



TO: Kent Studebaker, Mayor
Members of the City Council

FROM: Leslie Hamilton, AICP, Senior Planner
Planning and Building Services

SUBJECT: Study Session: Ordinance 2759,
Flag Lot and Access Lane Amendments (LU 17-0052)

DATE OF REPORT: December 8, 2017

DATE OF MEETING: December 19, 2017

ACTION

This report provides background information to the Council for its December 19, 2017 study session regarding proposed amendments to the Community Development Code (LOC Chapter 50 – CDC) relating to flag lots and access lanes. A study session was requested due to the policy implications of some amendments. The public hearing on this proposal is scheduled for January 2, 2018. The Council may direct staff to prepare a draft ordinance and return for the public hearing before the Council.

INTRODUCTION/BACKGROUND

The proposed amendments to the Community Development Code (CDC) [Ordinance 2759] are part of the City's on-going effort at process improvement, which includes making regulations more usable for residents, developers, and City staff by correcting errors, eliminating text ambiguities and redundancies, and codifying past code interpretations. Additionally, the amendments respond to community concerns regarding flag lot developments. The proposed amendments include provisions that will:

- Limit the number of flag lots served by a private access lane;
- Increase the number of parking spaces required in flag lot developments;
- Increase the front setback on flag lots;
- Provide flexibility on setback orientation on certain flag lots;
- Delete the requirement to connect private access lanes;
- Clarify that lot coverage and floor area on flag lots are calculated on net site area;
- Clarify the location of required landscaping and fencing in flag lot developments.

The proposed amendments were the subject of five Planning Commission (Commission) work sessions in January, February, April, June and September 2017, a Public Review Draft that was circulated August 15-31, 2017, notice to owners of residential properties large enough to be divided (mailed September 11, 2017), and Planning Commission public hearings on October 9 and November 27, 2017. For the purposes of review, staff encourages the Council to read the staff report dated September 29, 2017 (Exhibit D-1); the memo to Planning Commission (Exhibit D-2), and the updated code amendments (Attachment 2, dated 12/06/17 to Exhibit A-1.1).

DISCUSSION

At its public hearing on October 9, the Commission recommended that the Council adopt the proposed amendments. Of all the amendments, the items below generated discussion at the Commission's public hearings.

Limit on Flag Lots [LOC 50.06.003.1]: Currently, up to eight flag lots can be served by an access lane, which has a minimum width of 20 feet. Developments of nine or more lots require the construction of a public street; public streets generally require a right-of-way dedication width of 50 feet. The original package of flag lot amendments focused on controlling the impacts of development (parking, drainage, setbacks, etc.) without limiting private property rights. The Commission requested that staff analyze the impacts of reducing the size of flag lot developments after receiving public input that larger subdivisions or serial partitions served by private access lanes (flag lot developments) impact the surrounding neighborhood character. The key concerns related to parking spillover onto public streets, garbage collection (cans placed at the end of a private drive where it meets a public street), and the lack of public access on private access lanes.

One consideration with a limitation on the creation of flag lots is the concern that owners may have about a reduction of their development opportunities. Limitations on uses that create a demonstrable reduction in property values have the potential for triggering Measure 49 claims, which could result in a waiver of the limiting regulations in certain cases, or compensation to the property owner for the lost value. Another consideration is the impact to density that a limitation on flag lots would have. However, as described in Exhibit D-1, the 2013 Housing Needs Analysis identified that Lake Oswego has more low-density residential land than will likely be needed by the year 2035 to accommodate demand for single-family homes in the R-7.5, R-10 and R-15 zones.

On October 9, the Planning Commission tentatively recommended limiting the number of Flag Lots to two (not more than three lots in a development served by a private access lane), and requested that Staff consider standards for a reduced-width street (< 50 ft. right-of-way) that could serve developments of 4-8 lots. On November 27, Staff returned to the Commission with an amendment that created a standard for a 38-foot private street that could serve 4-8 lots; the private street section was inclusive of roadway, parking, drainage and sidewalk. The City Engineer recommended against dedication to the City of these smaller streets due to concerns about maintenance costs, efficiency, and the ability to service the smaller streets with the City's equipment. At its public hearing on November 27, the Commission recommended that the

Council adopt the proposed amendments without the proposed private street standards; flag lot developments would be limited to three lots (one standard lot and two flags) served by a private access lane.

Parking [LOC 50.06.003.1]: The minimum on-site parking requirement for single-family dwellings is one space per dwelling. Required parking cannot be within a front yard setback, though it is not uncommon for residential lots to have additional parking, for example in a driveway area in front of a garage. Currently, where an access lane serves seven or eight dwelling units, additional parking for four standard vehicles must be provided either “on-lane” in small turnouts, or “off-lane” in a small parking lot. Smaller flag lot developments have no requirement for providing parking in addition to the one space required on each lot. Because of the narrow width of access lanes (20 ft.), parking cannot generally be provided on the lane. The Commission recommends that for each flag lot served by an access lane, a standard parking space be provided on the lane. This may limit development in some cases as the areas provided for access and parking are excluded from Net Developable Area.

Setbacks and Orientation [LOC 50.07.007.2.e.v(1)]: In 2010, the flag lot standards were amended to require development sites to provide the opportunity for access lanes (existing or potential) to be extended onto an abutting property. In addition, whether or not there is development potential on the abutting lot, the front yard setback on the flag lot is measured from the access lane or a projection of the access lane (see Figure 50.07.007-A: Flag Lot Front Yard). Since 2010, no partitions or subdivisions have resulted in connected access lanes, and the potential for connected access lanes was not generally supported by the community. The Commission recommends removing the requirement to connect access lanes. The Commission also recommends the front setback for the “last” flag lot be similar to the what is required in the zone for corner lots, measured either from the property line parallel to the public street or to the property line parallel to the orientation of the projected access lane. This change provides flexibility for appropriately orienting the house on its lot.

Front Setback on Flag Lots [LOC 50.07.007.2.e.v]: Recent flag lot developments can appear crowded as viewed from the street or access lane, and the difference in front setback requirements between flag and non-flag lots may be contributing to this problem. This is particularly true where flag lots line both sides of a private access lane and is due in part to the narrower width of these lanes compared to standard city streets. As recommended by the Planning Commission, the front setback, measured from the access lane, is proposed to increase from 10 ft. to 15 ft.

Lot Coverage and Floor Area [LOC 50.07.002.e.vii]: This amendment clarifies that lot coverage and floor area are both calculated on net area (i.e., the area in the access lane/flag pole area is deducted from the gross lot size). Presently, the access lane/flag pole area is netted out only for determining minimum lot area and lot coverage. This change is consistent with the original intent of the 2010 Flag Lot Amendments.

Flag Lot Screening, Rear Yard Landscaping [LOC 50.07.00.2.f.iv]: The Flag Lot standards require a landscaping buffer to be provided along the rear property lines of flag lots. As the required orientation of houses on flag lots changed in 2010, the screening requirement was rotated to what was previously a side yard. A “rear” yard is always opposite a “front” yard, but because of the way side and rear flag lot setbacks are calculated (cumulatively), the “rear” yard may not be the largest yard. The proposed amendment requires the landscaping buffer to be provided along the largest side or rear yard of a flag lot. Therefore, the yard that is most likely to be actively used and also has the most space for plantings will have a landscape buffer.

Flag Lot Definition [LOC 50.10.003]: The Flag Lot standards (established in 1998) are imposed at the time of lot creation and enforced at the time of building permit review. Accordingly, the Flag Lot standards do not apply to lots created prior to 1998. The amendment to the definition of “flag lot” clarifies that the flag lot standards apply only to lots created under the Flag Lot standards. Lots created before September 6, 1998, the effective date of the flag lot requirements, that do not have standard frontage on a public street are not considered “flag lots.”

ALTERNATIVES & FISCAL IMPACT

The Council may direct staff to prepare a draft ordinance and schedule a public hearing on the proposed Code amendments. The proposed amendments may indirectly have a positive fiscal impact, as they include some code streamlining; however the limitations on the number of flag lots served by an access lane, as well as the increased parking requirements could have a negative fiscal impact. Limitations on uses that create a demonstrable reduction in property values have the potential for triggering Measure 49 claims, which could result in a waiver of the limiting regulation in certain cases or compensation for the lost value.

RECOMMENDATION

Staff recommends that Council identify items in the proposed Code amendments that the Council would wish additional information on, and provide direction to staff for preparation of a draft ordinance and subsequent public hearing before the Council.

EXHIBITS

A. Draft Ordinances

- A-1.1 Draft Ordinance 2759, 12/06/17 (supersedes Exhibit A-1)
 - Attachment 1: *Reserved for City Council Findings (not included)*
 - Attachment 2: Draft Code Text, 12/06/17 (supersedes version dated 11/08/17)

B. Findings, Conclusions and Order [No current exhibits; reserved for hearing use]

C. Minutes

- C-1 Planning Commission Minutes, 10/09/17

D. Staff Reports

- D-1 Planning Commission Staff Report, 09/29/17
- D-2 Planning Commission Memo, 11/17/2017

E. Graphics/Plans

- E-1 Density Analysis: Serial Partitions and Access Lanes
- E-2 Density Analysis: Serial Partitions and Public Streets

F. Written Materials

- F-1 Public Review Draft Narrative, 08/15/17
- F-2 Spreadsheet Comparison of Flag Lot/Access Lanes and Public Streets, 09/29/17

G. Letters

- G-1 Letter from Sheila Carlson, 08/29/17
- G-2 Letter from Bill Abadie with Hallinan Heights Neighborhood Association, 08/30/17
- G-3 E-Mail from Dianne Cassidy, 08/30/17
- G-4 E-Mail from Jim Standring, 08/31/17
- G-5 Letter from James Adkins with Home Builders Association of Metro Portland, 09/05/07
- G-6 E-Mail from Scott Bullard with Forest Highlands Neighborhood Association, 09/06/17
- G-7 E-Mail from Diana Boom with Evergreen Neighborhood Association, 09/27/17
- G-8 Photos submitted by Liz Martin, submitted 10/08/17
- G-9 E-Mail from Jim Fisher, 10/02/17
- G-10 Letter from Waluga Neighborhood Association, 10/09/17
- G-11 Letter from Wendie Kellington on behalf of Stuart Bingham, 10/09/17
- G-12 Statement from Bill Abadie, submitted 10/09/17
- G-13 Statement from Liz Martin, submitted 10/09/17
- G-14 Map-Uplands Flag Lot Dev. And City of Portland Handout on Flag Lot Dev. submitted by Audrey Mattison, 10/09/17
- G-15 Photo of Prohibited Parking on Access Lane, submitted Carolyn Krebs, 10/09/17
- G-16 E-Mail from James Adkins, Home Builders Association of Metro Portland, 10/23/17
- G-17 E-Mail from Bruce Brown, Waluga Neighborhood Association, 11/27/17
- G-18 E-Mail from James Stupfel, 11/27/17
- G-19 Letter from James Adkins, Home Builders Association of Metro Portland, 11/27/17
- G-20 Letter from J. Terrance Bittner, Attorney for Bryn and Janice Torkelson, 11/27/17
- G-21 Letter from Renee France, Attorney for Teri and Saul Caprio, 11/27/17
- G-22 Sample Plans submitted by Ralph Tahrn, 11/27/17
- G-23 Letter from Jerry Nierengarten, Lake Grove Neighborhood Association, 10/27/17

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 17-0052 then press "Submit":

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