

**BEFORE THE PLANNING COMMISSION
OF THE
CITY OF LAKE OSWEGO**

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A REQUEST FOR AMENDMENTS TO THE) LU 17-0052 - 1928
COMMUNITY DEVELOPMENT CODE FOR THE) (*CITY OF LAKE OSWEGO*)
PURPOSE OF UPDATING THE FLAG LOT) FINDINGS, CONCLUSIONS & ORDER
STANDARDS REGARDING LANDSCAPING,)
SETBACKS AND PARKING; LIMITING THE NUMBER)
OF FLAG LOTS TO TWO AND NUMBER OF LOTS)
SERVED BY AN ACCESS LANE TO THREE LOTS;)
REMOVING THE REQUIREMENT TO CONNECT)
ACCESS LANES; AND AMENDING THE DEFINITION)
OF FLAG LOT. ORDINANCE 2759.)

NATURE OF APPLICATION

The City of Lake Oswego is requesting approval of legislative amendments (Ordinance 2759) to the Lake Oswego Community Development Code (CDC) amending various sections relating to flag lots and access lanes. Proposed amendments are to:

- LOC 50.06.003 – Development Standards, Circulation and Connectivity
- LOC 50.07.007.2 – Review and Approval Procedures, Land Divisions, Flag Lots
- LOC 50.10.003.2 – Definitions and Rules of Measurement, Definitions of Terms

HEARINGS

The Planning Commission held public hearings and considered this application at its meetings on October 9 (testimony received on all matters relating to the amendments, and public testimony portion of public hearing closed) and November 27, 2017 (public hearing reopened with testimony limited to possible private street option and standards).

CRITERIA AND STANDARDS

- A. Applicable State Law
Oregon Revised Statute 197.307: Approval Standards for Certain Housing in Urban Grown Areas
- B. Oregon Administrative Rules
OAR 660-007-0035 Metropolitan Housing Rule (LCDC)

- 1 C. City of Lake Oswego Comprehensive Plan
- 2 Land Use Planning
- 3 Development (Community Development Code): Policy A-1.b
- 4 Design Standards and Guidelines: Policies C-1 and C-5
- 5 Land Use Administration: Policy D-1
- 6 Inspiring Spaces and Places: Goal 1, Policy 1
- 7
- 8 Complete Neighborhoods and Housing
- 9 Housing Choice and Affordability: Policy B-1
- 10 Complete Neighborhoods: Policy C-7
- 11 Community Culture: Civic Engagement Policies 1 and 2
- 12
- 13 Connected Community
- 14 Livability: Policy F-5

- 15 D. City of Lake Oswego Community Development Code
- 16 LOC 50.07.003.16.a Legislative Decisions Defined
- 17 LOC 50.07.003.16.c Required Notice to DLCD
- 18 LOC 50.07.003.16.d Planning Commission Recommendation Required
- 19 LOC 50.07.003.16.e City Council Review and Decision
- 20

21 CONCLUSION

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23 The Planning Commission concludes that *LU 17-0052* is in compliance with all applicable criteria

24 identified above.

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26 FINDINGS AND REASONS

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28 The Planning Commission (Commission) incorporates the staff report, dated September 29,

29 2017, and staff memo dated November 17, 2017, on LU 17-0052 (with all exhibits attached

30 thereto) as support for its decision, supplemented by the further findings and conclusions set

31 forth herein. In the event of any inconsistency between the supplementary matter herein and

32 the staff report, the matter herein controls. To the extent they are consistent with the approval

33 granted herein, the Commission adopts by reference its oral deliberations on this matter.

34

35 Following are the supplementary findings and conclusions of this Commission:

- 36
- 37 1. **Number of Flag Lots Served by an Access Lane:** The Commission heard testimony from a
 - 38 number of individuals and neighborhood association representatives regarding the
 - 39 impacts of large flag lot developments in terms of garbage collection, public access and
 - 40 neighborhood character. There was testimony that private access lanes, if strictly
 - 41 enforced, do not allow neighbors to visit one another unannounced without trespassing

1 on the private street. The Commission also heard testimony from property owners and
2 business associations that would be affected by a reduction in the size of flag lot
3 developments.

4
5 The testimony did not identify a specific policy to which these concerns were relevant.
6 However, as identified in the Staff Report, Land Use Planning, Development (Community
7 Development Code), Policy A.1.b states that the land use regulations shall “promote
8 compatibility between development and existing and desired neighborhood character.”
9 The Commission finds and recommends that the neighborhood impacts identified by flag
10 lot development in the staff report and by public testimony be addressed by limiting the
11 number of lots served by a private access lane to three (i.e., two flag lots and one non-flag
12 lot).

13
14 The Commission finds that reducing the maximum number of flag lots that can be served
15 by an access lane to two will have some potential effect on density throughout the City
16 because a public street results in more land devoted to on-site circulation and parking
17 than the current access lane; that loss of development potential is approximately one to
18 two lots out of an eight flag lot land division. However, the Commission finds that the
19 density impact will not affect compliance with Metropolitan Housing Rule’s (OAR 660-07-
20 035(3)) requirement that overall density in Lake Oswego equal or exceed 10 dwelling units
21 per net buildable acre because:

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23 (a) “net building acre”¹ excludes the area of rights-of-way, both private and
24 public, and thus there is no effect on the remaining net buildable area to develop
25 lots that meet the minimum lot areas, and

26
27 (b) the impacts of this code amendment would primarily affect low-density
28 properties [R-7.5, R-10 and R-15], which were shown to have the most
29 development potential for flag lots, but which account for less than one-third of
30 the residential capacity compared to medium- and high-density zones according
31 to the Housing Needs Analysis of 2013.

32
33 The Commission considered but does not recommend development of private street
34 standards, with a minimum width of 38 feet and serving a maximum of eight lots. The
35 Commission notes the testimony that neighbors to a housing development with a wider
36 access, e.g., 38—feet, may perceive that the access is public but that, because it is private,
37 may inadvertently trespass on a private street, and that private streets may preclude
38 neighbors from unannounced visits to residents served by a private street. The
39 Commission does not determine whether that testimony is a correct statement of law.
40 The testimony did not identify a specific policy to which these concerns were relevant,
41 however, the Commission will consider the concern in regards to Policy F-5.b of the

¹ “A ‘Net Buildable Acre’ consists of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas.” OAR 660-07-005(1) Definitions.

1 Connected Community chapter of the Comprehensive Plan. The Commission finds that
2 there could be perception that unannounced neighbor visits are not permissible for
3 homes due to the design and function of private streets, resulting in a dampening effect
4 on neighborhood livability due to reduced social interaction and community building,
5 contrary to Policy F-5.b:

6
7 F-5 Develop design standards that reinforce neighborhood livability by:

8 **

9 b. Applying design standards that reinforce neighborhood character, social
10 interaction and community building.

11
12 The Commission also finds that limiting flag lot developments to two flag lots will better
13 comply with Policy A.1.b of the Land Use Planning chapter of the Comprehensive Plan,
14 which requires that development standards promote compatibility between new
15 development and desired neighborhood character, and Policy C.7 of Complete
16 Neighborhoods, which requires that infill housing to be designed to be compatible with
17 existing neighborhood character, while addressing the impacts of flag lot developments
18 on neighborhood connectivity and character.

19
20 2. **Parking.** The Commission heard testimony regarding the parking impacts from flag lot
21 developments, particularly that access lanes provide no opportunity for guest or overflow
22 parking for the residents. The Commission notes that regular public streets are generally
23 designed to be wide enough to provide on-street parking opportunities to accommodate
24 residents, visitors, and persons that provide services to the residents. The Commission
25 finds that requiring one standard parking space on the access lane for each flag lot, in
26 addition to the parking space required on the flag lot itself, will minimize parking impacts
27 on nearby public streets. The Commission finds that these amendments meet Policy A.1.b
28 of the Land Use Planning chapter of the Comprehensive Plan and Policy C.7 of Complete
29 Neighborhoods, summarized above.

30
31 3. **Flag Lot Definition:** The Commission heard testimony that lots platted prior to September
32 6, 1998 and that do not have frontage on a public street appear to be Flag Lots, but that
33 the Code is not clear as to whether the Flag Lot standards apply to these lots. For
34 example, Phantom Bluff used to be a public street when the lots along Phantom Bluff
35 were created. The lots were not created as “Flag Lots” because (a) they abutted a public
36 street at the time of creation, and (b) they were created before the Flag Lot standards
37 were enacted in 1998. After the Phantom Bluff lots were created, Phantom Bluff was
38 vacated as a public street, and thus the lots are now served by a private access easement.
39 The current Flag Lot standards, created in 1998, are applied at the time of creation of the
40 Flag Lot; they are not retroactively applied upon lots that may later have limited public
41 street access. Thus the Phantom Bluff lots are not “flag lots” because they were not
42 created as flag lots. However, they may appear, at first blush, to meet the definition of
43 “flag lot” because they do not currently have public street access and are served by an
44 access easement. The Commission finds that amending the definition of Flag Lot to clarify

1 that the Flag Lot definition is applicable only to flag lots that are created after September
2 6, 1998 clarifies that the Flag Lot standards do not apply to lots created before that date.
3 The Commission finds that this amendment meets Policy 2 of Civic Engagement, which
4 requires that information related to land use planning is readily accessible and easy to
5 understand.

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7 4. The Commission finds that the balance of the proposed amendments update flag lot
8 provisions related to orientation and screening, correct errors, eliminate text ambiguities
9 and redundancies, or clarify code text, for the reasons set forth in Attachment 2 of
10 Ordinance 2759 (Exhibit A-1.1). They are consistent with the original scope and intent of
11 the code provision when adopted, and accordingly these amendments do not have policy
12 implications different than originally intended. The Commission finds that the
13 recommended code provisions comply with the adopted Comprehensive Plan for the
14 reasons set forth at the time of adoption of the original code text, and that the
15 amendments meet Comprehensive Plan Policies A.1.b (Land Use Planning) and C.7
16 (Complete Neighborhoods) by ensuring that infill development promote compatibility
17 with the existing neighborhood.

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19 ORDER

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21 IT IS ORDERED BY THE PLANNING COMMISSION of the City of Lake Oswego that:

- 22
23 1. The Planning Commission recommends that proposed Ordinance 2759, with Attachment 2
24 (12/06/17) [LU 17-0052] be approved by the City Council.

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26 I CERTIFY THAT THIS ORDER was presented to and APPROVED by the Planning Commission of
27 the City of Lake Oswego.

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30 DATED this 11th day of December 2017.

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33 Robert Heape /s/
34 Robert Heape, Chair
35 Planning Commission
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APPROVED: 12/11/17

1 ATTEST:
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PRELIMINARY DECISION - November 27, 2017

4

5 AYES: Arthur, Baker, Heape, Sweers, Ward

6 NOES: Brockman

7 ABSTAIN: None

8 EXCUSED: None
9

10 **ADOPTION OF FINDINGS AND ORDER - December 11, 2017**

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12 AYES: Arthur, Heape, Sweers

13 NOES: Brockman

14 ABSTAIN: None

15 EXCUSED: Baker, Ward