Ordinance No. 2468

["Beginning July 1, 1998"]

(Amending or Repealing Ordinances)

Secs. 15.02.283, 15.02.285, & 15.08.100 Amended by Ord. 3409;
Sec. 15.08.100 (E) Amended by Ord. 3521
AN ORDINANCE of the City of Kent, Washington relating to zoning; amending Kent City Code sections 15.02.105 - Development Standards, 15.02.285 - Nonconforming Use, 15.08.100 - Nonconforming Uses; repealing Section 15.06.060 - Nonconforming Signs and Amortization; and adding Sections 15.02.107 - Discontinuance, 15.02.257 - Major Nonconforming Buildings/Structures, 15.02.258 - Minor Nonconforming Buildings/Structures, 15.02.282 - Nonconforming Lots of Record, 15.02.283 - Nonconforming Sign, 15.02.286 - Nonconformity, and 15.02.531 - Use, Change of.

THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 15.02.105 of the Kent City Code is amended as follows:

15.02.105 DEVELOPMENT STANDARDS

Regulations including but not limited to setbacks, landscaping, screening, height, site coverage, signs, building layout, parking and site design and related features of land use.

Section 2. Section 15.02.285 of the Kent City Code is amended as follows:

15.02.285 NONCONFORMING USE

The use of land, a building or a structure lawfully existing as of June 20, 1973 which does not conform with the use regulations of the district in which it is located on the effective date of such use regulations.

Section 3. Section 15.08.100 of the Kent City Code is amended as follows:

15.08.100 NONCONFORMING USE DEVELOPMENT

A. Established Nonconforming Use
To benefit from the protection given to a non-conforming use, such use must have been legitimately and lawfully established prior to the adoption of this ordinance and amendments thereto or a county resolution in effect at the time of annexation which rendered it nonconforming.

PURPOSE: The intent and purpose of these provisions are:

1. To assure reasonable opportunity for use of legally created lots which do not meet current minimum requirements for the district in which they are located.

2. To assure reasonable opportunity for use, maintenance, and improvement of legally constructed buildings, structures, and site development features which do not comply with current minimum requirements for the district in which they are located.

3. To assure reasonable opportunity for continuation of legally established uses which do not conform to use regulations for the district in which they are located.

4. Encourage the eventual replacement of nonconforming uses having potentially undesirable impacts on conforming uses.

5. Encourage the eventual upgrading of nonconforming buildings, structures, and site development features which do not comply with current minimum requirements for the district in which they are located.

B. APPLICABILITY

Nonconforming uses, structures, lots or signs are not favored by law and this code and it is to avoid injustice that this code accepts such elements. To benefit from the protection given to nonconforming development, such use, structure, lot or sign must have been lawfully established prior to June 20, 1973 or pursuant to a county resolution in effect at the time of annexation which rendered it nonconforming. This section distinguishes
between and defines nonconforming uses, major nonconforming buildings/structures, minor nonconforming buildings/structures, nonconforming lots of record, and non-conforming signs. Different requirements are made applicable to each of these categories. The degree of restriction made applicable to each separate category is dependent upon the degree to which that category of nonconformance is a nuisance or incompatible with the purpose and requirements of this code.

((B. Noneconforming Uses

No existing buildings, structure or land devoted to a use not permitted by this chapter in the district in which such building, structure, or land is located shall be enlarged, extended, reconstructed, substituted or structurally altered, unless the use thereof is changed to a use located, and except as permitted in the following sections.

C. Substitution or Extension

1. When authorized by the Planning Director, a nonconforming use may be changed to use of a like or more restricted nature.

2. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

3. When authorized by the Planning Director, a nonconforming use of a building may be extended throughout those parts of a building which were manifestly designed or arranged for such use prior to the date when such use of such building became nonconforming, if no structural alterations, except those required by law are made therein.))

C. NONCONFORMING USES

1. Restrictions. Regulations applicable to nonconforming uses are in addition to regulations applicable to nonconforming structures, lots and signs, and in the event of any conflict the most restrictive provision shall apply.
2. Expansion of Nonconforming Uses. No existing building, structure, or land devoted to a nonconforming use shall be expanded, enlarged, extended, reconstructed, intensified, or structurally altered unless the use thereof is changed to a use permitted in the district in which such building/structure, or land is located except as follows:

a. When authorized by Conditional Use Permit, a nonconforming use may be expanded, enlarged, extended, reconstructed, intensified, or structurally altered on land under the same ownership as of January 1, 1984.

3. Change of Nonconforming Use. When authorized by the Planning Director, a nonconforming use may be changed to a use of a like or more restrictive nature.

4. Extension of Nonconforming Uses. When authorized by the Planning Director, a nonconforming use may be extended throughout those parts of a building which were manifestly designed or arranged for such use prior to the date when such use of such building became nonconforming if no structural alterations except those required by law are made therein.

((D) Discontinuance)

1. If the nonconforming use of a building, structure or premises ceases for a period of six (6) months or more, said use shall be considered abandoned, and the said building, structure or premises shall thereafter be used only for uses permitted in the district which it is located.

2. The nonconforming use of a conforming building, structure, or land may be continued for a period of five (5) years from the effective date of this chapter, of five (5) years from the date the use becomes nonconforming, whichever date is later, at the end of which period such nonconforming use shall be changed to a conforming use or be terminated, except that hardship cases may be appealed for time extensions to the Board of Adjustment.

3. All uses nonconforming at the time of adoption of this chapter, by reason of noncompliance with performance
Standards stipulated, shall adopt necessary measures and conform therewith within three (3) years of the adoption of this chapter.

4. Any nonconforming building or structure damaged, where cost of restoration exceeds fifty (50) percent of the fair market value of the structure at the time of the damage by fire, flood, explosion, wind, earthquake, war, riot, or other natural disaster shall not be restored or reconstructed and used as before such happening; but, where cost of restoration does not exceed fifty (50) percent of the fair market value of the structure at the time of the damage, it may be restored, reconstructed or used as before, provided that it be completed within one (1) year of such happening.

5. Such repairs and maintenance work as required to keep it in sound condition may be made to a nonconforming building or structure, provided no structural alterations shall be made except such as are required otherwise provided elsewhere in this chapter, the total structural repairs and alterations that may be made in a nonconforming building or structure shall not, during its life subsequent to the date of its becoming a nonconforming building or structure, exceed fifty (50) percent of its fair market value at the time it became a nonconforming building or structure.

6. The nonconforming use of a nonconforming building, structure or land may continue indefinitely, except where otherwise noted in this code.

7. Any nonconforming building or structure damaged in excess of fifty (50) percent of fair market value due to natural disaster may be appealed to the Board of Adjustment for time extensions.

5. Discontinuance of Nonconforming Uses. When a nonconforming use of land or a nonconforming use of all or part of a structure is discontinued or abandoned for a period of six (6) months, such use shall not be resumed, notwithstanding any reserved intent not to abandon such use. Normal, seasonal cessation of use, or temporary discontinuance for purposes of maintenance or improvements shall not be included in determination of the six month period of discontinuance.
6. Reversion of a Nonconforming Use. If a nonconforming use is changed to a permitted use, the nonconforming use shall not be resumed.

(E. Residential Districts—Existing Residential Uses of Greater Density Not Nonconforming.

Residential uses located in any residential zoning district and in existence at the time of adoption of this code shall not be deemed nonconforming in terms of density provisions of this code.

F. Rehabilitation of Nonconforming Dwellings.

Existing dwellings located in any zone in which they are not a permitted use, may be rebuilt after a fire or natural disaster or brought up to building standards after review by the Board of Adjustment.)

7. Residential Exception to Nonconforming Use Status. Legally established residential uses located in any residential zoning district and in existence as of January 1, 1984 shall not be deemed nonconforming in terms of density provisions and shall be a legal use.

D. NONCONFORMING BUILDINGS/STRUCTURES

1. Restrictions. Regulations applicable to nonconforming structures are in addition to regulations applicable to nonconforming uses, lots and signs and in the event of any conflict, the most restrictive provisions shall apply.

2. Major Nonconforming Buildings/Structures. No major nonconforming structure may be expanded, enlarged, extended, reconstructed, or otherwise structurally altered or changed nor may any major nonconforming building, structure or lot be occupied after discontinuance or change in use unless said structure, use and associated grounds, and development are brought into compliance with use and minimum development standards of the district in which such structure is located except as follows:
a. Any major nonconforming structure damaged by fire, flood, explosion, wind, earthquake, war, riot, or other natural disaster, and where cost of restoration exceeds fifty (50) percent of the fair market value of the structure at the time of damage, shall not be restored or reconstructed and used as before such happening; however, where cost of restoration does not exceed fifty (50) percent of the fair market value of the structure at the time of damage, the structure may be restored, reconstructed and used as before, provided that the work be completed within one (1) year of such happening.

b. Such repairs and maintenance work as required to keep the structure in sound condition may be made to a major nonconforming structure provided no such structural alterations shall be made except such as are required by law or ordinance or authorized by the Planning Director.

3. Minor Nonconforming Buildings/Structures. No minor nonconforming structure may be expanded, enlarged, extended, reconstructed, or otherwise structurally altered or changed nor may any minor nonconforming building, structure or lot be occupied after discontinuance or change in use unless said structure and associated grounds, and development are brought into compliance with the minimum development standards of the district in which such structure is located, except as follows:

a. Any minor nonconforming structure damaged by fire, flood, explosion, wind, earthquake, war, riot, or other natural disaster, and where the cost of restoration exceeds fifty (50) percent of the fair market value of the structure at the time of damage, shall not be restored or reconstructed and used as before such happening; however, where cost of restoration does not exceed fifty (50) percent of the fair market value of the structure at the time of damage, it may be restored, reconstructed and used as before, provided that it be completed within one (1) year of such happening.

b. Such repairs and maintenance work as required to keep it in sound condition may be made to a minor nonconforming structure provided no such structural alterations shall
be made except such as are required by law or ordinance or authorized by the Planning Director.

4. Planning Directors Authority: The Planning Director may waive specific development standard requirements and/or impose additional requirements when all the following criteria are met:

i. Owing to special circumstances a literal enforcement of the provisions of the Zoning Code or other land use regulatory ordinances of the City will result in unnecessary hardship.

ii. The waiver of development requirements is in harmony with the purpose and intent of City ordinances and the Comprehensive Plan.

iii. The proposed use, building, and development will function without adverse impact upon adjacent property, development in the area or the city as a whole.

iv. (When) A Conditional Use Permit is not required.

((C. Nonconforming Lots of Record.

1. Residential districts. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this code, notwithstanding limitations imposed by other provisions of this code. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership, except that the Board of Adjustment can consider lots that are in common ownership and common frontage. 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 district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.
Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

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 code, and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purposes of this code, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this code, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this code.

2. Other districts. In any other district permitted buildings and structures may be constructed on a lot of record, provided that site coverage, yard, landscaping and off-street parking requirements are met. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. Variance of these requirements shall be obtained only through action of the Board of Adjustment.

E. NONCONFORMING LOTS

1. Restrictions. Regulations applicable to non-conforming lots are in addition to the regulations applicable to nonconforming uses, structures and signs, and in the event of conflict, the most restrictive provisions shall apply.

2. Nonconforming Lots of Record

a. Residential districts. In any district in which single family dwellings are permitted, a single family dwelling and customary accessory buildings may be erected on any single lot of record as of June 20, 1973, notwithstanding limitations imposed by other provisions of this code. 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 and/or width that are generally applicable in the district, provided that
yard dimensions and requirements other than those applying to area
and/or width of the lot shall conform to the regulations for the
district in which such lot is located.

If two or more lots or combinations of lots and
portions of lots with continuous frontage in single ownership are
of record prior to June 20, 1973, and if all or part of the lots
do not meet the minimum requirements established for lot width and
area, the land involved shall be considered to be an undivided
parcel for the purposes of this code, and no portion of said
parcel shall be used or sold in a manner which diminishes compli-
ance with lot width and area requirements established by this
code, nor shall any division of any parcel be made which creates a
lot with width or area below the requirements stated in this code.

b. Other districts. In any other district, permitted building and structures may be constructed on a noncon-
forming lot of record, provided site coverage, yard, landscaping
and off-street parking requirements are met. Such lots must be in
separate ownership and not of continuous frontage with other lots
in the same ownership prior to June 20, 1973 and if all or part of
the lots do not meet the minimum requirements established for lot
width and area, the land involved shall be considered to be an
undivided parcel for the purposes of this code, and no portion of
said parcel shall be used or sold in a manner which diminishes
compliance with lot width and area requirements established by
this code, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in
this code.

F. NONCONFORMING SIGNS

1. Restrictions. Regulations applicable to non-
conforming signs are in addition to regulations applicable to non-
conforming uses, structures and lots, and in the event of conflict
the most restrictive provisions shall apply.
2. Nonconforming Signs

a. Signs that were legally existing as of June 20, 1973 that do not conform to these regulations shall be considered nonconforming signs. Nonconforming signs may not be moved, relocated, altered or added to without receiving approval from the Planning Department.

b. No sign permit shall be issued to allow legal signs on property having an illegal or nonconforming sign until such time as the nonconforming or illegal sign(s) is modified to conform to this code.

3. Amortization Period of Nonconforming Signs

a. Abandoned signs. Must be removed within ninety (90) days.

b. Number and type of signs. The number and type of allowable signs for each occupancy must conform to the regulations of this code by January 1, 1988.

Section 4. Section 15.06.060 of the Kent City Code is repealed in its entirety.

{(15.06.060 NONCONFORMING SIGNS AND AMORTIZATION

A. Nonconforming signs

1. Signs that are existing as of the effective date of this code that do not conform to its regulations shall be considered nonconforming signs. Nonconforming signs may not be altered or added to without receiving approval from the Planning Department. Nonconforming signs must be modified to conform or be removed according to the schedule listed in Section 15.06.060 subsection 2 below.

2. No sign permit shall be issued to allow legal signs on property having a nonconforming sign until such time as the nonconforming sign(s) is modified to conform to this code. Amendment—per City Council action, 3/17/75.}
b. Amortization Period of Nonconforming Signs

1. Abandoned signs. Must be removed within ninety (90) days from the date of adoption of this code.

2. Signs in public right of way. Must be removed within ninety (90) days from the date of adoption of this code.

3. Banners, pendants. Must be removed within ninety (90) days from the date of adoption of this code.

4. Number of signs per occupancy. The number of allowable signs per occupancy must conform to the regulations of this code within three (3) years from the date of adoption of this code.)

Section 5. A new Section 15.02.107 is added to the Kent City Code as follows:

15.02.107 DISCONTINUANCE

The abandonment or nonuse of a building, structure, sign and/or lot for a period of six (6) months.

Section 6. A new Section 15.02.257 is added to the Kent City Code as follows:

15.02.257 MAJOR NONCONFORMING BUILDING/STRUCTURE

Any nonconforming building or structure located on a parcel which at any point borders or is in a residential district and which is not in compliance with the minimum development standards of the district in which it is located.

Section 7. A new Section 15.02.258 is added to the Kent City Code as follows:

15.02.258 MINOR NONCONFORMING BUILDING/STRUCTURE

Any nonconforming building or structure which is not a major nonconforming structure and which is not in compliance with
the minimum development standards of the district in which it is located.

Section 8. A new Section 15.02.282 is added to the Kent City Code as follows:

15.02.282 NONCONFORMING LOT OF RECORD

Any validly recorded lot which at the time it was recorded fully complied with the applicable laws and ordinances but which does not fully comply with the lot requirements of this ordinance.

Section 9. A new Section 15.02.283 is added to the Kent City Code as follows:

15.02.283 NONCONFORMING SIGN

Any sign legally established prior to June 20, 1973 which is not in full compliance with the regulations of this ordinance.

Section 10. A new Section 15.02.286 is added to the Kent City Code as follows:

15.02.286 NONCONFORMITY

Any land use, structure, lot of record or sign legally established prior to the effective date of this code or subsequent amendment to it which would not be permitted by or is not in full compliance with the regulations of this ordinance.

Section 11. A new Section 15.02.531 is added to the Kent City Code as follows:

15.02.531 USE, CHANGE OF

A change of use shall be determined to have occurred when it is found that the general character of the operation has been modified. This determination shall include review of but not be limited to: 1) hours of operation, 2) materials processed or sold, 3) required parking, 4) traffic generation, 5) impact on public
utilities, 6) clientele, and 7) general appearance and location.

Section 12. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivisions, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance, or the validity or its application to other persons or circumstances.

Section 13. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

ISABEL HOGAN, MAYOR

ATTEST:

MARIE JENSEN, CITY CLERK

APPROVED AS TO FORM:

P. STEPHEN DIJULIO, CITY ATTORNEY

PASSED the 16 day of April, 1984.
APPROVED the 17 day of April, 1984.
PUBLISHED the 20 day of April, 1984.

I hereby certify that this is a true copy of Ordinance No. 2468, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

(SEAL)
MARIE JENSEN, CITY CLERK