



SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

EMERGENCY ORDINANCE NO. 09-032

RELATING TO GROWTH MANAGEMENT, ADOPTING AN INTERIM OFFICIAL
CONTROL REGULATING RESIDENTIAL DEVELOPMENT OF SUBSTANDARD
LOTS, AMENDING SCC 30.23.240, DECLARING AN EMERGENCY, AND SETTING A
HEARING DATE

WHEREAS, the Snohomish County Council adopted regulations in SCC 30.23.240 to allow residential development on existing legal lots that do not meet the minimum lot size required by current zoning regulations, provided that certain conditions are met; and

WHEREAS, SCC 30.23.240 was adopted to balance the desire to protect the character and quality of existing residential communities as envisioned in the Snohomish County Growth Management Act (GMA) Comprehensive Plan – General Policy Plan (GPP) and current zoning code with the desire to allow residential development on legally existing lots that were created before the current zoning was in place; and

WHEREAS, a recent Snohomish County Superior Court decision regarding the proper interpretation of SCC 30.23.240 clarified that duplexes are not allowed on substandard lots. The implementation of that decision has resulted in confusion regarding whether additions to or remodels of single family dwellings on substandard lots are allowed under the code and whether uses incidental to single family dwellings on substandard lots, such as garages, are allowed under the code; and

WHEREAS, the Snohomish County Council desires to clarify when remodels of and additions to single family dwellings, as well as incidental uses to such dwellings, are allowed on substandard lots in order to minimize any permitting delays while the county adjusts to the new court decision; and

WHEREAS, RCW 36.70A.390 provides that the Snohomish County Council may adopt a moratorium, interim zoning ordinance, interim zoning map, and/or interim official control; and

WHEREAS, moratoria, interim zoning ordinances, and interim official controls enacted under RCW 36.70A.390 are methods by which local governments may preserve the status quo while permanent development regulations are developed and adopted;

1 NOW, THEREFORE, BE IT ORDAINED:
2

3 **Section 1.** The Snohomish County Council makes the following findings of fact and
4 conclusions:

- 5 A. The Snohomish County Council adopts and incorporates the foregoing recitals as
6 findings as if set forth fully herein.
- 7 B. A large number of lots were legally created prior to the adoption of the current
8 zoning map and code. Many of such lots do not meet the minimum lot size
9 required by the current code.
- 10 C. SCC 30.23.240 provides that lots that have substandard area for their present
11 zone may be used only in the manner and upon the conditions set forth in that
12 section.
- 13 D. SCC 30.22.025 allows uses which are incidental to permitted uses on lots in
14 conjunction with the permitted use.
- 15 E. A recent court decision clarified that duplexes are not allowed on substandard lots,
16 but the decision was silent on incidental uses, which has created some confusion
17 and debate about what uses are permitted on substandard lots.
- 18 F. It is in the best interest of the community to clarify that incidental uses are
19 permitted in conjunction with single family dwellings on substandard lots by adding
20 an explicit provision for incidental uses to SCC 30.23.240.
- 21 G. The amendments to SCC 30.23.240 adopted by this ordinance are consistent with
22 GMA Goal 2 (RCW 36.70A.020(2)), "Reduce sprawl. Reduce the inappropriate
23 conversion of undeveloped land into sprawling, low-density development." These
24 amendments do not allow new uses on substandard lots; rather, they only clarify
25 the intent of the existing code, supported by many years of consistent
26 interpretation by staff from the Department of Planning and Development Services,
27 that remodels or additions to existing single family residences on substandard lots
28 and incidental uses thereto are allowed under certain conditions.
- 29 H. The amendments to SCC 30.23.240 adopted by this ordinance implement the
30 GMA requirements for planning for rural areas, including RCW 36.70A.070(5), by
31 controlling rural development in a manner that protects rural character.
- 32 I. The amendments to SCC 30.23.240 adopted by this ordinance implement GPP
33 Goal LU 6, "Protect and enhance the character, quality, and identity of rural areas."
- 34 J. The amendments to SCC 30.23.240 adopted by this ordinance comply with the
35 GMA requirement to adopt development regulations that are consistent with and
36 implement the GPP.
- 37 K. The amendments to SCC 30.23.240 adopted by this ordinance satisfy the
38 procedural and substantive requirements of and is consistent with the GMA.
- 39 L. The amendments to SCC 30.23.240 adopted by this ordinance bear a substantial
40 relationship to the public health, safety and welfare.

1 M. Pursuant to WAC 197-11-880 and SCC 30.61.020, the adoption of this ordinance
2 is exempt from the requirements for a threshold determination under the State
3 Environmental Policy Act (SEPA).
4

5 **Section 2.** Pursuant to section 2.120 of the Snohomish County Charter, the
6 Snohomish County Council finds and concludes that clarifying the code provisions for
7 substandard lots is necessary for the immediate preservation of the public peace, health
8 or safety. Non-emergency options for clarifying the regulations would not provide
9 adequate relief to applicants whose permits have been delayed by confusion over the
10 interpretation of the recent Snohomish County Superior Court decision regarding
11 substandard lots. Based on the foregoing, the Snohomish County Council declares that
12 an emergency exists and this ordinance shall take effect immediately.
13

14 **Section 3.** The County Council hereby adopts the following interim official control:
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16 A. Snohomish County Code Section 30.23.240, last amended by Emergency
17 Ordinance 08-157 on December 10, 2008, is amended to read:
18

19 **30.23.240 Residential use of substandard lots.**

20 (1) Use of lots for residential development when such lots have substandard
21 area for their present zone is permitted for single family dwellings and uses incidental to
22 single family dwellings if the lot was legally created and satisfied the lot area and lot
23 width requirements applicable at the time of lot creation; but such lots may be used only
24 in the manner and upon the conditions set forth below:

25 ~~((1))~~ (a) A person, who owns a single substandard lot or two or more
26 substandard lots which were not contiguous and under single ownership on December
27 31, 1989, may use such lot or lots, either individually or in combination, for building
28 sites, one single family dwelling plus incidental uses thereto per building site if the
29 building sites meet the setbacks and lot coverage requirements and the Snohomish
30 Health District's standards for the zone in which they are located;

31 ~~((2))~~ (b) A person who owns two or more substandard lots which were
32 contiguous and under single ownership on December 31, 1989, may use such lots,
33 either individually or in combination, for up to two building sites, one single family
34 dwelling plus incidental uses thereto per building site if the building sites meet the
35 setbacks and lot coverage requirements and the Snohomish Health District's standards
36 for the zone in which they are located. Additional contiguous substandard lots owned by
37 the same person may be used for additional building sites, one dwelling per building site
38 if the additional building sites contain at least one acre (43,560 square feet) or 50
39 percent of the lot area required for the zone in which such building sites are located,
40 whichever is less and if the building sites meet the setbacks and lot coverage
41 requirements and the Snohomish Health District's standards for the zone in which they
42 are located; and

43 ~~((3))~~ (c) Notwithstanding the provisions of SCC ~~((30.23.240(2)))~~
44 30.23.240(1)(b), a person who owns two or more substandard lots which were
45 established on or after April 15, 1957, and which were contiguous and under single

1 ownership on December 31, 1989, may use such lots, either individually or in
2 combination, for building sites, one single family dwelling plus incidental uses thereto
3 per building site if the building sites meet the setbacks and lot coverage requirements
4 and the Snohomish Health District's standards for the zone in which they are located.

5 (2) Single family dwellings and incidental uses established pursuant to SCC
6 30.23.240(1) are permitted uses and are not nonconforming uses.

7 (3) Existing single family dwellings on substandard lots that are nonconforming
8 only because they do not meet the criteria of SCC 30.23.240(1) may improve or add to
9 the single family dwelling and may improve, add to or add incidental uses to the single
10 family dwelling provided that any improvements or additions meet the setbacks and lot
11 coverage requirements and the Snohomish Health District standards for the zone in
12 which they are located.

13 (4) Existing single family dwellings on substandard lots that are nonconforming
14 because they do not meet the setbacks, lot coverage requirements, or Snohomish
15 Health District standards for the zone in which they are located may improve or add to
16 the single family dwelling and may improve, add to or add incidental uses to the single
17 family dwelling provided that any improvements or additions do not increase the existing
18 nonconformity or create a new nonconformity with setbacks, lot coverage requirements,
19 or Snohomish Health District standards.

20
21 B. This amendment shall be effective for six months.
22

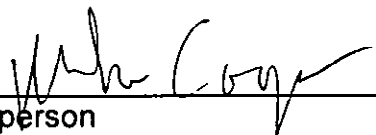
23 **Section 4. Public hearing.** The Snohomish County Council will hold a public
24 hearing on this matter on June 3, 2009 at the hour of 1:30 in the Henry M. Jackson
25 Board Room, 8th Floor, Robert J. Drewel Building, 3000 Rockefeller, Everett,
26 Washington, for the purpose of hearing public testimony on this matter in accordance
27 with RCW 36.70A.390. The notice for the public hearing shall specifically indicate that
28 this ordinance may be renewed for one or more six month periods if a subsequent
29 public hearing is held and findings of fact are made prior to each renewal.
30

31 **Section 5. Request for review.** Consistent with Emergency Ordinance 08-090
32 adopted on June 16, 2008, the Snohomish County Council requests that the County
33 Executive engage affected stakeholders and communities in the review of the
34 regulations for development of substandard lots in rural areas and propose any policies
35 and regulations deemed appropriate to serve the public health, safety, and welfare in
36 Snohomish County.
37

38 **Section 6. Severability and savings.** If any section, sentence, clause, or phrase
39 of this ordinance shall be ruled to be invalid or unconstitutional by the Growth
40 Management Hearings Board or a court of competent jurisdiction, such ruling shall not
41 affect the validity or constitutionality of any other section, sentence, clause, or phrase of
42 this ordinance, and the section, sentence, clause, or phrase in effect prior to the
43 effective date of this ordinance shall be in full force and effect for that individual section,
44 sentence, clause, or phrase as if this ordinance had never been adopted.
45

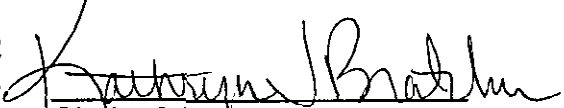
1 PASSED this 13th day of April, 2009.

2
3 SNOHOMISH COUNTY COUNCIL
4 Snohomish County, Washington

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7 
8 _____
9 Chairperson

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10 ATTEST:

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13 _____
14 Clerk of the Council

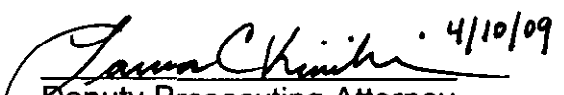
- 15
16 () APPROVED
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18 () EMERGENCY
19
20 () VETOED

21 DATE: _____

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25 _____
26 County Executive

27 ATTEST:
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29 _____

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31 Approved as to form only:

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33  4/10/09
34 _____
35 Deputy Prosecuting Attorney

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