**PLANNING COMMISSION MINUTES**

Mary 2, 2017

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, May 2, 2017 in the Municipal Building Council Chambers at 7700 Mission Road. Chairman Nancy Wallerstein called the meeting to order at 7:15 p.m. with the following members present: Melissa Brown, Patrick Lenahan, James Breneman, Gregory Wolf, Jeffrey Valentino and Jonathan Birkel.

The following persons were present in their advisory capacity to the Planning Commission: Chris Brewster, City Planning Consultant; Wes Jordan, Assistant City Administrator and Joyce Hagen Mundy, Commission Secretary.

###### **APPROVAL OF MINUTES**

James Breneman moved for the approval of the minutes of the April 4, 2017 regular Planning Commission meeting as submitted. The motion was seconded by Patrick Lenahan and passed by unanimously.

**PUBLIC HEARINGS**

**PC2017-01 Amendment to Prairie Village Zoning Regulations repealing**

**Design Guidelines for Countryside East Homes Association**

**PVMC 19.25.010**

Chairman Nancy Wallerstein announced that this is a continuation of the public hearing first held on Tuesday, March 7, 2017. Since that meeting the following actions have been taken:

* Public Meetings were held for members of the homes association on March 29th and 30th at City Hall with City Staff present (Mr. Brewster, Mr. Jordan & Mr. Dringman)
* Three staff options were sent to the Homes Association Board for further consideration and discussion:
	+ Option 1 – Repeal the Overlay and the Homes Association could enforce its current covenants.
	+ Option 2 – Repeal the Overlay and modify the overlay as an addendum to current covenants with staff assistance.
	+ Option 3 – Modify the current Overlay to focus on key elements or restrictions with the appeal process going through the City process.
* Homes Association meeting was held on April 18th at City Hall.
* The Homes Association completed and distributed a survey to its residents.
* The Homes Association sent two additional options to the City staff for consideration:
	+ Option 4 – Revise the Overlay with an ARB assisting in the review and approval process.
	+ Option 5 – Similar to Option 3 with the Planning Commission granting an extension of time to modify the current Overlay, then the existing Overlay would be repealed at the end of the time extension if the Overlay revision was unsuccessful.

Wes Jordan stated it is obvious that residents are concerned about the possibility of “over building” occurring in their community. They also seem to understand the unintended challenges the Overlay has presented for Staff. The difficulty is the elusive solution that can be reached that would be an acceptable outcome. And, in the midst of this deliberation a 5th appeal of the Overlay is pending pertaining to the side set back and a garage expansion.

Staff is certainly open to finding a compromise, and in that vein, believes there is merit to exploring the possibility of crafting a modified version of the Overlay into a simplified document of building standards that focuses on acceptable height, setbacks, and possible front porch extensions. Mr. Jordan noted that this type of process seems to have worked well in two other Homes Associations in Prairie Village and would require a more active role of the homes association and likely some legal costs.

Staff would support a 90-day extension of the Public Hearing to allow time to determine if the HOA Board and/or residents would be open to exploring the possibility of building standards as an addendum to existing Countryside East Covenants or even another similar mechanism. The addendum could also specify a process of review by an independent entity (much like an architectural review board) to minimize the burden of review by the HOA Board. In process, once that review was completed, city staff would then be responsible for compliance with City Zoning prior to permitting.

Gregory Wolf asked how many households were in the homes association. Mr. Jordan replied approximately 300. Mr. Wolf noted that 118 households responded to the survey. Chairman Nancy Wallerstein asked for a show of hands from those in attendance to reflect the number of households present. Twenty-one households were represented or less than 10% of its membership.

Leslie Darrington noted the Board met on April 18th and went over the three options provided by city staff and brainstormed possible actions resulting in options 4 and 5. At this time there is not a clear consensus. From the responses to their survey they were able to identify the “must haves” of the residents which included height and setbacks as they define the integrity of the neighborhood. She noted that no one on the current board is familiar with building codes; therefore, at this time the board would like to request a 90 day extension before the Commission takes any action on the proposed repeal.

Mrs. Wallerstein agreed that height and the space between homes does impact the integrity of the established neighborhood. Jonathan Birkel confirmed that the building height is restricted to one and a half stories. Mr. Birkel asked how many of the appeals to the setback restrictions had been denied. Mr. Jordan responded that none were denied.

Gregory Wolf asked if there was any objection to the 90 day continuance. Jeffrey Valentino noted the 90 days would provide them time to put something in place if the Overlay was repealed.

Wes Jordan stated that as long as the Commission follows the action being considered; i.e., the repeal of the overlay, the public hearing can be continued. If the Commission changes direction to consideration of a modification of the Overlay, the public hearing cannot be continued. This would require new notification as the action being considered is different from what was published and the notice that was previously sent. This would require the re-notification of all homes association members and the surrounding property owners. Mr. Jordan noted the initial mailing for this hearing cost approximately $3,000. The primary purpose of option #2 is to repeal the overlay and continuing the application would provide the homes association with time to put another process in place to address their concerns if they felt that was necessary. Mr. Breneman confirmed a continuance could only be done if the Commission were considering action on Options 1 or 2 without republishing and renotification.

Nancy Wallerstein asked what option the homes association board preferred. Mrs. Darrington replied that the board meets next week and has not made that determination.

Mr. Wolf asked if the application was continued for 90 days if the Board would come back with a plan of action and what the Board hoped to accomplish in 90 days.

Ms. Darrington replied with the following items that she feels needs to be done:

* Get quotes from 3 attorneys
* Select an attorney
* Have them review all of the covenants
* Make decision on how to proceed
* Create an addendum focusing on the “must haves” i.e., setbacks and as the board moves further along add other items

Patrick Lenahan asked whether the goal of their actions would be to establish and develop an amendment to the covenants of the homes association that would allow for the Overlay to be repealed with the homes association being able to retain its restrictions under the structure of its covenants.

Gregory Wolf asked if the Commission had to take action or if it could give them 90 more days. Mr. Lenahan stated that he felt a continuance of 90 days would give the homes association time to determine the appropriate mechanism and develop a process to implement it. He suspects that once that is done, the homes association would be supportive of the recommended repeal. He would be supportive of a continuance.

Wes Jordan stated that the homes association board is looking for direction from the Commission. Ms. Darrington stated that homes association would be willing to pursue Options 3 or 4 if that was the direction of the Commission.

Nancy Wallerstein asked if the city has received a lot of building requests that are being held up. Mr. Jordan stated they have not, but part of that problem is that when builders call to question what they can and cannot do staff doesn’t know what to say. Yes, the Overlay restricts the setback, but all four appeals to the setback have been granted.

Mr. Jordan noted that the City of Leawood is doing something similar. They have a 30-day holding period during which homes associations reviews plans and once approved the plans are submitted to the city for a building permit based on city code. The Town & Country and Corinth Downs homes association operate in a similar manner in that they require plans to be reviewed by the homes association prior to submitting for a building permit.

Nancy Wallerstein asked if the Board has discussed this option. Ms Darrington the Board is exploring options and determining what the residents really want the Overlay to address. Their task thus far in the process has been to notify and educate. She noted that in the process they have discovered other underlying issues. She does not have a personnel preference on what direction is taken.

Wes Jordan reminded the Commission that discussion cannot be had on modifying the Overlay District as it currently exists in city code without a complete new process with publication of a new notice of mailing and certified letters being resent. However, if the Overlay process was revised and place in the hands of the homes association is a modified format allowing the City to repeal it, no new application or notification would be required.

James Breneman suggested a combination of options 2 and 4 which would repeal the Overlay as a city code and connect it to the homes association covenant, but require any appeal to be heard by the City. Mr. Breneman stated that having an Overlay District in place that contradicts city regulations makes no sense to him. Mr. Wolf questioned if there was a legal mechanism to do this. Melissa Brown stated the city cannot enforce covenants.

Mr. Jordan noted the city was not completely severing ties with the homes association. Jeffrey Valentino confirmed that the city would not have to follow up on the covenants but only be enforcing its code and not independent covenants.

Chris Brewster stated that all homes association who register with the city receive notification whenever a building permit that creates a new living space or adds square footage is submitted. Under the proposed process, that information would first be submitted to the homes association. Once approved by the homes association, the applicant would submit verification of that approval and building documents for review. He stressed that the city cannot enforce independent homes association’s deed restrictions or covenants.

Nancy Wallerstein noted that not all households in Prairie Village are part of a home’s association. Town & Country applications are reviewed by the homes association board before being submitted for permitting to the City. The establishment of an architectural review board or similar entity would be the responsibility of the homes association. Mr. Jordan stated staff felt the options presented were a fair compromise. How the processes are going to work is still unknown.

Mr. Birkel noted that the city could provide assistance to the homes association in the drafting of criteria for the review process.

Patrick Lenahan noted the agenda item for Commission action deals only with the repeal of the existing Overlay District. If the Commission took that action this evening, the homes association would be left without anything in place to address the requirements of their Overlay. However, if the Commission granted a continuance, the existing Overlay District would remain in place while the homes association does their due diligence in developing a process to address their concerns themselves reducing the involvement of the city through more active involvement of the homes association understanding that the Commission is seeking to eventually repeal the Overlay.

Nancy Wallerstein clarified that action of the Commission would need to address the repeal of the Overlay District. The public hearing was reopened for public comment at 8 p.m.

Gregory Wolf stated that what he would like to hear from the public is if the homes association members were in support of having applications go before the association for review and approval based the restrictions set by the homes association before submitting an application for a building permit that would be reviewed solely on the city’s zoning regulations.

Ms Darrington confirmed that the Board would have the ability to enforce or waive their requirements under the covenants and deed restrictions. Mr. Breneman added, however, they would not be able to grant a variance to any of the city’s zoning requirements.

John Matthews, 4916 West 68th Street, stated he was unclear how elected officials can hand off the responsibility to the homes association to make these decisions, he felt this was the responsibility of the City noting that such decisions are above the scope and ability of the homes association board and city officials have the knowledge and expertise to make these decisions on an impartial basis.

Nancy Wallerstein responded that the Commission members are not elected, but appointed to make recommendations to the City Council who may or may not adopt the recommendations. She added that the Countryside East Overlay was used by the city as a prototype for the creation of new city zoning guidelines now in place throughout the city. She stated there are some differences between those city regulations, which are enforced by the Building Official, and those of the Overlay District. The Building Officials have to follow city regulations. The City cannot oversee or enforce covenants and deed restrictions. The Commission believes it would be in the best interest to repeal the Overlay and have the entire city under the new regulations which can be enforced.

There has been misunderstanding of the repeal and the homes associations’ role in continuing to enforce its restrictions. The Commission appreciates the concerns expressed and wants to help the Board put into place a mechanism that would replace those “must haves” of the overlay that would be enforced by the homes association prior to applications being submitted for a building permit.

Mr. Matthews noted that the homes association does not have the expertise and manpower to make decisions and arrive at consensus or to provide the services of an architectural review board. Such action would place more responsibility on the board. He noted that homes association board members are volunteers and do not want to take on that additional responsibility. Mrs. Wallerstein stated the City is trying to assist the homes association in determining what issues addressed by the Overlay are “must haves”, what have been addressed by the revised building codes and what process or mechanism is the best way for both to be enforced. It is the decision of the homes association how to proceed. She noted that most homes association boards are volunteers and they do not want the additional responsibility of reviewing plans for compliance with their covenants and deed restrictions.

Patrick Lenahan stated that the city does not have the authority to enforce private homes association covenants or deed restrictions. The reason the Overlay exists is that your homes association determined that there was a building problem that was not being addressed by covenants, so they sought city assistance with the placement of an Overlay District through the city’s code that could be enforced by city building staff. He noted that the granting of all appeals to the Overlay District has invalidated the restrictions and that the new city regulations address many of the issues addressed in the Overlay District, reducing the usefulness of this document. The city is not trying to force additional burdens on the association; but feels that the Overlay District has declined in its usefulness and feels that it should be repealed. Recognizing that some of the elements of the Overlay are still important to the homes association, it supports a process being implemented and overseen by the homes association to administer those elements.

Peter Gogol, 5019 West 65th Terrace, noted he previously served on the homes association board both prior to and after the implementation of the overlay district. He answered earlier questions raised by the Commission regarding the building height restriction of one and a half stories. This is found in the deed restrictions with the overlay providing criteria for defining what one and a half story is. The element of a five foot kneewall height on any floor above the first floor is a key element in the definition of one and a half stories in the Overlay District guidelines. He noted there are other elements in the definition that should be removed or revised. However, the results of the survey clearly indicated that residents want to retain the one and a half story restriction.

Addressing Mr. Wolf’s question of whether residents are comfortable with the HOA sign-off on building plans prior to submittal for a building permit. His personal opinion is based on his experiences being on the board. He has some reservations with requiring the HOA approval prior to submittal. He suggested a better scenario may be that if a set of plans are submitted with proof of the HOA approval they are reviewed by the City. If plans are submitted without HOA, they be held for 30 to 60 days or until approved. He is concerned with the liability if the HOA board is unable to meet within that timeframe, noting the difficulty in getting the board together.

Patrick Lenahan clarified that Mr. Gogol was suggesting that the city and the homes association could do concurrent reviews with the city not issuing the permit until reviewed by both entities. Mr. Gogol responded that the city could sign off on plans without the HOA approval if they had not been able to meet not holding up the building process.

Mr. Gogol stated that he supported the creation of the Overlay District but feels that it would work better with some radical simplification of requirements. He noted that they have approved four appeals to the setback requirements so obviously that can be removed. The appeals process is too subjective currently. Mr. Wolf requested a specific proposal, not just direction to simplify the overlay. Mr. Gogol stated the association is unable to do that at this point, but would be supportive of a resolution to continue the repeal action for a 90 day period to allow the homes association to develop a plan. Mr. Wolf replied that he does not feel the city should need to track or hold an application for “x” number of days.

Wes Jordan stated that the City of Leawood uses a 30 day clock for submittal of a home’s association. He noted that people are anxious to start their building process.

Melissa Brown noted that once a building permit is issued the contractor has legal authority to begin. She feels the City approval has to be the final step. Mr. Breneman would not support city staff spending time reviewing plans that have not been approved by the HOA. Mrs. Brown noted that if the HOA required modifications, the city would need to then review a second set of plans. Jonathan Birkel noted the time and expense required for the submittal of final drawings.

Mrs. Brown asked if the homes association had considered a zoning change to R-lb using the mechanisms that the City has in place. Mrs. Wallerstein stated looking at the conditions of the Overlay and the city code there are not many differences. The limitation of height to one and a half stories is already in place in the deed restrictions. Mrs. Brown asked if the setback has been the main appeal. Mr. Jordan replied at this time all of the appeals have been to setback. He is not aware of any teardown rebuild applications, primarily expansions, room additions, roofing, etc. type of applications.

Todd Wetherilt, 6344 Ash, wanted to address the proposed repeal. He noted the city came to them for a partnership to create a document that the city could enforce. Whatever generated the legal notice has given this question a life of its own where now different options are being suggested. It seems to him to be an all or nothing process. The dialogue has been good, but they are faced with the repeal of the Overlay and everything going back to the HOA and the HOA does not have the processes or resources to fashion a replacement mechanism for the Overlay and there is motivation to do so.

In the interim he does not want to see the Overlay repealed at this time as it would expose the neighborhood. He requests no action be taken until the HOA is ready to take it over. Mr. Wolf asked how much time was needed. Mr. Wetherilt noted that it took four years to draft the Overlay. He does not know if 90 days is sufficient time to create a new process. He does not understand why options #3, #4 and #5 would require renotification and a new process. Mrs. Wallerstein replied the action residents were notified of was the proposed repeal, not a modification of the Overlay. Therefore, under this application only action on the repeal can be taken. Mr. Wetherilt asked how the original notice came about.

Mrs. Wallerstein stated in November, 2016, City Administrator Wes Jordan and City Planning Consultant Chris Brewster attended the annual Countryside East HOA meeting and discussed the city’s challenges with the enforcement of the Overlay District and recommend the HOA repeal the Overlay District in view of the new strengthened building guidelines adopted by the City. In January, 2017,the HOA Board informed the City that it had voted to support the repeal of the Overlay District. Based on that application, staff filed the necessary application to accomplish the repeal. This action is similar to the rezoning of a property and the code requires notification of all the property owners of the impacted property and properties within 200’ of that property to be notified by a certified return receipt letter notifying them of the public hearing to be held on this request.

Gregory Wolf stated the HOA needs to determine what action, if any, they will take to keep the restrictions established in the Overlay in place after the formal repeal of the Overlay District. The Commission does not want to take action on that repeal until the HOA is ready, but not indefinitely.

Mr. Jordan reminded the Board that there action this evening needs to specifically address the repeal of the Overlay District, whether that is to repeal, not to repeal or to continue. Any action dealing with a modification would have to take place as a separate application. The HOA needs guidance from the Commission.

Patrick Lenahan noted he can see the following scenario: 1) the application is continued for 90 days; 2) during that time the HOA meets and decides what to do and begins to put that process in place; 3) after action is determined and taken by the HOA, the Commission/City Council votes on the repeal of the Overlay District.

Jonathan Birkel confirmed that if they want to retain parts of the Overlay a process and mechanism needs to be put in place by the HOA for them to enforce/administer those requirements.

Nancy Wallerstein clarified that if the City repeals the Overlay District, the HOA can take over administrating the requirements under a process established by the HOA with the City only enforcing its building and zoning regulations.

Jeffrey Valentino stated he is hearing that there is a general consensus that a modification of the Overlay District is necessary. The City believes that this would be better handled through a process administered through the homes association than the city as an Overlay District. He stated city staff has demonstrated how difficult it is for the city to administer this Overlay with contracting guidelines from city code and consistent approvals of appeals to the Overlay.

Todd Wetherilt stated that he believes the HOA has come to that understanding. His concern is that under options 1 or 2 is that they now have some groundwork to do figuring out how to create their own safety net to protect the integrity of their neighborhood. They had been under the assumption for the past four years that had been taken on by the city through a partnership and is now resolving with the repeal of the Overlay District.

Among the things yet to be determined by the HOA are the following: Are they going to assess their homeowners additional fees to create a legal defense fund? Are they going to formulate an architectural review board? Are they going to hire outside consultants? Are they going to get legal counsel involved? These are things they now need to pursue. They understand that the Overlay District is going to be repealed at some time and they need to make decisions and take actions.

Melissa Brown stated the Overlay District was a great pilot project and greatly assisted the city in the development of its revised building regulations. It is not the intent of the City to abandon the homes association. Jeffrey Valentino acknowledged the statement that the city was transferring the burden of administration to the HOA. He noted the easiest solution to this would be the buy-in and commitment of the HOA to the city’s revised building regulations enforced throughout the entire city. This would place no additional burdens on the HOA, on its Board or on the City. The other options have been presented as alternatives to allow the HOA to keep some additional restrictions that appear to be desired by your residents to protect the integrity of your existing neighborhood, that are not required throughout the entire city.

Todd Wetherilt stated that they would like to see what develops from the Phase II study of potential city design guidelines acknowledging that these may or may not address the concerns of their neighborhood.

Connie Mattoon, 4801 West 65th Terrace, supports the existing Overlay and noted that the HOA does not have the legal resources to enforce its covenants. She does not feel that overlays are uncommon and that if someone wants to renovate or rebuild in Countryside East they know the specific guidelines that are in place without having to take plans to a review board for review. The Board is not burdened with additional work, additional fees are not required to be paid to a consultant for review, you are not placing neighbors in the position of having to approve or reject a neighbor’s plan and plans can be submitted directly to the City. She does not feel 90 days is sufficient time for the HOA to put in place a new process and mechanism to address what would be lost with the repeal of the Overlay District. She feels that 180 days would be a more appropriate time frame, noting this action needs to be done during on a volunteer’s free time.

Dennis O’Roark, 5007 West 63rd Terrace, stated that he was a member of the Board for four years and currently sits on the appeals board. He is not supportive of the Overlay District and feels that it is too restrictive holding back development and improvements to property within Countryside East. He said it needs to be simplified to allow investment in the community. He added that vacant or unmaintained homes also impact the integrity of the neighborhood. He feels the common thread is to simplify and wants a time period implemented to phase out the Overlay District.

Mr. O’Roark questioned how not giving a permit for a plan that did not received approval from an HOA isn’t enforcing covenants and deed restrictions. The main goal should be to see investment occur within the City. He does not want to see investment held up. He believes that there is sufficient experience and expertise within the HOA to form an architectural review board, but that it would be in the Board’s best interest to contract with an independent party.

Jonathan Birkel noted that the criteria are clearly stated in the design guidelines and feels that a review checklist could be created from these without much difficulty or a major time commitment. He supported the 90 day continuance.

Melissa Brown asked if the ordinance repealing the Overlay District could have a specific date or would it become effective immediately upon adoption. The Commission Secretary replied that the ordinance could be drafted with an effective date as was done when the city repealed its recreational vehicle regulations.

Gregory Wolf moved the Planning Commission continue PC2017-01 consideration of the repeal of the Countryside East Overlay District for 90 days (August 1, 2017) to allow the HOA to determine and plan action prior to the Commission taking action on the proposed repeal. The motion was seconded by James Breneman and passed unanimously.

**NON PUBLIC HEARINGS**

**PC2017-105 Building Line Modification**

 **4602 Homestead**

Bruce Wendlandt, 7924 Floyd, architect for the home owners Brian and Edie Larson at 4602 Homestead, addressed the Commission requesting approval of a building line modification to the platted side yard setback on Granada to construct a detached accessory building to be used as a garage. The proposed garage would extend over the platted 30’ building line and be located 25’ from the lot line at its closest point.

The lot is located at the corner of Homestead Drive and Granada Street. The existing home is situated at an angle with a corner orientation. Although the building footprint is skewed on the lot, it is entirely within the platted building lines of 40’ along Homestead Drive and 35’ along Granada Street. The southeast corner of the existing home is closest to Granada Street at approximately 31.5’ from the lot line. The proposed accessory building would be located at the edge of the current driveway access off Granada Street and would be skewed to share the same orientation as the principle building. With this orientation, the accessory building would meet the platted building line at the closest point to the property to the north, and the majority of the proposed accessory building would be within the 35’ platted building. Due to the skewed orientation portion of the southeast corner would extend over the building line, with the closest point being 25’ from the lot line on Granada Street.

Chris Brewster noted the location of the proposed accessory building meets all requirements of the zoning ordinance. (Section 19.34.020 dealing with detached garages requires a 3’ setback from the north lot line and a 25’ setback from the east lot line along Granada Street.) The homes to the north of this home have a deeper setback along Granada Street (approximately 70’), as they are all primarily oriented to Granada and are much deeper lots than this corner lot. Homes immediately across Granada Street to the east have a similar orientation as this house, with a side orientation on Granada, and the primary orientation to West 64th Street and Homestead Drive respectively. The sides on Granada have garage access and are much closer to the street (angled slightly, but approximately 20’ at the closest point and 35’ at the farthest point).

The Commission reviewed the following criteria for consideration of a building line modification:

1. **That there are special circumstances or conditions affecting the property;**

This is a corner lot with the building oriented to the corner of Homestead Drive and Granada Street, though Granada is primarily the side orientation. The lot is irregularly shaped due to curvature of the streets and the shorter dimensions of this lot compared to others on the block. The principle building is skewed slightly within the buildable footprint, as similar to other corner lots in this neighborhood.

1. **The building line modification is necessary for reasonable and acceptable development of the property in question;**

The buildable area of the lot is reduced as a result of the platted setbacks, the smaller corner lot, and its corner orientation of the building. While the lot is large and there is a reasonable amount of buildable area under the platted setbacks, the platted building lines are more constraining than zoning setbacks. A small portion of the current home extends beyond the platted building line.

1. **That the granting of the building line modification will not be detrimental to the public welfare or injurious to or adversely affect adjacent property or other property in the vicinity in which the particular property is situated;**

The property most impacted by this modification would be the property immediately to the north. This lot is much deeper, and the building is setback approximately 70’ from Granada Street. The proposed accessory building meets the platting building line requirement at the closest point to this lot, and encroaches into the building line area as you move south due to the skewed building footprint. This is a similar orientation as the buildings directly across Granada Street. Other corner lots in this neighborhood share a similar orientation towards the corner with garage and access off the “side” street with reduced setbacks. The proposed accessory structure would meet all setbacks required by zoning. The applicant has supplied architectural drawings to demonstrate compatibility of the accessory building with the principle building and with the general character of the neighborhood.

James Valentino asked if the garage could be moved over five feet to be in compliance. Mr. Wendlandt replied that was discussed when he met with Mitch Dringman, Building Official. Such a move would impact the portal entry in the rear yard and essentially become an attached garage, not a detached garage.

Mr. Valentino suggested that if the columns were removed it could be in compliance. Mr. Wendlandt noted that would be an option but at the cost of good design he would not see that happening. The corner is in compliance with setbacks for this use. He noted the houses to the east and north set more squarely on their lots. They are dealing with the angular placement of this house on the lot. Mr. Valentino stated he can find in favor of criteria one and three, but not two.

Patrick Lenahan noted that if the garage was moved to the west it would be very close to the existing house making it difficult to maneuver. Jonathan Birkel questioned if the structure could be rotated to be more parallel to the property line would solve the problem.

Mr. Wendlandt replied that looking at the architecture of the property being very classical it would not fit. It would also be more difficult to have in and out access of the south door for the vehicles making an acute angle. From the architectural viewpoint alone, he feels the proposal is justified. Mr. Wendlandt noted that the property directly across the street to the east has a three car garage facing this property.

James Breneman asked if this was really a garage. Mr. Wendlandt stated that it would be for classic cars. Mr. Breneman noted that it meets the accessory structure setbacks and asked why it was before the Commission.

Chris Brewster replied that the more restrictive nature of the platted building lines take precedence over the zoning regulations. The project does meet the city’s zoning regulations. The criteria for building line modifications is part of the subdivision regulations and unlike the variance heard earlier, the criteria need to be considered, but all do not have to be met to grant the modification. If the Planning Commission determines that this reflects a good design that on balance meets the criteria and protects the interest represented by the criteria, they can approve the modification. This is not a variance.

Mr. Wendlandt noted that the immediate neighbors were all met with and shown the documents and do not have any objections to the request.

Patrick Lenahan moved that the Planning Commission approve PC2017-105 granting the building line modification for 4602 Homestead Drive as presented adopting Resolution PC2017-105 that must be recorded with the register of deeds prior to obtaining a building permit. The motion was seconded by Gregory Wolf and passed by a 6 to 1 vote with Melissa Brown voting in opposition.

 **PC2017-106 Site Plan Approval for Retaining Wall**

 **3007 West 71st Terrace**

Doug Stehl, 3007 West 71st Terrace, appeared before the Commission requesting to replace an existing wood fence and locate it with a more consistent alignment to the surveyed property lines. Due to the slight gradual changes in elevation between adjacent lots on this block, he would like to replace a retaining wall on the east side of the lot and build a retaining wall on the west side of the lot, with the fence located on top of the wall. The retaining wall will be less than 3’ in height at all locations and the proposed wood fence is 4’ high.

Chris Brewster noted the proposed fence is generally compliant with the standards of 19.44.025, except that 19.44.025.D.1. that requires all retaining walls be setback at least 2’ from the property line, with additional setbacks for larger retaining walls. However, this section allows the Planning Commission to approve deviations from this requirement through site plan review if it “results in a project that is more compatible, provides better screening, provides better storm drainage management, or provides a more appropriate utilization of the site .

In this case, the applicant proposes the retaining wall on the property line, and it is under the height requirement that requires additional setbacks (6’). The applicant has submitted letters mailed to the adjacent property owners along with returned signed statements with their agreement with the proposed fence location and construction of the fence and retaining wall combination.

The Commission reviewed the following criteria as presented by staff:

1. **The site is capable of accommodating the buildings, parking areas, and drives with the appropriate open space and landscape.**

This site is capable of meeting all requirements for residential property, and the fence and retaining wall meet the standards in all respects with the exception of the location of the retaining wall.

1. **Utilities are available with adequate capacity to serve the proposed development.**

This site is currently served by utilities and they should be adequate to serve the proposed use. The proposed wall and fence combination does not present any complications for utility easements different from fences and retaining walls meeting the standards.

1. **The plan provides for adequate management of stormwater runoff.**

The location of the proposed retaining wall will need to be reviewed by Public Works for any drainage issues prior to or at the time of permitting.

1. **The plan provides for safe ingress/egress and internal traffic circulation.**

N/A

1. **The plan is consistent with good land planning and site engineering design principles.**

The replacement of the fence will align better with surveyed property lines and result in a better relationship of private rear yards.

1. **An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.**

Other than as noted above in A., the fence complies with all design standards and is compatible for the area.

1. **The plan represents an overall development pattern that is consistent with Village Vision and other adopted planning policies.**

N/A

Patrick Lenahan asked if the footings would extend beyond the property line. Mr. Stehl replied the footings are 18 inches wide. James Breneman asked how wide the retaining wall would be. Mr. Stehl stated it would be 12 inches with the footings two to three inches beyond the wall. Mr. Breneman stated that the footings cannot extend beyond his property line. Mrs. Wallerstein noted that this could be added as a condition of approval.

Patrick Lenahan moved the Planning Commission approve PC2017-106 approving the site plan for a fence and retaining wall with a portion of the fence height exceeding six feet subject to the following conditions: 1) Prior to or at the time of building permits, public works shall review the plans for potential grading or drainage issues with the location of the retaining wall and proposed fence and 2) That the footing for the retaining wall remain on or within the applicant’s property line. The motion was seconded by Gregory Wolf and passed unanimously.

**OTHER BUSINESS**

**NEXT MEETING**

The secretary confirmed an application has been filed for a building line modification for the June meeting with the filing deadline being this Friday, May 5th.

**ADJOURNMENT**

With no further business to come before the Commission, Chairman Nancy Wallerstein adjourned the meeting at 9:45 p.m.

Nancy Wallerstein

Chairman