



CITY OF KIRKLAND
Planning and Community Development Department
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MEMORANDUM

To: Kurt Triplett, City Manager
From: Eric Shields, Planning Director
Date: October 16, 2012
Subject: Nonconforming Density Regulations

RECOMMENDATION

That the Council Reviews the Zoning Code amendments recommended by the Planning Commission and the potential alternatives presented below and then directs staff to prepare an ordinance for consideration at a future meeting. If the Council selects an alternative for consideration that is significantly different from the PC recommendation, it is recommended that a public hearing be scheduled.

BACKGROUND DISCUSSION

As part of a recent large group of Zoning Code amendments, the Planning Commission recommended amendments to regulations governing nonconforming density. The regulations specify the circumstances under which a building with more dwelling units than allowed under the current zoning must be brought into conformance.

The amendments were precipitated by discussions during the update of the Lakeview and Central Houghton Neighborhood plans in 2011. Both neighborhoods contain buildings that were constructed when zoning regulations allowed greater density. During the plan update process, concerns were raised by residents that current zoning regulations unreasonably restrict maintenance and remodeling of these structures. In response, the Planning Commission and Houghton Community Council considered including policies in the neighborhood plans that would support more flexibility in dealing with nonconforming density within those neighborhoods. However, this approach was ultimately rejected because it was focused solely on two neighborhoods, rather than addressing the issue throughout the City. Instead, it was agreed to look at the regulations on a City-wide basis.

The amendments recommended by the Planning Commission remove construction cost limits on maintenance and remodeling of structures with nonconforming density, as well as generally simplify the regulations. The proposed amendments, however, continue to restrict the expansion of structures with nonconforming density, although the language was changed somewhat.

Correspondence has been submitted suggesting that the current restriction on expanding structures is too restrictive. Many of the older structures that exceed current density limits are smaller in size than current regulations, particularly lot coverage regulations, allow. The

correspondence asks that the regulations be further amended to allow structures to expand, consistent with current dimensional standards, without requiring that density be brought into conformance.

The regulations recommended by the Planning Commission are included in Attachment 1 and show the complete proposed wording changes to the current code. Following are alternatives to paragraph 3 of the regulations which addresses remodeling, with a brief explanation of each alternative's implications:

Planning Commission recommendation:

- 3. Remodeling may be carried out consistent with the provisions of this chapter; provided, there is no change to the configuration of exterior walls and the density within the remodeled structure is no greater than contained in the original structure.*

Implications: The Planning Commission proposal removes construction cost restrictions on remodeling but allows no change to exterior walls. If expansion is desired, buildings must be brought into compliance with existing density limits. Consequently, this restriction tends to discourage substantial redevelopment. Since buildings with nonconforming density are older and typically smaller and more affordable than newer structures, the regulation also has the effect of preserving some of the City's more affordable housing stock.

Alternative 1 - Limit remodeling to existing major exterior dimensions:

- 3. Remodeling may be carried out consistent with the provisions of this chapter; provided, there is no change to the configuration of exterior walls the remodeled structure does not exceed the major exterior dimensions of the original structure and the density within the remodeled structure is no greater than contained in the original structure.*

Implications: This is very similar to and fundamentally consistent with the Planning Commission recommendation, but uses language more similar to the current regulations with regard to structure expansion. Expansion is still generally prohibited, but the language allows for more flexibility in making minor changes.

Alternative 2 - Allow limited expansion:

- 3. Remodeling or minor additions may be carried out consistent with the provisions of this chapter; provided, there is no change to the configuration of exterior walls the gross floor area of the structure is not expanded by more than X%, and the density within the remodeled or expanded structure is no greater than contained in the original structure, and any expansion of the structure complies with all applicable zoning regulations.*

Implications: This alternative would allow structures with nonconforming density to be expanded by a limited percentage of the floor area in existing structures. The Council would need to determine the appropriate percentage. Any further expansion would require that the density comply with current regulations. This alternative allows more flexibility for remodeling. It would also increase the possibility of fully redeveloping existing buildings,

but would typically not allow expansion or rebuilding up to current dimensional standards unless density is reduced.

Alternative 3 - Allow complete redevelopment:

3. *Remodeling or redevelopment may be carried out consistent with the provisions of this chapter; provided, there is no change to the configuration of exterior walls and the density within the remodeled structure is no greater than contained in the original structure and any expansion of the structure complies with all applicable zoning regulations.*

Implications: This alternative would allow for complete redevelopment while maintaining the existing nonconforming density. The Planning Commission discussed this idea and concluded that it would be inappropriate as it would essentially create spot zoning of higher density within areas generally planned for lower densities. This would create an inequitable regulation of density for similarly situated properties.

Alternative 4 – Rezone areas with significant nonconforming density:

In lieu of alternative 3, but potentially in addition to one of the other alternatives, areas with high concentrations of nonconforming density could be up-zoned consistent with the prevailing highest density. For example, the largest concentration of properties with nonconforming density is in the RM 3.6 and PR 3.6 zones south of downtown, as shown in Attachment 2. Rezoning would allow all properties in a defined area to redevelop under the same density regulations. This alternative would require amendments to the Comprehensive Plan. Such amendments could be considered during the 2013/14 update of the Plan.

Public Hearing Recommended

If the Council is interested in considering regulations that are significantly different than those recommended by the Planning Commission such as alternatives 2 or 3, it is recommended that the Council conduct a public hearing to receive public comment. To provide sufficient time for advertising, the earliest date to schedule the hearing would be December 11, 2012. If Alternative 4 is of interest, Council may direct that this alternative be considered in the upcoming Comprehensive Plan update.

Attachments:

1. Proposed regulations recommended by the Planning Commission
2. Properties with nonconforming density in the RM 3.6 and PR 3.6 zones south of downtown

Planning Commission Recommended Amendments to Nonconforming Density Regulations

162.6035.12 ~~Special Provisions for Continued Uses—~~ Nonconforming Density

The provisions of this section set forth when, and under what circumstances, residential property with nonconforming density may continue in existence or be rebuilt or redeveloped. An existing lawful use of a residential structure which became nonconforming as to density ~~either as a result of amendatory Ordinance No. 2347 or due to other zoning changes implemented to bring about conformity with the Comprehensive Plan~~ shall be allowed to continue in existence, or be remodeled, repaired or maintained subject to the conditions listed below. ~~Redevelopment or rebuilding may not occur unless the structure is destroyed by fire or other casualty (see subsection (4) of this section).~~

1. The provisions of this section apply only to multifamily structures in areas designated by the ~~Comprehensive Plan~~ Zoning Code for multifamily use.
2. ~~Any change in use shall conform to the Comprehensive Plan and zoning regulations in effect at the time such change is made.~~
3. ~~Any change in density shall comply with the provisions of this section.~~
42. Ordinary repairs and maintenance may be carried out consistent with the provisions of this chapter; ~~provided, that there shall be~~ with no limitation on the amount or cost of such repairs and maintenance.
53. Remodeling may be carried out consistent with the provisions of this chapter; provided, ~~that within any 24 month period, the value of all improvements may not exceed 50 percent of either the assessed valuation of the existing structure based on the King County assessed valuation of the structure, or the value of the existing building as determined by the most current Building Standards as published by the International Conference of Building Officials, whichever is greater. If there is no King County assessment for the structure to be remodeled, the most current Building Standards as published by the International Conference of Building Officials shall be used to determine valuation~~ there is no change to the configuration of exterior walls; and
The density within the remodeled density structure is no greater than must be at least 75 percent of that contained in the original structure. The major exterior dimensions of the structure shall not exceed the major exterior dimensions of the previous structure. Except as noted in this subsection and subsection (7) of this section, this provision shall not reduce any requirements of the zoning, building, or fire codes in effect when the structure is remodeled.
64. Residential property with nonconforming density shall not be subject to the provisions of this chapter relating to destruction by fire or other casualty. In the event a residential structure that is nonconforming as to density is destroyed to any extent by fire or other casualty, the structure may be rebuilt as a residential structure; provided, however, that the number of dwelling units, gross floor area of the structure, and major exterior dimensions of the structure shall not exceed the same dimensions or standards of the previous structure. This subsection shall not reduce any requirements of the zoning, building, or fire codes in effect when the structure is rebuilt. The property owner shall also have the option of rebuilding the structure at a reduced density, as described in subsection (5) of this section. The provisions of this subsection shall only be available if an application for a building permit is filed within 12 months of fire or other casualty and construction is commenced and completed in conformance with the provisions of the building code then in effect.

~~7. Should the number of parking stalls provided on-site be insufficient to meet zoning regulations in effect at the time of remodeling, this deficiency shall be allowed to remain with the remodel; provided, that the number of stalls may not be reduced from the number of stalls on-site with the original structure. Any surplus of parking stalls above those required by the zoning regulations in effect at the time of remodeling may be eliminated.~~

~~85. The owner of a continued use nonconforming as to density may request the issuance of a "certificate of continued use" which shall identify the property, existing use, density and site characteristics for which the certificate is issued and which shall include the provisions of this chapter.~~

~~162.35.1213.~~ Any Other Nonconformance

If any nonconformance exists on the subject property, other than as specifically listed in the prior subsections of this section, these must be brought into conformance if:

- a. The applicant is making any alteration or change or doing any other work in a consecutive 12-month period to an improvement that is nonconforming or houses, supports or is supported by the nonconformance, and the cost of the alteration, change or other work exceeds 50 percent of the replacement cost of that improvement; or
- b. The use on the subject property is changed and this code establishes more stringent or different standards or requirements for the nonconforming aspect of the new use than this code establishes for the former use.

