I. DECLARATION OF QUORUM
A quorum being present, Chair Fiske called the meeting to order at 7:15 p.m.

II. APPROVAL OF THE SEPTEMBER 24, 2012 MEETING MINUTES
Ald. Rainey moved approval of the minutes, seconded by Ald. Wynne.

The minutes of the September 24, 2012 meeting were approved unanimously 5-0.

III. ITEMS FOR CONSIDERATION

(P1) Ordinance 72-O-12 Amending the Zoning Ordinance – Residential Building Height, Dormer Size and Location, Half Stories, Accessory Structure Height, and Legal Nonconformities in the R1, R2, R3, R4 and R4a Districts
The Plan Commission and City staff recommend adoption of the proposed regulation changes for residential building height, dormer size and location, half stories, accessory structure height, and legal nonconformities in the R1-R4a Districts. For Introduction

Chair Fiske called Zoning Planner, Melissa Klotz, to the podium.

Ms. Klotz explained that the current Ordinance is sometimes too restrictive and other times too permissive regarding building height and bulk. She said the proposed Ordinance:
• Will not allow architects to add a third story where it is prohibited because the height requirement is currently a mean measurement; the proposed Ordinance will change the definition to a peak measurement so it will be 2.5 stories or 35’ to the peak of the structure
• Change the definition of “½ story” so it will apply to attic style where it is above the full second story of the home and below the slope of the roof
• To regulate bulk, a 3’ exterior knee wall on attic style roofs so gable or hip roofs will be allowed to have the same relative bulk size as other roofs such as gambrel or mansards roofs.
• Eliminates substandard lot size allowing homes on these lots to have the same height as the homes on standard size lots
• Change dormers to half stories above the first full 2 stories of a home; dormers currently apply to all stories so they would no longer be different for sides from front facades of homes; it will be the same maximum limit of 30% to all wall lengths.
• To keep with conformity, the Ordinance proposes to change accessory structures to peak height rather than mean height, as currently regulated, so accessory structures will be measured in the same way as primary structures.
• To address the non-conformities that exist regarding height, he amended Ordinance proposes that all structures that are in any federal or local historic districts, are a historic landmark, or are over 50 years old, would be grandfathered in and considered conforming structures with regards to height so if they are damaged by natural forces only, they are allowed to be rebuilt without a rebuild letter from the Zoning Administrator.

Ms. Klotz asked if there were any questions.

Chair Fiske thanked Ms. Klotz and asked whether the proposed amendment had gone before the Preservation Commission, to which Ms. Klotz replied that it had been discussed with the staff liaison to the Preservation Commission, who said they are in agreement with it.

Ald. Wynne said she thinks it is a very good change. She said she has been on City Council long enough to have seen one similar, prior change regarding the measurement of height which is to start from the base of the 1st floor to measure height rather than including the basement. She says the proposed amendment continues in making the process logical and fair for everyone so there are not loopholes in the law that allow creative architects to create unusual structures.

Ald. Rainey said she had a letter from a very creative architect that would take exception to these comments. She read a paragraph from the letter:

*If the Ordinance is to go forward, it should be made absolutely clear in the Ordinance that all existing properties that may be affected by the language of the Ordinance be grandfathered, not just those in the historic district. The way the Ordinance is proposed, if my house were damaged by a storm or fire, I would not be able to rebuild the roof as it is now. The Ordinance would prevent me from doing so. This would be a prejudicial Ordinance favoring those who can afford to live in the Historic District. I take exception to that prejudice.*

Ald. Rainey asked whether it is true that not all properties who currently exceed these dimensions, were they to be destroyed, could not be rebuilt in kind. Ms. Klotz replied that it is a little more complicated in that all those properties would be considered legal non-conforming at this point. In the case that a property were damaged and it did not meet the criteria discussed in the memo as one of the historical properties, then the property owner would have the opportunity to request a rebuild letter from the Zoning Administrator. This clause is currently in the Zoning Ordinance and it allows the Zoning Administrator to look at that property on a case by case basis. Current practice is that
the Zoning Administrator quite often grants it, but it does allow the City to look at each specific case.

Ald. Rainey said she does not like this piece of the Ordinance. She said if a property exists now as a legal property and the owner had obtained permission for it from the Zoning Board years ago because of the F.A.R. issue and it is an old home on a narrow lot, she believes the Committee should absolutely insist that those homes be grandfathered in. She said she does not care whether the home is 10 years or 100 years, if it is legal, it needs to be allowed to be restored to what it is should anything happen to it.

Ald. Wilson thanked Ald. Rainey, saying that was his concern as well. He said he believes that the language should be modified to allow that existing homes as of the date of the Ordinance, could be replaced at existing dimensions.

Ald. Wilson moved to amend Ordinance 72-O-12 such that any home that exists legally as of the date of the passing of the Ordinance would be grandfathered in, in the event of future damage or destruction, seconded by Ald. Rainey.

The Committee voted unanimously 5-0 to amend the Ordinance.

Ald. Wilson moved approval of the full Ordinance, as amended, seconded by Ald. Rainey.

The Committee voted unanimously 5-0 to recommend approval of Ordinance 72-O-12 as amended.

IV. ITEMS FOR DISCUSSION

(PD1) Short-Term Home Rentals ("Vacation Rentals") For Discussion

Chair Fiske called the public who wished to speak to the podium, announcing that they will each have 3 minutes.

Mark Rosati of 2509 Ashland, Evanston said he believes 2 of the 16 houses on his block are renting to transients even though they are in an R1 district. He said he believes this is an issue of safety, security and quality of life in the neighborhood and that the zoning laws are meant to encourage safety and stability. He said he and his wife would not have moved into their home if there was a hotel or B&B on their block, which is in close proximity to elementary schools. He said they encourage enforcement of the existing laws to prohibit transient rentals in R1 districts.

Maureen O'Donnell of 2505 Ashland said she lives next door to 2515 Ashland, where the owner has advertised her home and individual rooms for rental on AirB&B.com and Craigslist. Ms. O'Donnell said since the last Committee meeting, she read a story in Chicago newspapers about a man who met his roommates on Craigslist and has been arrested and charged with their double stabbing murder. She said the murderer looked
good on paper and had a graduate degree in marketing. He moved in 5 days before the bodies were found. He is also accused of using their credit cards in Las Vegas. One of the victims was a former prosecutor and City Attorney for Kankakee; precisely the kind of person one would think could suss out a problem tenant. She said she is very concerned about the use of Craigslist and AirB&B for advertising for short term tenants because short term tenants cannot be properly vetted for criminal background or for sexual predators. They have 3 schools a very short distance from the home. She urged the Committee to consider the Ordinance very carefully. She said their sense of safety is very important to them and this is damaging it. She thanked the Committee.

Greg Richards of 2529 Ashland said he agrees with the comments of Mr. Rosati and Ms. O'Donnell and he thinks vacation rentals represent a safety issue and fundamentally affect the character of their neighborhood. He is against allowing that activity.

David Reynolds of 204 Davis Street said the issue is a sister issue to the B&B issue. He said considering vacation rentals, it follows naturally to consider the B&B ordinance because these 2 types of uses are so similar, in fact, they are almost identical because:

- There is no requirement in the existing B&B Ordinance for the owner to be present when guests have rented accommodations
- There does not appear to be any requirement that the B&B actually serve breakfast
- There are no parking requirements for B&Bs except that the guests not park in the front or side yard
- There are no limits to the number of parties or special events that can be held
- There are no limits to the number of B&Bs or vacation rentals on a block or in a particular area
- The only real present difference is that a B&B requires a special use with final approval by the City Council

Mr. Reynolds continued that the special use requirement does not seem to be much of a barrier, especially in light of the fact that the Zoning Board of Appeals denied the special use application for the B&B at 300 Church Street, but the Council approved it over their denial. He said the real issue is whether the City wants this type of commercial rental in its residential areas. He said people purchase homes or apartments in residential neighborhoods in Evanston with the expectation of living in a residential environment, not one infused with commercial uses, and while that expectation is supported by the stringent requirements for home occupations, it is eroded by allowing B&Bs or vacation rentals. He said families buy houses near other families and where they feel comfortable and secure and many families with younger children have testified against both when B&Bs were proposed and regarding vacation rentals because they do not want to live next door to a rental facility with unknown people constantly coming and going. Mr. Reynolds said Evanston wants and needs young families and that they are the health & future of Evanston, and asked why the City would want to do something that would discourage them. He said if a B&B or vacation rental can move in down the block it is a strike against Evanston. Mr. Reynolds concluded that the detriments of B&Bs and vacation rentals far outstrip the benefits, if any, and asked whether it is wise to allow
something which benefits one home owner financially at the expense of the rest of the neighborhood. He said he does not believe it makes sense.

Julie Koehler announced that she and Attorney Kim Novi had emailed to the City Council members a Memorandum of Law explaining her organization’s position regarding the vacation rental Ordinance and how there are existing municipal ordinances on the books already that prohibit the renting of rooms within a home and the wholesale rental of a house for short periods of time. She said the Memorandum has several exhibits attached and she encouraged the Committee to read it and to call her or Kim Novi if they have any questions regarding the Memo of Law, which sets out their explanation as to how the codes on the books already prohibit this type of rental of a home. She explained that the City is focusing on Chapter 5, the Lodging Establishment portion of the City’s code and that is simply a red herring and a rabbit hole they do not have to go down to prohibit the type of behavior that was going on in Ald. Rainey’s ward. She explained that the rental of a home on an overnight basis is a prohibited home occupation under Chapter 2 of the City’s municipal code and it is not allowed in the absolute definition of home occupation, which prohibits any type of establishment that offers shelter or lodging: “No person can, from the confines of their home, begin to operate a business which allows for overnight guests.” She stressed that it is there in the municipal code, which can be enforced. She asked why, if someone can open an unlicensed B&B and does not offer breakfast, would anyone in this town open a B&B when they don't have to serve breakfast if they open a vacation rental and advertise it on Craiglist or AirB&B and make money hand over fist, which these people seem to be doing. She said there is a place on her block next to the golf course that has 87 testimonials from previous renters and asked why anyone would go to a hotel in Evanston, adding that she is sure that industry does not like vacation rentals either. She asked why anyone would go to a B&B in Evanston when they can get a nice room for $50 a night next to the golf course, so, she explained, it is bad for people who are running legitimate businesses, who have worked hard to obtain the licenses they deserve, who have gotten the one B&B license that is in Evanston, or who are running a legitimate hotel. She concluded that it does not make sense and is prohibited by the existing Ordinance as explained in the Memo. She again encouraged the Committee to read it and contact her or Kim Novi if they have questions. She thanked the Committee.

Jim Mullenix of 2525 Ashland said he agrees with the comments made by others, adding that Ms. Koehler is his wife. He said on page 7 of the Memo it states that certain types of businesses are outright prohibited by the statute that deals with home occupations. He said the Memo says that in R1 districts there are only certain permitted uses of which none of these apply to allow a transient hotel, a vacation rental or a B&B and there are special uses, none of which apply. Regarding home occupations, he said certain businesses are outright prohibited by the statute regardless of where they fall within the definition of a major or minor occupation because of their nature. These businesses “impair the integrity of the residential district in which they are located.” He repeated it, adding that every person that has spoken has addressed the issue that this type of business, located next to a residential homes where there are children, across the street from St. A’s grammar school, 2 blocks away from Haven and Kingsley, is
prohibited. He said this is what zoning regulations address. He concluded that he cannot think of a better way of ending their petition to the Committee than asking them to enforce the existing laws and that they do not need to make any further laws in order to address this issue; there are laws on the books as outlined in the Memorandum of Law. He beseeched the Committee to enforce those laws and prohibit this type of transient hotel in residential neighborhoods.

Chair Fiske thanked all of the speakers.

Chair Fiske opened the issue to Committee discussion.

Ald. Rainey said she absolutely opposes the comments that there is no difference between a B&B and a vacation rental and she believes there is every difference in the world. A vacation rental is a house that has no owner present, there is no oversight, no supervision or front desk, and no breakfast provided. Renters take their own garbage out and make their own beds. There is absolutely no concierge of any kind and it is a free-for-all. She said it could be different but in Evanston, it is a free-for-all because the owner has no idea who is coming in other than whoever has signed an online registration. She said on Dobson, 8 – 12 people came with 18 cars in one night and there were keg parties. She said they are advertised as party houses. She said it depends on where they are to some extent but Evanston has not had one good experience and she does not know how the City can have any oversight of this kind of thing. She said she would be willing to consider a vacation rental for a month or 2 or 3 weeks, but not the way it is set up now. She agrees with all the testimony that the City’s current laws govern this and agrees that it is a home occupation and it needs to be enforced and is not being enforced. She said she realizes they hit a brick wall at the ZBA and that the meeting where this was discussed was the most uncomfortable, difficult, meeting she has ever attended and then an attorney took the City to court, which did not go well. She concluded that the City has not met with any success in its various efforts and she hopes the City can revisit its current laws regarding home occupation.

Ald. Grover thanked Chair Fiske for letting her join the Committee to discuss the issue. She said it is interesting that Council has reaffirmed its interest in B&B in allowing B&Bs in Evanston but find themselves in a quandary regarding short term rentals, which have the flavor and nature of B&Bs but don’t operate the same way, mostly regarding supervision. She noted that a pertinent issue is the legality of the City’s existing ordinances. She asked Grant Farrar, Corporate Counsel, to explain how our home occupation code does not apply to a short term rental like this.

Mr. Farrar said with respect to enforcement, it has become relevant in the past 3 months, so City staff tried to take an aggressive approach in enforcement and as Ald. Rainey said, there were 2 appeals, in ports of call, the ZBA and federal court. He said the federal court case is still ongoing and there was much discussion between him, opposing counsel and the court with respect to how the parties wound up in court. He said he could not comment as the case is still pending, other than to say they respectfully disagree with the Court’s interpretation and direction. He explained that
there was another issue related to the enforcement that was on a simple nuisance provision which is a very open ended provision of the Code that says issues such as noise, traffic and litter are nuisance violations. Unfortunately, the City was unable to get any traction relative to that issue as well. He said based on the energetic comments by the Council and the citizens at the last meeting, and the volume of information provided, it is important to do a comprehensive look at this issue because it would be very counterproductive to try another enforcement action that while, having every good intention and the assistance of several arguments behind it, may run into the same situation of not being received well either in a court of law or by the Zoning Board of Appeals. He concluded that since this issue has been going on for 3 or 4 months he the City has gained insight into this issue at the different locations at which it has occurred and that with more information gained, it is critical that Council give staff direction as to where they stand on this Ordinance and how far they want to take enforcement.

Ald. Wynne asked Mr. Farrar what the City can and cannot do in keeping Judge Shadur’s ruling, in relation to creating an ordinance that prohibits vacation rentals.

Mr. Farrar replied that in terms of the public policy issue, the legislative prerogative of the Council remains free and clear. He said they can craft an ordinance that incorporates the appropriate recitals, the appropriate case law and also looking at best practices of other municipalities, which Mr. Griffin’s department has already done. He said there is no restriction on the City’s ability to license or regulate, but he is not at liberty to talk about Judge Shadur’s comments, of which there is a transcript of the brief attached to the Memorandum of Law that was submitted by the citizen’s group. He said he was the only one there and his understanding is that Judge Shader was inclined to see a much more comprehensive set of regulations if that was the will of the Council, instead of a piecemeal enforcement of existing law. Mr. Grant said he does not think existing law touches on every single issue that is invoked by this vacation rental scheme. He concluded that in terms of enforcement, the best way to enforce is to have a good ordinance and that is what staff is prepared to prepare with the Council’s direction and the comments of the citizens.

Ald. Wynne said she would be in favor of such an ordinance and that, because of the district court’s ruling, we need to move forward with speed to craft and ordinance that prohibits vacation rentals and determine a time period, as Ald. Rainey has suggested, if we do want to have a time period. She said also that she thinks the arguments are all on point with the difficulties of B&Bs because the neighbors do not know whether they are going to have a B&B, a commercial establishment or a vacation rental next door to them. She said B&B operators do not screen people or necessarily have to be present when a guest comes, they don’t have to serve breakfast and guests can stay a single night and the people who live on the street have no idea who is coming and going. So she believes it is precisely the same problem, it just has a different label.

Ald. Wilson asked that an analysis be prepared as to the legality of a ban on vacation rentals just to ensure that the appropriate research has been done to ensure that they don’t try to pass something they cannot pass. He said he thinks vacation rentals are different than B&Bs and he absolutely would not want this ordinance to include B&Bs.
He believes it has been made clear what the issue is and that there is a gap in what the City can enforce relating to property so it would be appropriate to fill that gap. He suggested that staff do the research as to what is enforceable and draft a legal, enforceable ordinance for the Committee’s review.

Ald. Grover said she heartened to get the sense from the Committee that there is a real interest in banning these short term rentals and not just regulating them. She said they would rely on Mr. Farrar to help determine what the most effective enforcement mechanism would be and whether it would be through zoning or through business regulation.

Ald. Rainey suggested to Ald. Grover that it is not a good idea to make any statement regarding banning short term rentals or vacation rentals until we find out the legalities of it.

Chair Fiske said she too has been struck by the comparisons between B&Bs and vacation rentals. She said to her understanding of B&Bs, on occasion the property owner may or may not be present, that there are facilities including a microwave in the room should someone want to prepare their own breakfast, that they certainly know who is coming because they register on AirB&B or on Craigslist. She thinks Ald. Wynne is absolutely correct in that while we may not want to call this a B&B. The only difference she can see is that this is unlicensed. She said she understands the concerns of neighbors who have had to deal with the B&B issue over many months, as Ald. Wynne said, of unknown people coming into the neighborhood on a short term basis and the general disruption of the neighborhood and that people do not want to move in and live next door to commercial establishments. She hopes the Committee will consider having a side by side discussion of the B&B ordinance and the vacation rental ordinance.

Ald. Rainey said she disagrees that B&Bs and vacation rentals are similar. In a vacation rental, the tenant has absolute control of the property while they’re there including the basement, the back yard, the front yard, the curb and the entire house; not a microwave in a bedroom and they can have anyone there they choose at any time of the day or night; there is no supervision whatsoever. She said if she were to pay $250 or $300 a night for a B&B and there was no supervision, it was not clean and tidy and there is no breakfast served, she will go on Yelp and blast them as will every other guest there, so there is a big difference between a B&B as we know it. She said some have been allowed to go unregulated and unlicensed and it is the fault of some Committee members because the people running vacation rentals are their friends. She asked why the one where the person lives in the house and is renting rooms has not been considered a rooming house, adding that the City has a rooming house license and she is sure we would be hearing from Ald. Fiske if it was not being enforced. She noted that the City regulates rooming houses and this sounds like a classic rooming house so she asked why this is that not a simple case and why it is being considered a vacation rental. Chair Fiske answered that in her ward they do have some licensed rooming houses that are very well run but they’re licensed. Ald. Rainey asked why this one is not subject to the same license. Ald. Fiske asked, “What if this lady applied for a B&B license?” Ald. Rainey said it sounds like a rooming house but Ald. Fiske said, it does
not sound like the neighbors would encourage this woman to take the extra step of applying for a B&B. Ald. Rainey replied that the City does not know what is going on there and it needs to be investigated. She said the vacation rental on her block is supposedly rented to 1 or 2 families but in this case we know it is being rented out by the room. She said she would like to hear from staff what they have done to inquire about this operation because it appears to be a rooming house and if it is, the City should enforce the licensing requirement properly.

Steve Griffin, Director of the Community & Economic Development Department, said that is what the City tried to do and that is what the City got struck down with. He said Grant could explain this in more detail. He said in the Dobson case, they were cited with violations. Ald. Rainey clarified that she was referring to the one at 2515 Ashland where the lady lives in the house and rents out rooms, which is very different than is what is happening on Dobson. She asked if staff could look into it and demand that she apply for a license or cease to exist. Mr. Griffin agreed to do that, but noted that the discussion at hand is whether the Committee wants staff to explore the combination of zoning and licensing as a way to deal with this issue and to ensure that the City is doing it in a legal, enforceable way.

Ald. Rainey said she would like to separate this particular house to determine whether or not it is a rooming house.

Ald. Holmes said she is concerned that the City is going to do it piecemeal and do it one house at a time and she does not feel that is the way to go. She feels that they need to look at the different situations that are occurring in Evanston in the last year including the B&Bs and the short term vacation rentals which sometimes can be renting a house and sometimes renting a room in a house. She said the City needs to approach all of the situations at once. She said she sympathizes with the people on Ashland but she does believe a law should be created to deal with one situation; we must craft an enforceable law that can cover all of the issues at hand.

Ald. Wilson moved that staff prepare research regarding what the City can and cannot do banning or restricting the uses and report with a proposed ordinance if banning them is legal, but with an accompanying memorandum that tells us what we can and cannot do.

Ald. Grover amended the motion and asked that an ordinance be drafted to include an analysis of our rooming house ordinance and boarding houses and how those do not already apply. The motion was seconded by Ald. Grover.

Ald. Wilson agreed that that was necessary to figure out what the gap is that needs to be closed.

The Committee voted unanimously to have staff draft an ordinance and include their research as to the City’s ability to ban vacation rentals and an analysis of existing laws regarding boarding houses and rooming houses.
V. COMMUNICATIONS

VI. ADJOURNMENT

The meeting was adjourned at 8:06 p.m.

Respectfully submitted,
Bobbie Newman