



TO: Kent Studebaker, Mayor
Members of the City Council

FROM: Debra Andreades, AICP
Senior Planner

SUBJECT: LU 15-0017 (Ordinance 2666)
Study Session to review Community Development Code amendments regulating development on Substandard Lots

DATE: August 27, 2015 **DATE OF MEETING:** September 15, 2015

ACTION

Review the amendments recommended by the Planning Commission related to “Substandard Lots”, in preparation for a public hearing tentatively scheduled for October 20, 2015.

INTRODUCTION/BACKGROUND

“Substandard Lots” are lots that do not meet the minimum lots size and/or dimensional standards of the zone, typically because they were created before the City adopted the current standards. Substandard lots are found throughout the City but there is a predominance in the older neighborhoods such as Hallinan, Old Town, FAN and Evergreen, and in areas around Oswego Lake, due to historical (1880’s – 1950’s) subdivision platting.

Development on substandard lots has occurred by complying with the current underlying zoning standards (e.g., setbacks, lot coverage, height, etc.), the same standards applicable to standard lots. Any variance from the zoning standards for development on a substandard lot is reviewed pursuant to the minor variance criteria and procedure.

Recent development on substandard lots has raised the question of whether compliance with the underlying zoning standards achieves the goal of neighborhood compatible development, or whether additional development standards are necessary, pursuant to the Comprehensive Plan (Policy A-1 of the Land Use Planning Chapter, and Policy C-7 of the Complete Neighborhoods and Housing chapter). Specifically, residents of the Hallinan Heights Neighborhood brought the issue of development on substandard lots to the Planning Commission and City Council in 2014. A lot line adjustment consolidating substandard lots and

decreasing their nonconformity, and the development of several new single-family houses on the resulting lots, which remained substandard (adjacent to Bicker, Cedar, and Spruce Streets), prompted the discussion. The Council directed staff to work with the Commission in preparing code amendments that would address development on substandard lots.

New substandard lots are not being created by land divisions because new lots must comply with current minimum lot area and dimension requirements. Existing substandard lots cannot be reduced in size because a lot line adjustment may not increase the degree of nonconformity. However, as land values increase and the supply of dividable land in the City becomes ever more limited, the pressure to build on substandard lots is likely to increase.

Development on substandard lots is most evident when an owner of contiguous substandard lots removes an older home that was built across property lines, and constructs a home on each substandard lot. However, it may also occur where a house on its own lot is removed to make way for a larger house.

DISCUSSION

In addition to the Comprehensive Plan policies cited above, the proposed amendments respond to the 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.”

Following is an outline of the issues and discussion of the proposed code amendments recommended by the Planning Commission and found in Exhibit A-1.3.

Density / Lot Aggregation

Where an owner of contiguous substandard lots removes an older home that was built across property lines and constructs a home on each substandard lot, there is an increase in density on that development site. Over time, as more substandard lots are redeveloped in this way, the cumulative effect is an increase in neighborhood density from that envisioned by the zone’s minimum lot area requirement. During the Planning Commission’s initial review of the issue, it considered requiring lot aggregation (consolidation of substandard lots) as a tool to discourage this increase in density. The Commission found that not all substandard lots can be aggregated because not every substandard lot is in contiguous common ownership with another lot. The Commission found that the number of substandard lots is not as important as the impacts to the neighborhood of development on those substandard lots.

Definition

The Planning Commission’s review resulted in a recommendation to add a definition of “substandard lot” to the Code [LOC 50.10.003.2]. This would provide a structure for addressing, through new code standards specific to substandard lots, the impacts of development on those lots.

Development

To address neighborhood compatibility, the Commission recommends that development on substandard lots be regulated by the requirements of the zone plus additional specific development standards and procedures applicable only to substandard lots. The following standards and procedures are recommended:

- **Onsite Parking:** Requiring two on-site parking spaces for substandard lots rather than the one that is required for standard lots.
- **Building Height:** (a) Not utilizing the additional 6 feet of height for certain roof forms allowed by right in the zone; and (b) limiting height in the same manner as height of structures on flag lots (the average height of structures on lots abutting the substandard lot, but not greater than the height permitted by zone).
- **Floor Area – Garage:** Limiting additional floor area allowed for garages in low density zones (Table 50.04.001-1) to 400 sf because a two car garage can be accommodated with 400 sf. (Note: The additional 400 sq. ft. is not expressly restricted to garage use, but because of the two parking space requirement, it is more likely that the space will be used for that purpose.)
- **Variances:** Limiting the ability to request a Variance to zone dimensional standards, including Residential Infill Design Review (RID) variances.
- **Public Hearing / Mitigation of Development Impacts:** A building permit application for a new single family dwelling or accessory structure (or addition) on a substandard lot is to be processed as minor development, rather than ministerial development, to ensure that conditions of approval may be imposed to address the impacts of development on the lot, with a required public hearing before the Development Review Commission.

Discussion of Standards

Parking

The Commission recommended a requirement for two off-street parking spaces when substandard lots are developed because it found that the curb cut required to provide driveway access to a typical substandard lot, which will likely have a smaller width at the street frontage, results in a reduction of on-street parking availability. Further, this requirement would minimize the possibility that, with a constrained building envelope, builders on a substandard lot could opt for less garage space by utilizing on-street parking, in order to maximize on-site living area.

Compatibility of Development – Height, Size and Scale of Structures

The Commission discussed whether to require a lower height than allowed by the zone, for development on substandard lots. As staff noted to the Commission, staff believes it is likely that standard lots in a neighborhood would redevelop over time, some reaching the height

allowed in the zone, rather than all redevelopment retaining the lower height that currently exists in older homes. If a lower building height were required for substandard lots, structures on substandard lots would be compatible with surrounding existing older homes initially but, when the adjacent older homes are redeveloped to a greater height, the substandard lot's dwelling may no longer be compatible.

In addition, staff noted to the Commission that the development standards of each zone are calibrated to regulate how development occurs on a lot, regardless of whether the lot is standard or substandard. As indicated in Exhibits D-1 and E-1, Architect Ralph Tahrán prepared graphics to illustrate how the zone standards limit development on smaller lots, using the R-7.5 zone as an example. The formula for calculating Floor Area is based on lot size: the smaller the lot, the less Floor Area allowed. Lot coverage is based on height: less lot coverage is allowed when there is more height. In addition, with the required setbacks and the structure design standards applicable to residential zones, per Table 50.04.001-2, some of the additional lot coverage allowed with a lower height could not be accommodated on a smaller lot. It was physically not possible to maximize height, floor area, and lot coverage (with minimum setbacks) and still meet all of the building design standards, on the substandard lot. As stated by Mr. Tahrán, each lot size may have an optimal combination of height, lot coverage, floor area, and setbacks that work together to achieve a realistic living space. From this evidence, limiting the height on substandard lots in a similar manner as required for flag lots may unintentionally encourage building designs which have greater lot coverage in order to maximum floor area. Conversely, an owner of a substandard lots would likely not utilize a higher height in exchange for less living space (floor area) on a small lot.

The Commission was willing to accept the risks; it reasoned that allowing standard building height on a substandard lot would present greater compatibility concerns. The Commission found that it is likely that dwellings on substandard lots would be developed near or to the maximum height allowed in the zone, unlike dwellings on standard lots, in order to maximize floor area. The Commission reasoned that dwellings on substandard lots constructed to the maximum zone height would be incompatible with existing neighboring dwellings that are at a lower height. The Commission therefore found that height should be limited on substandard lots to ensure that neighborhood character is maintained. The Commission recommends adoption of the "average of the abutting residences" building height method currently used for flag lot development.

The Commission also recommends that, on substandard lots, prohibiting the additional height for roof forms allowed by right in the zone, and limiting additional floor area allowed for garages in low density zones would accomplish the goal of limiting the extent of development allowed on substandard lots while allowing some development to occur.

Variance

The Commission found that certainty of what could be developed on a substandard lot was important to assure neighborhood compatibility and to respect private property rights: "...clear

and objective development standards help assure that both the owner and the adjacent neighbors can anticipate with greater certainty the degree of development on a substandard lot.” (Exhibit B-1, page 6). The Commission recommends that development on a substandard lot should not be eligible for a variance¹ to the zone dimensional standards other than a Minor Variance required to correct survey errors, (LOC 50.08.002.2.l), or to comply with state or federal law based on the rights of the occupant, (LOC 50.08.002.2.o).

Lot Line Adjustments

The Commission also recommends that the opportunity for a lot line adjustment be limited to either a substandard lot that, following adjustment, is not less than 67% of the zone’s minimum lot area or dimension, or the lot is consolidated with another lot.

The Commission also addressed the review process for a lot line adjustment involving a substandard lot. Currently, a lot line adjustment between two lots is a ministerial review which does not require public notice and is not subject to appeal. To ensure that the City has the conditioning authority to require public improvements to address identified impacts of development on substandard lots, the Planning Commission recommended that lot line adjustments involving substandard lots be processed as minor development, rather than ministerial development, with a required hearing before the DRC.

ALTERNATIVES & FISCAL IMPACT

The requirement that all development on substandard lots, including lot line adjustments, be reviewed through the Minor Development procedure and that the application be reviewed by the DRC, would add processing time and require additional staff labor. Some examples of related fees are:

- Lot line adjustment (a Ministerial permit): \$1,630.
- Minor partition (a Minor Development review): \$4,002.
- Commercial design review (a Minor Development), includes mandatory DRC hearing: \$4,861, plus 37% of the building permit fee.
- Public hearing review of modification of a Minor Development permit: \$2,907

Alternatively, the City could require the Minor Development Review, which provides for public notice and an opportunity for appeal, and require a DRC review only on appeal, as is done now for land divisions.

¹ The Commission noted the applicability section for a Residential Infill Design Review (RID) variance does not need to specify that a RID review is prohibited on substandard lots because Ordinance 2644, effective May 8, 2015, classified RID as a type of variance. The proposed code amendments to LOC 50.01.006.5.a. specifies no variances to any of the zone dimensional standards, and the amendment to LOC 50.08.001.2 Variances Not Allowed, includes on the list of variances not allowed, “the zone dimensional standards on a substandard lot”.

RECOMMENDATION

Staff requests that the City Council provide input to staff regarding the proposed amendments in preparation for the hearing scheduled for October 20, 2015.

EXHIBITS

A. Draft Ordinance:

A-1.3 Draft Ordinance 2666 (dated 7/20/15) with Attachment 2 – Proposed Amendments (dated 7/16/15)

B. Findings, Conclusions and Order:

B-1 Planning Commission Findings, Conclusions and Order, approved 7/27/15
(Please note that Attachment 2 referenced in the Findings is not included. Refer to Attachment 2 (07/16/15) of Draft Ordinance 2666 (Exhibit A-1.3). The complete set of Findings can be viewed using the link below.

C. Minutes:

C-1 Planning Commission Minutes, 4/27/15
C-2 Planning Commission Minutes, 5/11/15
C-3 Planning Commission Minutes, 6/22/15
C-4 Planning Commission Minutes, 7/13/15

D. Staff Report:

D-1 Planning Commission Staff Report, 4/17/15
D-2 Planning Commission Staff Memo, 5/5/15
D-3 Planning Commission Staff Memo, 7/1/15

E. Graphics/Plans:

E-1 Case Study Graphics

F. Written Materials:

F-1 Comments from Commissioner Ward, 5/1/15
F-2 Proposed Text Amendments from A. Brockman and E. Brockman 7/7/15
F-3 Staff Response to Planning Commission Proposal, 7/9/15

G. Letters:

- G-1 E-mail from John Bosshardt, 4/12/15
- G-2 E-mail from Linda Rudawitz with Attachment, 4/21/15
- G-3 E-mail from Candace Bonner, 4/22/15
- G-4 Letter from Frank Whelan, 4/23/15
- G-5 E-mail from Evans Van Buren, 4/24/15
- G-6 E-mail from Joe Breimayer, 4/24/15
- G-7 Letter from Lake Oswego Preservation Society, 4/24/15
- G-8 Letter from Christian Manz, 4/27/15
- G-9 Letter from Dylan Pollock, 4/27/15
- G-10 Letter from Mary Bresnahan, 4/27/15
- G-11 Letter from Paden Prichard, 4/27/15
- G-12 Statement from Wendy McLennan, 4/27/15
- G-13 Statement from Liz Martin, 4/27/15
- G-14 Photos submitted by Liz Martin, 4/27/15
- G-15 Letter from Susan Heichel, 7/13/15
- G-16 E-mail from Christian Manz, 7/13/15
- G-17 E-mail from Paden Prichard, 7/19/15
- G-18 E-mail from Liz Martin, 7/19/15
- G-19 Letter from Susan Heichel, 4/30/15
- G-20 Letter from James and Barbara Fisher, 5/6/15

Staff reports and public meeting materials can be found by visiting the project web page. 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>

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