



MEMORANDUM

DATE: October 13, 2010

TO: Chair Ferris and Members of the Planning Commission

FROM: Matthews Jackson, Neighborhood Development Planning Manager, 452-2729
Carol Helland, Land Use Director, 452-2724
Development Services Department

SUBJECT: Nonconforming Lot Building Height Restriction Land Use Code Amendment (LUCA)

GENERAL

Land Use Code (LUC) Section 20.20.070 contains regulations that govern lots that are nonconforming as to area, street frontage, width or depth. These regulations describe when an individual nonconforming lot may be used for a building site. Section B of LUC 20.20.070 further restricts maximum building height on a lot failing to meet 70 percent of the area, width **or** depth requirements of the land use district in which it is located, and variances from this height restriction are specifically prohibited. In recent years, staff has assisted several property owners in navigating the code requirements applicable to lots that have an area less than 70 percent of the minimum lot area of the underlying zoning district. In most cases, application of the current regulations has resulted in such severe height restrictions on already constrained lots that redevelopment projects are entirely abandoned.

On July 19, 2010, the Director of the Development Services Department (DSD) initiated a code amendment work program for the balance of this year. The Land Use Code Amendment (LUCA) intended to provide additional building height flexibility on nonconforming lots was included on the work program list that was presented to the Planning Commission at its annual retreat. The objective of the LUCA is to allow for the reasonable development of nonconforming lots consistent with neighborhood character code amendments that were adopted last year and individual site conditions. No action is required of the Planning Commission at this time; staff is requesting your feedback on the recommended LUCA. The Commission is further asked to establish a public hearing on the proposal presented at this meeting if there is consensus on the recommended direction. After a public hearing, staff would return to the Planning Commission for development of a recommendation to Council.

BACKGROUND

The existing code language contained in LUC 20.20.070 was established by Ordinance No. 3921 published on June 24, 1988. A review of the minutes from a City Council study session held on June 13, 1988 indicates that the ordinance was intended to apply to three types of nonconforming lots: shoreline lots which typically fail to meet minimum width but are within 70% of the minimum lot size; very small lots platted at the turn of the century; and undersized lots which are between 50% and 70% of the minimum lot size.

The existing code restricts building height on nonconforming lots per the following formula:

Development of an individual lot failing to meet 70 percent of the area, width or depth requirements of the land use district in which it is located is restricted to a maximum building height computed by the following formula (see Example A, below) and is not subject to variance:

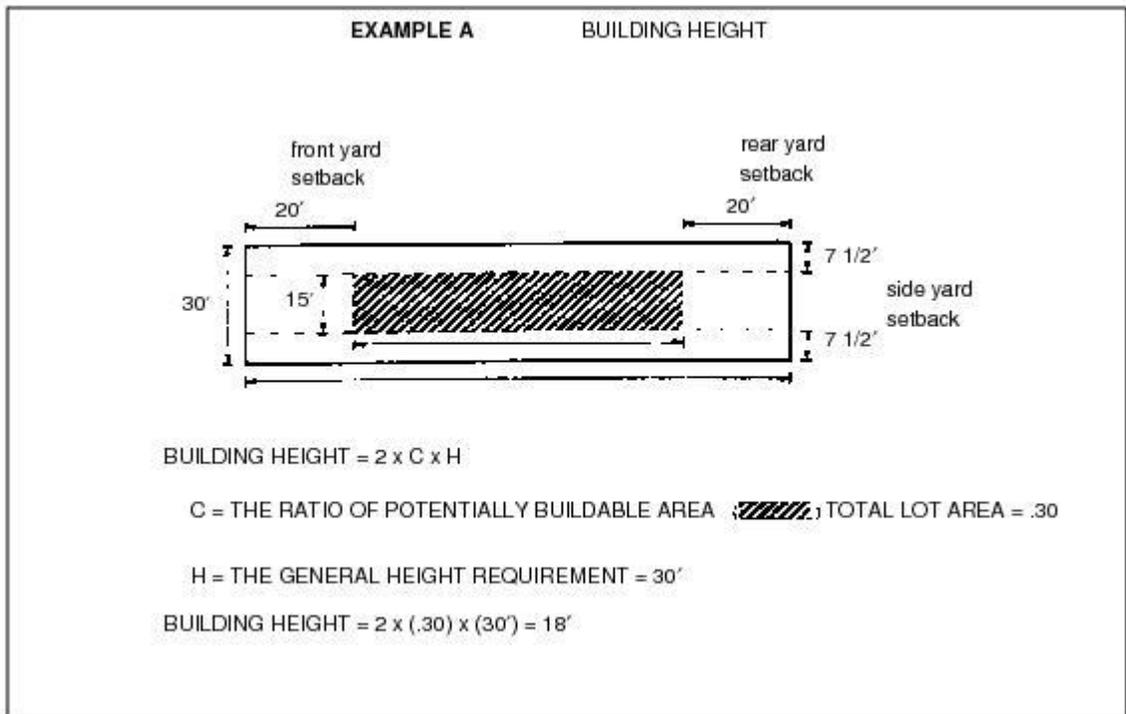
$$\text{Building Height} = 2 \times C \times H$$

C = The ratio of potentially buildable area (lot area less the area of the lot's minimum setback requirements) to total lot area.

H = The general building height requirement otherwise applicable to the lot.

(Calculation of building height is in no way intended to suggest a waiver of lot coverage requirements imposed elsewhere in the Code. Similarly, calculations are based on basic Code requirements; any variances to setbacks of the property do not affect building height calculation.)

Provided, that in no event shall building height exceed the building height requirement otherwise applicable to the lot; and provided, that in no event shall a building height requirement be imposed less than 15 feet.



Nonconforming lots which are subject to reduced maximum building height are likely to have other development constraints such as minimum structure setbacks, maximum lot coverage, and maximum impervious surface. Where an applicant can demonstrate that they can satisfy the decision criteria of LUC 20.30G.140 or LUC 20.30H.155, they may be granted a Land Use Code or Shoreline Variance from most dimensional standards. These decision criteria focus on granting an approval that is not considered a special privilege inconsistent with other properties in the vicinity and the unique size, shape, and topography of the subject lot. The applicable Process II administration review requires notice to the

surrounding property owners and provides an appeal opportunity to the Hearing Examiner for individuals who participated in the review and are a party of record. As stated above, the current restriction on maximum building height for nonconforming lots cannot be modified through the variance process.

In recent years, staff has been engaged in a conversation with the community on issues around neighborhood character and the impacts of development and redevelopment in existing neighborhoods. Planning Commission discussion of neighborhood character issues began in April 2007 and culminated in December 2007 with City Council adoption of Phase I regulatory solutions to address relatively straightforward concerns about neighborhood redevelopment impacts, including loss of trees and greenscape, loss of light and privacy, and impacts of construction-related activities (Ordinance No. 5791). The Council directed that a second phase of outreach and discussion focus on solutions to the remaining, more complex issues of building bulk and scale. The Commission re-engaged in the Neighborhood Character discussion in February 2008, and in August 2009 the City Council adopted Phase II land use code amendments intended to address issues related to size, scale, and character related to single family construction (Ordinance No. 5896). These code amendments have provided new tools to address issues related to new development and redevelopment which were not available at the time of the establishment of Ordinance No. 3921 in 1988 which limits building height for nonconforming lots. Due to the barriers that the current regulation is imposing on redevelopment and as a result of the new tools available for maintaining neighborhood character, additional flexibility to modify the current height restriction seems warranted.

PROPOSED LUCA

The proposed LUCA would modify the language of LUC 20.20.070.B so that the maximum building height that results from the formula in Example A above may be modified through the Land Use Code Variance process (See Attachment A). Although the variance requirement would add an additional process step, it would remove redevelopment barriers that exist within the current code and provide an opportunity to consider the unique circumstances of each proposal to weigh whether additional height can be granted in a manner that is consistent with surrounding neighborhood character. The variance process allows for public notice and comment and information provided from the public would help shape the decision making process.

NEXT STEPS

If staff has adequately responded to any questions or issues raised at the Planning Commission following the discussion on October 13th, we ask that a public hearing be scheduled and that the Planning Commission proceed with review of the proposed amendment.

Attachment A

This is a summary of the recommended revisions to the Land Use Code (LUC) to provide additional building height flexibility for nonconforming lots that are less than 70 percent of the of the area, width or depth requirements of the land use district in which it is located.

A. The proposed LUCA would modify existing code language in LUC 20.20.070 so that the code provisions contained therein may be modified through a Land Use Code Variance and provides clarifying language as to what constitutes a legally created building site:

20.20.070 Lots nonconforming as to area, street frontage, width or depth – Status.

A. An individual nonconforming lot legally created pursuant to LUC 20.20.060 otherwise complying with the requirements of the Bellevue City Code may be used for a building site if:

1. There are no restrictions on development imposed by prior permits or land use approvals;

and

~~2.~~ The lot does not lie within a Residential (R-1 – R-30) Land Use District; or

~~3.~~ The lot lies within a Residential (R-1 – R-30) Land Use District; and

- a. The area, width and depth of the lot each meet or exceed 70 percent of the minimum requirements for the Residential (R-1 – R-30) Land Use District in which it is located, or
- b. Although the area, width or depth of the lot, or a combination thereof, do not meet 70 percent of the minimum requirements of the Residential (R-1 – R-30) Land Use District in which it is located,

- i. The lot's area meets or exceeds 3,000 square feet; and

- ii. The lot's width meets or exceeds 30 feet; and

- iii. The lot's depth meets or exceeds 50 feet.

B. Development of an individual lot failing to meet 70 percent of the area, width or depth requirements of the land use district in which it is located is restricted to a maximum building height computed by the following formula (see Example A, below). ~~and is not subject to variance~~ The maximum building height resulting from the following formula may be modified up to the maximum height allowed in the underlying land use district through a variance pursuant to Part 20.30G LUC or Part 20.30H LUC:

$$\text{Building Height} = 2 \times C \times H$$

C = The ratio of potentially buildable area (lot area less the area of the lot's minimum setback requirements) to total lot area.

H = The general building height requirement otherwise applicable to the lot.

(Calculation of building height is in no way intended to suggest a waiver of lot coverage requirements imposed elsewhere in the Code. Similarly, calculations are based on basic Code requirements; any variances to setbacks of the property do not affect building height calculation.)

Provided, that in no event shall building height exceed the building height requirement otherwise applicable to the lot; and provided, that in no event shall a building height requirement be imposed less than 15 feet.

C. Notwithstanding subsection A of this section, a nonconforming lot in a Residential (R-1 – R-30) Land Use District failing to meet or exceed 70 percent of minimum area, width and depth requirements of the district in which it is located may not be used for a building site if at any time since the effective date of the ordinance which first established a minimum lot area, width, depth or street frontage requirement larger than the lot contains or annexation, whichever was later, has a person, partnership, corporation or marital community owning said lot simultaneously owned additional contiguous property. Such lots must be combined with additional contiguous property sufficient that the area, width and depth of the combined property each meets or exceeds 70 percent of the minimum requirements of the land use district in which the property is located. This subsection does not constitute a waiver of any of the requirements of boundary line adjustment procedure.

D. Any nonconforming lot used for a building site must meet [the nonconforming provisions of LUC 20.20.560, the, building height requirements of B and the applicable dimensional requirements of LUC 20.20.010](#) ~~all setback and lot coverage requirements of for~~ the district in which it is located, unless a variance has been granted pursuant to Part 20.30G or 20.30H LUC [or modification has been granted pursuant to LUC 20.25H.040.B.](#)

E. This section is not applicable in the Bel-Red Land Use Districts. Refer to LUC 20.25D.060 for regulations relating to existing conditions.