

STAFF REPORT

CITY OF LAKE OSWEGO

PLANNING AND BUILDING SERVICES DEPARTMENT

APPLICANT

City of Lake Oswego

FILE NO.

LU 15-0017

LOCATION

Citywide

STAFF

Debra Andreades, Senior Planner

DATE OF REPORT

April 17, 2015

PLANNING COMMISSION HEARING DATE

April 27, 2015

I. APPLICANT'S REQUEST

The City of Lake Oswego is proposing legislative amendments to the Community Development Code (CDC) regarding development of substandard lots (lots that do not meet the minimum lot size or other dimensional standards), including amendment of the definition of "Lot." Amendments to other sections of the Community Development Code will add criteria for lot line adjustments involving substandard lots. Amendments are proposed to the following code sections: LOC 50.01.006.5 Non-Conforming Lots; LOC 50.03.002 Residential Use Table; LOC 50.04.003.2.b General Exception to Lot Area and Dimension Requirements, Lot Line Adjustments; LOC 50.07.003 Review and Approval Procedures, and LOC 50.10.003 Definitions. Ordinance 2666, which would enact these changes, is attached as Exhibit A-1.

II. APPLICABLE REGULATIONS

A. City of Lake Oswego Comprehensive Plan

Land Use Planning Goal:

Development (Community Development Code)

Policy A-1.b

Policy A-1.g

Policy A-1.e

Policy A-2.a

Policy A-2.c

Policy A-3

Policy A-6

Development Review

Policy B-1

Policy B-2

Policy B-7

Policy B-8

Policy B-9

Policy B-13

Design Standards and Guidelines

Policy C-1.a

Policy C-1.e

Policy C-3

Policy C-5

Land Use Administration

Policy D-1

Community Culture Goal:

Civic Engagement

Policy 1

Policy 2

Policy 3

Policy 4

Policy 5

Inspiring Places and Spaces Goal:

Goal 1: Policy 1.a

Complete Neighborhoods and Housing Goal:

Housing Location and Quality

Policy A-2

Housing Choice and Affordability

Policy B-1

Complete Neighborhoods

Policy C-7

B. State Statute

ORS 197.307

Approval Standards for Certain Housing in Urban Growth Areas

C. City of Lake Oswego Community Development Code

LOC 50.07.003.16.a	Legislative Decisions Defined
LOC 50.07.003.16.b	Criteria for a Legislative Decision
LOC 50.07.003.16.c	Required Notice to DLCD
LOC 50.07.003.16.d	Planning Commission Recommendation Required
LOC 50.07.003.16.e	City Council Review and Decision

III. BACKGROUND AND DISCUSSION

Introduction

The proposed amendments to the Community Development Code (CDC) are intended to regulate how development occurs on substandard lots. This issue arises when property owners seek a building permit on an underlying platted or legally-created lot that does not meet the minimum lot size of the zone.

These amendments also respond to the following 2015 City Council Policy on Neighborhood Livability which is to “preserve the character of existing established residential neighborhoods...in consultation with residents of the neighborhood and neighborhood association representatives, while keeping in mind the property rights of owners or buyers who are interested in improving their property.” Residents of Hallinan Heights Neighborhood brought the issue of substandard lot development to the Planning Commission and City Council in 2014. The Council in turn directed staff to work with the Commission in preparing an amendment addressing the residents’ concerns.

Background


The Commission held three work sessions on the issue of substandard lots: January 12, 2015, February 9, 2015 and March 23, 2015.

At the January 12th work session, 1028 Cedar Street in Hallinan Heights was used as a case study of a recent a lot line adjustment and of building permits issued on substandard lots. Background was provided on the origin of the current definition of “lot”, the methodology for determining where legal lots exist, and development rights on substandard lots where a lot is found to be legal for purposes of development.

At the February 9th meeting staff reviewed the history of the definition of “lot” in the Community Development Code along with the basis for the definition in the Comprehensive Plan and for allowing development on a substandard lot (Land Use Planning, Policies B-8 and B-9).

The Commission, by general consensus, for the public hearing, directed staff to prepare an amendment to the definition of “lot” in the City’s Community Development Code (LOC 50.10.002.3) that requires aggregation of all lots in common ownership to meet the minimum lot size of the zone in which it is located. The Commission also requested options for consideration at the hearing for how a substandard lot could be developed when it was not possible to aggregate and reach the zone’s minimum lot size. This would occur, for example, where there is only one lot in ownership.

The Commission also wanted to consider amendments that address compatibility of substandard lot development with development in the vicinity.

In addition to the amended definition of “lot”, the proposal includes options for standards that would generally reduce development potential on substandard lots. (This staff report contains the following symbol in the left margin signifying a decision point for the Commission). 

DISCUSSION


Definition of Lot


“Lot” is currently defined in the Community Development Code (“CDC” or “Code”) LOC 50.10.003.2, as:

“Lot. A unit of land created in compliance with all legal requirements in effect and applicable at the time of creation.”


The Commission’s guidance to staff focused on preparing an amendment to the definition of “lot” that implements the minimum lot size of the zone, consistent with the Comprehensive Plan. The Commission requested for public hearing consideration an amendment that would require aggregation of contiguous, commonly owned lots to achieve the minimum lot size of the zone for the purpose of development; aggregation would not be required if the development lot met or exceeded the minimum lot size of the zone. The Commission also suggested that the public hearing draft contain a provision requiring aggregation of lots prior to demolition, where a dwelling to be demolished is built upon more than one lot and at least one of the lots is substandard.


The following definition is proposed, as found in Attachment 2 of Exhibit A-1, Page 3:

 Lot: A legal or legalized unit of land created in compliance with all legal requirements in effect and applicable at the time of creation which meets the minimum lot dimensions of the zone. If the unit of land does not meet the minimum lot dimensions of the zone, the ‘lot’ shall consist of the contiguous, commonly-owned lots that meet the minimum standards of the zone. If all contiguously, commonly-owned lots are insufficient to meet the minimum standards of the zone, the ‘lot’ shall be all of the contiguously, commonly-owned lots. Where a structure has been constructed over the common lot line of two platted or deeded units of land and the structure is to be demolished, the platted or deeded units of land shall be legally consolidated prior to demolition unless each platted or deeded unit of land meets the minimum lot size”.

 Note: Lots created by the Planned Development (PD) subdivision process usually have less lot area than the minimum lot area of the zone because density is transferred from the common open space that is set aside for the enjoyment of the residents. Staff recommends that the definition of “lot” be further amended to state that PD-created lots not be treated as substandard lots: “**Lots**

within a Planned Development shall be deemed to meet the minimum lot dimensions of the zone.”

 An amendment to the Non-Conforming Lots section of the code, LOC 50.01.006.5, is also proposed to address situations where the development lot does not meet the minimum lot area of the zone. The proposal limits substandard development to “one dwelling unit” (Attachment 2 of Exhibit A-1, page 1). [Staff notes that the amendment shown in Exhibit A-1 is to this section as recently approved by the City Council by Ordinance 2644, which is expected to be in effect in May, 2015. It is shown in regular typeface because it has been adopted, although not yet in effect.]

 Where aggregation is not possible, the Commission suggested that two different options be presented for the public hearing that are intended to protect neighborhood character. These options would limit the size and/or control the impacts of, development on substandard lots. The Commission was interested in addressing a variety of impacts, including building compatibility with adjacent development (scale, height, lot coverage, floor area, privacy, etc.), parking, and public facilities. One approach was quantitative numerical standards and the other was based on discretionary standards. The Commission should consider which of the options it prefers, or if neither option is recommended.


Limits on Development of Substandard Lots

Quantitative Option: Percentage reduction in floor area; numerical height limitation

As a preface to discussion of this option, staff notes that the current Floor Area formula in the Community Development Code is dependent on the actual size of the lot (LOC Table 50.04.001-1). Therefore, floor area is currently reduced on a lot that is less than the minimum lot size in the zone. Another factor that addresses the bulk of a structure is lot coverage, which is a percentage of lot area but is also dependent on height: greater lot coverage is allowed for reduced height; less lot coverage is allowed with a greater height (LOC Table 50.04.001-2).

The quantitative option would:

- a. Limit Floor Area to a percentage of what would be allowed for a standard lot in the zone. The percentage would equal the actual lot area divided by the minimum lot size of the zone, i.e., 66% of the minimum lot size would result in 66% of maximum Floor Area; and/or
- b. Cap the height of a future structure on a substandard lot at 22 feet, or the average height of structures on abutting lots, whichever is greater, similar to the height limitation for flag lots.

 *On-Street Parking / Garage Space:* During the work sessions, the Commission discussed the impacts of development on substandard lots to the surrounding neighborhood. Among the issues the Commission noted for public hearing discussion was on-street parking and traffic. Currently, the CDC requires one off-street parking space per single family dwelling. The formula for calculating Floor Area in the code has an additional 600 square-foot allowance in the R-7.5 zone, “per residential unit providing a garage”. The Commission should consider whether a substandard

lot should be entitled to this additional floor area, and whether new dwellings on substandard lots should be required to have more than one off-street parking space, to address the site limitations and parking needs of substandard lots.

A substandard lot is typically a narrower lot, which may offer limited opportunities for on-street parking directly in front of the residence if driveway access is from the street and not an alley. On a narrower lot, the driveway occupies a greater percentage of the street frontage than it would with a standard width lot. A substandard lot also inherently results in a smaller house, where residents enhance storage opportunities by using the garage for storage of personal items. This may occur in larger houses as well, where the occupants may have more personal belongings, but larger houses typically have more garage and storage space overall.

Case Studies: Two tables provide examples of various sized lots in the R-7.5 zone showing two different ways to calculate floor area allowance and the effect of limiting height. Architect Ralph Tahran has prepared graphics to illustrate how height, floor area, setbacks and design standards interact on a lot (Exhibit E-1) to illustrate the massing that this approach would allow on various sized lots, (including in one scenario, a 500 square-foot garage for two cars).

On the following pages, there are two tables.

Column 3 shows what would happen if the Floor Area for a substandard lot was calculated according to the existing formula in the code, based on actual substandard lot size.

Table 1, Column 4, shows the 7,500 square-foot lot total floor area allowance, including garage, multiplied by the percentage of 7,500 sf that is the substandard lot. This “full proportional” method applies the percentage Floor Area reduction to the total Floor Area allowed on a standard lot, both the house and garage allowance. In the case of the substandard lot, the total allowed on the standard sized lot is reduced by the percentage size of the substandard lot.

Table 2, Column 4, applies the Floor Area percentage reduction to the dwelling floor area only, and adds a 500 square foot allowance for a two-car garage to that total. Tables 2, Column 4 is different from Table 1 in allowing only a 500 square foot allowance for a garage, rather than a 600 square foot allowance, with the same percentage reduction in floor area as Table 1.

Column 5 contains two height limitation options for substandard lots:

1. 22 feet (or average height on abutting lots)
2. The existing height limitation in the zone for a regular 7,500 sf lot

Column 6 shows lot coverage based on two scenarios: the existing limitation in the CDC, i.e., dependent on height; and height capped at 22 feet.

Column 7 shows the expected effect of height restriction on Floor Area; that is, what amount of allowed Floor Area could not be utilized with a height restriction (doubling the allowed lot coverage to simulate two floors for an approximate floor area).

See next pages for Tables 1 and 2.

Table 1 ("Full Proportional" FA Reduction)

1	2	3	4	5	6	7
Lot Size	% of Min. Lot Size	Existing code- Max FA based on lot size	Proportional FA based on % min lot size for zone	Height Limitation	Lot Coverage	~FA not used w/ height restriction
7,500 sf	100 %	3,000 sq. ft. + [(7,500 – 5,800 sq. ft.) x 0.19]+ 600 sf, if garage provided (3,923 sf total)	No change (lot meets minimum lot area)	28 ft- flat lot 32 ft-sloping topo. 35 ft-sloped lot	% Based on height (zone compliant)	NA
5,000 sf	66%	3,000 sq. ft. + [(5,000 – 5,800 sq. ft.) x 0.19] 2,848 sf + 600 sf, if garage provided (3,448 sf total)	2,589 sf total (66% of 3,923 sf) Proportional % also applied to 600 sf garage	22 feet (or the average height of dwellings on all lots abutting the site)	Based on 22 ft height, per Table 50.04.001-2 35%=1,750 sf	911 sf
				28 ft: Height allowed by zone	25%= 1,250 sf	89 sf
4,000 sf	53%	3,000 sq. ft. + [(4,000 – 5,800 sq. ft.) x 0.19] 2,658 sf + 600 sf, if garage provided (3,258 sf total)	2,079 sf total (53% of 3,923 sf) Proportional % also applied to 600 sf garage	22 feet (or the average height of dwellings on all lots abutting the site)	Based on 22 ft height, per Table 50.04.001-2 35%=1,400 sf	721 sf
				28 ft: Height allowed by zone	25%= 1,000 sf	0
3,000 sf	40%	3,000 sq. ft. + [(3,000 – 5,800 sq. ft.) x 0.19] 2,468 sf + 600 sf, if garage provided (3,068 sf total)	1,568 sf total (40% of 3,923 sf) Proportional % also applied to 600 sf garage	22 feet (or the average height of dwellings on all lots abutting the site)	Based on 22 ft height, per Table 50.04.001-2 35%=1,050 sf	532 sf
				28 ft: Height allowed by zone	25%= 750 sf	0 sf
2,500 sf	33%	3,000 sq. ft. + [(2,500 – 5,800 sq. ft.) x 0.19] 2,373 sf + 600 sf, if garage provided (2,973 sf total)	1,294 sf total (33% of 3,923 sf) Proportional % also applied to 600 sf garage	22 feet (or the average height of dwellings on all lots abutting the site)	Based on 22 ft height, per Table 50.04.001-2 35%=875 sf	456 sf
				28 ft: Height allowed by zone	25%= 625 sf	0

Table 2 (% FA reduction not applied to 500 sq. parking area)

1	2	3	4	5	6	7
Lot Size	% of Min. Lot Size	Existing code- Max FA based on lot size	Proportional FA based on % of house + 600 sf garage	Height Limitation	Lot Coverage	~FA not used w/ height restriction
7,500 sf	100 %	3,000 sq. ft. + [(7,500 – 5,800 sq. ft.) x 0.19]+ 600 sf, if garage provided (3,923 sf total)	No change (lot meets minimum lot area)	28 ft- flat lot 32 ft-sloping topo. 35 ft-sloped lot	% Based on height (zone compliant)	NA
5,000 sf	66%	3,000 sq. ft. + [(5,000 – 5,800 sq. ft.) x 0.19] 2,848 sf + 600 sf, if garage provided (3,448 sf total)	(2,693 sf) 66% of 3,323 sf. for house + 500 sq. ft for garage*	22 feet (or the average height of dwellings on all lots abutting the site)	Based on 22 ft height, per Table 50.04.001-2 35% =1,750 sf	807 sf
				28 ft: Height allowed by zone	25%= 1,250 sf	0
4,000 sf	53%	3,000 sq. ft. + [(4,000 – 5,800 sq. ft.) x 0.19] 2,658 sf + 600 sf, if garage provided (3,258 sf total)	(2,261 sf) 53% of 3,323 sf. for house + 500 sq. ft for garage*	22 (feet or the average height of dwellings on all lots abutting the site)	Based on 22 ft height, per Table 50.04.001-2 35% =1,400 sf	539 sf
				28 ft: Height allowed by zone	25%= 1,000 sf	0
3,000 sf	40%	3,000 sq. ft. + [(3,000 – 5,800 sq. ft.) x 0.19] 2,468 sf + 600 sf, if garage provided (3,068 sf total)	(1,829 sf) 40% of 3,323 sf. for house + 500 sq. ft for garage*	22 feet (or the average height of dwellings on all lots abutting the site)	Based on 22 ft height, per Table 50.04.001-2 35% =1,050 sf	271 sf
				28 ft: Height allowed by zone	25%= 750 sf	0
2,500 sf	33%	3,000 sq. ft. + [(2,500 – 5,800 sq. ft.) x 0.19] 2,373 sf + 600 sf, if garage provided (2,973 sf total)	(1,596 sf) 33% of 3,323 sf. for house + 500 sq. ft for garage*	22 feet (or the average height of dwellings on all lots abutting the site)	Based on 22 ft height, per Table 50.04.001-2 35% =875 sf	154 sf
				28 ft: Height allowed by zone	25%= 625 sf	0

As provided in the CDC, the setbacks of the R-7.5 zone and the structure design standards in residential zones would still apply. The tables indicate two possible height limitations: the existing 28-foot base height limitation of the R-7.5 zone, and a height limit of 22 feet as a test case. Lot coverage is determined by the height of the structure in a particular zone (see LOC 50.04.001.1.f). As indicated in the tables above, limitations on height could result in a builder not being able to utilize the allowed Floor Area, even the Floor Area reduced by the percentage of the substandard lot size. Builders often seek to maximize floor area on standard sized lots as well substandard lots. Staff believes that there is a likelihood that the result of a quantitative approach for substandard lots would be a certain uniformity of design, with many dormers on roofs in order to gain the allowed Floor Area and stay within the lot coverage and height. In a neighborhood of substandard lots, this can result in a lack of design variety, and thus a lack of visual texture in the neighborhood.

Other conclusions may be drawn from the case studies (Exhibit E-1):

Size and scale of structures: At a 22 foot height, it is difficult to get two stories, especially with the structure design standards applicable to residential zones. The additional lot coverage allowed by Table 50.04.001-2 with a lower height could not be accommodated on a smaller lot. The setbacks of the zone also limit the allowed building envelope on any lot; on a smaller lot, the setbacks will further limit the amount of lot coverage (on the 3,000 sf lot, the building envelope is 15' in width by 45' in length). Exhibit E-1 shows that on each lot size there may be an optimal combination of height (greater than 22 feet), lot coverage, floor area, and setbacks that work together to achieve a realistic living space.

Parking implications: With a constrained building envelope, builders might drop one garage space to get an extra bedroom since only one off-street parking space per single family dwelling is required. Exhibit E-1 indicates that additional lot coverage allowed either by right or by a Minor Variance to front and rear setbacks, could alleviate this issue, although the building elevations show development without this added lot coverage.

Other Constraints -Drainage: Drainage measures required at the time of building permit review put further constraints on a lot. Infiltration facilities must be located five feet from a property line and 10 feet from a building foundation. This does not include the width of the facility itself and there may be tree preservation that precludes the facilities from being located in the rear yard. (A planter box built against the foundation can be used if there is no other alternative). A steeply sloped lot creates another constraint because the driveway transition to the street on these lots requires additional space for maneuvering.

Staff finds that the numerical approach of the Quantitative option is complicated and might not take into account all circumstances on a substandard lot as opposed to the Compatibility Review which may afford a more comprehensive approach.

Regarding the question of whether a substandard lot should have a height limitation less than that allowed by the zone, staff notes that not all existing dwellings in the zone may have utilized the allowable development potential. Neighborhoods continue to evolve as properties re-develop. An

older neighborhood with single-story ranch-style homes may see redevelopment in the future, where second floors are added, that reach the maximum height and floor area of the zone. In addition, a lot that complies with the minimum lot size could completely re-develop, with a new house constructed that is taller than the house it replaces and neighboring residences. If a height limitation was placed on substandard lots, the code-complying house on the re-developed lots next door could tower over the smaller and lower house constructed on the substandard lot. If different numerical standards are created to be compatible with current neighborhood development, when neighboring standard sized lots re-develop as allowed by the zone, the smaller house may no longer be compatible to its neighbors. The quantitative option does not provide flexibility to the substandard lot to redevelop to the same *proportional* degree as its neighboring lots even as it must comply with the same setbacks, lot coverage, and building design standards.



Following the public hearing, should the Commission recommend the Quantitative option, staff suggests that the following additional policy choices be addressed:

- Should a height limitation be imposed that is more restrictive than the height limit of the zone?
- Alternatively, should substandard lots get the height allowed by the zone but not be eligible for variances (or RID approval) to modify setbacks, lot coverage, Floor Area and Design Standards?
- Should dwellings on substandard lots be required to provide more than one off-street parking space, so builders don't prioritize Floor Area for the dwelling (with a 500 square foot allowance for the garage)?

Compatibility Review Option: No Significant Negative Impact on Scale, Noise, Traffic, etc.

A second option for public hearing consideration is to require compatibility review where a lot does not meet the minimum standards of the zone. This can be achieved by borrowing from the LOC 50.01.003.5.c criteria for legalization of a lot when the lot does not dimensionally comply with the current lot dimensional requirements or those applicable when the lot was created illegally.


LOC 50.01.003.5.c. requires the applicant demonstrate that development that would be allowed by legal creation of a lot will not have a significant negative impact on the neighborhood in terms of scale, noise, traffic, parking, loss of privacy, obstruction of views, or buffers from existing properties. In this code provision, the City determines the degree of impact by considering the "consistency of potential development on a lot with the existing development pattern in the vicinity". Furthermore, the City "may impose conditions on development of the lot in order to ensure that legalization of the lot does not have a significant negative impact on the neighborhood". This code language could be modified to address the following issues:

- a. scale
- b. noise
- c. traffic
- d. parking
- e. buffers from adjacent properties
- f. loss of privacy on adjacent properties

Because the criteria are based upon compatibility with the neighborhood, this option would provide a degree of flexibility to the owner of the substandard lot when the houses on the neighboring lots redevelop. As neighbors add onto their homes, or demolish and build new, larger homes, the above factors would be applied in context. In addition, the owner of a substandard lot with development approved under the compatibility standard would be able to apply for a modification of the conditions of approval and add onto the house, consistent with the character of the neighborhood.

During the March 23rd work session, the Commission discussion focused on the review process for a Compatibility Review option. Since the criteria would be discretionary, development on the substandard lot would be reviewed as Minor Development, not Ministerial Development; neighbors in the vicinity would receive notice and have the opportunity to comment.


As a subset of this option, the Commission also requested public comment on whether the Minor Development review of lots that fall below certain thresholds must be referred to the Development Review Commission. Currently, LOC 50.01.003.5.c, provides for mandatory referral to Development Review Commission (DRC) when a lot is below 65% of any dimensional standard. Should this type of provision apply to substandard lots? For example, DRC referral could be required at the following thresholds:

- 
- a. 5,000 sf in area and 50 feet in width in the R-7.5 zone
 - b. 7,500 sf in area and 65 feet in width in the R-10 zone
 - c. 10,000 sf in area and 80 feet in width in the R-15 zone

To implement the Compatibility Review and provide for the referral of applications to the DRC, LOC 50.01.006 would be amended. (See Attachment 2 to Exhibit A-1, page 1).

Global Issues Relating to Substandard Lots with Either Option

Whichever option is selected for reducing development potential on substandard lots, staff notes that compliance with the drainage standard requires retention and/or infiltration of storm water (placement of rain gardens), and that will further constrain development on the substandard lot beyond setbacks, floor area, lot coverage, height, etc.



Staff suggests that the Commission discuss whether Secondary Dwelling Units (SDU) or Duplexes should be permitted on substandard lots. The definition of lot as amended above would provide that an SDU or duplex is not allowed on a substandard lot. If the Commission concurs that a substandard lot should be limited to “one dwelling unit,” this is provided in amendments to LOC 50.01.006.5.a, Non-Conforming Lots, Development Permitted (as amended by Ordinance 2644), and LOC 50.03.002, Use Table, Attachment 2 to Exhibit A-1, pages 1 and 2, respectively.

Lot Line Adjustments

Currently a lot line adjustment is allowed on a substandard lot as long as it does not increase the degree of noncompliance per LOC 50.04.003.2.b:

b. Substandard Lots or Dimensions

A lot which does not comply with the minimum lot area or dimensional requirements required by this Code at the time of application for development may be occupied by a permitted use in the zone in which the lot is located. Any proposed use of the lot must comply with all other applicable code provisions, including but not limited to setbacks, height limits, and lot coverage requirements. *The lot lines of a lot which does not comply with the minimum lot area or dimensional requirements of this Code at the time of application may be adjusted as long as the adjustment does not increase the degree of noncompliance.*

A lot line adjustment is processed as a Ministerial Review if it doesn't increase density.

At the March 23rd work session, the Commission recommended for consideration at the public hearing whether this code section should also be amended to specify when the lot lines of substandard lots may be adjusted, and, if so, the process for doing so. Staff has included this subject as one of the amendments, as follows:

a. Compliant with Zone's Minimum Lot Size.

Where the lot line adjustment results in two parcels that each meet the zone's minimum lot area, the existing Ministerial Review process is not proposed to be modified.

b. Substandard Lot Remains Following Lot Line Adjustment

The Commission directed staff to include for public hearing discussion a provision requiring Minor Development Review, with a possible mandatory DRC referral, for lot line adjustments where at least one of the resulting lots would continue to be substandard after the adjustment.

Reclassifying the review of some (or all) lot line adjustments from Ministerial Development to Minor Development provides for public notice and an opportunity for public comment. It also provides the opportunity for both exactions (i.e., required public improvements) and mitigation of impacts upon "the built environment" under the conditioning authority of LOC 50.07.003.5.iii¹ and vi²: The conditioning authority applies to Minor and Major Developments, not Ministerial Development. Whether or not any particular lot line adjustment would warrant a condition of exaction depends upon the difference between the impact of the lot line adjustment pre-adjustment and post-adjustment to

¹LOC 50.07.003.5.a.iii: "The condition is reasonably related to alleviation of a need for public services or facilities created or contributed to by the proposed development. As used in this section, 'public services or facilities' includes sewer, water, surface water management, parks, open space, streets, sidewalks, and pathways."

²LOC 50.07.003.5.a.iv: The condition is reasonably related to eliminating or mitigating a negative impact on natural features or processes or on the built environment of the neighborhood which is created or contributed to by the proposed development. As used in this section, "natural features or processes" includes tree groves, stream corridors and natural drainage ways, significant tree(s), wetlands, and other natural areas."

the public services and facilities. Whether any particular lot line adjustment would warrant a condition of mitigation depends upon the impact of the lot line adjustment upon the built environment.



Referring Minor Development lot line adjustments to the DRC does not add or modify any of the applicable standards, and it does not change the City's authority to exact public improvements; it provides for a public hearing after the comment period and adds approximately 45 days to the development review process.

See Attachment 2 to Exhibit A-1, page 2, with the proposed amendment relating to Lot Line Adjustments under LOC 50.04.003.2.b (Exceptions, Projections, And Encroachments / General Exception to Lot Area and Dimension Requirements). In addition, see Attachment 2 of Exhibit A-1, page 1 for amendments to LOC 50.01.006.5.b relating to Non-Conforming Lots, and page 3 for amendments to LOC 50.07.003.13(4) relating to Review Procedures.

IV. NOTICE OF APPLICATION

A. Newspaper Notice

On April 16, 2014, public notice of the proposed CDC text amendments and Planning Commission public hearing was published in the *Lake Oswego Review*.

B. ORS 227.186 (Measure 56) Notice

The City followed the procedures required by ORS 227.186 (Ballot Measure 56) for notification of the owners of property potentially affected by the changes. The notice was combined with a notice for LU 15-0010 and was mailed citywide on April 7, 2014.

C. DLCD Notice

Pursuant to LOC 50.07.003.16.c and ORS 197.610, staff provided notice of the proposed CDC text amendments to the Oregon Department of Land Conservation and Development (DLCD) on March 13, 2015.

D. Metro Notice

Pursuant to Metro Code 3.07.810 and .820, staff provided notice of the proposed CDC text amendments to Metro on March 13, 2015, not less than 45 days prior to the hearing date.

V. COMPLIANCE WITH APPROVAL CRITERIA

Legislative amendments to the CDC shall comply with the following criteria:

A. Any Applicable State Law

See discussion below under State Statute, ORS 197.307-Approval Standards for Certain Housing in Urban Growth Areas.

B. Applicable Provisions of the City of Lake Oswego Comprehensive Plan; and

Staff finds that the following Comprehensive Plan Policies are applicable to this proposal:

Land Use Planning

Development (Community Development Code) Goal, Policies A-1.b, A-1.e, A-1.g

Policy A.1.b, A-1.e and A-1.g: *Maintain land use regulations and standards to: *** (b) promote compatibility between development and existing and desired neighborhood character, *** (e) provide for necessary public facilities and services, and *** (g) promote architectural and site design quality.*

Findings: The amendment to the definition of “lot” promotes compatibility between development and existing neighborhood character by specifying that lots for development purposes must be aggregated to meet the minimum lot size of the zone. Where that is not possible, the proposed amendments set out criteria for an individualized compatibility review that could limit the scale of development on a substandard lot and impose conditions that require public facilities to have sufficient capacity to accommodate future development. This ensures that development would be consistent with the existing neighborhood character.

Conclusion: The proposed amendments are consistent with these policies.

Land Use Planning

Development (Community Development Code) Goal, Policy A-2.a, and A-2.c

Policies A.2.a and A-2.c: *Ensure that land use regulations have sufficient flexibility to Allow developers and the City to propose measures to: *** (a) adapt development to unique and difficult site conditions; (c) Avoid negative impacts on surrounding properties.*

Findings: The proposed code amendments require aggregation of substandard lots and provide a process of review to allow a lot line adjustment and/or development on a substandard lot on sites where aggregation does not result in the minimum lot size of the zone. The proposed amendments also provide a process that allows reasonable development on uniquely constrained or difficult sites provided that it can be shown that the development will minimize negative impacts to surrounding properties. Through the development review process, the City has conditioning authority to ensure that future development on substandard lots will avoid negative impacts on surrounding properties.

Conclusion: The proposed amendments are consistent with these policies.

Land Use Planning

Development (Community Development Code) Goal, Policy A-3.

Policy A-3. *Ensure high-quality building and site design through the application of clear and objective design standards for residential development, and design review; utilize the development review process for commercial, industrial, and institutional development to ensure high-quality building and site design and overall appearance.*

Findings: This policy is not applicable to the proposed amendment requiring aggregation of contiguous, commonly-owned parcels to achieve a developable lot that is equal to or greater than the minimum lot size of the zone because this policy addresses building and site design upon a developable lot, not the lot threshold required for development.

The Compatibility Review criteria required for development of a dwelling on a lot that is less than the minimum lot size are not clear and objective and therefore this policy is not met with regard to residential development on substandard lots. However, it is recognized that there are instances in which policies may conflict:

“Plan goals and policies are intended to be supportive of one another. However, when using the Plan to make decisions, if conflicts arise between goals and policies, the City has an obligation to make findings indicating why the goal or policy being supported takes precedence over other goals or policies found to be in conflict. This involves a decision-making process on the part of the City that balances and weights the applicability and merits of the Plan’s many goals and policies against one another.”

Lake Oswego Comprehensive Plan, page 14.

As discussed regarding:

- Land Use Planning, Development Review Goal, Policy B-8
- Land Use Planning, Design Standards and Guidelines Goal, Policies C-1.a, and C-1.e, , Inspiring Spaces and Places, Goal 1, Policy 1.a,
- Complete Neighborhoods Goal Policy A-4,

Substandard-sized lots in the neighborhood by their very nature do not conform to the neighborhood pattern and development. This policy’s requirement for clear and objective residential development standards is premised on the resulting development being compatible with the surrounding neighborhood. This policy is intended to be supportive to the cited neighborhood compatibility requirements. However, when development is to occur on lots which do not meet the neighborhood pattern and minimum zoning requirements, additional attention is

needed to ensure that development on an out-of-character site conforms to, and does not degrade, the existing and planned neighborhood character. When a site does not conform to the planned neighborhood pattern, the policies relating to ensuring the preservation of neighborhood character must prevail as to a policy that promotes clear and objective criteria for residential development that is not compliant with the planned neighborhood development.

Conclusion: This policy is not met with regard to compatibility review standards for development on substandard lots, but when developing on lots that do not meet the neighborhood pattern, in order to achieve the policies of neighborhood compatibility, discretionary standards are needed to achieve the above cited conflicting policies, and the desired compatible neighborhood development.

Land Use Planning

Development (Community Development Code) Goal, Policy A-6

Policy A-6: *Require that residential densities and allowed land uses within the Lake Oswego Urban Services Boundary not exceed the capacity of planned public facilities and services.*

Findings: The proposed code amendments require an individualized review in order to develop lots that remain substandard after aggregation, as required by the proposed definition of “lot”. Through this process, the City has conditioning authority to ensure that the capacity of public facilities (street and storm water systems) is sufficient.

Conclusion: The proposed amendment is consistent with this policy.

Land Use Planning

Development Review Goal, Policies B-1, B-2, B-7, B-8, B-9

Policies B-1, B-2, B-7, B-8 and B-9: ****(B-1) Require development to conform to the City’s land use regulations; (B-2) Use the City Code to require new development to be adequately served by public facilities and services including water, sanitary sewer, transportation facilities, parks and open space and surface water management and storm drainage facilities. Services shall be available or committed prior to approval of development; (B-7) Allow development within the designated density range when the development is in compliance with code standards that ensure: a) adequate public facilities and services can be provided; and b) Negative impacts can be resolved; (B-8) Allow development of permitted uses on legally created nonconforming lots subject to all applicable land use regulations; and (B-9) Allow for legalization of illegally created lots and opportunity to develop these parcels, provided development occurs pursuant to applicable land use regulations*

including those intended to prevent negative impacts on the surrounding neighborhood.

Findings: The proposed code amendments continue to allow permitted uses and development on substandard (nonconforming) lots, subject to all other standards and a compatibility review to mitigate any negative impacts. As proposed, LOC 50.01.006.5 allows a nonconforming lot to be developed as permitted in the zone, provided all other standards are met (i.e. setback, height, lot coverage, drainage, parking), and there is not a significant negative impact on the neighborhood with regard to traffic, parking and other factors. The proposed amendment allows the City to put conditions on the development to ensure that the new development is adequately served with public facilities and does not adversely impact the neighborhood. The proposed amendments do not remove the ability to legalize an illegal lot nor the ability to develop it, but they do regulate how development can occur to prevent negative impacts.

Conclusion: The proposed amendments are consistent with these policies.

Land Use Planning

Development Review Goal, Policy B-13.

Policy B-13. Require developers, prior to application for permits, to discuss development proposals with neighborhood groups, residents and City staff.

Findings: If the developer of a substandard lot is able to assemble sufficient additional lands so that the development site meets the minimum lot dimensions of the zone, review of development would be the same as applicable to all development in the zone that complies with the minimum lot dimensions of the zone, i.e., construction of a single-family residential dwelling would be a ministerial review. Where, however, development is to occur on a substandard lot, this amendment would classify the development as minor development and would be subject to the pre-application neighborhood meeting requirements (meeting required when deemed beneficial by the City Manager), per LOC 50.07.003.1.f.

Conclusion: The proposed amendment is consistent with this policy.

Land Use Planning

Design Standards and Guidelines Goal, Policies C-1.a, C-1.e, C-3 and C-5

*Policies C-1.a, C-1.c, and C-1.e: Enact and maintain regulations and standards that require: *****(a)** New development to enhance the existing built environment in terms of size, scale, bulk, color, materials and architectural design; **(e)** Minimize and/or*

mitigate adverse traffic impacts generated by new development on adjacent neighborhoods.

Findings: The proposed amendments specifically require compatibility of scale with the existing built environment and mitigation for adverse traffic and/or parking impacts generated by new development on substandard lots by requiring a compatibility review.

Conclusion: The proposal is consistent with these policies.

Policy C-3. *Ensure through development and design standards that both public and private developments enhance the aesthetic quality of the community.*

Findings: The Code presently has development and design standards applicable to single-family residential development. This amendment does not alter the requirement to comply with those standards upon either standard or substandard lots. For substandard lots, additional discretionary criteria may be applied to further assure the development is compatible to the surrounding neighborhood due to the substandard lot dimension.

Conclusion: The proposal is consistent with these policy.

Policy C-5. *Adopt and maintain clear and objective standards for needed housing, pursuant to state law.*

See finding below under subsection “C” regarding ORS 197.307, that it is not applicable to these amendments.

Land Use Planning

Land Use Administration Goal, Policy D-1.

Policy D-1: *Coordinate the development and amendment of the City plans and actions related to land use with other affected agencies, including county, state, Metro, federal agencies and special districts.*

Findings: This proposal includes public notice of the proposed text amendments in compliance with adopted land use regulations. Staff has also provided notice of the proposal to Metro and the DLCD.

Conclusion: The proposal is consistent with this policy.

Community Culture

Civic Engagement Goal, Policies 1-5,

Policies 1-5: 1. *Provide citizen involvement opportunities appropriate to the scale of a given planning effort, and ensure those affected by a Plan have opportunities to participate in the planning process;* 2. *Ensure that information related to land use planning and decision-making is readily accessible to the public and easy to understand;* 3. *Utilize City boards and Commissions, neighborhood associations, and other community groups to ensure a diverse and geographically broad range of citizen input in land use issues;* 4. *Provide opportunities for citizens to engage in land use planning and decision-making, including opportunities for individual citizens who may otherwise not participate;* 5. *Ensure direct and ongoing two-way communications between the City and Lake Oswego citizens regarding land use issues.*

Findings: As discussed above, the Planning Commission held three public work sessions regarding substandard lots and the proposed code amendments. The Commission heard public comment at the work sessions which informed the Commission's understanding of the subject and direction to staff on the proposed amendments. A Notice was sent out city-wide to all residential property owners advising them of the proposed draft code amendments and the April 27th hearing date. At the hearing, the Planning Commission will take public testimony.

Conclusion: The proposal is consistent with these policies.

Inspiring Spaces and Places

Goal 1, Policy 1.a

Policy 1.a: *Adopt implementation measures and guidelines that ensure:*
a. New development in residential areas complements the existing built environment in terms of size, scale, bulk, height, and setbacks.

Findings: The proposed amendments include criteria to ensure that development on substandard lots has no negative impact on the neighborhood in terms of scale and loss of privacy on adjacent properties (which refers to size, bulk, height and setbacks). Proposals for development on substandard lots would be required to go through a Minor Development compatibility review to ensure these criteria are met.

Conclusion: The proposal is consistent with this policy.

Complete Neighborhoods and Housing

Housing Location and Quality Goal Policy A-2

Policy A-2: *Develop and maintain regulations and standards that ensure residential densities are appropriately related to site conditions, including slopes, potential hazards, natural features and the capacity of public facilities.*

Findings: The proposed amendments require a Minor Development compatibility review to ensure that development on substandard lots is appropriate for the site conditions including street width, sidewalks/pathways and bike lanes. The City's conditioning authority allows conditions to be imposed on the development to ensure that the standard is met.

Conclusion: The proposal is consistent with this policy.

Complete Neighborhoods and Housing

Housing Choice and Affordability Goal Policy B-1

Policy B-1: *Provide and maintain zoning and development regulations that allow the opportunity to develop an adequate supply and variety of housing types, and that accommodate the needs of existing and future Lake Oswego residents.*

Findings: The proposed amendments allow development on substandard lots that cannot be aggregated, provided certain criteria are met. Development on a smaller lot will be proportionately smaller and therefore potentially more affordable, providing an opportunity to accommodate diverse needs for housing within the City.

Conclusion: The proposal is consistent with this policy.

Complete Neighborhoods and Housing

Complete Neighborhoods Goal Policy C-7

Policy C-7: *Require infill housing to be designed and developed in ways to be compatible with existing neighborhood character.*

Findings: Development on substandard lots would be characterized as residential infill development. The proposed amendments require a Minor Development review with criteria that ensure new development on these lots will be compatible with existing neighborhood character.

Conclusion: The proposal is consistent with this policy.

C. State Statute ORS 197.307

ORS 197.307: Approval Standards for Certain Housing in Urban Growth Areas

ORS 197.307: *Requires clear and objective standards, conditions and procedures regulating the development of “needed housing” on buildable lands.*

“Needed housing” means “housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

- (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy; ****”. ORS 197.303(1)(a).

The City has clear and objective standards for residential development. This amendment does not affect development on lots that meet the minimum lot requirements in the zone. By aggregating sufficient land for the site that meets the minimum lot requirements in the zone, residential development can then utilize the clear and objective standards. There is, therefore, a path for development of a detached single family housing type under clear and objective standards: obtain sufficient land for the site of the dwelling that meets the minimum lot dimension requirements of the zone. Where aggregation is not possible and a lot does not meet the minimum lot requirements of the zone, it need not be developable. However, the amendment is proposing a path for development for these types of lots.

Looking to the City’s Housing Needs Analysis, Updated March 19, 2013 (Ordinance 2640, Exhibit 4, page 31) to determine if the City had adequate capacity to meet the need for single-family dwellings (SFD), the City examined “Low Density (primarily large lot SFD in R-7.5, R-10, R-15 zones) and “Medium Density (primarily small lot SFD in R-3, R-5 zones). The City found “the city can accommodate the low growth forecast for all housing and zone types, but would need to adopt some new policies to fully accommodate the expected medium housing density need associated with the medium growth forecast”. Thus, in determining whether the city could meet “needed housing,” substandard lots – lots that were not “large lot single family dwelling in the R-7.5, R-10, and R-15 zones- or “small lot single family dwelling in R-3 and R-5 zones” were not part of the housing land inventory and thus were not calculated in determining that the city could meet the housing type demands. With a surplus of large and small lots to meet the SFD demand, excluding substandard lots, the application of standards that are not clear and objective to development on substandard lots will not affect the City’s compliance with the statutory requirement for clear and objective standards, regulating the development of “needed housing” on buildable lands.

Conclusion: This statute is not applicable to these amendments.

- C. Lake Oswego Community Development Code Procedural Requirements
 - LOC 50.07.003.3.c. Published Notice for Legislative Hearing
 - LOC 50.07.003.16a Legislative Decisions Defined
 - LOC 50.07.003.16b Criteria for Legislative Decision
 - LOC 50.07.003.16c Required Notice to DLCD
 - LOC 50.07.003.16.d.iii Planning Commission Recommendation Required
 - LOC 50.07.003.16.e City Council Review and Decision

Findings:

The Community Development Code 50.07.003.16.a defines “legislative decisions” to include amendments to the policies, procedures, standards, criteria or map designations of the Comprehensive Plan, and the Community Development Code. Public hearings by the Planning Commission for recommendations to the City Council for “legislative decisions” are required to have at least ten days prior published notice, per LOC 50.07.003.16.d.iii and 50.07.003.3.c. Notice is defined as being published in a newspaper of general circulation in the City of Lake Oswego at least ten days in advance of the hearing, and mailed at least ten days in advance to the Commission for Citizen Involvement and to all recognized neighborhood associations. The notice shall include:

- i. The time, date, and place of the public hearing;
- ii. A brief description of the proposed legislative amendment; and
- iii. A phone number for obtaining additional information.

As discussed above, Notices of the public hearing were posted, published and mailed per LOC requirements.

The criteria for a legislative decision are addressed in Sections A and B, above. The City notified DLCD and Metro of the proposed action 45 days before the initial evidentiary hearings.

Conclusion:

Staff concludes that the Community Development Code (CDC) procedural requirements for the proposed legislative decision, including public notice requirements for the public hearing, are met per the applicable CDC criteria.

VI. CONCLUSION / RECOMMENDATION

a. Substandard Lot Development

Staff recommends the amendments proposed in Exhibit A-1, which require:

1. Aggregation of substandard residential lots under common ownership.
2. Aggregation of substandard lots when a dwelling that is built over a common interior lot line is demolished.

3. A limitation of one dwelling unit on substandard residential lots that cannot be aggregated.
4. Minor development review of a dwelling on a substandard lot, with compatibility review criteria, which could result in limitations on development that are more restrictive than the zone standards.
5. Minor development review of lot line adjustments where a resulting lot does not meet the minimum lot size. (Maintains existing requirement that lot line adjustment not increase degree of nonconformity.)

As directed by the Commission, the guiding principle of this code amendment is to implement the Comprehensive Plan by upholding the minimum lot size of each zone, and to minimize the opportunity for substandard lot developments. The Commission should consider which approach, Quantitative Standards or Compatibility Review, best meets the intent of the Comprehensive Plan.

Staff finds that based on the above analysis and the drawings in Exhibit E-1, the Quantitative option would increase the complexity of the CDC and could have unintended effects (uniformity of design, inadequate parking, etc.) by applying a fixed numerical standard to all substandard sized lots. If aggregation is not possible to achieve the minimum lot size of the zone, a simpler solution is to add criteria to LOC 50.01.006.5.a Nonconforming Uses, Structures, Lots, and Site Features / Nonconforming Lots so that development must comply with Compatibility Review criteria. This minimizes complexity in the Code and allows for building and site design solutions that are more sensitive to the context of individual neighborhoods. In addition, these amendment permit other aspects of development to be considered, such as parking and public improvements, which also vary by neighborhood. With discretionary Compatibility Review standards, these elements would be considered in context; however, with the Quantitative option, some of these elements may be omitted, or would not be addressed completely.

For this reason, the proposed code amendments in Exhibit A-1, shows only the Compatibility Review option. If the Planning Commission upon receiving public testimony chooses to recommend the Quantitative option, then a footnote will be added to the dimensional tables in LOC 50.03.002.2, indicating special floor area and building height standards apply to substandard lots.

In addition, Staff notes that the criteria for the Compatibility Review option coincides with the criteria for legalizing a lot that does not comply with the standards now existing or that were existing at the time of an illegal lot creation. Should the Commission decide on the Quantitative option, the process for legalizing a lot should be amended to include concurrent review of future development on the lot to be legalized, and to consider revising the standards for legalization of the lot under LOC 50.01.003.5.c.

b. Lot Line Adjustment

Applications for lot line adjustments where the adjustment results in two parcels that each meet the zone's minimum lot area should continue to be processed as a Ministerial Review. If at least one of the resulting lots would continue to be substandard after the adjustment, without increasing the degree of non-conformity, a Minor Development Review should be required for both the lot line adjustment and any future development on the resulting substandard lot.

Based on the information presented in this report, staff recommends that the Commission recommend adoption of Ordinance 2666, Exhibit A-1, to the City Council.

EXHIBITS

A. Draft Ordinances

- A-1 Draft Ordinance 2666, dated 04/07/15
 - Attachment 1 – Reserved for City Council Findings (not included)
 - Attachment 2 – Proposed Draft Code Amendment, 04/07/15

B. Findings, Conclusion and Order

(No current exhibits; reserved for hearing use)

C. Minutes

(No current exhibits; reserved for hearing use)

D. Staff Reports

(No current exhibits; reserved for hearing use)]

E. Graphics/Plans

- E-1 Case Study - Depictions of Development on Substandard Lots; R-7.5 zone

F. Written Materials

(No current exhibits; reserved for hearing use)

G. Letters

- G-1 E-Mail from John Bosshardt, 04/12/15

BACKGROUND MATERIAL AND REFERENCES

Staff reports and public meeting materials that were prepared for the Clear and Objective Housing Standards Amendments, can be found by visiting the project web page for LU 15-0017.

Use the link below to visit the City’s “Project” page. In the “Search” box enter LU 15-0017 then press “Submit”:

<http://www.ci.oswego.or.us/projects>