

Wendie L. Kellington
P.O. Box 159
Lake Oswego Or
97034

Phone (503) 636-0069
Mobile (503) 804-0535
Facsimile (503) 636-0102
Email: wk@klgpc.com

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Via Hand Delivery
Lake Oswego Planning Commission
380 A Ave.
Lake Oswego, OR
97034

RE: LU 17-0052

Dear Lake Oswego Planning Commission Chair and Members:

Thank you for your time and the courtesies of City staff concerning this matter.

This firm represents Stuart Bingham, who owns either individually or with his wife, three (3) existing R-10 zoned lots located at 16350 Phantom Bluff Ct. in Lake Oswego. Phantom Bluff Ct. was previously a public street, but was vacated in 1959 and thereafter became a private street. Mr. Bingham acquired his lots for investment purposes in 1973 (2.36 acres and developed with a residence and outbuildings), 1983 (.46 acres - undeveloped) and 2003 (.50 acres - undeveloped) respectively.¹ These lots are part of an existing 1920s vintage subdivision. When Mr. Bingham acquired these lots, they were and still are simply pre-existing residential lots.

The Bingham lots abut Phantom Bluff Ct. and do not appear to meet the definition of a "Flag Lot" because no building site could be "located behind another lot."² For information

¹ There may be two other platted lots. As you can see from the attached Exhibit 1, two lots have been consolidated for tax assessment purposes. The effect tax consolidation on those two additional lots is beyond the scope of this letter. We simply note that it is possible that there are two more preexisting subdivision lots (for a total of five (5) owned by Mr. Bingham, with frontage on Phantom Bluff Ct.

² LOC defines Flag Lot as follows:

"Flag Lot

A lot that:

- a. Has the actual building site located behind another lot; and
- b. Takes access from the street via:
 - i. A driveway or access lane that is part of the lot and the width narrows to less than the minimum lot width for the zone; or

purposes, a map of the Bingham lots is attached as Exhibit 1. However, city planner Leslie Hamilton has stated that she understands that all lots abutting Phantom Bluff Ct. are flag lots as defined. We are also advised by staff that it is not intended that the proposal affects existing lots that were not created as flag lots.

Respectfully, we think that it is fair to say that the proposal is confusing and could benefit from some clarity concerning its effect on preexisting lots abutting a private street, including where those lot's boundaries are adjusted via lot line adjustment later on.

All of Mr. Bingham's lots were created by land division principles and not as flag lots. Mr. Bingham is concerned that the proposal makes his properties, and those that his wife and he own together, undevelopable as an unintended consequence, even though they are zoned residential and meet all dimensional standards.

The proposed new language imposes new restrictions on existing lots and parcels that were created before the existing or proposed flag lot standards were ever adopted. It can be read to make essentially any existing lot or parcel undevelopable if it now meets the definition of "flag lot" because most neighborhood streets will already have 4-6 primary dwellings on them. There are a surprising number of private streets in the city, and as we understand it, the city does not have a list of all of them. Accordingly, the impact of the proposal if its apparent unintended effects are not addressed, are unknown and are likely to be far more severe on the city's ability to comply with its state and Metro region housing obligations than is presumed, and would require a specific evaluation that has not been undertaken to determine compliance with state and regional housing standards.

Thus, we suggest the planning commission recommend the addition of new language to the proposal, to clarify it is intended scope is to only to apply to new lots and parcels created as flag lots, not to preexisting lots and parcels, and not to lots or parcels the boundaries of which have been adjusted via lot line adjustment. Relatedly, because the proposal is designed to clarify previous flag lot ordinance amendments, a global clarification of the rules applicable to flag lots versus the rules that apply to existing platted lots on private streets, makes sense, avoids confusion and avoids needless controversy later on.

Suggestion

The planning commission should make clear that the proposal applies only to newly created lots or parcels that meet the definition of a "flag lot", and that the flag lot standards are not intended to, and do not apply to, existing platted subdivision or partition lots or other parcels predating flag lot standards, or lot line adjustments to them, merely because they are on private streets. In this regard, we suggest an additional "Exception" to be placed in the appropriate part or parts of the code by the codifiers, to say essentially:

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- ii. An access easement."

“Exception: The city’s “Flag Lot” standards do not apply to existing lots or parcels created by subdivision or partition or deed that were not created under rules applicable to “flag lots”. An existing lot or parcel not created as a flag lot, that is reconfigured through a Lot Line Adjustment, where no new lot or parcel is created, shall not be deemed to subject such lot or parcel to standards applicable to Flag Lots.”

The above general suggestion extends the policy embraced by the language in the proposed new exception to the “Land Division” standards of LOC 50.07.007(2)(a)(ii), more broadly. *See* Draft 09/29/17 Corrected” Attachment 2, p 6.

In addition to that general suggestion, we have four specific suggestions to accomplish the objective of limiting the scope of the proposal to that which we understand is intended:

FIRST RECOMMENDED ADDITION (LOC 50.07.007(2)(a)(ii)³:

“Exception: These provisions do not apply to existing flag lots **including those** that are reconfigured through a Lot Line Adjustment; the standards in effect at the time of the existing flag lot’s creation remain applicable.”⁴

SECOND RECOMMENDED ADDITION

We suggest the city modify the definition of Flag Lot to include the yellow highlighted language below:

“Flag Lot

“A **newly created** lot that * * *

“* * *

“An existing lot or parcel the boundaries of which have been reconfigured without creating a new lot or parcel, is not a newly created lot.”

THIRD RECOMMENDED ADDITION

The proposed language at “Draft 09/29/17 Corrected” Attachment 2, p 2 & 3 & 4, at “d” should be revised to make clear that the proposed new restrictions there only apply to newly created flag lots. Specifically we suggest adding the highlighted language in yellow below, that:

³ New suggested language is shown with yellow highlight.

⁴ *See* Draft 09/29/17 Corrected” Attachment 2 , 6.

“Access lanes serving lots and parcels created as flag lots, shall serve not more than eight primary dwelling units and shall meet the following minimum standards * * *” This provision does not apply to existing flag lots that are reconfigured through a Lot Line Adjustment; the standards in effect at the time of the existing flag lot’s creation remain applicable.”

FOURTH RECOMMENDED ADDITION

We suggest you make clear that the proposed new restriction at “Draft 09/29/17 Corrected” Attachment 2, p 19 applies only to “Flag Lots” and accordingly be revised to add the highlighted language below:

“vii. Lot Coverage and Floor Area

“For the purposes of calculating lot coverage and floor area on a lot created as a flag lot, the area of access easement or flagpole shall be deducted from the gross acreage of the flag lot. This provision does not apply to existing flag lots that are reconfigured through a Lot Line Adjustment; the standards in effect at the time of the existing flag lot’s creation remain applicable.”

Additional Evidence that these Clarifications Should be Adopted

Strong evidence that an exception to the flag lot rules is intended for existing lots and parcels not created under flag lot standards, is the staff report analysis of the impact of the proposal on the city’s compliance with the Metropolitan Housing Rule and Goal 10 (Housing). As noted briefly above, the Housing Needs Analysis evaluation in the staff report contains no analysis of how the proposal would impact the city’s needed housing stock if it results in existing lots and parcels, on existing private streets, becoming undevelopable. This significant (we think unintended) restriction on the developability of the city’s existing housing stock, cumulatively with the other acknowledged limitations on further division of oversized residential lots and parcels on private streets under the proposal, has not been evaluated and would have to be under Goal 10 and OARs, as well as Metro Functional and Framework Plans.

Specifically, in the staff report analysis, there is no identification of the number of private streets or the number of currently residentially developable lots and parcels that will become undevelopable under the proposal. As we understand it, the reason there is no such analysis, is that the proposal is not designed to make existing subdivision lots or partition parcels or other preexisting parcels on private streets, undevelopable, regardless of whether there are already 4 or 6 primary dwellings developed on the private street.

This issue is further reason why the proposal should be clarified to make it clear it only applies to new lots and parcels created as flag lots.

Our Proposal is Consistent with City Practice and State Law

As noted above, we are advised that the city's practice is not to treat existing subdivision lots or partition parcels or other parcels, including those subject to a lot line adjustment, as "flag lots". In other words, if lots or parcels were not created under flag lot standards, they aren't considered to be "flag lots" by the city, even if there is a subsequent lot line adjustment. Thus, the standards applicable to "flag lots" simply do not apply to those lots and parcels. Rather, existing lots and parcels are developable under the land use standards that apply to such lots or parcels, not flag lot standards, even where their boundaries are adjusted via lot line adjustment.

Mr. Bingham's lots appear to be conforming lots in all but the flag lot standards. They are not considered "nonconforming lots" under LOC because they meet all dimensional standards that apply.

"A nonconforming lot that does not meet the minimum size or dimensional requirements of the zone in which it is located may be developed as permitted in that zone; provided, that (i) the structure complies with all applicable Code standards or (ii) the applicant obtains a variance pursuant to LOC Article 50.08, Variances." LOC 50.01.006 (5)(a)

What the Bingham lots could not meet are flag lot specific standards (again if they were flag lots which with all due respect does not seem to be the case under the existing definition):

- Phantom Bluff Court already has well more than 4-6 dwellings with primary dwelling.
- Phantom Bluff Court lots and parcels have never been developed by having their "Lot Size" reduced by the amount of acreage consumed by Phantom Bluff Court.
- Phantom Bluff Ct. is considered an "access easement" and it is a reasonably long street. Without clarification, under the proposal, the area of the entirety of Phantom Bluff Court would have to be deducted from the lot area of each of the existing lots (which makes no sense) likely making the existing lots not meet lot coverage and floor area standards (Attachment 2, p 19) for any development.

The city's practice and our requested amendments that the flag lot standards don't render existing lots and parcels undevelopable, is also consistent with ORS 92.017 which provides:

"A lot of parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law."

For all these reasons we respectfully request that the proposal be modified to make clear it applies only to newly created flag lots. Thank you for your consideration.

Very truly yours,

Wendie Kellington

Wendie L. Kellington

WLK:wlk

Enclosures

CC: Client

Leslie Hamilton, via email

Evan Boone, Esq., via email

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