwent County wide rezoning and there were stands of trees throughout the Village, they didn't look to see if those were necessarily five acres or four acres or three acres or two acre stands of trees, but what they did is they just drew a box around the trees and said zone C-2. And what we're saying is that with this amendment, the Plan Commission, through recommendation to the Board, could actually create a parcel of land that is three acres if that entire wooded area is three acres. In other words, what we're saying is we're not requiring that you add an additional two more acres of non-wooded area and put it into the C-2 designation.

We've got a couple of situations where people have stands of trees that are less than five acres. They're zoned C-2 but they can't create any parcels because they don't have five acres. You know what I'm saying? That there might only be three acres of woods and they can't create a three acre parcel and split it off because they don't have enough acreage.

(Inaudible)

Jean Werbie:

The way this is written now it can't be any smaller than 20,000 square feet. There's two more provisions, though. The second is:

- (3) Lot frontage on a public street: 300 feet minimum; provided, however, that on a curve or a cul-de-sac the public street frontage may be reduced as necessary to an absolute minimum of 150 feet if all other requirements are satisfied, except as provided below in subsection E(4).
- (4) If a tree survey which has identified and surveyed all trees 8-inches or larger in diameter shows that the tree area is less than five acres, then the Village Board may allow for the lot frontage to be reduced to the amount of the tree frontage; however, the frontage shall not be less than 100 feet; provided that on a curve or a cul-de-sac, the public street frontage may be reduced as necessary to an absolute minimum of 50 feet if all other requirements are satisfied.

And then the two other provisions that we added:

- (5) If the lot size and lot frontage is reduced pursuant to subsections E (2) and (4) above, then the only permitted uses allowed in the district shall be:
 - (a) Preservation of scenic, historic and scientific areas.
 - (b) Park and recreation areas.
 - (c) One single-family dwelling.

So what we ended up doing is if the lot size is reduced in the C-2 area to the extent of the wooded area, all the other uses that are currently listed in the C-2 District would not be allowed.

Primarily agricultural uses and some other uses, so we're minimizing the amount of uses that would be allowed in that C-2 District with that reduced lot area.

- (6) If the lot size and lot frontage is reduced pursuant to subsections E (2) and (4) above, then the only accessory uses allowed in the district shall include:
 - (a) Gardening, tool and storage sheds incidental to the residential use.
 - (b) Home occupations.
 - (c) Private garages and carports.

One of the other concerns is that horses are currently allowed along with big barns in the C-2 District. But if you don't have five acres we don't want to see horses or large barns go into that particular district so we eliminated those as well.

Tom Terwall:

If it was only 20,000 square feet, are you saying how many trees you would allow them to cut down in order to build a house?

Jean Werbie:

No, I'm not specifically stating that. I mean whether it's C-2 as it exists with five acres or C-2 with a half acre, in both sections the ordinance allows you to cut down trees to accommodate one single family home. So whether the tree stand is five acres or it's a half acre you can still put a single family home in both, and at this time there is no limitation or restrictions as to how many trees can be cut down.

Tom Terwall:

But when I look at what's going on at Tobin Woods, I guess that's my concern.

Jean Werbie:

Not zoned C-2.

Tom Terwall:

But the same thing could happen here if it was zoned C-2, could it not? If I'm a property lot owner and I say half these trees gotta go because I want to be able to see the road from my house, then we have no clout.

Jean Werbie:

What the Plan Commission could do, and the reason why this is coming up is for people who want to subdivide their property that has C-2 on it, is the Plan Commission through the certified survey map process could put restrictions on how many trees and in what area of the trees, or if someone is proposing something like this that they have to have a building pad that shows us exactly what's going to be cut down before the trees are cut down for that purpose.

Tom Terwall:

Speaking for myself I'd prefer to see that. I'd prefer to have the property owner come in and say this is what I'm proposing to do with this, this is where my house is going to go, and this is the number of trees I'm going to remove and we hold them to that. Because unfortunately that's not what's happening in Tobin Woods right now.

Jean Werbie:

And we could do that on a certified survey map. Right now there are no provisions in the C-2 District that restrict exactly how many. It just says that a single family home can be placed on the property.

Tom Terwall:

This is a matter for public hearing. Is there anybody wishing to speak on this matter? Anybody wishing to speak? Anybody wishing to speak? Hearing none, I'll open it up to comments and questions from the Commissioners.

Mike Serpe:

To Mike Pollocoff, Mike, the more we talk about trees and the protection of trees, are we treading on thin ice? Are we going to try to dictate to a property owner what he can do with his property in as much as how many trees he can cut down?

Mike Pollocoff:

It gets to be more problematic when the zoning is something other than C-2. The C-2 zoning is expressed for conversancy uses. That ends up being an underpinning of why you have that type of regulation. Where it gets more difficult, as Tom indicated, you take a subdivision like Tobin Woods where it's not zoned C-2, then that property under our zoning ordinance is no different than a parcel in Prairie Ridge where there is no trees. There's nothing distinguishing those two parcels. The only thing that would be an overriding ordinance over all parcels that would govern who could cut trees down or prohibiting tree removal or something over and above what the existing or underlying zoning is.

In this as it reads, if it's C-2, we have that nexus between what the zoning is requiring and what we're regulating, and having the tool for that regulation be the actual certified survey that would prohibit it. Again, I think you could fine somebody, but I think the Village would have to be ready to go to court on each case to litigate it.

Mike Serpe:

One other concern. In three and a half years from now Smart Growth is supposed to be in effect. Are we going to be prepared to identify the C-2 areas throughout this whole Village by 2010 to protect as many stands of trees as possible? All zoning has to be in place by 2010.

Mike Pollocoff:

More doable to have to do that than if you were going to adopt a tree ordinance because that would be Village wide, because we would have to identify every tree in the Village under a Village wide tree ordinance.

Don Hackbarth:

I don't know how to read this. Let me give you an example. Let's say that I've got a stand of trees that's two acres and I've got one tree that's eight inches in diameter and the rest are smaller. That means I can clean everything out except the one tree?

Mike Pollocoff:

Not if it's C-2.

Jean Werbie:

Not if it's zoned C-2. I guess what we're trying to say is that if there is a stand of trees that's currently zoned C-2 and it's zoned that way currently but there's only three acres of land that are zoned C-2, a property owner wants to create a parcel of land that's three acres, they can't currently do it in a relatively easy manner without going around some provisions of the ordinance because they need to create a five acre parcel. And so through the certified survey map process what we're trying to say is that we want to see those trees protected and we can add some additional provisions on that certified survey map that aren't currently in the C-2 provisional ordinance without a tree ordinance or a tree preservation ordinance that we would like to work on.

Jim Bandura:

But that's still kind of confusing because you're sending an eight inch factor here. So as Don said the way it seems it just seems like I can keep one tree if it's only eight inches and cut the rest down even though it's in conservancy.

Mike Pollocoff:

No, because you're still going to identify the pad. That's what's going to be the criteria. That pad will work around the eight inch trees.

Jim Bandura:

I'm in agreement with that, as Tom said, to identify everything up front then. Okay.

Tom Terwall:

Comments or questions?

Jean Werbie:

I guess I would need to understand what size the tree--the land division ordinance currently is ten inches, so we brought it down to eight inches for trees, but if we say any tree'd area, I guess I need to understand from the Plan Commission. We have current zoning of C-2 so we're working under the current arguments that the County used back in 1983 until we've completely relooked at all the conservancy areas in the Village.

Tom Terwall:

And that zoning doesn't specify tree diameter at all?

Jean Werbie:

No.

Mike Serpe:

Jean, what if we have a stand of cottonwood trees. Those should be outlawed throughout America.

Jean Werbie:

We don't distinguish on type of trees.

Mike Serpe:

But what if we have a stand of mature cottonwood trees? We're not allowed to touch those? Cottonwood trees are a menace and they're an expense to everybody who's got an air conditioner. Buckthorn same thing.

Jean Werbie:

I can't be sure exactly what criteria that the County used in 1983 when they comprehensively zoned Pleasant Prairie and all the stands of trees that they identified they put them into C-2. I can bet that the probably didn't go look to see exactly how big those trees were or what kind that they were. So we're not asking that those stands of trees be eliminated, but what we're saying is that there are no trees on the property but for in the clustered stand of trees. We want to be able to say to the property owner that you could create a parcel that's not five acres but it could be four acres. What we're saying is that wherever there's trees on that property that's the area that has to remain as C-2. The balance of the area if they want to add non C-2 area I guess they could, but what we're saying is it has to be a minimum of the box drawn around the trees on the property.

Don Hackbarth:

When somebody buys a piece of land with trees on them and he looks at his survey and he knows that this is C-2, it's almost like we're saying he can buy this land and then he can come and negotiate with us. You go and buy this piece of land and you know right off the bat C-2 you're not going to touch.

Jean Werbie:

In C-2 you can put one single family home. And if someone has 20 acres of land and they want to split off a lot and there's four acres of trees, can they create a four acre wooded stand or four acre parcel that's just all trees? Can they do that? That's what this ordinance will allow.

Don Hackbarth:

Let me ask you this. Down on 39th Avenue this thing came up a couple years ago and maybe even more and there was an issue with the trees. Somebody was going to put a home in there. Remember that?

Jean Werbie:

Yes.

Don Hackbarth:

Somebody was going to put a home in there and I don't think it went through because the whole issue was the trees. We were trying to protect that beautiful stand of woods there, and it got to be a dicey situation. It looks as though right now the thing is dead. I don't know if anything is moving forward on that piece of land.

Jean Werbie:

He had a five acre tract of land and he built one single family home. But his entire five acres was all wooded, so he actually cut down trees in order to put in one single family home.

Tom Terwall:

Under this proposed ordinance if I have two acres that are wooded, I can only build one 20,000 square foot lot for whatever reason?

Jean Werbie:

No. You would have to create a two acre parcel of land and you could build one single family home. What we're saying is the parcel that you create has to mirror the size of the wooded area on your property up to five acres. So if you only had a half acre of woods, you couldn't create a smaller lot than a half acre. But if you had four acres of woods, your parcel size would have to be at least four acres and you could still only build one single family home.

Tom Terwall:

I know we're treading on dangerous ground here. I'll tell you my personal experience I think I was the third lot of buyer in Meadowdale Farms, and I picked the lot that I picked because it was the only lot in the entire subdivision that had two mature oak trees minimum of 24 inches in diameter and that's why I bought that lot. I paid a premium for it. I built my house, and when I sold the house the guy that bought it he wasn't there two months and he cut those two trees down and put a swimming pool in the backyard. Everybody in the subdivision went bonkers but there was nothing you could do.

Jean Werbie:

But that's different than what we're talking about tonight because that's not zoned--that would be addressed by a tree preservation ordinance. This would be addressed by allowing lots to be created the same size as the wooded areas on the parcel.

Tom Terwall:

At the risk of being called a tree hugger or a tree Nazi I think that's something we need to look at.

Mike Serpe:

Tom, for what it's worth somewhere in here I think we should identify trees that are a nuisance, cottonwoods, buckthorn. If somebody comes in and they had a stand of all cottonwood trees, a five acre stand and it's a C-2 the quicker you cut those things down the better off everybody is going to be.

Tom Terwall:

Look what happened when 165 went through and WisPark donated all that land to The Nature Conservancy. At the Conservancy's request WisPark went out there and girdled hundreds of trees to kill them because they were nuisance trees. Boy, I'll tell you what, the tree huggers went absolutely nuts until they realize that that was not only ordained by the DNR but requested by the DNR.

Mike Serpe:

I don't know if we need something in here--

Jean Werbie:

Typically, where something like that of that specificity, because I'm sure that there's many more issues other than just nuisance trees you want to get into, that would go into a tree preservation ordinance or a tree ordinance. In the general zoning ordinance where it just talks about the general provisions with respect to upland resource conservancy, I'm not sure that's the place where you want it. In the short term that's a possibility, but a tree preservation ordinance should really address everything from nuisance trees to sizes of trees, replacement trees, the types of trees and things like that.

Tom Terwall:

We meet again in two weeks and we'll look forward to that.

Wayne Koessl:

Mr. Chairman, I think we're digressing from what this zoning text amendment is all about. I would move that we send the recommendation to approve the zoning text amendment as presented.

Larry Zarletti:

Second.

Tom Terwall:

Moved by Wayne Koessler and seconded by Larry Zarletti to send a favorable recommendation to the Village Board to approve the zoning text amendment as presented. All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

B. Consider the request of Lenore Velardo, property owner, for a Certified Survey Map, to subdivide the property located at 10415 22nd Avenue.

Jean Werbie:

Mr. Chairman and members of the Plan Commission, the petitioner is requesting to divide the corner property located at 10415 22nd Avenue, Tax Parcel Number 93-4-123-302-0510, located at the southeast corner of 104th Street, Highway 165, and 22nd Avenue, to create an additional parcel.

The property is zoned R-4, Urban Single Family Residential District. Pursuant to Village Ordinance regulations, the R-4 District requires lots to have a minimum lot area of 15,000 square feet with a minimum frontage of 90 feet on an improved public street and a minimum lot depth of 125 feet. The minimum street, rear and side setbacks for a house in the R-4 District are 30 feet, 25 feet and 10 feet respectively.

Lot 1 of the CSM, a corner lot, is proposed to be 28,621 square feet, with 155.56 feet of frontage on 104th Street, 184.16 feet of frontage on 22nd Avenue. According to Village records, Lot 1 is improved with a 2,228 square foot single-family dwelling. The house is serviced by municipal water and sanitary sewer.

Background Information – The original home was constructed in 1915. The Village issued addition and remodel permits for the single-family dwelling in 1991 and 1996. Additionally, on November 14, 1997, the dwelling was partially destroyed by fire and the portion of the home that was built as an addition in 1991 suffered significant interior damage as a result of the fire, while the more recent 1996 addition suffered mainly smoke and water damage from the fire. On February 3, 1998, the Village Zoning Board of Appeals granted a variance, Grant No. 98-02, to reconstruct the single-family dwelling damaged by fire in order to rebuild the fire-damaged house on the existing foundation which was 48'1" from the property line adjacent to STH 165, whereby a 65 foot setback is required. On June 15, 1998, the Village issued building, zoning and erosion control permits for an addition to the dwelling and to repair and reconstruct fire/smoke damaged areas of the structure.

Lot 1 is also improved with a small detached shed, located in the street yard of 22nd Avenue. As information, the detached shed is considered a non-conforming use in that the Village Zoning Ordinance does not allow detached accessory structures in street yards. As noted on Sheet One of the CSM, this nonconforming shed is to be razed.

In conjunction with the proposed CSM, the property owner is dedicating an additional approximate 26 feet of 104th Street south ½ right-of-way. This will increase the southern ½ right-of-way of 104th Street to approximately 59 feet. Also, with the proposed CSM the property owner is dedicating an additional 18.75 feet of 22nd Avenue right-of-way which will increase the 22nd Avenue right-of-way to a total of approximately 60 feet.

With the additional 104th Street and 22nd Avenue right-of-way dedications, the 104th Street setback of the existing single-family dwelling on Lot 1 will remain a conforming structure, pursuant to the previously noted Variance Use Grant. However, the 22nd Avenue street setback of the existing dwelling will be reduced to 23.5 feet, whereby a minimum 30 foot street setback is required. Therefore, the dwelling will become a non-conforming structure.

Lot 2 – The vacant, unimproved Lot 2 of the CSM is proposed to be 15,071 square feet with 97 feet of frontage on 22nd Avenue and 155.48 feet in lot depth. Both proposed Lot 1 and Lot 2 meet and exceed the minimum requirements of the R-4 District regulations.

The subject property is not located within the limits of the 100-year floodplain, does not contain any wetlands and is not within a shoreland jurisdiction.

Both municipal sanitary sewer and municipal water are available in 104th Street and 22nd Avenue. When a new single-family dwelling is constructed on Lot 2, the house shall connect to both the municipal sanitary sewer and water systems. It may be necessary to bore underneath the roadway for the sewer and/or water connections.

According to Village records, there are no outstanding taxes or assessments on this property. There would be a \$1,600 per residential unit sewer connection fee subject to any change for any new connections to the sanitary sewer system.

The payment of \$1,490 in Village Impact Fees will be required at the time the building permit for a new dwelling on Lot 2 is obtained.

According to Mr. Rich Hooper at WE Energies, no additional utility easements are required in accordance with this CSM.

The land division conforms with the Village Land Division and Development Control Ordinance, Village Zoning Ordinance and all other relevant Ordinances or requirements of the Village.

With that, there are representatives that are here to speak regarding this particular item.

Lenore Velardo:

Lenore Velardo, 10415 22nd Avenue. That shed they're saying that there's a shed between the house and 22nd Avenue, and that shed hasn't been there since the fire. It's been moved back.

Jean Werbie:

Okay, but the survey shows that it's in the future dedicated right of way. We don't know where it's located, so if we can get that corrected maybe it might not need to be razed. I don't know where it is. I'm just going by the documentation that was submitted to the Village.

Tom Terwall:

Anything else?

Sharon Bates:

Sharon Bates and I'm her daughter so I just came along with her. The dedicating an additional 26 feet, it says, therefore, the dwelling will become a nonconforming structure. Does that mean that once they widen the road then her house is not legal? What does that mean?

Jean Werbie:

What it means is that it will not meet the current 65 foot setback to the right of way. I don't know exactly what the right of way that's being proposed by the Wisconsin DOT. At the final third public information meeting which will be this fall we'll know what the future width of 165 will be. So at that point we'll know exactly what that distance is, but based on current situation today it would be a legal nonconforming structure because it won't meet the current setbacks.

Tom Terwall:

So it's legal but nonconforming.

Lenore Velardo:

But the land we're trying to sell isn't on 165.

Tom Terwall:

Correct, that's not an issue.

Mike Serpe:

Was your question on the setback on 22nd Avenue?

Lenore Velardo:

The last paragraph here. It said with the additional 104th Street and 22nd Avenue right of way dedications, the 104th Street setback of existing family dwelling on Lot 1, which is her house, will remain a conforming structure. However, the 22nd Avenue street setback of the existing dwelling would that still be her house?

Jean Werbie:

I'm sorry, I thought we were talking about 165. Yes, there will only be 23.5 feet between the foundation and the dedicated right of way of 22nd Avenue wherein a 30 foot setback is required. So it will be legal but nonconforming.

Mike Serpe:

And there's going to be a future development going south of 22nd Avenue at some point in the future?

Jean Werbie:

At some point in the future that's correct.

Mike Serpe:

And that's the reason for the dedication to the wider road. I think the people have to know what's going on with a nonconforming use. If you have another fire and it destroys more than 50 percent of that home, God forbid I hope you don't have to go through that again, but you'd have to put the house into a conforming—

Tom Terwall:

Or get a variance, right?

Lenore Velardo:

. . . but the house is going to be okay . . .

Tom Terwall:

It's legal but nonconforming.

Lenore Velardo:

They're planning on tearing my house down anyway.

Tom Terwall:

If you should have another fire you would then have to go back to the Board of Appeals for an additional variance.

Lenore Velardo:

Okay, I understand. Thank you.

Don Hackbarth:

Looking at all the dimensions here, they're going to look at another Lot 2 here. Looking at the existing Lot 1, technically I think and I'm not sure, they could subdivide that one and break that one in half? No?

Jean Werbie:

No, I don't think they'd have enough—

Don Hackbarth:

They wouldn't have enough land?

Jean Werbie:

No. They'd need 30,000 because it would be 15,000 in the R-4 District that they would need.

Mike Serpe:

I move approval of the certified survey map.

Jean Werbie:

I just have to clarify because I heard some terms getting mixed up a little bit. They do not have a nonconforming use. The use is conforming because it's residential in a residential district. The structure is what would become legal nonconforming so that if there would be some type of calamity on the property and they would like to rebuild, they either have to build at the current setback or obtain a variance at that point. But, again, the use is permitted because it's residential in a residential district.

Wayne Koessl:

Through the Chair to the applicant, has the foundation of that shed been moved or is it still there?

Lenore Velardo:

It's been moved.

Wayne Koessl:

The shed has been moved but how about the foundation?

Lenore Velardo:

There was no foundation.

Wayne Koessl:

Okay, fine.

Mike Serpe:

Move approval of the certifies survey map.

Don Hackbarth:

Second.

Tom Terwall:

It's been moved by Mike Serpe and seconded by Don Hackbarth to send a favorable recommendation to the Village Board to approve the CSM subject to the terms and conditions outlined in the staff memorandum. All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

Jean Werbie:

I just want to clarify that if, in fact, that structure is not at that location, we'll need to have a corrected CSM that shows that that's not there any longer so it's not going to cause a problem for them.

Tom Terwall:

They're going to have to submit the paperwork for the CSM anyhow, right?

Jean Werbie:

And they have already, but what we're saying is the surveyors still show it so we want to make sure that surveyor has that corrected information. Visit with Tom right now and he will find out where it is or if it's still on that property, then one of you can contact the surveyor to make sure it's accurately shown.

C. Consider the request of Michael & Jeanine McCrary, property owners, for a Lot Line Adjustment between 10310 28th Avenue and 2808 104th Street.

Jean Werbie:

Mr. Chairman and members of the Commission, the petitioner is requesting to adjust the lot lines between 10310 28th Avenue, Tax Parcel Number 92-4-122-244-0215, owned by Michael & Jeanine McCrary, and 2808 104th Street, Tax Parcel Number 92-4-122-244-0210, owned by Byron McCrary and Michael McCrary.

This proposed Lot Line Adjustment will increase the width of Tax Parcel Number 244-0215 by adjusting this property's southern lot line 40 feet to the south. The end result of the Lot Line Adjustment will be two conforming properties, whereby the northern of the two lots, 10310 28th Avenue, will be increased in lot width from the existing 50 feet to 90 feet. Both properties are improved with single-family dwellings and detached accessory garages.

Both properties are zoned R-4, Urban Single Family Residential District. The R-4 District requires lots to have a minimum frontage of 90 feet on an improved public road with a minimum lot area of 15,000 square feet in area. As information, the current setback requirements for single-family structures in the R-4 District are: 30 feet from street property lines, 10 feet from

side property lines, 25 feet from rear property lines and 75 feet from the ordinary high water mark of a navigable waterway.

The first parcel at 10310 28th Avenue, owned by Michael & Jeanine McCrary, is improved with an existing 720 square foot single-family, one-story dwelling, constructed in 1955 with an approximate 576 square foot detached garage. The Lot Line Adjustment will result in 90 feet of frontage on 28th Avenue and the lot area will be increased by 5,855 resulting in a conforming 15,440 square foot lot.

The existing single-family dwelling on the 10310 28th Avenue property will remain a non-conforming structure due to the fact that the house does not meet the minimum 10 foot side setback requirement and does not meet the minimum 1,400 minimum floor dwelling area for an R-4 zoned lot. The Plat of Survey depicts a north side setback of this house of 6.3 feet, whereby a minimum 10 foot side setback is required and the dwelling consists of only 720 square feet.

The second property at 2808 104th Street, owned by Byron McCrary and Michael McCrary, is improved with an existing 840 square foot single-family, one-story dwelling, constructed in 1954 with a 576 square foot detached garage. With this Lot Line Adjustment, this property will be transferring 40 feet of 28th Avenue frontage and transferring the associated 5,855 square feet of lot area to the lot to the immediate north. The lot width and area requirements for this property will remain conforming as a result of this Lot Line Adjustment.

However, according to the Plat of Survey for this Lot Line Adjustment, it appears as though the existing detached garage on this property will continue to not meet the required side lot line setback requirement, thus making the garage a nonconforming structure. Additionally, the existing single-family dwelling on this property will remain a non-conforming structure due to the fact that the house does not meet the minimum 1,400 minimum floor dwelling area for an R-4 zoned lot. The dwelling consists of only 840 square feet.

In conclusion, the Lot Line Adjustment between the parcels will result in two conforming lots due to their area and the width. The single family dwellings and accessory structures will remain as conforming used on these particular properties. Again, it's just the structures themselves that will be nonconforming. The lots and the uses are conforming.

With that, the staff recommends approval of their request as presented. The petitioners are here to add any additional information or answers to any questions that you may have.

Jeanine McCrary:

We're hoping that you'll consider the request. The only thing that we were concerned about is it signified 90 feet of frontage on 22nd Avenue and it's 28th Avenue so we want to make sure that's written correctly in both descriptions of the 103rd and the 104th.

Don Hackbarth:

This is a move in the right direction so I move approval.

Andrea Rode:

Second.

Tom Terwall:

Moved by Don Hackbarth and seconded by Andrea Rode to send a favorable recommendation to the Village Board to approve the lot line adjustment subject to the terms and conditions in the staff memorandum. All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

8. ADJOURN.

Wayne Koessl:

So moved.

Mike Serpe:

Second.

Tom Terwall:

All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.