



Ordinance 190506

# Nonconforming Lots

Joint Hearing

Neighborhood Planning and Development Committee  
Special Committee on Housing Policy

October 23, 2019



# Prior meetings and hearings:

## BZA Hearing

- Appeal hearing

April 9, 2019

## Community Meetings:

Staff presented Ordinance 190506 to the public at several meetings held as follows:

- Kansas City Neighborhood Advisory Council (KCNAC)
- Northland Neighborhoods Inc. (NNI)
- Gregg-Klice Community Center
- Kansas City Neighborhood Advisory Council (KCNAC)
- Kauffman Conference Center

June 10, 2019

August 21, 2019

August 27, 2019

September 9, 2019

September 12, 2019

## City Plan Commission:

- City Plan Commission recommended approval (3 to 2)

June 18, 2019

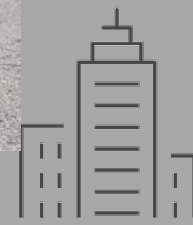
## Planning, Zoning & Economic Development Committee:

- Planning, Zoning & Economic Development Committee  
Ordinance has since been held on the agenda.

June 26, 2019.

# What is a Nonconforming Lot?

“A nonconforming lot is a lawfully created lot, shown on a plat or survey map recorded in the appropriate recorder of deeds office, that does not comply with the most restrictive minimum lot area or lot width standards of the zoning district in which the lot is now located.”



# How do lots become nonconforming?

- Many lots were legally created prior to:
  - Establishment of zoning in 1923, or
  - Annexation into the city, so platted in other jurisdictions
- Downzonings
  - Intent was to prevent multi-family development in single family neighborhoods
  - But minimum required lot area increased -- for example from 1,500 to 6,000 sq. ft.



# Current Ordinance...

- Permits construction of a single family home on any legally established lot, regardless of the lot width or lot area
- **Except when** two non-conforming lots are *adjacent and under same ownership*
  - ... again, if the lot doesn't meet current lot width or lot area requirements, it is "nonconforming"



Two nonconforming lots (25 ft. width) that are adjacent but NOT under same ownership – a single family home could be constructed on each of these lots



Four nonconforming lots (25 ft. width) that are adjacent and under same ownership – therefore deemed "combined"





### Under Current Code:

If these four lots are under same ownership, they are **deemed to be combined**

- Current code does allow reestablishment of lots 30 ft. and wider
- But, even after minor subdivision process, this would permit construction of only 2 homes, rather than 4

- Four, adjacent 25 ft. wide lots of 3,250 sq. ft. (total area 13,000 sq. ft.)
- Nonconforming due to lot width and size, as R-6 zoning would require 50 ft. lot width and minimum 6,000 sq. ft. / lot



### Under Proposed Code Revisions:

Whether or not under same ownership, these lots are **not deemed to be combined**

- This would permit construction of 4 homes, each on 25 ft. wide lot (due to provision stating that a home may be built on a legally established lot).
- Looking at configuration of existing homes, as originally constructed on that side of the block, homes on 25 ft. wide lots are compatible



# Reason for Proposed Ordinance ...

- To delete specific language pertaining to nonconforming lots from Chapter 88, Zoning & Development Code
- This language (88-610-03-C.) is preventing construction of **single family homes** on certain nonconforming lots.
- Need arose following Board of Zoning Adjustment action to overturn decision to issue permit for single family home on a nonconforming lot of less than 30 ft. width.



# Reason for Proposed Ordinance ...

- Existing ordinance states:
  - Lots that are nonconforming with regard to lot area are allowed to be developed with a single-family home. (88-820-01-B)
- On appeal, the BZA found that there is a different section of the ordinance which conflicts. It says:
  - Adjacent lots under common ownership, one or more of which are nonconforming, are “deemed combined” and “exist as a single lot and may not be sold or used in a manner that diminishes compliance with lot size requirements”; and
  - Once deemed combined, the director may approve re-establishing the lots only if 1) it would result in lots that are at least 30 feet wide, and 2) if the lots would “result in compatible infill development that is in keeping with the pattern of development on the subject block”.





# Reason for Proposed Ordinance ...

- Staff has concerns with the “deemed combined” language.
  - The lots become combined simply as a result of an entity purchasing two or more lots or a lot adjacent to one they already own with the result being increased red tape to build on it or a total loss of their right to use of one or more of the lots.
- Staff has concerns with the re-establishment language.
  - The resulting lots must be at least 30 feet wide. This number is arbitrary. Many nonconforming lots are less than 30 feet wide and many of these were previously approved by the city.





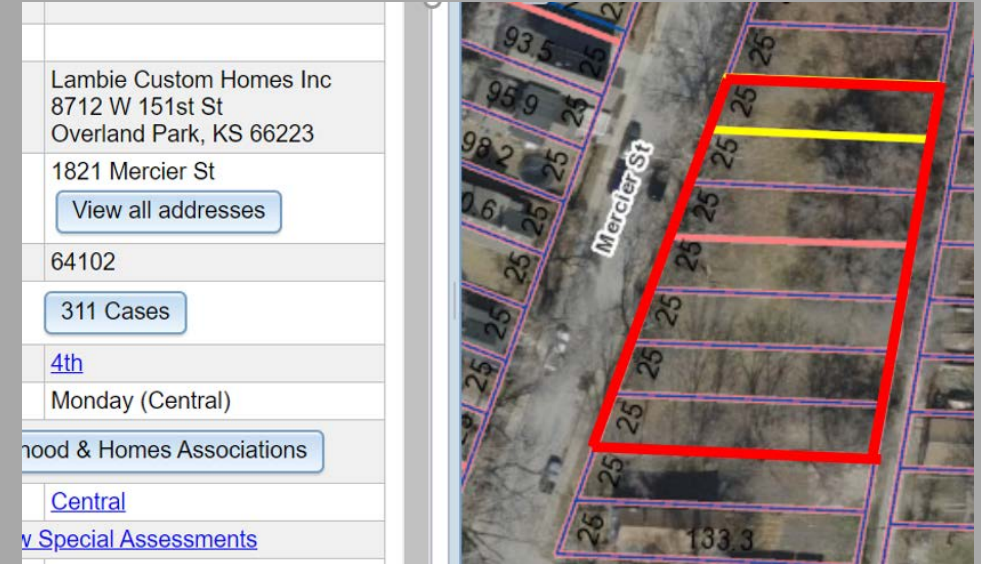
# Reason for Proposed Ordinance ...

- Impact on property owners:
  - Prior to the board's decision, an owner could obtain a building permit for a home the same day they submitted an application.
- If the proposed ordinance does not pass, staff anticipates the following impacts on owners:
  - Those who own a single nonconforming lot (i.e. those not deemed combined) would need to conduct a title search of their property and each adjacent property to verify that the subject lot was never under common ownership with one or more of the adjacent lots.
  - Those who own two or more lots, one or more of which is nonconforming (i.e. those deemed combined) would need to first obtain approval of a minor subdivision.



# Reason for Proposed Ordinance ...

- Unintended consequences
  - Many Land Bank properties will fall into the “deemed combined” category making it more difficult to sell and develop on their lots.
  - Will cause buyers who can afford it to purchase more than one land in order to comply.
    - This decreases density and return on investment
    - Will likely result in larger more expensive homes



- example of Land Bank lots acquired by builder
- 25 ft. wide
- under same ownership, so deemed to be combined





# *Rationale for proposed ordinance...*

In reviewing and making decisions on zoning and development code text amendments, the city planning and development director, city plan commission and city council must consider at least the following factors:

**88-510-07-A.** whether the proposed zoning and development code text amendment corrects an error or inconsistency in the zoning and development code or meets the challenge of a changing condition;

Staff Response: The proposed ordinance meets the challenge of a changing condition in two ways: 1) the BZA's decision set a precedent, and 2) there is increased demand in the market to build in neighborhoods with higher concentrations of nonconforming lots that we are unable to meet without the proposed amendment.





# *Criteria to Consider*

**88-510-07-B.** whether the proposed zoning and development code text amendment is consistent with adopted plans and the stated purpose of this zoning and development code; and

Staff Response: The proposed amendment is consistent with the stated purpose of this zoning and development plan, in particular the following:

**88-10-05-G.** accommodating mixed-use, pedestrian-oriented development patterns;

**88-10-05-H.** promoting pedestrian, bicycle and transit use;

**88-10-05-K.** promoting natural resource conservation, and environmentally responsible and sustainable development practices;

**88-10-05-N.** maintaining a range of housing choices and options;

**88-10-05-O.** ensuring provision of adequate public facilities and services;

**88-10-05-P.** establishing clear and efficient development review and approval procedures; and







# *Criteria to Consider*

**88-510-07-C.** whether the proposed zoning and development code text amendment is in the best interests of the city as a whole.

Staff Response: The proposed amendment will allow the city to absorb increased population and the benefits that come with that with little, if any, increased costs (such as those that come with greenfield development such as extension of infrastructure). This is in the best interest of the city as a whole.



# Effect of Proposed Ordinance

- example of neighborhood where larger, ranch style home built on 3 underlying lots
- revision to code would allow construction of one home per lot, for 3 homes
- allowing smaller homes in neighborhoods
  - appealing to residents in various stages of life
  - providing relative affordability







Home recently constructed in Columbus Park on a 25 ft. wide infill lot





# Proposed Ordinance would...

- Move “Exceptions” language
  - delete 88-820-01-B. Exceptions
  - add 88-110-06-C. Exceptions
- Delete 88-610-03-C. Lot Consolidation



# Proposed Revisions

## 88-820-01 - LOT AREA

### 88-820-01-A. MEASUREMENT

The total land area contained within the property lines of a lot.

#### 88-820-01-B. EXCEPTIONS

1. A single-family dwelling, wherever permitted as an allowable use, may be erected on any area of land in separate ownership that was in existence at the time of the passage of the original Ordinance No. 45608, passed June 4, 1923, or any subsequent amendment thereto that causes the area of land in separate ownership to contain less area than required to house one family in the district in which it is located, provided all setback, height, and parking requirements of this zoning and development code are met. For purposes of this section, separate ownership means any lot previously established by a recorded subdivision plat or any lot established by a recorded conveyance made prior to March 1, 1954, or made in conformance with subdivision regulations of this code, or as otherwise lawfully established.
2. A single-family dwelling, wherever permitted as an allowable use, may be erected on any area of land established by an approved lot split or subdivision plat.

- Moving text regarding “Exceptions” from 88-820-01-A. Measurement to 88-110-06 Lot and Building Standards
- Clarifying to add lot “width”

## 88-110 - RESIDENTIAL DISTRICTS

### 88-110-06 - LOT AND BUILDING STANDARDS

#### 88-110-06-C. EXCEPTIONS

1. A single-family dwelling, wherever permitted as an allowable use, may be erected on any area of land in separate ownership that was in existence at the time of the passage of the original Ordinance No. 45608, passed June 4, 1923, or any subsequent amendment thereto that causes the area of land in separate ownership to contain less lot width or less lot area than required to house one family in the district in which it is located, provided all setback, height, and parking requirements of this zoning and development code are met. For purposes of this section, separate ownership means any lot previously established by a recorded subdivision plat or any lot established by a recorded conveyance made prior to March 1, 1954, or made in conformance with subdivision regulations of this code, or as otherwise lawfully established.
2. A single-family dwelling, wherever permitted as an allowable use, may be erected on any area of land established by an approved lot split or subdivision plat.





# Proposed Revisions

## Delete 88-610-03-C Lot Consolidation

### 88-610 - NONCONFORMITIES

#### 88-610-03 - NONCONFORMING LOTS

##### 88-610-03-A. DESCRIPTION

A nonconforming lot is a lawfully created lot, shown on a plat or survey map recorded in the appropriate recorder of deeds office that does not comply with the most restrictive minimum lot area or lot width standards of the zoning district in which the lot is now located.

##### 88-610-03-B. USE OF NONCONFORMING LOTS

1. In residential zoning districts, a nonconforming lot may be developed with a detached house.
2. In nonresidential zoning districts, a nonconforming lot may be developed with a use allowed within the subject zoning classification. If the zoning allows a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable lot area and lot width standards, while others would not, then only the uses or intensities that comply with applicable standards are permitted.

##### ~~88-610-03-C. LOT CONSOLIDATION~~

- ~~1. If two or more abutting lots (or portions of abutting lots), one or more of which are nonconforming, are in single ownership, the land involved will be deemed a single lot for purposes of determining compliance with lot size requirements, and no portion of the lot may be sold or used in a manner that diminishes compliance with lot size requirements.~~
- ~~2. In cases where 2 or more abutting lots of record are under single ownership and are deemed a single lot as set forth in paragraph 1 above, the city planning and development director may allow re-establishment of a lot previously combined with an abutting lot in order to accommodate a detached house, provided both of the following conditions are met:
  - ~~(a) granting of the request results in compatible infill development that is in keeping with the pattern of development on the subject block; and~~
  - ~~(b) the lot split will not result in the creation of any lot that is less than 30 feet in width.~~~~

##### 88-610-03-D. DIMENSIONAL STANDARDS

Development on nonconforming lots must comply with the bulk and density standards of the subject zoning classification unless otherwise expressly stated.

# Other concerns heard during community engagement meetings & public hearings:

- Density increase due to infill development
- Parking issues resulting from additional homes
- Existing residents/neighborhoods don't want gentrification
- People could sell their side yard
- This would prevent people from combining lots
- Tax increases
- Don't want expensive homes on small lots
- Infill housing is not "affordable"
- Construction may cause damage to existing homes and foundations
- Infill development on small lots causes homes to be too close, causing fire and emergency issues, difficulty performing maintenance, etc.
- Minimum 2.5 ft. side yard setback required not sufficient, especially when adjacent to existing homes built on zero-lot-line lots (prior to setback requirements)



# Responses to community engagement meeting & public hearing comments regarding density:

- Density increase due to infill development
- Parking issues resulting from additional homes
- Allow people to sell their side yard and build a house between theirs and mine.
- People could no longer combine lots.

Staff Response: The proposed ordinance does not adjust the Code's level of density for any zoning district or the minimum parking requirements. By code a side yard is on the same lot as the home; however some homeowners have bought an adjacent lot beside their home and some might consider this to be a side yard. The ordinance would only allow this lot to be sold and developed if it was legally created (i.e. if it was platted). Lot combinations would continue to be allowed as they are today.



# Responses to community engagement meeting & public hearing comments home values:

- Existing residents/neighborhoods don't want gentrification
- Tax increases
- Don't want expensive homes on small lots
- Infill housing is not "affordable"

Staff Response: The proposed ordinance allows home construction on smaller lots which reduces the impact of land value on home cost and the proposed ordinance has no impact on the cost of improvements to the land (i.e. the house itself). The ordinance has no bearing on taxes and how they are assessed.



# Responses to community engagement meeting & public hearing comments building codes:

- Construction may cause damage to existing homes and foundations
- Infill development on small lots causes homes to be too close, causing fire and emergency issues, difficulty performing maintenance, etc.
- Minimum 2.5 ft. side yard setback required not sufficient, especially when adjacent to existing homes built on zero-lot-line lots (prior to setback requirements)

City Building Official's Response: The Building Code provides for the prevention of fire spread from property to property via setback, fire resistant exterior wall construction, limitation of exterior wall openings, or combination thereof.







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Questions / Comments