
MEMORANDUM

Agenda Item # 7

To: Metropolitan Planning Commission
From: Mark Donaldson, Executive Director
Date: October 26, 2009
Subject: 11-A-09-OA
Consideration of proposed amendments to the City of Knoxville Zoning Ordinance to rescind Ordinance O-76-08, approved by City Council on March 25, 2008, regarding Article V, Section 6(D)(5), "Division of a lot".

Request:

In a memo dated October 6, 2009 from the City of Knoxville Law Department, MPC has been requested to consider an amendment of the City of Knoxville Zoning Ordinance at Article V, Section 6(D)(5) "Division of a lot". The proposed amendment would return the language of this section to its status prior to an amendment approved by City Council on March 25, 2008.

Background:

Article V, Section 6(D)(5) was changed in its entirety in 2008 as part of a "housekeeping" effort that rearranged wording in the ordinance without meaning to add any new content. It is now apparent that the rearrangement, for the sake of simplification, has unintentionally changed the meaning of the ordinance. Under the 2008 revisions, a significant number of small lots "created by deed" prior to annexation into the City can no longer be recorded and developed. City administration requests that MPC consider rescinding the 2008 amendment, approved as Ordinance O-76-09, in its entirety; thus returning to the language of the Zoning Ordinance prior to this approval

Staff Recommendation:

Staff recommends that the planning commission make a recommendation to Knoxville City Council that the City of Knoxville Zoning Ordinance be amended by rescinding Ordinance O-76-08 regarding Article V, Section 6(D)(5) "Division of a lot".

Attachments:

- Memo dated October 6, 2009 from City Law Department
- Ordinance O-76-08
- Exhibit A, language adopted with Ordinance O-76-08
- Exhibit B, language replaced by Ordinance O-76-08



11-A-09-0A Law Department
Debra C. Poplin
Law Director

Angela Bolton Rauber
Attorney

MEMORANDUM



To: Mark Donaldson, Executive Director, MPC

From: Angela Rauber, City of Knoxville Law Department

Subject: City of Knoxville Zoning Code, Article V, Section 6(D)(5) "Division of a lot"

Date: October 6, 2009

cc: William Lyons, Senior Director, Policy & Communications
Debra Poplin, Law Director
Gary Norman, Inspections Director
Tom Reynolds, Building, Zoning & Plans Review Chief
Anita Cash, Zoning Coordinator
Dan Kelley, Development Services Manager, MPC

In March 2008, MPC staff proposed changes to the City of Knoxville Zoning Code, Article V, Section 6(D)(5) "Division of a lot". MPC recommended approval of the amendments, and City Council approved the amendments through Ordinance No O-76-08 on March 25, 2008. A copy of Ordinance No. O-76-08 is attached hereto, along with a blacklined version of Article V, Section 6(D)(5) as it existed prior to approval of O-76-08 and indicating how the section was revised.

The changes to Article V, Section 6(D)(5) appear to have been intended as "housekeeping" changes to clarify the exceptions to the general rule that recorded lots within the City must meet the minimum size requirements of the City's zoning ordinance. The revisions did not add any new exceptions to the ordinance, but instead rearranged the wording. At first blush, it seems that the only effect was to make the section simpler to read. Unfortunately, it is now apparent that the rearrangement has unintentionally changed the meaning of the ordinance. Specifically, under the revised ordinance, subparagraph (e) was revised such that a significant number of small lots "created by deed" prior to annexation into the City can no longer be recorded and developed. This change was not intended to result from the approval of O-76-08. Accordingly, the City of Knoxville Policy & Communications Department, Law Department, and Inspections Department request that MPC recommend rescinding O-76-08 in its entirety.

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ORDINANCE

ORDINANCE NO: 0-76-08

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AN ORDINANCE OF THE COUNCIL OF THE CITY OF KNOXVILLE TO AMEND THE KNOXVILLE CITY CODE, APPENDIX B, "ZONING REGULATIONS", ARTICLE V, SECTION 6 "YARD, BUILDING SETBACK AND OPEN SPACE EXCEPTIONS" DEALING WITH SUBSTANDARD PARCELS AND LOTS OF RECORD. (FILE NO. 2-B-08-OA)

ORDINANCE NO: 0-76-08
REQUESTED BY: MPC
PREPARED BY: Law
APPROVED AS TO FORM AND CORRECTNESS: Director of Law
FINANCIAL IMPACT STATEMENT:

Director of Finance
APPROVED ON 1ST READING: 03-11-2008
APPROVED ON 2ND READING: 03-25-2008
APPROVED AS AN EMERGENCY MEASURE:

MINUTE BOOK 72 PAGE

WHEREAS, the Metropolitan Planning Commission ("MPC") staff has prepared proposed changes to the Knoxville zoning code, Article V, Section 6, "Yard, Building Setback and Open Space Exceptions", dealing with substandard parcels and lots of record; and

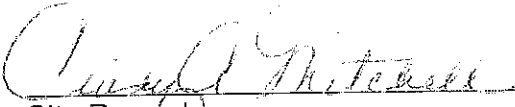
WHEREAS, at its February 14, 2008 meeting, MPC recommended approval of said amendments; and

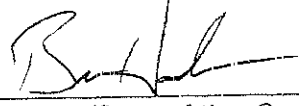
1 **WHEREAS**, notice of the MPC hearing on February 14, 2008 was published
2 in The Knoxville News Sentinel on February 1, 2008, and notice of the City Council
3 meeting on March 11, 2008 was published in The Knoxville News Sentinel on February 22,
4 2008

5 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY**
6 **OF KNOXVILLE:**

7 **SECTION 1:** The Knoxville City Code, Appendix B "Zoning Regulations",
8 Article V, Section 6, "Yard, Building Setback and Open Space Exceptions", dealing with
9 substandard parcels and lots of record, is hereby amended as shown on Exhibit A,
10 attached hereto and made a part hereof by reference

11 **SECTION 2:** This Ordinance shall take effect seventeen (17) days from and
12 after its passage, the welfare of the City requiring it

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18 City Recorder

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Presiding Officer of the Council

Proposed Amendment to the Knoxville Zoning Ordinance dealing with substandard parcels and lots of record (2-B-08-OA)

New language is in **Bold** and old language is struck through

Article 5, Section 6, Yard, Building Setback & Open Space Exceptions

D. The purpose here is to clarify certain conditions pertaining to the use of lots and access points

1. In Residential Districts, if twenty-five percent or more of the lots on one side of the street between two intersecting streets are improved with buildings all of which have observed an average setback line of greater than twenty-five feet, and no building varies more than five feet from this average setback line, then no building shall be erected closer to the street line than the minimum setback so established by the existing buildings; but, this regulation shall not require a front yard of greater depth than fifty feet.
2. Double frontage lots shall provide the required front yard setbacks along those streets.
3. For all buildings located on corner lots there shall be a side yard setback from all intersecting streets the same as the required front setback. The interior side yard shall be the same as required for interior lots.
4. On corner lots, all exterior lots shall conform to the district regulations except where existing yards on the same side and in the same block of the street do not meet the requirements of the district. The exterior yard on such street may be equal to the average depth of the existing yards, provided such average depth does not extend into the visibility triangle
5. ~~Division of a lot. No recorded lot shall be divided into two or more lots unless such division results in the creation of lots each of which conforms to all of the applicable regulations of the district in which the property is located and no reduction in the size of a recorded lot below the minimum requirements of this ordinance shall be permitted with the following exceptions:~~
 - a. ~~When a dedication of right of way is required and approved under the provisions of the *Knoxville-Knox County Minimum Subdivision Regulations*, and this dedication makes a lot, building or structure nonconforming with requirements for minimum yards, building setbacks, building coverage, lot area, lot width or lot depth, a final~~

~~plat may be approved which results in no other new non-conformity and no other increase in the extent of any existing non-conformity.~~

~~b. When a legal, non-conforming structure exists on the property being subdivided and this structure is non-conforming with requirements for minimum yards, building setback or height, a final plat may be approved which results in no new non-conformity and no increase in the extent of any existing non-conformity.~~

~~e. When a subdivision of property is proposed and each proposed new lot will contain a principal building categorized as contributing in an H-1 or NC-1 overlay zone district. If each proposed new lot meets this criteria, and the existing principal buildings are non-conforming with requirements for minimum yards, building setbacks, and/or lot coverage, the property owner may seek a variance as prescribed by law.~~

~~d. Subsections "a", "b" and "c" above shall also apply to one lot subdivisions, as defined in the *Knoxville Knox County Minimum Subdivision Regulations*, which combine two or more existing lots into one lot or where an adjustment is made to one lot line between two existing recorded lots.~~

~~e. In any residential district, a house may be constructed on a lot created by deed provided the lot is:~~

~~i. Located in the area within the city boundary resulting from an annexation in 1917; is described by a deed recorded prior to February 3, 1947; and has remained intact with the same boundary configuration since the recorded date; or~~

~~ii. Located in the area within the city boundary resulting from a series of annexations in 1962 (Ordinances 3049, 3050, 3052, 3053 and 3054); is described by a deed recorded prior to October 16, 1962, and has remained intact with the same boundary configuration since the recorded date.~~

~~— If a lot created by deed meets the criteria cited above, and is nonconforming with requirements for minimum yards, building setbacks, and/or lot coverage, the property owner may seek a variance as prescribed by law. Upon application for a building permit, the owner will be required to submit a survey completed by a registered land surveyor that has been recorded with the Register of Deeds.~~

5. Division of a lot. All recorded lots shall conform to all the applicable zoning district regulations in which the property is located unless it can be shown

that the lot meets one of the following exceptions, in which case a variance may be sought:

- a. **The recorded lot, building or structure is made nonconforming to the zoning district regulations by the required dedication of right-of-way provision of the Knoxville-Knox County Minimum Subdivision Regulations.**
- b. **The recorded lot has a legal non-conforming structure on the property and the recording of this plat will result in no new non-conformity or increase in the extent of any existing non-conformity.**
- c. **The recorded lot will contain a contributing building in an H-1 (Historic Overlay) District or NC-1 (Neighborhood Conservation) District and has obtained a certificate of appropriateness from the Historic Zoning Commission.**
- d. **The recorded lot results in a larger recorded lot than existed prior to such subdivision, but does not yet achieve conformity with the zoning district regulations.**
- e. **The recorded lot does not conform to the property's zoning district regulations but is a deeded parcel that can be shown to have been deeded in its present configuration prior to annexation into the City of Knoxville.**

Language adopted with Ordinance O-76-08

5. Division of a lot. All recorded lots shall conform to all the applicable zoning district regulations in which the property is located unless it can be shown that the lot meets of the following exceptions, in which case a variance may be sought:
 - a. The recorded lot, building or structure is made non-conforming to the zoning district regulations by the required dedication of right-of-way provision of the Knoxville-Knox County Minimum Subdivision Regulations.
 - b. The recorded lot has a legal non-conforming structure on the property and the recording of this plat will result in no new non-conformity or increase in the extent of any existing non-conformity.
 - c. The recorded lot will contain a contributing building in an H-1 (Historic Overly) District or NC-1 (Neighborhood Conservation) District and has obtained a certificate of appropriateness from the Historic Zoning Commission.
 - d. The recorded lot results in a larger recorded lot than existed prior to such subdivision, but does not yet achieve conformity with the zoning district regulations.
 - e. The recorded lot does not conform to the property's zoning district regulations but is a deeded parcel that can be shown to have been deeded in its present configuration prior to annexation into the City of Knoxville.

Language replaced with Ordinance O-76-08

5. Division of a lot. No recorded lot shall be divided into two or more lots unless such division results in the creation of lots each of which conforms to all of the applicable regulations of the district in which the property is located and no reduction in the size of a recorded lot below the minimum requirements of this ordinance shall be permitted with the following exceptions:
- a. When a dedication of right of way is required and approved under the provisions of the Knoxville-Knox County Minimum Subdivision Regulations, and this dedication makes a lot, building or structure nonconforming with requirements for minimum yards, building setbacks, building coverage, lot area, lot width or lot depth, a final plat may be approved which results in no other new non-conformity and no other increase in the extent of non-conformity.
 - b. When a legal, non-conforming structure exists on the property being subdivided and this structure is non-conforming with requirements for minimum yards, building setback or height, a final plat may be approved which results in no new non-conformity and no increase in the extent of any existing non-conformity.
 - c. When a subdivision of property is proposed and each proposed new lot will contain a principal building categorized as contributing in an H-1 or NC-1 overlay zone district. If each proposed new lot meets this criteria, and the existing principal buildings are non-conforming with requirements for minimum yards, building setbacks, and/or lot coverage, the property owner may seek a variance as prescribed by law.
 - d. Subsections "a", "b" and "c" above shall also apply to one lot subdivisions, as defined in the Knoxville-Knox County Minimum Subdivision Regulations, which combine two or more lots into one lot or where an adjustment is made to one lot line between two existing recorded lots.
 - e. In any residential district, a house may be constructed on a lot created by deed provided the lot is:
 - i. Located in the area within the city boundary resulting from an annexation in 1917; is described by a deed recorded prior to February 3, 1947; and has remained intact with the same boundary configuration since the recorded date; or
 - ii. Located in the area within the city boundary resulting from a series of annexations in 1962 (Ordinances 3049, 3050, 3052, 3053 and 3054); is described by a deed recorded prior to February 3, 1947; and has remained intact with the same boundary configuration since the recorded date.

If a lot created by deed meets the criteria cited above, and is non-conforming with requirements for minimum yards, building setbacks, and/or lot coverage, the property owners may seek a variance as prescribed by law. Upon application for a building permit, the owner will be required to submit a survey completed by a registered land surveyor that has been recorded with the Register of Deeds.