



Ordinance 190506

Nonconforming Lots

Neighborhood Planning & Development Committee
October 23, 2019

Reason for this Ordinance ...

- To delete problematic language of Chapter 88, Zoning & Development Code
- This language (88-610-03-C.) is preventing construction of **single family homes**
 - on lots of less than 30 ft. in width that are adjacent to other lots of 30 ft. in width and owned by same entity
 - many lots sold by Land Bank
- **Pertains only to legally established lots**
- Need to revise code arose after Board of Zoning Adjustment overturned decision to issue permit for single family home on a nonconforming lot of less than 30 ft. width



Ordinance does not ...

- Prevent **combination** of existing lots that would allow construction of larger homes (“McMansions”)
 - this is permitted today and would continue to be allowed unless addressed by separate legislation
- Allow someone to ‘sell off their side yard’,
 - unless that ‘side yard’ is already a legally established lot
- Prescribe the cost of development
- Address:
 - “affordable” housing
 - need for housing for the homeless



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
- 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)



Currently, Chapter 88 ...

- 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"



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?

- City was established in mid-1800s, zoning was first adopted in 1923
- Zoning established minimum lot area and lot width
- Many lots were legally created prior to:
 - zoning requirements of 1923
 - annexation into the city, so platted in other jurisdictions
- Lots also became nonconforming due to “downzonings” that increased lot area and width requirements
 - 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 code problematic

- Provision added to Legal Nonconforming section in 2011:
 - adjacent, nonconforming lots under single ownership will be considered as a single lot
 - prohibits sale of any lot (even if legally created) or portion of parcel
 - allows reestablishment (minor subdivision), but resulting lot must be at least **30 ft.** in width



Current code problematic

- Code says single family home may be built on any nonconforming lot legally created (exceptions), so long as it has not been deemed combined (lot consolidation)
- Once deemed combined, these lots are considered to be a single lot in determining compliance with lot size requirements
- No portion of that lot may be sold or used in a manner that diminishes compliance with lot size requirements



Under current code:

- 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
- 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
 - Although 3 lots of 30 ft. width could be reestablished, the required 6,000 sq. ft. lot area would permit only 2 lots (with 13,000 sq. ft. total parcel area)
 - Note: "reestablishment" requires minor subdivision, at minimum. Minor subdivision cannot be approved for lot of less area than required by zoning. Applicant would have to proceed to plat and then request lot area variance.

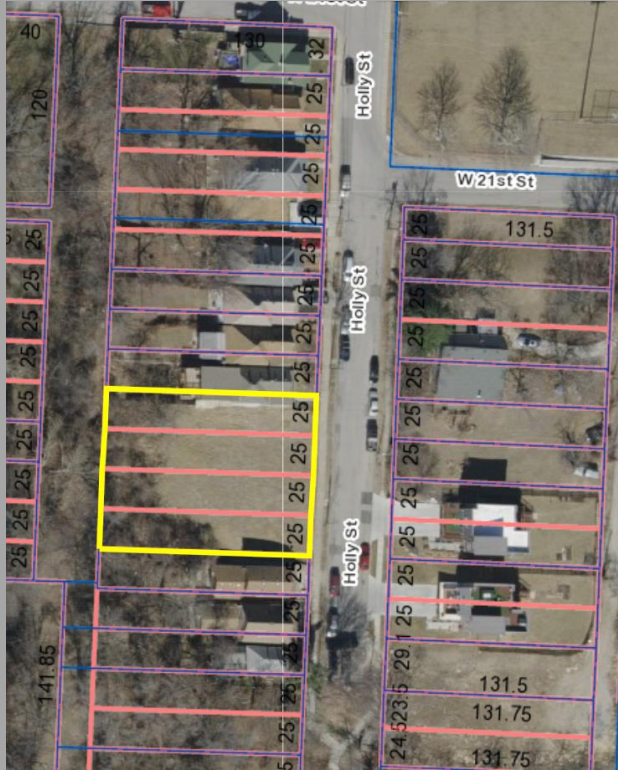


If lot consolidation provision deleted, as proposed:

- Four, adjacent 25 ft. wide lots of 3,250 sq. ft.
- Nonconforming due to lot size (zoning in this case would require 50 ft. of lot width and 6,000 sq. ft. of lot area per lot)
- 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



Under current code:



- Four adjacent 25 ft. wide lots under same ownership
- Because under same ownership, deemed to be combined
- Due to lot width and area requirements, only **2 homes** may be built

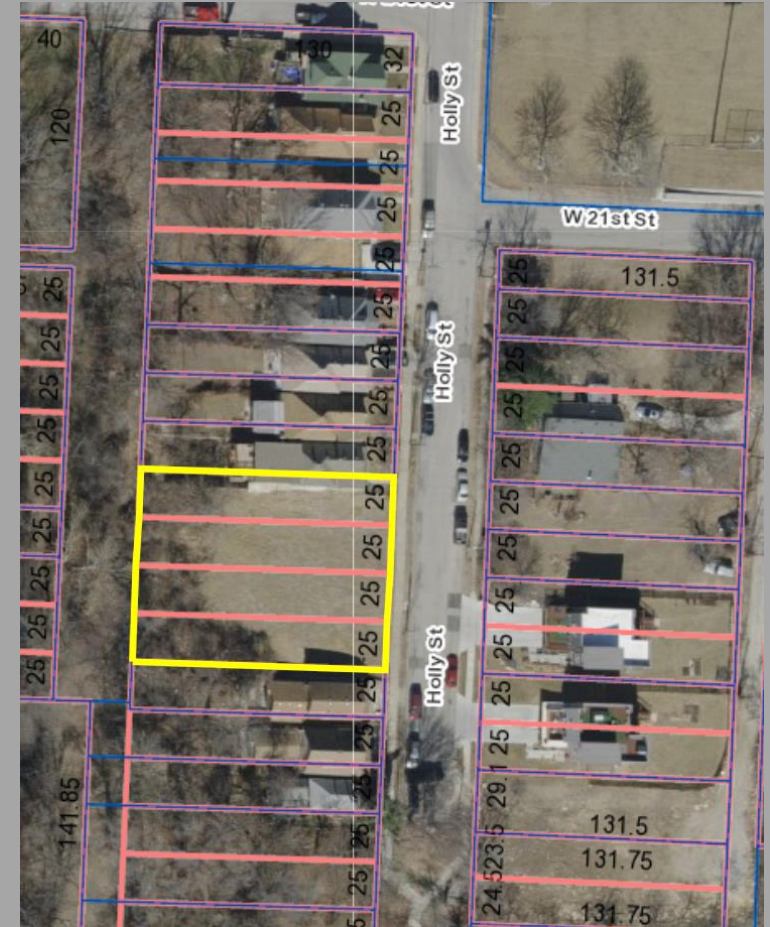


- Four adjacent 25 ft. wide lots under separate ownership
- Because not under same ownership, permit may be issued for home on each legally established lot
- Would permit construction of **4 homes**



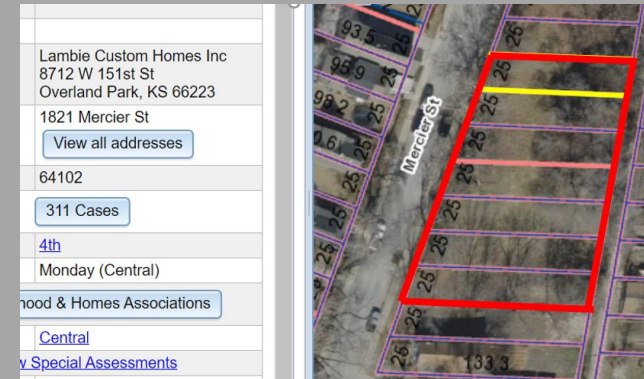
as a result ...

- Prohibits infill development on
 - Adjacent nonconforming lots that are under the same ownership
 - Even though they were legally established lots
 - If reestablished (through minor subdivision) resulting lot must be at least 30 ft. in width



as a result ...

- After Board of Zoning Adjustment decision, several dozen permits on hold due to current code language, including many Land Bank lots
- Unintended consequence -- causes incompatibly, for example:
 - causes buyers to purchase more than one lot
 - increases cost of lot
 - Lot price then justifies larger home that may not be compatible with character of existing neighborhood



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



Promote diversity in housing type and lot area

- 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 affordability





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



Allow construction of a single-family dwelling on a legally established lot, so as to:

- Enable infill development on vacant lots, many of which once contained single family dwellings
- Utilize existing, built infrastructure in the urban core
- Maintain neighborhood character
 - Front doors
 - Street activity
 - Safer neighborhoods
- Maintain prevalent building type
 - If single family homes cannot be built on existing lots, it is possible that developers will rezone/replat and propose multi-family development



Rationale for current code revision:

- Shifting market causing demand for smaller lots
- Desire to construct in established areas of the city, where utilities, improved streets, transit, and amenities exist
- Enable development of Land Bank lots -- often nonconforming and under same ownership
- Preserve character of existing neighborhoods by allowing redevelopment on existing lots
- Less emphasis on establishing “conformity”
- Enable sustainable development



Proposed Revisions

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



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.

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.