

Council Agenda Report

Date: February 6, 2017
Submitted by: Odie Wheeler, Director of Public Works
Prepared by: Pat Escher, City Planner, A.I.C.P.

SUBJECT: Ordinance No. 1090 Text Amendment to Amend Section 2.4.2 Non-conforming Lots, Structures, Uses to permit a single family dwelling on a legal lot of record.

Recommendation: That Council:

- A. Introduce Ordinance No. 1090 by reading of title only;
- B. Open the public hearing and continue to February 27, 2017 for second reading, public hearing and adoption of Ordinance No. 1090.

- I. **Discussion:** Staff brought forth this text amendment to the Planning Commission at the January 3rd and it is now being forwarded to the Council with a unanimous recommendation of approval by the Planning Commission.

The language in the current UDC states that single family lots may be developed on "undeveloped single lot of record". This language is vague and subject to interpretation. Is an undeveloped lot, a lot that has never been built on? Is it a lot that has been vacant for certain time period? Is it a lot that has been vacant for 120 days and therefore reverts to the permitted uses in the zone?

Given the vast number of vacant lots in the downtown, staff believes that the language should be clarified to read as a "legal lot of record". If the lot is legal then it should be permitted to have a single family residence, if that is a permitted use in the zone district. This is a fairly subtle change of language, but provides clarity. The proposed change also lessens the ambiguity that the current language affords. Additionally, there are homes that are built very close to the road creating a situation whereby a sidewalk cannot be accommodated. In an effort to alleviate that situation, the proposed changes would allow new residences to be built with the same footprint, but adhering to the front yard setback. In an effort to streamline the process, when modifications to a setback are required, it can be done administratively by staff.

Below are staff recommended changes to the non-conforming section of the UDC.

§ 2.4.2 Nonconforming Lots, Structures, and Uses

A. Nonconforming Lots of Record

1. In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any undeveloped single legal non-conforming or conforming lot of record at the effective date of adoption or amendment of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width or both that are generally applicable in the zone, provided that yard dimensions shall conform to the regulations for the zone in which such lot is located. ~~Any variance of yard requirements shall be obtained only through action of the Board of Appeals.~~ Any single family residence that does not comply with side and rear setback can be administratively reviewed.
2. Single family lots with existing foundations may be reconstructed with the same footprint in a location that complies with the front yard setback. With regards to such lots, side and rear yard setbacks may be administratively modified to accommodate the relocation of the building footprint thereon.
3. In any commercially zoned property in which commercial/mixed use buildings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a commercial/mixed use building may be erected on any undeveloped single lot of record at the effective date of adoption or amendment of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width or both that are generally applicable in the zone, provided that yard dimensions shall conform to the regulations for the zone in which such lot is located. Any variance of yard requirements shall be obtained only through action of the Board of Appeals.
4. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold which does not meet lot width or area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Ordinance.

B. Nonconforming Uses of Land

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance.
3. If any such nonconforming use of land ceases for any reason for a period of more than 90 days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zone in which such land is located.

C. Nonconforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued subject to § 2.4.2E, so long as it remains otherwise lawful, subject to the following provisions:

1. No such structure may be enlarged or altered in a way that increases its nonconformity. For purposes of this ordinance, a renovation of a structure which maintains the existing building envelope and does not extend the structure beyond the existing building envelope does not constitute an increase in nonconformity of the structure.
2. Should such structure be destroyed by any means to an extent of more than 25 percent of its appraised valuation at time of destruction as determined by the "appraised valuation" which shall mean either the appraised valuation for property tax purposes, as determined by the Maryland Department of Assessment and Taxation or the valuation determined by a professionally recognized property appraiser; it shall not be reconstructed as a nonconforming structure, except as may be authorized by the Planning Commission under § 5.1.2A(3).

3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

D. Nonconforming Uses of Structures

If a lawful use of a structure or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the zoning district under the terms of this Ordinance, the lawful use may be continued subject to § 2.4.2E of this Ordinance, so long as it remains otherwise lawful, subject to the following provisions:

1. The alteration of a structure containing a non-conforming use will be subject to the same standards subsection C and E herein, Nonconforming Structures.
2. Any nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed for use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use, provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate or more appropriate to the zone than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with the provisions of this Ordinance.
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed.
5. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structures shall eliminate the nonconforming status of the land.

E. Repairs and Maintenance of Nonconforming Structures

1. Repairs to, improvements that do not increase nonconformity, and routine maintenance of property where nonconforming situations exist are permitted as qualified below for those structures which may be devoted to nonconforming uses.

2. On any structure devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or renovations of the structure, provided that the building's density and building envelop (i.e. bedroom count and typology), as it existed at the time of passage or amendment of this Ordinance, shall not be increased.
3. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

II.

Fiscal Impact: This amendment may facilitate infill development within the Downtown Waterfront Development District.

Approved by: 