City of Bellevue

MEMORANDUM

DATE: December 1, 2010

TO: Chair Ferris, Members of the Planning Commission

FROM: Carol Helland, Land Use Director
Matthews Jackson, Neighborhood Development Planning Manager

SUBJECT: Staff Report - Nonconforming Lot Building Height LUCA
File No. 10-124743 AD

This memorandum presents the report and recommendation of the Development Services Department on proposed Land Use Code (LUC) amendments to modify existing limitations on building height on lots nonconforming to minimum lot size requirements. A copy of the proposed ordinance is included with this memorandum as Attachment A.

Following the public hearing scheduled for December 1, 2010, and consideration of public comment, staff recommends that the Planning Commission make a recommendation to the City Council regarding adoption of the proposed code amendment as included in Attachment A.

Sample motion language (for reference): I move to recommend *to the City Council approval of the proposed Land Use Code Amendment related to Nonconforming Lot Building Height file number 10-124743 AD, as proposed in the draft ordinance included in Attachment A.*

I. BACKGROUND

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. Planning Commission discussion of nonconforming lot building height restrictions began during the study session held on October 13, 2010. The proposed LUCA received favorable comments and staff was directed to prepare a staff report and recommendation for a public hearing to be held on December 1, 2010.

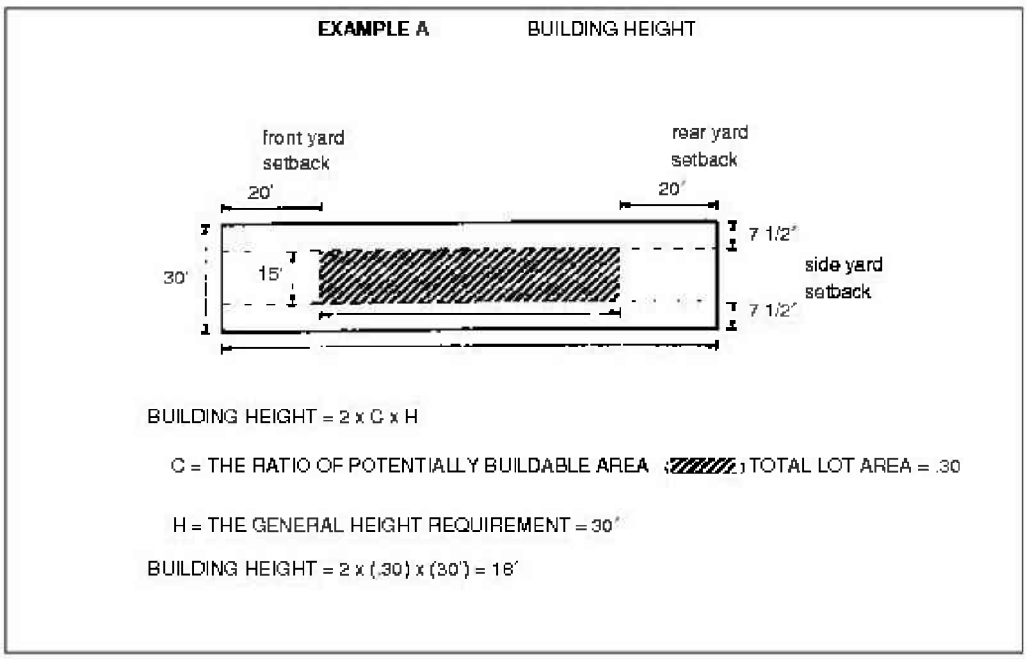
II. PROPOSAL

Based on considerable research and input provided by citizens who have been impacted by existing limitations on building height on nonconforming lots, Staff recommends approval of the following code amendment to address neighborhood character elements and development flexibility. Specifically, staff recommends the following code amendment:

Proposed amendment to the Land Use Code (Attachment A)

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:
>
> Building Height = 2 x C x 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.



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). The variance process would provide the mechanism to 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. Many of the lots subject to this code provision would otherwise seek a variance for relief from other dimensional requirements due to special circumstances related to lot size, shape, and/or topography. As a result, the variance process allows for public notice and comment and information provided from the public would help shape the decision making process.

III. STATE ENVIRONMENTAL POLICY ACT

The Environmental Coordinator for the City of Bellevue has determined that the substantive changes included in this proposal will not result in any probable, significant, adverse environmental impacts. A final threshold determination of non-significance (DNS) was issued on November 11, 2010. The final DNS is attached to this memorandum as Attachment B.

IV. PUBLIC NOTICE, PARTICIPATION, COMMENT AND RESPONSE

This Land Use Code Amendment was introduced to the Planning Commission at a study session held on October 13, 2010. Notice of the Public Hearing before the Planning Commission, staff recommendation, and SEPA determination (DNS) was published in the Weekly Permit Bulletin on November 10, 2010. The public hearing is scheduled to be held on December 1, 2010.

A courtesy public hearing on the proposal will be held with the East Bellevue Community Council (EBCC) on December 7, 2010. Any concerns expressed by the EBCC will be brought back for Planning Commission consideration prior to final Planning Commission recommendation to the City Council.

Pursuant to the requirements of the Growth Management Act, state agencies must be given an opportunity to review and comment on the proposed amendment to the LUC. Copies of the draft ordinance were provided to the state agencies for review on November 8, 2010.

V. APPLICABLE DECISION CRITERIA – LAND USE CODE PART 20.30J

The Planning Commission may recommend and the City Council may approve or approve with modifications an amendment to the text of the Land Use Code if:

A. The amendment is in accord with the Comprehensive Plan; and

The proposed amendment is consistent with the Comprehensive Plan. The proposed amendment is intended to allow for the reasonable development of nonconforming lots consistent with neighborhood character code amendments that were adopted last year and individual site

conditions. Several Comprehensive Plan policies support development that is compatible and complimentary to existing neighborhoods.

> **Policy HO-3.** Refine Land Use Code standards to improve the compatibility of single family infill development with the neighborhood.
>
> **Policy HO-17.** Encourage infill development on vacant or under-utilized sites that have adequate urban services and ensure that the infill is compatible with the surrounding neighborhoods.
>
> **Policy LU-9.** Maintain compatible use and design with the surrounding built environment when considering new development or redevelopment within an already developed area.
>
> **Policy LU-21.** Develop land use strategies to encourage the maintenance and updating of the city's older housing stock, so that neighborhoods are well maintained and existing housing is preserved, updated, or modified to meet the evolving needs of residents.
>
> **POLICY HO-19.** Periodically review land use regulations to assure that regulations and permit processing requirements are reasonable.

B. The amendment bears a substantial relationship to the public health, safety or welfare; and

Implementation of the Comprehensive Plan through the City's development regulations is an appropriate use of City authority, and fulfills the GMA mandate for consistency between the City's Comprehensive Plan and Land Use Code. The proposed amendment serves the public health, safety, and welfare by addressing issues of neighborhood character and development flexibility associated with development on some lots nonconforming to minimum lot size requirements.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

The public interest is generally identified in the Comprehensive Plan and the development regulations that implement it. As described above, the proposed amendment serves to enhance the LUC and further the Comprehensive Plan. The public interest is advanced through this proposal.

VI. RECOMMENDATION

Staff requests the Planning Commission develop a recommendation to the City Council regarding adoption of the proposed Land Use Code amendment referenced herein (Attachment A) and transmit the ordinance on to the City Council for final approval.

ATTACHMENTS

A. Draft Ordinance for Land Use Code Amendments
B. Determination of Non-significance

ATTACHMENT A

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE amending the Bellevue Land Use Code relating to nonconforming building height, specifically amending Land Use Code Section 20.20.070.B of the Bellevue Land Use Code; providing for severability and establishing an effective date.

WHEREAS, On July 19, 2010, the Director of the Development Services Department (DSD) initiated a code amendment work program for the balance of 2010 and 2011; and

WHEREAS, the City seeks to allow for the reasonable development of nonconforming lots consistent with neighborhood character code amendments that were adopted in 2007 and 2009; and

WHEREAS, the Environmental Coordinator for the City of Bellevue determined that this proposal will not result in any probable, significant, adverse impacts and as such a final threshold determination of non-significance (DNS) was issued on November 10, 2010; and

WHEREAS, the Planning Commission held a public hearing on December 1, 2010 with regard to the proposed Land Use Code amendment contained herein; and

WHEREAS, the Planning Commission recommends that the City Council approve such proposed amendments, now, therefore;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 20.20.070 of the Bellevue Land Use Code is hereby amended as follows:

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

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

ATTACHMENT A

~~2~~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:

Building Height = 2 x C x 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.

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ATTACHMENT A

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.

Section 2. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 3. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this _____ day of _____, 2010 and signed in authentication of its passage this _____ day of _____, 2010.

(SEAL)

_____

Don Davidson, DDS
Mayor

Approved as to form:

Lori M. Riordan, City Attorney

_____

Lacey Madche, Assistant City Attorney

Attest:

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ATTACHMENT A

_____

Myrna L. Basich, City Clerk

Published _____

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ATTACHMENT B

DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL COORDINATOR
450 110th Ave NE., P.O. BOX 90012
BELLEVUE, WA 98009-9012

DETERMINATION OF NON-SIGNIFICANCE

PROPONENT: City of Bellevue Development Services Department

LOCATION OF PROPOSAL: City-wide

DESCRIPTION OF PROPOSAL: The proposal amends Land Use Code section 20.20.070.B so that the maximum building height restriction on lots that fail to meet 70% of the minimum lot size in the underlying land use district may be modified through the Land Use Code Variance process.

FILE NUMBER: 10-124743 AD, Nonconforming Lot Building Height LUCA

The Environmental Coordinator of the City of Bellevue has determined that this proposal does not have a probable significant adverse impact upon the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(C). This decision was made after the Bellevue Environmental Coordinator reviewed the completed environmental checklist and information filed with Land Use Division. This information is available to the public on request.

☒ This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

☐ This DNS is issued under WAC 197-11-340(2) and is subject to a 14-day comment period from the date below. Comments must be submitted by 5 p.m. on _____.

This DNS may be withdrawn at any time if the proposal is modified so that it is likely to have significant adverse environmental impacts; if there is significant new information indicating, or on, a proposals probable significant adverse environmental impacts (unless a non-exempt license has been issued if the proposal is a private project), or if the DNS was procured by misrepresentation or lack of material disclosure.

This DNS is only appealable as part of the City's action on the amendment to the Land Use Code. In order to comply with requirements of SEPA and the State of Washington Growth Management Act for coordination of hearings, any appeal of the SEPA threshold determination herein will be considered by the Growth Management Hearings Board along with an appeal of the City Council's action. *See* LUC 20.35.250C.

Carol V Helland
Environmental Coordinator

November 10, 2010
Date

OTHERS TO RECEIVE THIS DOCUMENT:
State Department of Fish and Wildlife
U.S. Army Corps of Engineers
Attorney General
King County
Muckleshoot Indian Tribe