

## MEETING OF THE LAND USE COMMITTEE 3-9-09

The meeting was called for 7 pm in the Town Hall. Present were Donna Kirk (chair), Sue Blacklow, Kathy Flaxman, Lees Hartman, Dedun Ingram, Jim Roy, Joe Rubin, Joel Rubin, Bruce Russell, Linna Barnes (Council liaison), and guest Gabrielle (American University student there for her Reporting class).

Bruce presented a review of pre-PAC meetings. He attended one which was a combined pre-PAC/site management meeting. Dedun noted that the ordinance requires these to be separate, but Bruce felt that combining them was appropriate in this individual case which involved demolition of the house damaged by fire. Bruce thought that there were problems with the running of the meeting, but because there was a Council member present they were handled. Council presence is not a matter of course at these meetings but perhaps should be. Linna said that she had been attending pre-PAC meetings, had not done so recently but perhaps should resume.

Bruce also reported that the Environmental Committee has noted that water issues are not addressed in pre-PAC meetings and they think that they should be. Bruce suggested that if the Environmental Committee thinks that this is important, the suggestion should come from them rather than from us.

Budget: Donna reported that we have put in a request for the upcoming Town budget for \$150,000 to \$200,000 to do a right-of-way survey and \$40,000 for landscaping, in particular for the Rosemary Circle. We would also like to produce a brochure about the building ordinance.

Streamlining the variance process: Bruce found a “donut hole” in the 35% rule: houses built after the setbacks were changed but before the FAR restrictions are illegal because they were not properly grandfathered. Bruce presented his concept of “developmental nonconformity” which came from Town lawyer, David Podolsky in response to his query about consistency of grandfathering dates. It refers to something that was legal when constructed but no longer conforms to current code. This will be fixed.

At our last meeting, Dave Walton and Alan Beale had suggested that replacement retaining walls should require only a permit, not a variance. Bruce asked whether the permitting process for replacement fences, and retaining walls could be streamlined. If the process is streamlined for replacements, “replacement” will have to be precisely defined. Joe suggested using the same form as for fence permits, which asks about height and existing/replacement materials. Donna suggested requiring no variances for *replacement* fences, front yard walls and retaining walls, and hedges. The case of lead walks was addressed: currently disturbing the right of way to build a lead walk to the sidewalk, or from the sidewalk to the street, seems to require no permit while to replace a lead walk in kind requires a permit but not a variance?

The committee looked at groups of variance applications as provided by Dave Walton.

Front porch coverings: Joe asked why the Town standards vary from the County’s. Linna: They used to be the same but the County changed theirs to accommodate the design of the Kentlands. The Town looked at the results of the change and decided not to follow.

Bruce noticed that the application form used to ask for “hardships claimed by applicant” but now says only “applicant claims”.

Bruce noted that of this group of applications (front porch coverings), one was withdrawn, two (the same address) were denied and the rest were approved. Does this suggest that some streamlining would be possible? Linna suggested that the existing rules serve as a filter to keep people from even bringing certain requests. Many of the approvals involved “developmental nonconformities” or oddly-

shaped lots. The same is true with side-lot setbacks. Joe: Front porches are important and we probably want to take them through the process.

Rear-yard setbacks: Again, most are approved because people have made accommodations before applying and they often involve oddly shaped lots. Establishing the rear setback line is particularly problematic when the side lot lines differ in length. The committee discussed possible solutions for this. There is a problem with the formula for determining the rear setback which causes a “donut hole” at property depths between 120 and 130 feet. Joe pointed out that much of Norwood Heights has 125’-deep lots, and that if they were only 120’ deep the rear setback line would be further back. The formula should be tweaked to correct this. Lees has the current setback calculations and will distribute to committee members so we can see how to adjust the rear setback rules to eliminate the “donut hole”. The committee decided to recommend that the Town should continue to require the full variance process for front porch, side lot and rear lot variances.

The pre-PAC/permit/variance cycle was discussed. Which comes first? Some people apply for a variance first to see if they can proceed with a project, while others apply for a permit first and can get well into the process before finding out that they need a variance. This is especially true when a variance is required by the Town but not the County. The pre-PAC meeting was supposed to take care of this, but people often get too far in their plans before that meeting; however, Jim noted that if plans aren’t too formed it is difficult to answer questions that might be raised at a pre-PAC meeting. Joe suggested that Alan Beale might look over permit applications and suggest if a variance should be applied for. However, Kathy noted that people are often told to get a County permit first before coming to the Town. Overall, more information has to be provided, on the Town website and on permit applications. Bruce suggested using the model of the Town Arborist as consultant and set up something similar for potential construction. Alan could do this. If he is already doing it in some cases, we should make it more formal and better publicized.

Limit of 35% non-vegetative coverage for front yards: A memo had been circulated. One question that had been raised was when a side bump-out defined a front versus a side yard. Bruce proposed: use the proportion of the width of the bump-out to its distance from the front corner. A bump-out wider than its distance from the corner would continue the front. Alan Beale also had brought up the issue of the word “front”. We are using the phrase “front surface area” rather than “front yard” which has other meaning in other contexts. The word “front” itself is nowhere defined in the ordinance.

We currently read the code as not requiring a permit for constructing lead walks, even in the right of way. This needs to be added.

We need to grandfather any existing improvements even if they violate the 35% rule, and also to allow certain improvements that bring things up to code (for instance, widening a driveway to 10’) even if this would violate the 35%.

We will combine recommendations for changes here with recommendations for implementing the 35% rule and provide a single set of recommendations to the Council.

The meeting adjourned at 9:40.