Ordinance No. 2905

(Amending or Repealing Ordinances)

CFN=131 – Zoning Codes
Passed – 2/20/1990
Amending KCC 15.08.100

Amended by Ord. 3409
Amended by Ord. 3439
Amended by Ord. 3521 (Sec. 15.08.100(E))
Amended by Ord. 3600
Amended by Ord. 3665 (Sec. 15.08.100(C))
Amended by Ord. 4003
ORDINANCE NO. 2905

AN ORDINANCE of the City of Kent, Washington, resulting from the Planning Department Housing Element Work Program, amending Kent City Zoning Code 15.08.100 relating to Non-conforming Development Regulations.

WHEREAS, the Kent City Council, by Resolution 1123, evidenced its desire to achieve reduction in the density of multifamily housing through revisions to Kent's Comprehensive Plan and Zoning Code; and

WHEREAS, the City Council, by Resolution 1172, directed the Planning Department to conduct a study and proposed update of the housing element of the City's Comprehensive Plan, including an area by area analysis of multifamily density for East Hill, West Hill and Valley Floor Planning Areas; and

WHEREAS, the Council directed that the results of said area-wide study are to be proposed for implementation through text and/or map zoning amendments to be presented to the Council; and

WHEREAS, the Council had directed that the Planning Department work with the City Council to develop a work program for the area by area analysis; and

WHEREAS, Kent City Code 2.32.050 (Ordinance 2469, Section 1) authorizes the Planning Commission to hear and make recommendations to the City Council on Zoning Text amendments; and

WHEREAS, public notice and opportunity for input on the Work Program process, procedure and results has been of the highest priority to the City Council; and

WHEREAS, amendments to the Kent City Zoning Text creating a new residential zone R1-5.0, amending Section 15.04.020 of the Kent City Code, were recommended to the Planning Commission; and
WHEREAS, in accordance with the provisions of Kent City Code 2.32.050 and the provisions of 35A.63.100(2), public hearings were held before the Planning Commission of the City of Kent on August 28, September 18, October 16, November 20 and November 27, 1989 to consider the proposed amendments; and

WHEREAS, after the final hearing of the Planning Commission and its final deliberations, the Planning Commission’s Findings of Fact, Conclusions of Law, and recommendations for proposed amendments to the Kent Zoning Code Text concerning the R1-5.0 zone were issued on December 11, 1989; and

WHEREAS, the Kent City Council considered the Findings of Fact, Conclusions of Law and recommendations of the Planning Commission concerning the R1-5.0 zoning code text amendments at a public meeting on January 30, 1990; and

WHEREAS, there exist approximately 42 lots within areas which the Planning Commission has recommended for the R1-5.0 designation that meet the lot size requirement, but do not meet other requirements of the proposed zoning designation; and

WHEREAS, under the proposed R1-5.0 zoning designation approximately 33 single family homes could be developed on these same 42 lots; and

WHEREAS, one facet of the Housing Element Work Plan is to encourage single family housing within the City of Kent; and

WHEREAS, the Mayor has recommended an amendment to the nonconforming development regulations of the Kent City Zoning Code (Section 15.08.100), relating to the proposed R1-5.0 zone, to maximize the number of lots eligible for development as single family housing, in advancement of the legislative policy of the Housing Element Work Program promoting single family housing; NOW, THEREFORE,
THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES 
HEREBY ORDAIN AS FOLLOWS:

Section 1. The Kent City Zoning Code 15.08.100 is 
amended as follows:

15.08.100. NONCONFORMING DEVELOPMENT.

A. 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 nonconforming 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.

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.
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.

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 Director's authority. The Planning Director may waive specific development standard requirements
and/or impose additional requirements when all the following criteria are met:

   a. 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.

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

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

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

E. Nonconforming Lots.

1. Restrictions. Regulations applicable to nonconforming 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.
In all single-family zoning districts, with the exception of the R1-5.0 zoning district, 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 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.

In the R1-5.0 zoning district, if two or more single-family-zoned lots or combination 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 below-described minimum requirements established for lot width, lot area, and topography, 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.

Minimum lot area: 4600 square feet
Minimum lot width: 40 feet
Maximum site slope: 15 percent

b. Other districts. In any other district, permitted building and structures may be constructed on a nonconforming 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 nonconforming signs are in addition to regulations applicable to nonconforming 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 2. The City of Kent Zoning Text, is amended to provide that all references to said Section 15.08.100, Nonconforming Development Regulation, shall be in conformity with those changes as set forth in Section 1.

Section 3. The amendments to the Kent City Zoning Code Text shall be filed with the City Clerk and in the Office of the
Planning Department and made available for public inspection upon request.

Section 4. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 5. Effective Date. This ordinance shall take effect and be in force thirty (30) days from the time of its final passage as provided by law.

DAN KELLEHER, MAYOR

ATTEST:

BRENDA JACOBER, DEPUTY CITY CLERK

APPROVED AS TO FORM:

SANDRA DRISCOLL, CITY ATTORNEY

PASSED the 20 day of Feb, 1990.
APPROVED the 21 day of Feb, 1990.
PUBLISHED the 23 day of Feb, 1990.

I hereby certify that this is a true copy of Ordinance No. 2905, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, DEPUTY CITY CLERK

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