

Present: Chairperson Ostrowski; Vice-Chairperson Westerlund; Members: Borowski, Drummond, Grinnan, Jensen, Ruprich, Wilensky

Absent: Stempien

Also Present: Planning and Zoning Administrator, Wilks
Planning Consultant, Duffy
Council Members, Peddie and Nunez

Chairperson Ostrowski called the regular Planning Commission meeting to order at 7:30 p.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

AMENDMENTS TO AGENDA/APPROVE AGENDA

Motion by Westerlund, second by Grinnan, to amend the agenda to include “Discussion on Upcoming Joint Meeting with Council Scheduled for February 8, 2017” and approve the agenda as amended.

Motion passed.

REVIEW AND CONSIDER APPROVAL OF PLANNING COMMISSION MINUTES OF MEETING HELD NOVEMBER 30, 2016

Motion by Westerlund, second by Ruprich, that the minutes of the regular Planning Commission meeting held November 30, 2016 be approved with the amendment on page 2, under “Discussion on Construction Fence”, third paragraph line 3; “...with the fence or if IT was to...”.

Motion passed.

Borowski arrived at 7:34 p.m.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

PUBLIC HEARING ON PROPOSED ORDINANCE AMENDING CHAPTER 22.08.280 REGULATION OF NUISANCE ACTIVITIES

After discussion at the November 30, 2016 Planning Commission meeting draft ordinance language was submitted for the Commission to consider regarding fencing requirements at construction sites. The Village building official confirmed there are no standards within the Michigan Building Code that could be applied to compel a contractor to erect barriers as described. Therefore, the proposal is to add this language to the existing ordinance Section 22.08.280 Regulation of Nuisance Activities as item b.

A notice for public hearing on this language was published in the Birmingham Observer & Eccentric on Sunday, January 8, 2017. Upon positive recommendation from the Planning Commission, the Village Council will hold a public hearing, and first and second readings prior to adoption. Upon adoption by Council, the language will take effect 20 days after publication.

Ostrowski opened the public hearing at 7:38 p.m.

Bill Wigert, Westlady Drive, is glad to hear this ordinance is being considered, he has presented his request for a construction fence ordinance previously. Wigert went on to provide photos of a home on his street that was recently demolished, leaving a large hole that filled with water and froze into ice. He stated that he thinks when the construction company bulldozed dirt to fill in the hole they caused flooding throughout the neighborhood. He also expressed concern about safety around open build sites and second story construction.

Drummond arrived at 7:43 p.m.

Bob Walsh, Smallwood Court, stated he concurs with Wigert. He believes that the water remained in the foundation hole for over three weeks without any action taken. He would like to see this ordinance in place before the start of the 2017 construction season.

Ostrowski closed the public hearing at 7:49 p.m.

REVIEW AND CONSIDER RECOMMENDATION TO COUNCIL ON PROPOSED ORDINANCE AMENDING CHAPTER 22.08.280 REGULATION OF NUISANCE ACTIVITIES

Ostrowski clarified that the state of Michigan does not require any fencing of residential construction sites, but the Commission recognizes the importance of this for the Village.

Borowski stated that previously the Commission had discussed whether they would use minimalist or specific language regulating fence type, material etc., with the consensus to leave it to Administration's discretion.

Ostrowski submitted an email sent by Stempien who was unable to attend the meeting.

Stempien felt that currently the ordinance lacks the requirements necessary to secure an excavation, demolition or temporary storage of material and equipment on a construction site. The Village allows a plastic wind fence which provides little to no barrier to the public and does not achieve the intent of securing a site. He included two photos of the site on Kirkshire which has a plastic wind fence secured to metal garden stakes. This "fence" is not a barrier and is not securing the open excavation 7 to 8 feet deep, partially filled with standing water. The language of the ordinance should speak to the type of fence material, the fence supports and location, and site access. Stempien felt the purpose of this ordinance should be to provide a safe and secure site and ease some of the burden placed on the surrounding neighbors during the construction period. An orange plastic windscreen does not achieve either of these items and currently the ordinance allows this type of fencing.

Westerlund felt it was important that the ordinance be included with the permit application, ensuring contractors are aware of the requirement.

Drummond suggested that Administration work to ensure compliance as well. He felt the Commission needed to determine if they are requiring a fence for the entire site during excavation, or just around the excavation area. He also felt it was important to limit the height of the fence to ensure it does not violate the current Village fence ordinance.

Jensen pointed out that demolition can take over three weeks, so inspectors will be aware that a site is properly fenced. He also pointed out that due to elevation levels, there are many properties on Eastlady that have drainage problems.

Grinnan stated that because sites are so varied, she felt it was important to use general language so that it is left to the discretion of the Administration.

Wilensky inquired if Village attorney Ryan had reviewed the ordinance. Wilks explained that he would not formally review it until it was presented to Council.

Ruprich asked Wilks if the ordinance could be incorporated into the application process, thus making contractors aware upfront of the need for fencing. Wilks confirmed that it can be addressed in both the application process and on the issued permit.

Westerlund and Wilensky suggested language changes (which are noted as underlined and capital lettering) for section b.3: Fences.

3. Fences. Every excavation and/or demolition resulting in an open hole shall be enclosed with a RIGID barrier not less than four (4) feet high and sufficient to prevent the entry of unauthorized persons. ALL barrierS shall remain in place until such time as THE open hole/EXCAVATION has been filled or closed. All barriers shall be of adequate strength ~~to resist wind pressure~~ TO PROVIDE SUITABLE PROTECTION FOR THE GENERAL PUBLIC as required by the building official.

Motion by Borowski, second by Drummond, that the Planning Commission recommends Village Council review and consider adopting language amending Chapter 22, Section 22.08.280 Regulation of Nuisance Activities to add item b requiring barriers at excavation sites as amended above.

Roll Call Vote:

Motion passed (8-0)

DISCUSSION ON TREE PROTECTION ORDINANCE

Wilks provided the Commission with a draft of the proposed tree ordinance. The language has been revised based on input at the October and November 2016 Planning Commission meetings, and has been incorporated into Chapter 17, Trees, as Article II. The Village's existing Tree Ordinance, Chapter 17, regulates trees in rights-of-way. That language remains unchanged as Article I. As a complete chapter, the new language will provide the Village tools by which to regulate trees on private property when construction activity takes place. Generally, established single family lots are exempt from these regulations, except for removal of landmark trees. Additionally, combining the private and public regulations in a single chapter will provide ease of navigation for end-user. When the Planning Commission is ready to move forward with recommendation for adoption of the new language, we will simultaneously propose modifying Section 22.08.290 Site Plan Review to note compliance with the requirements enumerated in the new ordinance.

Westerlund stated that he would like both LSL and Village attorney Ryan to review the final draft of the ordinance before the public hearing date.

Ostrowski asked to remove "...industrial, or agricultural..." in Section 17.11.3, since these are not options to build in the Village. In Section 17.12.d, he asked Wilks to clarify whether the Planning

Commission will have the authority to grant the tree removal permit as a part of the site plan approval or will that permit be granted by Council. Wilks felt that granting a permit would be contingent on site plan approval as a separate action. In Section 17.15.g it should read; “For example, a three (3) inch deciduous tree shall be equal to a ~~six (6)~~ SEVEN (7) foot coniferous tree.

Ruprich thanked everyone for their work on the document.

The Commission agreed to set a public hearing date at the February 22, 2017 Planning Commission meeting.

DISCUSSION ON FENCE ORDINANCE

Ostrowski explained that Wilks provided the Commission with previous meeting minutes as they relate to the fence ordinance. The minutes support the openness between homes and four (4) foot fences. He suggested the Commission consider changes to the privacy screening ordinance in relation to setback requirements. It is also apparent from the minutes that the east side of the Village has historically been the area with fence ordinance concerns.

Jensen also agreed that the privacy screen ordinance could be addressed; it seems unreasonable to ask homeowners to give up 20 feet of a 40-foot lot and plantings should be allowed on the lot line.

Ostrowski felt the Zoning Board of Appeals (ZBA) minutes don't support the suggestion of a high need for fence changes. Jensen pointed out that there was no way to know how many people built fences without a permit. Grinnan agreed that it seems to be an unsolvable issue; there is no way to prove if a fence is older or newly installed. Drummond felt that its reliant on a neighbor to call in a fence violation to put enforcement into motion.

Grinnan pointed out that the Village has never looked to control the quality and maintenance of fences, and that was a concern.

Jensen felt arborvitae and natural screening were the ideal approach to this problem. Ostrowski pointed out that on the east side of the Village, there are restrictions due to utility rights-of-way located in rear yards.

Borowski does not like privacy fences. He has lived on both the east and west side of the Village, and has not felt a need for a fence in either location. He also felt that fences do not prohibit issues between neighbors. He agreed with Grinnan that there are a lot of existing fences in the Village that are in a severe state of disrepair and that concerns him.

Wilensky said he currently lives on the east side, and can see both sides of the discussion. People moved to the Village for a certain aesthetic, and four foot fences are part of that aesthetic. However, if someone had a small lot and did not get along with their neighbors it could be awkward. While he was a member of the ZBA good and reasonable cases were made, but they were denied because the ordinance is very clear. These denials resulted in some disgruntled residents. He felt it was less about the height of the fence and more about the aesthetic which cannot be regulated.

Nunez shared that this has been brought up to him as a resident and as a Council member. There are hundreds of fences up illegally in the Village. For a variety of reasons a green screen may not work on all properties, and people are reasonable to have an expectation of privacy on their property. Having a fence does not exclude a friendly relationship between neighbors.

Ostrowski stated that this will be on the agenda for the joint Planning Commission/Council meeting February 8, 2017.

DISCUSSION ON UPCOMING JOINT MEETING WITH COUNCIL SCHEDULED FOR FEBRUARY 8, 2017

Ostrowski stated the items to be included on the joint meeting agenda include

- Zoning ordinance
- Medical marijuana
- Pattern book for the Village Center
- Gibbs marketing proposal
- Transitional area for the Village Center
- Updating the ordinance related to childcare and adult group homes
- Potential liaison from the Commission to attend the ZBA and Parks & Recreation Board meetings.

PUBLIC COMMENTS

None.

LIAISON COMMENTS

None.

ADMINISTRATION COMMENTS

Wilks reported the second draft of the Request for Proposals has been sent to Gibbs, and Administration hopes to have it ready soon to present to Council. Premier Pet Supply will be on the ZBA agenda on February 13, 2017 to request a variance for a new sign.

COMMISSIONER'S COMMENTS

Drummond thanked the Commission for their work on the tree ordinance.

Grinnan will not attend the February and March meetings due to travel.

Borowski will not attend the February meeting due to travel.

Motion by Westerlund, second by Borowski, to adjourn the meeting at 9:17 p.m.

Motion passed.

George Ostrowski
Planning Commission Chairperson

Ellen Marshall
Village Clerk

Elizabeth Lyons
Recording Secretary