Ordinance No. 3665

(Amending or Repealing Ordinances)

CFN=131 – Zoning Codes
Passed – 10/7/2003
Amends Sec. 15.08.100(C)

Amends Ords. 2905;3409;3439
AN ORDINANCE of the City Council of the City of Kent, Washington, amending section 15.08.100(C) of the Kent City Code, entitled "Nonconforming development – Nonconforming uses."

WHEREAS, banks with drive-through facilities in the Downtown Commercial (DC) district established prior to August 1992, are considered legally nonconforming uses under Kent City Code (KCC) 15.08.100, and the drive-through facility use cannot be continued if the use has been abandoned for a period of six (6) or more months; and

WHEREAS, for the economic welfare of the downtown core, KCC 15.08.100(C) should be amended to provide that legally established banks with drive-through facilities will not be nonconforming, so long as these drive-through facilities are not expanded; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:
SECTION 1. - Amendment. Section 15.08.100 of the Kent City Code, entitled "Nonconforming development" shall be amended as follows:

Sec. 15.08.100. Nonconforming development.

A. Purpose. The intent and purpose of this section is to:

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

2. Ensure 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. Ensure 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 title, and it is to avoid injustice that this title accepts such elements. To benefit from the protection given to nonconforming development, such use, structure, or sign must have been lawfully established pursuant to a county resolution in effect at the time of annexation which rendered it nonconforming, or it must have been lawfully established prior to the effective date of this chapter or subsequent amendments thereto, or lawfully established prior to the purchase or condemnation of right-of-way by the city of Kent. This section distinguishes between and defines nonconforming uses, major nonconforming buildings and structures, minor nonconforming buildings and 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 title.

C. Nonconforming uses.

1. Applicability of 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 provisions 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: When authorized by conditional use permit, a nonconforming use may be expanded, enlarged, extended, reconstructed, intensified or structurally altered.

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 use. 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 use. 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 (6) month period of discontinuance.

6. Reversion to 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 shall not be deemed nonconforming in terms of density provisions and shall be a legal use.

8. *Exception for certain drive-through banking facilities.* Legally established bank buildings with drive-through facilities in the Downtown Commercial zoning district that existed prior to August 9, 1992, shall not be nonconforming; however, these drive-through facilities may not be expanded beyond that which existed on August 9, 1992, when the City prohibited bank drive-through facilities in DC zones.

D. *Nonconforming buildings and structures.*

1. *Applicability of 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 and structures.* No major nonconforming structure may be expanded, enlarged, extended, reconstructed or structurally altered or changed, nor may any major nonconforming building, structure or lot be occupied after discontinuance of change in use, unless the 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, may be restored, reconstructed and used as before; provided, that the work be vested by permit application within one (1) year of such happening; any restoration or reconstruction not vested by permit application within twelve (12) months from the date of the fire or other casualty shall be deemed abandoned and not allowed to be restored.

   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/manager.

3. **Minor nonconforming buildings and 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 the 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, may be restored, reconstructed and used as before; provided, that the work be vested by permit application be completed within one (1) year of such happening; any restoration or reconstruction vested by permit application twelve (12) months from the date of the fire or other casualty shall be deemed abandoned and not allowed to be restored.

   b. Such repairs and maintenance work as required to keep the structure 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/manager.

4. **Planning director/manager's authority.** The planning director/manager may waive specific development standard requirements or impose additional requirements when all the following criteria are met:

   a. When owing to special circumstances a literal enforcement of the provisions of this title or other land use regulatory ordinances of the city will result in unnecessary hardship.

   b. When the waiver of development requirements is in harmony with the purpose and intent of city ordinances and the comprehensive plan.
c. When 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. Applicability of 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.

(1) 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 title. 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 or width that are generally applicable in the district; provided, that yard dimensions and requirements other than those applying to area or width of the lot shall conform to the regulations for the district in which such lot is located.

(2) In all single-family zoning districts, with the exception of the SR-8 zoning district, if two (2) 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 title, and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this title, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this title.
(3) In the SR-8 zoning district, if two (2) 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 following 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 title, and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this title, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this title.

(a) Minimum lot area: Four thousand six hundred (4,600) square feet.

(b) Minimum lot width: Forty (40) feet.

(c) Maximum site slope: Fifteen (15) percent.

(4) In any district in which duplex dwellings are permitted, a duplex dwelling and customary accessory buildings may be erected on any single lot of record as of June 20, 1973, with a minimum area of seven thousand two hundred (7,200) square feet, notwithstanding limitations imposed by other provisions of this title. 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 or width that are generally applicable in the district; provided, that yard dimensions and requirements other than those applying to area or width of the lot shall conform to the regulations for the district in which such lot is located.

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 title, and no portion of the parcel shall be

7 Nonconforming Development Amendment KCC 15.08.100
used or sold in a manner which diminishes compliance with lot width and area requirements established by this title, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this title.

F. Nonconforming signs.

1. Applicability of 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. Continuation of nonconforming signs.
   a. Signs that were legally existing as of the effective date of this title or subsequent amendments thereto that do not conform to the regulations of this title shall be considered nonconforming signs. Nonconforming signs may not be moved, relocated, altered or added to without receiving approval from the planning office.
   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 is modified to conform to this title.

3. Amortization period.
   a. Abandoned signs. 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 title.

SECTION 2. Severability. If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.
SECTION 3. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

JIM WHITE, MAYOR

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY


APPROVED: 7 day of October, 2003.


I hereby certify that this is a true copy of Ordinance No. 3665 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, CITY CLERK

Nonconforming Development Amendment KCC 15.08.100