



CO00039214

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 09- 101

RELATING TO GROWTH MANAGEMENT,
REGULATING RESIDENTIAL DEVELOPMENT OF SUBSTANDARD LOTS, REPEALING
SCC 30.23.240, AND ADOPTING NEW SCC 30.23.240

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 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 considered options 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, on April 13, 2009, the County Council adopted Emergency Ordinance No. 09-035, enacting an interim official control regulating residential development of substandard lots pursuant to RCW 36.70A.390; and

WHEREAS, RCW 36.70A.390 provides that the County Council may adopt, among other things, an interim official control; and

WHEREAS, an interim official control enacted under RCW 36.70A.390 may be used to preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, pursuant to RCW 36.70A.390, the County Council held a public hearing on Emergency Ordinance No. 09-035 on June 3, 2009; and

1 WHEREAS, on April 13, 2009, the County Council passed Motion 09-160, referring
2 Emergency Ordinance No. 09-035 to the Planning Commission for review; and
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4 WHEREAS, when the County Council refers an ordinance to the Planning
5 Commission, SCC 30.73.040(3) requires the Planning Commission to hold a public hearing
6 within 90 days of the date of the Council referral unless one of certain regulatory exceptions
7 are met, which are inapplicable here; and
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9 WHEREAS, SCC 30.73.060(5) provides that if the Planning Commission does not
10 adopt and transmit a recommendation to the County Council within 45 days following the 90
11 day deadline for holding a public hearing under SCC 30.73.040(3) (a total of 135 days from
12 referral), the County Council may consider the proposal without a Planning Commission
13 recommendation; and
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15 WHEREAS, as of September 8, 2009, 148 days have elapsed since the date the
16 Council referred the matter to the Planning Commission and the Planning Commission has
17 not held a public hearing or made a recommendation on the proposed ordinance, which
18 allows the County Council to consider action on the proposal pursuant to SCC 30.73.060(5)
19 and .070; and
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21 WHEREAS, the provisions of Emergency Ordinance No. 09-035 will expire on
22 October 13, 2009, unless action is taken to renew those provisions prior to that date.
23

24 NOW, THEREFORE, BE IT ORDAINED:
25

26 **Section 1.** The County Council adopts the following findings of fact and
27 conclusions:
28

- 29 1. The foregoing recitals are adopted as findings of fact and conclusions.
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- 31 2. A large number of lots were legally created prior to the adoption of the current
32 zoning map and code. Many of such lots do not meet the minimum lot size required by the
33 current code.
34
- 35 3. SCC 30.23.240 provides that lots that have substandard area for their present
36 zone may be used only in the manner and upon the conditions set forth in that section.
37
- 38 4. SCC 30.22.025 allows uses which are incidental to permitted uses on lots in
39 conjunction with the permitted use.
40
- 41 5. A recent court decision clarified that duplexes are not allowed on substandard
42 lots, but the decision was silent on incidental uses, which has created some confusion and
43 debate about what uses are permitted on substandard lots.
44
- 45 6. It is in the best interest of the community to clarify that incidental uses are
46 permitted in conjunction with single family dwellings on substandard lots by adding an
47 explicit provision for incidental uses to SCC 30.23.240.
48

1 7. The amendments to SCC 30.23.240 adopted by this ordinance are consistent
2 with GMA Goal 2 (RCW 36.70A.020(2)), "Reduce sprawl. Reduce the inappropriate
3 conversion of undeveloped land into sprawling, low-density development." These
4 amendments do not allow new uses on substandard lots; rather, they only clarify the intent
5 of the existing code, supported by many years of consistent interpretation by staff from the
6 Department of Planning and Development Services, that remodels or additions to existing
7 single family residences on substandard lots and incidental uses thereto are allowed under
8 certain conditions.

9
10 8. The amendments to SCC 30.23.240 adopted by this ordinance implement the
11 GMA requirements for planning for rural areas, including RCW 36.70A.070(5), by controlling
12 rural development in a manner that protects rural character.

13
14 9. The amendments to SCC 30.23.240 adopted by this ordinance implement GPP
15 Goal LU 6, "Protect and enhance the character, quality, and identity of rural areas."

16
17 10. The amendments to SCC 30.23.240 adopted by this ordinance comply with the
18 GMA requirement to adopt development regulations that are consistent with and implement
19 the GPP.

20
21 11. The amendments to SCC 30.23.240 adopted by this ordinance satisfy the
22 procedural and substantive requirements of and is consistent with the GMA.

23
24 12. The amendments to SCC 30.23.240 adopted by this ordinance are substantially
25 the same as the interim regulations adopted by Emergency Ordinance No. 09-035.

26
27 13. While Emergency Ordinance No. 09-035 has been in effect, the Department of
28 Planning and Development Services has been able to successfully process permit
29 applications on substandard lots.

30
31 14. While Emergency Ordinance No. 09-035 has been in effect, the Department of
32 Planning and Development Services has had numerous discussions with stakeholders
33 about substandard lot regulations, and no recommendation has come forward to the
34 Planning Commission or the County Council for an alternative that would be preferred to the
35 provisions of Emergency Ordinance No. 09-035.

36
37 15. A Determination of Non-Significance for this proposal was issued on September
38 10, 2009. All requirements for compliance with the State Environmental Policy Act (SEPA)
39 have been satisfied for this proposal.

40
41 16. The Snohomish County Council held a public hearing on September 30, 2009,
42 to consider the entire record and to hear public testimony on this Ordinance No. 09-101.

43
44 **Section 2.** Snohomish County Code Section 30.23.240, last amended by
45 Emergency Ordinance No. 09-035 on April 13, 2009, is repealed.

1 **Section 3.** A new section is added to Chapter 30.23 of the Snohomish County Code
2 to read:

3
4 **30.23.240 Residential use of substandard lots.**

5
6 (1) Use of lots for residential development when such lots have substandard area
7 for their present zone is permitted for single family dwellings and uses incidental to single
8 family dwellings if the lot was legally created and satisfied the lot area and lot width
9 requirements applicable at the time of lot creation; but such lots may be used only in the
10 manner and upon the conditions set forth below:

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

17 (b) A person who owns two or more substandard lots which were contiguous and
18 under single ownership on December 31, 1989, may use such lots, either individually or in
19 combination, for up to two building sites, one single family dwelling plus incidental uses
20 thereto per building site if the building sites meet the setbacks and lot coverage
21 requirements and the Snohomish Health District's standards for the zone in which they are
22 located. Additional contiguous substandard lots owned by the same person may be used for
23 additional building sites, one dwelling per building site if the additional building sites contain
24 at least one acre (43,560 square feet) or 50 percent of the lot area required for the zone in
25 which such building sites are located, whichever is less and if the building sites meet the
26 setbacks and lot coverage requirements and the Snohomish Health District's standards for
27 the zone in which they are located; and

28 (c) Notwithstanding the provisions of SCC 30.23.240(1)(b), a person who owns two
29 or more substandard lots which were established on or after April 15, 1957, and which were
30 contiguous and under single ownership on December 31, 1989, may use such lots, either
31 individually or in combination, for building sites, one single family dwelling plus incidental
32 uses thereto per building site if the building sites meet the setbacks and lot coverage
33 requirements and the Snohomish Health District's standards for the zone in which they are
34 located.

35 (2) Single family dwellings and incidental uses established pursuant to SCC
36 30.23.240(1) are permitted uses and are not nonconforming uses.

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

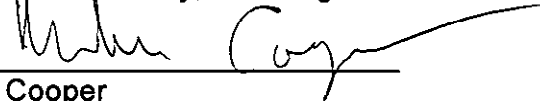
43 (4) Existing single family dwellings on substandard lots that are nonconforming
44 because they do not meet the setbacks, lot coverage requirements, or Snohomish Health
45 District standards for the zone in which they are located may improve or add to the single
46 family dwelling and may improve, add to or add incidental uses to the single family dwelling
47 provided that any improvements or additions do not increase the existing nonconformity or

1 create a new nonconformity with setbacks, lot coverage requirements, or Snohomish Health
2 District standards.

3
4 **Section 4. Severability and savings.** If any section, sentence, clause, or phrase of
5 this ordinance shall be ruled to be invalid or unconstitutional by the Growth Management
6 Hearings Board or a court of competent jurisdiction, such ruling shall not affect the validity
7 or constitutionality of any other section, sentence, clause, or phrase of this ordinance, and
8 the section, sentence, clause, or phrase in effect prior to the effective date of this ordinance
9 shall be in full force and effect for that individual section, sentence, clause, or phrase as if
10 this ordinance had never been adopted.

11
12 PASSED this 30th day of September 2009.

13
14 SNOHOMISH COUNTY COUNCIL
15 Snohomish County, Washington

16 
17 _____
18 Mike Cooper
19 Chairperson

20
21 ATTEST:

22 
23 _____
24 Clerk of the Council, *Asst.*

- 25
26 APPROVED
27 EMERGENCY
28 VETOED

29
30 DATE: 10/6/09

31
32 
33 _____
34 for County Executive
35 **MARK SOINE**
36 Deputy Executive

37
38 ATTEST:

39 
40 _____

41 Approved as to form only:

42  9/10/09
Deputy Prosecuting Attorney

D-14