

THE CITY OF OLMOS PARK
PLANNING AND ZONING COMMISSION
MINUTES OF MEETING HELD
FEBRUARY 23, 2022

The Planning and Zoning Commission for the City of Olmos Park, Texas held a meeting at 5:00 p.m. on Wednesday, February 23, 2022 at City Hall. Members present were Paul Covey, Adam Harden, Jim Hyslop, Lorin Runnels and Richard Wolf. Members not present were John Cornelius and Shannon Collins. Administrative staff present was City Manager, Celia DeLeon; City Secretary, Kyndra Munoz and Building Official Ricardo Cavazos. Also present was City Attorney, Richard Lindner and Deanna Rickabaugh, 302 Luther Drive.

Chair Adam Harden called the meeting to order and announced a quorum was present at 5:00 p.m.

Citizens to be heard: This time is provided for citizens to address the Council on issues and concerns. No action can or will be taken on issues raised under this portion of the meeting. Please state your name and address for the record and limit your remarks to a period not to exceed three minutes.

There were no citizens to be heard.

Approve minutes from January 26, 2022.

City Attorney Richard Lindner stated there was an issue with the notice being removed from the bulletin board for a short period of time. My legal recommendation is to pull the January 26, 2022 minutes and place on the agenda for approval at the March meeting.

Paul Covey stated I have a question regarding notice. We post the agenda but in other jurisdictions, they will post the contents of their packets. Are any of these items considered exempt from public view?

City Attorney Richard Lindner stated generally this is a City Council policy decision. Typically, draft legislation is exempt from public exposure. Whether or not certain draft legislation is presented to the public is on a case by case basis decided by the City Council.

Discussion on proposed ordinance amending Sections 40-40 and 40-41 of the City Code to revise certain provisions relating to the maximum permitted height of accessory structures.

Chair Adam Harden stated I appreciate the subcommittees time and effort on this. I believe you are correct in that we are stewards in a small degree of authority and decision making. It is up to us to protect the code and values in what we all purchased into as citizens of Olmos Park.

Paul Covey stated myself, Hank Cornelius and Richard Wolf all had a part in working on this. This is primarily in result of the complaint at 115 Primera where a two-story garage was built on a small lot, which is a legitimate complaint. When speaking with Ric, the majority of the houses here have an accessory structure and many of them are two story. I witnessed a Board of Adjustment meeting last month, in which they requested a variance because they wanted to add a living area to the house; if they did not add a living area, the only choice would be to demo the house and start all over. A lot of the time with these older homes, the only way to add more living area is to add an accessory structure. One thing Mr. Cavazos pointed out is that it is very difficult to take an existing one story and make it a two story. We could have written an ordinance that had all kinds of complications and diagrams but the reality is we felt increasing the rear setback from 3 feet to 12 feet for the two-story accessory structure would force the

homeowner to take a look at this. This will impede the small lots and they will just run out of room. We also thought about recommending changing the side setbacks but we were not charged with that. There are a whole group of people out there who may in the future want to have more living space in their house in which the only way to do so will be to add an accessory structure or tear down the one they have and come back with a two story. According to Ric, a lot of the new houses are building two story accessory structures and I believe it is because you try to get as much use out of the land. You have people who live here who expect to maintain their privacy and on the other hand you have people who currently live here or may move in here who feel the only way to get additional living area is two stories. We believe moving it back will be really hard on the smaller lots like the one on Primera. The ones living on $\frac{3}{4}$ of an acre will not have a problem. Although, interestingly enough, even a lot of these houses are right on the property line. It would help to have an ordinance that would move this back and have a minimum disturbance. We have comparable houses to those that sit in Alamo Heights and Terrell Hills although the cheapest house on the market today in Olmos Park is close to \$1 million. Some of these houses are tear downs, some are remodels and the majority of people spend hundreds of thousands of dollars remodeling. I have read Terrell Hills' ordinance which is very long, lengthy and convoluted. We have quite simple ordinances and as a result I personally know people who have chosen to live here because they have more discretion to do what they want with their property.

Jim Hyslop stated this is sort of a two-edge sword. With detailed regulations, everyone knows the rules of the road and there will not be any disagreements when working with contractors, architects and so forth. If you make it to where anyone can interpret it their way, that will create a lot of problems and can get into legal disputes.

Paul Covey stated I think what you see is precisely when the ordinance is complex. When they get this complicated, it gets very hard for staff to interpret it and becomes much more of a process. I highly suggest taking a look at Terrell Hills codes and see how understandable they are. At the end of the day, most of them get what they want done although they may have to adjust a little. There is a preference right now to buy homes in Olmos Park. The values here are higher and they seem to be differentiating.

Jim Hyslop stated getting back to the smaller lots, these are usually cannibalized first. Are we penalizing the smaller lots when they are trying to do something with their primary and secondary structures who might not be able to with the 12-foot setback?

Paul Covey stated our job is to recommend to the City Council. We really have 3 recommendations: one is no recommendation with no change at all, two is don't let anyone build a two-story accessory structure anywhere, anyhow and three is where we tried to find a reasonable setback for an accessory structure. I do believe the smaller lots will be more affected but those are precisely the ones that seem to create the issues.

Chair Adam Harden asked if there is a smaller lot, at the 3-foot setback line, an accessory structure can go up 16 feet?

Paul Covey stated 16 feet would be at the peak of the roof. We made it 16 feet because that would allow for the roof. The idea was to keep up against the property line of a one story with a maximum of 12 feet. As you move back, you eventually get within 10 feet from the house. On a smaller lot, you may have a small accessory structure before you get the 10 foot.

Jim Hyslop asked will the 10-foot distance between the primary and accessory structure still be mandatory.

Paul Covey stated we did not address the 10-foot separation because that was not our charge. We didn't address site work or drainage either.

Jim Hyslop asked isn't this part of our charge and our purview because it is part of the lot lines?

Paul Covey stated we were told to look at a very specific issue which is the setback from the rear property lines. I would like to address the whole issue, but this was the direction of the City Council.

Jim Hyslop stated there are a few points in the memo that I disagree with. One is that it mentions accessory structures were not looked at. We have been looking at accessory structures which started way back in November.

Chair Adam Harden stated the subcommittee was tasked with looking into just the accessory structures. Based on our conversation last time, it seemed as if our changes were going to be both primary and accessory, but really the reason this was brought to us was for accessory structures.

Lorin Runnels stated last meeting during our citizens to be heard the complaints were for primary structures.

Celia DeLeon stated the complaints discussed were regarding building height and this issue was reviewed at the last City Council meeting.

Jim Hyslop stated we can discuss looming for primary structures but we cannot discuss how you measure the height of the building for primary structures. I believe we need to direct the City Manager to speak to City Council or write a memo to City Council to let them know these are some of the things we need to look at. As for the charge of secondary structures, there are some objections I have to the memo. I think you did an admirable job of trying to solve the problem. We need to ask the City Attorney if we are creating litigation because it is too simple and whether or not the City is protected.

Paul Covey asked to you think we should advocate for no change in the ordinance?

Jim Hyslop stated the question is if we have a simple ordinance how is the enforceability monitored? This is a tough job and if you don't have the applicable language, it is hard for you to make a judgement. For the house on 115 Primera, did they go in front of the Board of Adjustment to request a variance?

Ricardo Cavazos stated they did not. This started as a one-story garage and was amended after the framing. However, CPS recommended and installed a taller utility pole on the backside without informing the surrounding property owners. The two-story went up and intensified the looming situation.

Jim Hyslop stated if we have good enforcement and the Board of Adjustment why mess with this if there has only been one exception to the rule.

Paul Covey stated if it were up to me, I would suggest leaving it alone. We drafted this assuming City Council wanted the opportunity for change. I am trying to present the case that everything here is just fine.

Jim Hyslop stated we shouldn't assume City Council wanted us to change, they charged us to look at this issue.

Paul Covey asked I have a question for Ric regarding 115 Primera. If we were to ask the neighbors of 115 Primera now that the structure is built and they are living here, do you think they have any quarrels with it? Did a lot of their objection have anything to do with the poles?

Ricardo Cavazos stated after the completion of the drainage, I have not heard back from any of the complainants. The utility pole became an issue because there was a disconnect.

Attorney Richard Lindner stated I am not trying to advocate either way, but the Board of Adjustment only provides variances from someone who is trying to do something that would break the law. If the structure was in compliance with the law, it would not have to go to the Board of Adjustment. Same as if the structure is compliance with the law and the residents are not happy with the structure, there is not much the City could do about this.

Jim Hyslop asked in the history of the City of Olmos Park, how many citizens have sued the City because they did not like the interpretation of the rules and disagreed with the outcome?

Richard Lindner stated if they do not like Ric's interpretation, the first thing is they would get to go in front of the Board of Adjustment and ask them to appeal the decision. After this, then it would go to the Courts. Since I have been here, none of these have gone to Court.

Jim Hyslop stated this is a good system. If they do not agree with Ric's interpretation, they have an avenue to plead their case. Why should we change this?

Paul Covey stated this was to present options. Olmos Park's ordinances are very straight forward, easy to interpret and easy to enforce because they have very simple rules. I agree that every time we make a change and slap on another layer of rules and complexity, there is a risk of creating non-conforming structures.

Jim Hyslop stated I do not get hung up on this. Again, you go to the Board of Adjustment and if you have a rational explanation, I think our citizens that sit on these Boards are going to be able to take care of it. Things happen and you have to make an adjustment; if is not in compliance, so be it.

Paul Covey stated the Board of Adjustment does not have unlimited powers. They are constrained for variances where there are rules and restrictions regarding hardships.

Richard Lindner stated that correct. Again, I am not trying to advocate either way, but if that is your limitation, you would never be able to change your laws. If you are always worried about non-conforming structures you would not be able to move forward and plan your community the way the neighbors want.

Paul Covey stated we do have to take into consideration of the fact we may be creating a future hardship for someone. For example, the structure at 115 Primera where the paint is barely dry, this ordinance would make it non-conforming.

Richard Lindner stated for this meeting, there is no action item on this agenda. Your options are to discuss and fine tune what you want to present for next time. If you think you are ready to have a motion and make a decision we will set this item for a public hearing for the next meeting.

Richard Wolf joined the meeting at 5:26 p.m.

Paul Covey stated the real question is are going to make any recommendation for change or do we recommend that we don't change anything at all. Do we also want to wait for more Board Members to decide?

Jim Hyslop stated I believe everyone should be here before we make a motion.

Richard Wolf stated the subcommittee felt that we had identified the problem but we didn't want a very complicated solution. We were worried about making changes and creating signification numbers of non-conforming structures.

Lorin Runnels stated the subcommittee was charged with looking at the accessory structures. Are we not looking in to the primary structures as well? I do not see the accessory structures as big of an issue as the primary structures without having any height restrictions up to the setbacks. I thought this was the original concern brought to us, then it turned off into accessory structures. I agree with Jim in that I don't notice the accessory structures, but I do notice the primary structures going all the way to the property line then all the way up to 35 feet. If you look back in the minutes, Austin Beck originally brought up the issue of primary from the very beginning then it went into the accessory structure and we never got back to the primary.

Jim Hyslop stated I agree. I believe the hardest issue we have to face is with the primary structure.

Paul Covey stated we were informed that City Council only charged us with looking into accessory structures.

Deanna Rickabaugh, 302 Luther Drive stated the issue came from the structures on Primera. There were several people that came in and complained about the site work causing drainage into their property. At the same time, several other neighbors came in and were complaining about how the primary structure was going to be 35 feet tall on what is a small lot. It was not just about the accessory structure and we were being asked about the primary structure as well. The issue of looming was to address the scale of the property and if it will be in scale of what is around it.

Paul Covey stated with this language we felt with the small lots, it would be constrained and you would either find a solution that would be far enough or you wouldn't do it all.

Chair Adam Harden stated when I lived in Monte Vista their solution was instead of going up, it would go out to the sides. They kept the height restriction but instead of doing top to bottom they would do side by side; neighbors didn't have the looming issue and that was a solution. I think this gets you into that same category. If you are at the 3-foot setback at the back of your property and you want that extra living space, there is a way to accomplish this that does not impede on the primary structure.

Paul Covey stated that was the thinking. We could have gone into drainage, site work, side setbacks but we felt we had a very narrow item to look at which was the height of the accessory structure and rear setback line.

Chair Adam Harden stated I like the idea of recommending what has been presented with the inclusion of exhibit B which added the grandfathering language for the non-conforming structures and I also like the idea of recommending no change.

Paul Covey asked if we recommend this specific solution to City Council, would we need a public hearing on this? If City Council decides if they want to proceed with this solution and place into the ordinances, at that point, would be scheduled for a public hearing with us, with them or both?

Richard Linder stated because of the language on the agenda you cannot take action tonight. Before it leaves Planning and Zoning, you must have a public hearing. If your recommendation is to send it to City Council with recommended language or whether your recommendation is to take no action, you have to have a public hearing here. Then it goes to City Council. They can overrule your take no action or overrule your recommended language. They appoint you for a reason and will consider your decisions for a reason.

Jim Hyslop stated I like the work you have done but I would not go with the proposed grandfathered language. I would prefer to recommend no change because it is not broken yet. Are we able to direct the City Manager to ask City Council to give us authority to consider height, drainage and other issues that are upsetting our citizenry? Who sets our agenda and how are we able to place building height on our agenda?

Richard Linder stated City Council discussed building height and made a decision recently they were okay with the definition of building height. You can speak as a citizen to be heard, but you must be very clear that you are speaking as a citizen and not a Board Member of the Planning and Zoning Commission.

Celia DeLeon stated what ends up on the Planning and Zoning agenda is directed by the City Council.

Richard Lindner stated I am going to read from the July 12, 2021 City Council minutes where City Council gave direction. "Councilwoman Plant moved to direct the Planning and Zoning Commission to review code of ordinances for possible update to include setbacks, looming, building heights, impervious cover and any other relevant ordinances and direct City Attorney, Richard Lindner to review and consider ordinance regulating the increase/diversion of drainage leaving a property during and after residential construction and as it effects neighboring properties. Councilwoman Rickabaugh seconded the motion. The vote in favor of the motion was unanimous." You were not given a directive on accessory or primary. You have focused on accessory and I think you need to take an action on this item. You have been working on this since July. We can set this up for a public hearing at the next meeting and you can dispose of this one way or the other. For primary structures, you can discuss, set up a subcommittee if you wish and set this up for a public hearing right after that. Regarding the public hearing, the City has to advertise this in the newspaper. If the recommendation for an ordinance is not ready, we must advertise the public hearing again and again. We have to judge this just right and make a judgement call whether you are close to a consensus, otherwise it is a waste of money.

Chair Adam Harden stated the consensus of the Board is we will be ready to make a decision at the next meeting, set a public hearing and move on to the primary structure.

Set time and date of next meeting.

The next Planning and Zoning meeting is scheduled for March 30, 2022 at 5:00 p.m.

There was no other business and the meeting adjourned at 5:59 p.m.

Chair

ATTEST:

Kyndra Munoz
City Secretary