



CITY OF LAKE OSWEGO Planning Commission Minutes October 9, 2017

1. CALL TO ORDER

Chair Rob Heape called the meeting to order at 6:30 p.m. in the Council Chamber of City Hall, 380 A Avenue, Lake Oswego, Oregon.

2. ROLL CALL

Members present were Chair Heape, Vice Chair Bill Ward and Commissioners Randy Arthur, Skip Baker, Ed Brockman, Nicholas Sweers.

Staff present were Scot Siegel, Planning and Building Services Director; Leslie Hamilton, Senior Planner; Debra Andreades, Senior Planner; Evan Boone, Deputy City Attorney; and Iris McCaleb, Administrative Assistant.

3. COUNCIL UPDATE

Councilor Kohlhoff provided an update on recent Council activities.

4. CITIZEN COMMENT

Charles "Skip" Ormsby, 170 SW Birdshill Road, Portland, 97219, requested a copy of the annexation report released to the City by Portland State University. He invited the Commission to the general meeting of the Birdshill Neighborhood Association. He expressed concern and frustration about not being notified of Willamette Shore Line Consortium meetings and other meetings including a meeting with the Tryon Creek Culvert Replacement project with the U.S. Army Corps of Engineers. Mr. Ormsby also provided an update on the status of the Terwilliger sewer installation and issues not being addressed. He stated that he may not be able to stay for the duration of this evening's meeting and shared that he supported the Lake Oswego Neighborhood Action Coalition (LONAC) position on flag lots and was also very concerned about street connectivity and asked the record be left opened. He indicated that in April he had requested and was still waiting for a 1996 report from ODOT regarding the costs related to the expansion of Highway 43. He also alerted the Commission of an upcoming project regarding the potential of electronic tolling on I-205 and I-5, leaving Highway 43 the only non-toll roadway.

Mr. Siegel advised Mr. Ormsby to contact the City Manager's office for a copy of the annexation report prepared by Portland State University. Regarding the Willamette Shore Line Consortium, Mr. Siegel stated he was unsure if they were meeting, but would follow-up with Mr. Ormsby regarding minutes of past meetings. Mr. Ormsby emphasized the importance of the city obtaining a copy and reviewing the Tri-Met Bus Stop Report for bus stop accessibility throughout the city.

5. COMMISSION FOR CITIZEN INVOLVEMENT

Chair Heape announced upcoming vacancies on various boards and commissions.

6. MINUTES

Consideration of the September 11, 2017, minutes was moved to the next meeting.

7. PUBLIC HEARINGS

7.1 Community Development Code Amendments – Flag Lots and Private Access Lanes (LU 17-0052)

A request from the City of Lake Oswego for text amendments to the Community Development Code amending the standards for development of flag lots and private access lanes. The proposed text amendments are to the following sections: Circulation and Connectivity [LOC 50.06.003], Park and Open Space Contributions [LOC 50.06.005], and Land Divisions, Flag Lots [LOC 50.07.007.2].

Staff coordinator is Leslie Hamilton, Senior Planner.

Chair Heape opened the hearing and Mr. Boone outlined the applicable criteria and procedures. At time of declarations no conflicts of interest were reported and no one challenged any Commissioner’s right to consider the application.

Staff Report

Ms. Hamilton presented the staff report and provided background and the history of the project to date, including four Planning Commission work sessions and two public review draft comment periods. She introduced Exhibits G-8, G-9, G-10, G-11, and G-12 into the record.

She provided history of Flag Lot – Evolution:

- Pre 1998: No Flag Lot Criteria
- 1998-2010: Flag Lot 1 – first criteria developed
- 2010-Present: Flag Lot 2 – additional criteria developed

Ms. Hamilton described the main updates made from 2010 to the present (Flag Lot 2), including:

- The addition of public access lane connectivity between abutting flag lot developments.
- The 90-degree rotation of the front lot line to face the access lane.
- The requirement to distribute the side and rear setbacks to create site-specific and context-specific setbacks.

Ms. Hamilton stated that some of the key discussion points were around density and parking, including the number of flag lots accessing an access lane. She explained that currently the limit was eight and that staff had looked at limitations of six and four. She noted that the parking standard would be discussed as well to address concerns that flag lot developments didn’t provide enough parking which could result in cars spilling out into the neighborhood.

Lot Line Adjustments and Flag Lots:

Current Code

- New flag lot standards apply to existing flag lots that are reconfigured by a lot line adjustment.
- Creates non-conformities regarding setbacks and orientation on developed flag lots.

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Proposed Code

- For Flag Lots approved prior to 2010, new development/remodels must comply with the dimensional standards and orientation in effect at the time the flag lot was created.

Mr. Boone added that for lots that pre-date 1998, the underlying zone standards at the time of development would apply.

Orientation/Setbacks:

Current Code

- “Front” measured from access lane projection even if access lane cannot connect to abutting lot.

Proposed Code

- Zone “front” can be either parallel to Public Street or parallel to access lane orientation; measured from property line.
- Maintain rear/side setback distribution to minimize impact to abutting properties.

Ms. Hamilton explained that no access lanes had been connected since 2010 and that there were exceptions to the connectivity standard. She explained that even if a connection couldn't be made the access lane had to be projected; this change would provide additional flexibility. Mr. Siegel clarified that these were private lanes, not local streets.

Commissioner Brockman raised a question about access lane projections in a practical sense, which would not be possible unless an easement was granted. He opined the people developing behind the flag lot development would not be guaranteed access through the access lane. Mr. Siegel responded that the easements were required to be recorded.

Garage Appearance Standards:

Proposed Code

- Garage Appearance and Location standards deleted.
- Not effective: garages on flag lots are more than 60 feet from the public street which is the limit for non-applicability on non-flag lots.

Flag Lot Front Setback:

Proposed Code:

- For flag lots with an access lane, increase setback from 10 ft. to 15 ft., as measured from the access lane.
- No change to garage face setback from access lane (20 ft.)

Setback Distribution – R-5, R-3, R-0:

	R-5 Flag	R-5 Non-flag	R-7.5 Flag	R-7.5 Non-flag
Side Setback	10 ft. (each)	5 ft. (each)	10 ft. (each)	15 ft. (total)
Rear Setback	25 ft.	20 ft.	25 ft.	30 ft.
Total	45 ft.	30 ft.	45 ft.	45 ft.

Current Code – R-5, R-3, R-0

- Sum of side and rear setbacks at least 45 feet
- No setback less than 10 feet

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Proposed Code – R-5, R-3, R-0

- Sum of side and rear setbacks at least 35 feet
- No setback less than 7.5 feet

Ms. Hamilton explained the Setback Distribution standard and how it was calculated. The proposed amendment would better ensure that one yard would be big enough for an activity area.

In response to question from Chair Heape regarding the 5-foot setback on R-5 non-flags and if that would change, Ms. Hamilton responded it would not be less than 7.5 feet on flag lots.

Lot Coverage and Floor Area:

Current Code

- Lot coverage and lot area based on Net Developable Area.
- Floor area based on gross area of flag lot.

Proposed Code

- Lot coverage, lot area and floor area based on Net Developable Area.
- Consistent with original intent of 2010 Flag Lot Amendments.

Screening/Access Lanes:

Proposed Code

- Delete landscaping on inside (dwelling side) of access lane.
- Delete requirement for trees in buffer when potential conflict with utilities exists, as determined by City Engineer.

Ms. Hamilton noted there were often potential conflicts when trees were required to be planted in those strips and the utilities that often run up and down the access lanes. She explained that one approach was to delete the requirement for trees in the buffer and the other was to delete the landscaping on the dwelling side of the access lane. She advised that the proposal would require buffering of the access lane only on the edge adjacent to another property.

Screening/Perimeter Fencing:

Current Code

- Fencing required along-side and rear property lines of flag lots.
- Screened at the rear.
- Orientation rotated in 2010, leaving one side unfenced.

Proposed Code

- Fencing required at perimeter of new flag lots.
- Screening buffer against largest yard.

Ms. Hamilton explained that the code change would return to the earlier (1998-2010) requirement for perimeter fencing. She noted the buffering standard currently required a 6-foot buffer along the rear property lines of a flag lot, but that was not necessarily the largest yard or the activity area so the proposal was for a 6-foot landscaping buffer against the largest yard/activity area.

Serial Partitions and Density

Ms. Hamilton noted the Commission's question about what the impacts to density would be if flag lots were limited on access lanes. She indicated that density impacts were hard to quantify exactly; it depended on context, lot shape, slope, sensitive lands, access constraints, etc. Ms. Hamilton summarized the results of the map analysis:

- By limiting the number of flag lots served by an access lane to six, 25 flag lots would be lost.
- By limiting the number of flag lots served by an access lane to four, 64 flag lots would be lost.
- By limiting the number of flag lots served by an access lane to one, about 130 flag lots would be lost. She clarified that it did not account for smaller flag lots as the map analysis was based on parcels that could be divided into five or more lots.

Ms. Hamilton referenced the spreadsheet of a comparison of Flag Lot/Access Lanes and Public Streets (Exhibit F-2), described the methodology used and noted that the density impact varied according to lot shape, such as long and narrow. She noted there were trade-offs between access lanes and public streets – flag lot access lanes were efficient in terms of providing less impervious surface and public streets, once dedicated, became a maintenance responsibility for the City. She clarified that access lanes could be more flexible in terms of saving trees.

In response to a question from Commissioner Arthur, Ms. Hamilton clarified that the map analysis provided information about additional lots while the discussion about limiting flag lots served by an access lane, e.g. limiting to four flag lots, would not include the original structure unless it was served by the access lane. Mr. Siegel added that the one fronting the street was not considered a flag lot. Ms. Hamilton clarified that the front house was typically served by the public street, while the parcels along the access lane were the flag lots. She further clarified that the spreadsheet was an exercise in density impacts and assumes total lots, including the front house. In response to a question from Chair Heape, Ms. Hamilton stated the lot size was used for the spreadsheet analysis was 75,000 sq. ft.

Commissioner Baker asked about the Housing Needs Analysis (HNA) referenced in the staff report. Ms. Hamilton clarified that the HNA showed that Lake Oswego had more low-density residential land than would likely be needed by 2035; there was an estimate of 1,646 units in these zones, and a demand for 783 units, leaving a surplus of 863 units. She pointed out that the HNA was not specifically looking at flag lots versus non-flag lots, but was consistent in terms of how the capacity was determined, such as taking out sensitive lands.

Parking

Ms. Hamilton explained that currently the only requirement for flag lots was that every single-family dwelling had to have one off-street parking space on their property outside of the setbacks. She further explained that in flag lot developments with access lanes that served seven or eight lots, four standard parking spaces, either on-lane or off-lane, are required. She reviewed the three proposed options:

Option 1

- Two "on-lane" standard parking spaces required for access lanes serving 4-6 dwelling units.
- Four "on-lane" standard parking spaces required for access lanes serving 7-8 dwelling units.

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- Will affect density because area devoted to parking is not counted in Net Developable Area.

Option 2

- One “on-lane” standard parking space required per flag lot if access serves 4-8 dwelling units.
- No additional “on-lane” standard parking spaces required if access lane serves 2-3 dwelling units.

Option 3

- Reduces flag lot developments to six lots served by an access lane.
- Four additional “on-lane” standard parking spaces required if access lane serves 4-6 dwelling units.

Ms. Hamilton advised that that staff recommended that the Commission make a recommendation to Council on the amendment options presented, and to adopt Ordinance 2759 (including the attachments).

Commissioner Brockman asked about potential Measure 49 consequences which Mr. Boone addressed, noting there might be situations where a property owner would chose to make a Measure 49 claim.

Public Testimony

Bruce Brown, 2323 Wembley Park Road, Lake Oswego, 97034, noted he lived in the Uplands Neighborhood and had recently presented to the Commission on the Uplands Neighborhood Plan Overlay, which dealt with flag lots. He noted three items to comment on:

- The number of lots allowed should reflect the underlying zoning density, if the Commission decided not to limit it to one flag lot. Some sort of sliding scale could be developed. Higher density zones could accommodate flag lots more easily in terms of character and density.
- The biggest negative comes out of the concept of the private access lane, which could be detrimental to the character of a neighborhood. Potentially you could start to get private enclaves in what would otherwise be publicly accessible neighborhoods; it not only isolates the people on that street, but the people who lived at the end of the access lane didn't get people walking by. He advised that any access lane that served two flag lots or more should be required to have a public access easement even if it was not a public street.
- Regarding setbacks, he didn't see any logical reason for a flag lot to have reduced setbacks; the lots should have to conform to the setbacks of the underlying zone.

Lastly, Mr. Brown stated that he agreed that the flagpole should be deducted from the calculation and that it should be kept in the Code. In response to a question from Commissioner Brockman, Ms. Hamilton confirmed that an easement over the front lot for an access lane would be counted in the parcel's size. Commissioner Brockman observed that the very last lot would be in the same situation.

Wendy Kellington, Kellington Law Group, 1335 Chandler Road, Lake Oswego, 97034, stated she was representing Stuart Bingham. She referenced the letter and maps submitted, Exhibit G-11. She explained that Mr. Bingham owned, individually or with his wife, three lots that were created by a subdivision in the 1920's on Phantom Bluff Court and that in 1959 Phantom Bluff Court was vacated and thereafter became a private street. She stated that it looked like a

public street; it did not look like a flag lot situation, the lots were linear. She indicated that the concern and hope they had was to obtain clarification in the proposed amendments that a situation like that, where you had existing platted lots created by subdivision long before there were flag lots, being served by a private streets, were not being embraced by the flag lot standards or access limitation standards. She stated she didn't see that the Bingham's lots fit the definition of a flag lot; the site had to be behind another lot. Staff thought they would meet the definition of a flag lot, but staff also felt that because the lots were created before the flag lot provisions were adopted, they would be developed under the traditional rules that would apply. She opined that staff did not intend for this type of development to be considered a flag lot. Staff clearly didn't inventory all of the private roads in the City to determine how many pre-existing lots would be rendered undevelopable.

Ms. Kellington added, if this was consistent with Commission's view as well, her written material offered four different ways to clarify things. She noted this would be similar to the proposed language that said existing flag lots that were reconfigured through a lot line adjustment were subject to the standard when the flag lot was created and were not subject to the new standards. Ms. Kellington suggested that if there was an existing lot that met all of the zoning and was created prior to the flag lot standards, and was never created as a flag lot, that it was developable as a regular subdivision lot or a regular partition lot; it wasn't subject to these new flag lot standards. She suggested the definition for flag lot could be amended to say it was a newly created lot.

Ms. Kellington explained that the lots that Mr. Bingham and his wife owned were shown as 37, 38, 39, and 40, and more currently were referred to as 1300, 1500, and 1600. She pointed out that they abutted Phantom Bluff Court and were existing platted subdivisions lots; they should be developable as just regular lots. She added that Commissioner Brockman was correct that lot 1300 was composed of three additional lots that were consolidated for tax purposes.

Ms. Kellington pointed out that if the assumption was made that you had developable lots that about a private street (like 1300, 1400, 1500), was the intention that they be developable or were they somehow being affected by the flag lot standards which would foreclose them from developing because there were already four to six primary dwellings that were served by Phantom Bluff Court? Commissioner Brockman brought up the distinction between lots of record and tax lots; tax lots were just for tax purposes. Ms. Kellington agreed and added they didn't want to wade into that.

Mr. Boone noted what was at question to the Commission was whether what Ms. Kellington raised was an issue. He read aloud the Code definitions of lot and lot of record; a legal lot was tied to the time of creation. He referred back to the discussion about lots that were created prior to 1998; if they were legally created at the time, the standards that were applied were the zone standards. He referenced another provision that stated the code only applied to lots that were created after 1998 as flag lots and that to Ms. Kellington's client's point, those lots were created in a legally created subdivision at the time; the later street vacation didn't change the legality of the creation of the lots. Mr. Boone further explained that they did not become flag lots under the post-1998 flag lot code; the base zone standards would apply. He advised that there were two code provisions that applied here that addressed that and the legislative history also provided that clarity.

In response to a question from Commissioner Ward if Phantom Bluff Court was a developed road at this time, Ms. Kellington responded that it was actually a public street vacated in 1959. Commissioner Ward asked if the owner was interested in winding up with five buildable lots? Ms. Kellington stated it had been consolidated for tax purposes and that they may or may not.

She added the owner was interested in maintaining tax lot 1300 now, and someday selling tax lots 1500 and 1600, perhaps to his children. Mr. Boone clarified that the tax lot references were to the tax lots and the underlying plats would be what the City would recognize. Mr. Boone confirmed that he did not think these amendments would constrain future development on these lots, however he didn't know the specifics of the lots. He noted that if a large lot came in now for a partition the new standards would apply going forward. Mr. Boone clarified that it would not apply to a lot line adjustment so long as it did not create a flag lot.

Ms. Kellington described a scenario where Phantom Bluff Court was considered a private access way and if somehow developing off of Phantom Bluff created a flag lot situation; then the entire length of Phantom Bluff Court would be included as something you would be subtracting out of the lot area, resulting in a lot becoming undevelopable. Ms. Kellington thanked Mr. Boone for his comments. Ms. Kellington clarified she was trying to make sure things were clear.

Bill Abadie, 1498 Meadows Drive, Lake Oswego, 97034, voiced his concerns with the proposed amendments related to flag lots and private access lanes. His first concern was with the number of lots that could be accessed by a private lane in flag lot developments. He stated that flag lots should be limited to one additional lot behind an existing home and comply with the prevailing zoning requirements; if a developer or landowner wanted to develop more, they should go through the subdivision process. Mr. Abadie referenced the May 2017 Planning staff memo to the Commission regarding the Uplands overlay discussion. He opined that flag lot issues were citywide and questioned whether the city wanted numerous overlays around the city. He recommended the City adopt the Uplands Overlay citywide.

Mr. Abadie objected to the proposed on- and off-lane parking requirements on private access lanes; it should be at least one if not two per lot if three or more homes were on a private access lane. He advised it was of the utmost importance if the City was going to continue to allow four or more homes to be accessed by a private access lane; this created parking issues and congestion.

Another issue he raised was the construction of secondary units on flag lot development, such as garage apartments which compounded the problems with private access lanes; secondary units should be prohibited on flag lots.

He referenced the stated purpose for the flag lot standards and opined this was not happening. He held that developers were squeezing in larger homes on smaller lots with substandard streets. He opined this had led to parking, stormwater, and garbage pickup problems; it also created challenges for emergency vehicles. He expressed his concern that the flag lot code was a means for developers to bypass more thorough and restrictive processes and that Lake Oswego citizens had to live with the problems it created.

In summary, Mr. Abadie requested the following:

- Limit flag lots to one additional home, which could most efficiently be accomplished by adopting the Uplands Overlay citywide.
- Do not allow changes to prevailing zoning requirements in flag lot developments.
- Increase the on-lane and off-lane parking requirements for private access lanes.
- Prohibit secondary units in flag lot developments.

He referenced the written testimony submitted by the Hallinan Heights Neighborhood Association and noted support from a number of other neighborhood associations.

In reference to the suggestion flag lots should be processed as subdivisions, Commissioner Brockman stated that under current code, four lots or more were already processed as a subdivision. Mr. Siegel confirmed this; there was not a separate process for flag lots and a subdivision could have private lanes or public streets. Commissioner Arthur asked for clarification from staff about secondary dwelling units (SDU) and accessory dwelling units (ADU). Ms. Hamilton stated they were the same; a guesthouse was defined differently by the code and described their approval process. She noted that an SDU did not require a separate address or access, are a maximum of 800 square feet; and one additional off-street parking space was required. Mr. Siegel advised that there were Metro Code provisions that required the allowance of one additional accessory dwelling unit on each lot in zones that authorized a detached single-family dwelling; accessory dwellings were permitted subject to siting and design standards.

Donald Mattersdorff, 930 Bullock Street, Lake Oswego, 97034, stated flag lots were an important issue to Lake Oswego and how the community would grow in the future. He acknowledged that a lot of work had gone into this project but commented it was the first evening of taking public comment; it was a little late in the game. He stated public comment as to the general direction should have been solicited earlier in the process. He reviewed the public comment drafts and helped to prepare some comments and disagreed with almost every word in both drafts. He questioned why they were here tonight talking about flag lots; was it so a homeowner could sell off a lot and stay in their home or was the city creating a second parallel code by which developers could bypass the established code in Lake Oswego?

Mr. Mattersdorff opined the private lane route allowed for substandard development, including the ones developed on Cedar Street, which created a tremendous amount of problems for neighbors. He advised that the city needed to revisit the purpose of flag lots and they should be limited to one new structure behind the other house with access taken from a lane. He pointed out that the Cedar Street development included tearing down the front house, which in his opinion made it no longer a flag lot development. He opined people were now planning projects with one lot in front and all the others behind for the expedience of using the flag lot standards with reduced setbacks, etc. He further shared concerns about the Cedar Street development and the vacation of the street easement. He encouraged the Commission to go back and start at first principles, which was permitting one new structure behind an existing structure; anything else should follow the standard code.

Commissioner Brockman asked what he considered the standard code. Mr. Mattersdorff responded that the city had a code that had been developed carefully over many years, requiring the width of the cul-de-sac, dimensional standards, etc. He held that flag lots bypassed a very large number of them, the major and minor development code. Commissioner Brockman observed the proposed amendments were restricting flag lot development, not enhancing it from what currently was code. Mr. Mattersdorff responded that they'd like to see it reduced to one lot.

Chair Heape asked Mr. Mattersdorff for any thoughts on the earlier suggestion for the number of allowed flag lots to be guided by the underlying zone. He responded that his personal view was that flag lot developments were a blight, more than one additional lot. He added he didn't like the larger direction of creating multiple new structures behind a sometimes-imagined front structure.

Commissioner Arthur asked Mr. Mattersdorff if he had any perspective or thought to offer on the prospective loss of value to property owners if they lost development opportunity by the

code restricting development from eight lots to one, for example and whether he had any concerns for the vested property rights of that owner or comments he'd like to share. Mr. Mattersdorff responded that the city had all sorts of codes that people had to meet; if their lot did not meet the standards created over the years they should not be allowed to develop.

James Stupfel, 1137 Spruce Street, Lake Oswego, 97034, stated that anyone that lived in or planned to move into a neighborhood should be able to look at the zoning or review the development code to understand what kind of community currently existed and how it would look in the future. He stated that he valued living in a medium low-density neighborhood like the Hallinan neighborhood, along with the walkability and the connected streets which were wide enough even without sidewalks to safely traverse. The flag lot code as proposed, he opined, would continue to erode the connectivity and the density as they knew and understood. He advised that neighbors didn't and couldn't safely access these narrow private streets, like Cedar Street, for example. He suggested these types of developments pushed excessive burdens onto adjacent properties and that allowing the continuation of the subversive flag lot loophole of the code, on top of the historic lot of record issue, did not seem to be consistent with the R-7.5 zoning of their area. He suggested such developments would change their area over time, which was not what he understood it to be when he moved there; if the city wanted to increase the density, then the underlying zoning should be changed. He held that the discussion should be about one flag lot, not a flag lot subdivision.

Chair Heape referred to the two comments regarding interest in requiring public access or an easement for public access and asked if that was possible. Mr. Boone acknowledged that it was possible; if the Commission found that public access was necessary for the neighborhood character and walkability it could be included as a standard, it was ultimately judged under the conditioning authority. He explained that when more lots were created, more people were being put on the sidewalks so they were required to mitigate that impact, it was a permissible requirement.

Liz Martin, 1017 Cedar Street, Lake Oswego, 97034, talked about the effects on the Hallinan Heights neighborhood and how they have had to try to become experts to understand the City Code. She discussed the Cedar Street property and showed before and after photos (Exhibit G-8), mentioning that the City vacated the street. She referenced City staff statements that maintaining streets was burdensome and pointed out all the trees that had been removed from the property. She opined that neither of the staff statements made sense for their neighborhood; flag lots were cutting corners and there was little thought about the effect on neighbors. She pointed out that there was no access since Cedar Street was vacated and showed the "after" photo, noting the moved Cedar Street; there was no open space, views had been blocked, and it was now a crowded mass of homes resulting in little privacy. She advised that there was no public access to Freepons Park although the findings showed a Development Review Commission condition of approval that there be an open public parkway connected to the development to Freepons Park. She reported that there was now a locked gate where the keys were only issued to the flag lot owners. She concluded that the result was an overdeveloped street with a private drive and locked access to Freepons Park.

Ms. Martin advised that the biggest concern was lack of parking. She showed a photo of construction vehicles parked near her front yard and pointed out that any extra vehicle could not fit on the access lane, including guests; the land was simply overdeveloped and was the easiest way to get around the subdivision code. She stated that it did not take into account the people who already lived there. She requested the Commission consider a flag lot to be a single lot behind a parent lot with street frontage. In response to a clarifying question from Commissioner Baker, Ms. Martin stated she was advocating for one flag lot only to be allowed.

Jerry Nierengarten, 15561 Twin Fir Road, Lake Oswego, 97035, stated he was the chair of the Lake Grove Neighborhood Association. He stated that the neighborhood had reached no consensus on what to do about flag lots, however, as a neighborhood they were very concerned and were envious of the Uplands Overlay. He noted Lake Grove had been affected by flag lots and that two lots behind a home were very common. He indicated that the neighborhood thought the Commission needed to consider a more complicated code with exceptions. He opined the difficulty was with more than one lot and that Lake Grove had large lots and narrow streets with no sidewalks. He advised that flag lots with access lanes were not big enough for emergency vehicles and not accessible to garbage and recycling pick-ups. He added that having more than two lots needed to be considered from a traffic and safety standpoint. He pointed out that with flag lots you had to be specific with requirements and what the development was doing to the lot in front; for example there could be up to three cans (trash, recycling, and yard debris) from each of the eight houses on garbage day. He also pointed out that in much of their neighborhood mailboxes were only on one side of the street. He reported that their Board could not reach any agreement on the number but could agree that the size of the lot needed to be considered when deciding how many flag lots could go behind it; one flag lot didn't need as wide a street in front as four flag lots would. He added that allowing one flag lot would be a good starting point, with exceptions to allow more depending on the width of the front street.

When asked, Ms. Hamilton responded that an access lane would have to be at least 20 feet wide. Commissioner Brockman indicated that in his experience with the fire department they required different widths depending how many flag lots were being served. Mr. Siegel added that for certain access lanes there had to be a turn-around. Mr. Nierengarten stated that for the two lot flag lots the garbage truck didn't go down those streets. Commissioner Brockman agreed the access lane would be too narrow.

Gary Buford, 5 Camelot Court, Lake Oswego, 97034, stated his professional credentials. He addressed proposed amendments of required open space dedication on certain partitioned sites that were greater than 75,000 sq. ft. of land area. He opined it was a bad idea because land of a proposed partition was usually a relatively private piece of land and did not usually contain a 50-foot public road right-of-way; a minor land partition and the parcels therein usually were connected by 20-foot wide drive aisles. He indicated that the open space sites within the partition were expensive to maintain and would possibly never be used. He described his own residential property, a four-acre strip, with a portion too steep to develop for residential building. He advised that open space should be included as part of the parcel not as shared open space.

Ms. Hamilton clarified that the open space requirements as part of large partitions in previous drafts had been dropped and was no longer part of the proposed amendments. Mr. Buford responded that if the open space requirements for large partitions had been dropped it would make his day.

Audrey Mattison, 2929 Glen Eagles Road, Lake Oswego, OR stated she had lived in Uplands for 50 years and was Vice Chair of the Uplands Neighborhood Association. She stated that she had been following infill for many years and was involved in developing the Uplands Overlay. She provided comments about complexity, efficiency, connectivity, and community and acknowledged it was complicated. She advised that the Uplands Neighborhood Plan took two years to research and develop and she also referenced the City of Portland flag lot standards. She stated she was in support the Hallinan letter dated August 30, 2017 and other

similar requests. Commissioner Baker asked if she was advocating for the proposed changes and Ms. Mattison replied no, she was supporting having just one flag lot.

Kate Meyers, 5250 Carman Drive, Lake Oswego, 97035 and Carolyn Krebs, 16925 Denney Court, Lake Oswego, 97035, stated they were Board members representing the Lake Forest Neighborhood Association (NA). Ms. Meyers stated that the Lake Forest NA voted at their most recent Board meeting to support the definition of flag lot as proposed in the Hallinan testimony. She added that they really liked the idea that a flag lot was a pole and flag. She stated that anything that was larger should go through the Planned Development process; they were not opposed to additional development.

Ms. Krebs stated the Lake Forest neighborhood, like Hallinan, had experienced adverse impact from flag lot developments in their neighborhood. She advised that flag lot standards could combine with Planned Development (PD) with Sensitive Lands delineations that resulted in lot sizes out of character with the neighborhood and smaller than 75% of the underlying zone allowed through Exceptions. She opined that the “a la cart” use of land division categories and exceptions had led to overly complex regulations and undesirable outcomes pitting density against resource protection. She added that in their neighborhood it was desirable to have residential development with significant resources on each residential parcel rather than have resources cut off completely in set-aside areas of protection and off limits. Ms. Krebs stated that private access lanes that served multiple homes didn’t provide connectivity; it was quite the opposite, they cut off neighbors from public streets and made it questionable whether they could be walked or biked by neighbors not served by those private lanes. She noted Carman Grove, a nine-lot subdivision in their neighborhood, as an example. Only one lot on that site met the minimum lot size requirement; five lots were called flag lots in the staff report. She further described that development application and approval, including setback exceptions. She opined this set a precedent for the neighborhood. She indicated that they were anticipating a 10-lot subdivision on Bonita with a resource protection designation, where flag lot and PD overlay standards would once again suggest that this type of tightly configured development was what was best for their neighborhood.

Ms. Krebs stated that the Lake Forest NA supported the positions taken by Hallinan in their letter dated August 30, 2017, to limit the number of flag lots to one served by a private lane; if a developer wanted more than one lot they should be required to construct a public street. She added that the Lake Forest NA requested the code of the Uplands Overlay District apply to low-density single-family zones, including R-7.5, citywide. She referred to the specific code sections of the Uplands Overlay that should apply related to access lane extension and projection to abutting properties, especially important in Lake Forest. In addition, she stated that minimum onsite parking requirements for single-family residences should be two spots each for both the parent and flag lot. She suggested the Commission should consider requiring access driveways to include one additional parking space to take pressure off of fire access lanes used for illegal parking. She referred to the photo she submitted (Exhibit G-15) showing a car parked illegally on a signed fire access lane; she stated that providing this type of dedication for parking was needed and should not allow for reducing lot size. She emphasized the need for adequate parking.

Ms. Krebs stated that she didn’t think it was appropriate to put flag lots on a Planned Development and would like to see the Commission put this on the work list to look at in the future. Ms. Meyers opined that the combining of the two standards allowed too much a la carte picking of standards to comply with.

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Ms. Krebs confirmed for the Commission that the Lake Forest NA was recommending two off street parking spaces for each flag lot.

Jim Bolland, 804 Fifth St., Lake Oswego, 97034 stated he was the Co-chair of the Lake Oswego Neighborhood Action Coalition (LONAC). He stated representatives from Hallinan attended LONAC's last meeting and after a lively debate the board voted to support the Hallinan recommendation for one parent lot and one flag lot; this was also supported in the Upland Overlay Code. Mr. Bolland stated he had served on the Infill Task Force and recalled the concept of the private access lane was an outcome of that effort; however, the Task Force never intended for an access lane to serve more than a couple of homes. He opined that when talking about devaluing property you had to keep in mind that the flag lot standard had only been in effect for a few years; prior to that, flag lots were not allowed.

Mr. Bolland added that LONAC also supported Hallinan's recommendation that secondary dwelling units (SDU's) not be allowed on flag lots because of the way they compounded parking problems. He reported that LONAC also supported the concept of two on-site and one off-site parking space.

Mr. Bolland spoke about meeting density requirements and that in 2013 the City adopted a new Comprehensive Plan; during its development there was a lot of talk about density standards and meeting growth projections. He recalled that the City had received confirmation from the State and Metro that the city was okay with its density and growth requirements, however the State had pointed out that the only thing the city could do that would be a problem would be if they down zoned one part of the community and didn't up zone another area. He opined that changing the flag lot standard would not be an issue as it was not down zoning.

Mr. Bolland encouraged the city to go back to the traditional definition of a flag lot as one parent lot and one flag lot and to get away from having private access lanes serving multiple lots; it didn't work and was bad planning.

When asked if the City could negotiate with Metro regarding the SDU requirement, Mr. Siegel advised that with City Council direction the code could be amended to disallow SDUs on flag lots, however, the city would have to reconcile the change with the existing Comp Plan and Code that were currently in compliance with Metro Code. Mr. Bolland added that the First Addition/Forest Hills NA supported SDUs but agreed with the issues raised by Hallinan as it compounded the parking issue. Vice Chair Ward stated he did sit in on one of the Infill Task Forces and it had always been unclear in his mind where the notion of serving eight flag lots with an access lane came from. Regarding SDUs, Mr. Siegel clarified that existing Code required one off-street parking space for a SDU in addition to one off-street parking space for the primary dwelling. Ms. Hamilton added, regarding the number of flag lots served by access lanes, it was in the flag lot standard itself as well as in the separate Access Standard; she was not sure when it was added. Mr. Bolland opined it was added after the second Infill Task Force completed its work.

Charles (Skip) Ormsby, 170 SW Birdshill Road, Portland, 97219, stated he agreed with the Hallinan and LONAC testimony and that Birdshill would soon have a resolution stating that. He added he was also curious about how the flag lot numbers were derived and would also like the Metro density letter provided during the Comprehensive Plan update to be provided in the record. He opined the picture of Hallinan was scary and abysmal. He understood that surface water management was still an issue there and expressed concerns about surface water management in Birdshill and December flooding on Fielding Road and risks to emergency responders. He opined this was a matter of neighborhood concern throughout the

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Lake Oswego area, especially in the outlying dual interest areas related to street and sewer capacity. Mr. Ormsby pointed out that Exhibits E-1 and E-2 showed densification potential within the Willamette River Greenway.

Teri Caprio, 5570 Neff Park Lane, Lake Oswego, 97035, shared that the proposed ordinance could have a major impact on her property. She stated she had been working with the City for years and had an approved division in front of the City using a flag lot concept. She stated that she had been careful to share overall plans with the City to make sure there were no misunderstandings of the multi-year divisions that would take place. She added that any proposal that reduced the number of allowed lots under this ordinance would result in a major financial impact on her property.

When asked if her proposed development would require an open space under the current code, Ms. Caprio replied that she did not know. Ms. Hamilton showed a plan of Ms. Caprio's property and noted the development was proposed as a serial partition serving a number of flag lots off an access lane. She recalled it was approved for a Minor Partition in 2013, with the idea that there would be a series of partitions to get it to 9 or 10 lots. Ms. Hamilton advised that what was locked in now with that approval was only the first partition. She added that if the flag lot numbers changed Ms. Caprio would be affected by the limits on the number of flag lots based on this development plan. Ms. Caprio added that in this particular case there were already nine existing homes on the one lot so the partition would not affect traffic.

When asked if she was an advocate of the proposed changes, Ms. Caprio responded that she did not know; she didn't want anything to affect her property and the plans she had been making for years.

Carole Ockert, 910 Cumberland Road, Lake Oswego, 97034, stated she was the Chair of the First Addition-Forest Highlands (FAN-FH) Neighborhood Association. She shared that while developing the FAN-FH Plan it was decided to give people a development option. She noted that flag lots were more of the double-lot splits, not the serial partitions. She clarified that in order to discourage the flag lots they established a policy to support the granting of a variance to the street frontage requirement to minimize the number of flag lots and to allow people to develop side-by-side when possible. Regarding SDUs, Ms. Ockert opined that Metro clearly saw them as important and they were seeing SDUs in FAN-FH where there was both street frontage and an alley, which helped with the extra traffic. She encouraged the Commission to keep that in mind when discussing access lanes. She added that the FAN-FH Board had a standing position related to off-street parking – to go from one parking spot which was required by Code, to two spaces. She suggested the Commission consider this now for flag lots and that the FAN-FH Board would like that to be the requirement citywide.

Commissioner Brockman asked staff to clarify its support for having lesser street frontage. Ms. Hamilton confirmed that a Minor Variance allowed for a reduction of five feet or less and that a Hardship Major Variance would be required for anything beyond that. Mr. Boone added that a Major Variance would be difficult to get; the lack of ability to create a partition was not a hardship as there was no guaranteed right to do a partition.

Rebuttal

None.

Questions of Applicant

None.

Deliberations

Chair Heape opened deliberations. He suggested discussing the concepts presented and then having the Code amendments brought back based on the Commission's direction. Mr. Siegel suggested the Commission might want to start with the density conversation, which affected parking. Commissioner Brockman suggested it might make more sense for a third task force to make a recommendation to the Commission, to have it vetted better. Vice Chair Ward recalled that they had held four work sessions on this matter thus far and had had a lot of time to work on it as well as a lot of public testimony tonight. He added that he felt prepared to make a recommendation; Chair Heape agreed and suggested there were additional things or concerns raised tonight that could be added to the Commission's plan for future work. Commissioner Brockman noted they had received overwhelming testimony related to limiting it to one flag lot, which was not the direction the Commission had been going; he opined that further vetting was needed to understand the consequences, good and bad. He recalled testimony related to concerns of right-of-way width and commented that possibly the width of the access lane should be tied to the number of lots with a maximum of four lots.

Chair Heape suggested moving ahead tonight, starting with density and the number of flag lots followed by parking and then the other topics. No Commissioners objected.

Density

Chair Heape summarized that the Commission heard significant input from neighborhood associations asking for a single flag and pole as well as some concern over negative impacts from one property owner, and concerns from another about specificity and removing ambiguity. Commission discussion followed:

- Vice Chair Ward stated that was clear that many people wanted to see a single flag behind an existing lot, like in the Uplands NA. He noted that the Commission had received material supporting this from Hallinan Heights, Evergreen, Waluga, Oak Creek, and Lake Forest neighborhood associations, all expressing support for this position. He stated that with that kind of support from so many recognized NAs he recommended changing the flag lot rules.
- Commissioner Sweers agreed that the NAs brought a compelling argument but that sometimes poles had more than one flag. He suggested reconsidering four lots in conjunction with making that harder to reach for the developer. He agreed with Vice Chair Ward's suggestion for a one-lot requirement with the understanding that there were variance opportunities to reach a maximum of four.
- Commissioner Baker stated he tended to agree with a maximum of four lots and that requiring a wider private road could alleviate some issues with vehicles and garbage trucks.
- Commissioner Brockman suggested that one option was to do nothing and leave the code as it was. He commented that if changes were needed down the road there could be a different process to ensure a more comprehensive solution that didn't have unintended consequences.
- Chair Heape stated he shared some of the ideas expressed – a larger number of flags meant that the access requirements increased. He was concerned that as the number of flags increased, what was to prevent the development from having a regular constructed street? He believed that going to a 50-foot wide right-of-way would become excessive. He recalled another concern that was brought up regarding access from the public's point of view; having private accesses closed to the public did not promote connectivity. He suggested that in addition to the size perhaps they should

consider requiring public access as well. He questioned whether it should be made a public street when going up to a higher number of lots.

- Commissioner Arthur noted that tonight's testimony was convincing and compelling in support of significantly reducing the number of flag lots permitted on a private access lane. In his best judgement his recommendation was to explore lowering it to two flag lots in addition to the existing house. Ms. Hamilton explained that flag lots that accessed a lane were to be combined where practicable; if it served two properties, including the front lot, it had to be 20 feet wide; if it served just one flag in back and the access couldn't be combined, it could be a private drive at 12 feet wide. Commissioner Brockman opined the 12-foot driveway option was not very well known.
- Commissioner Arthur added that, in light of testimony and commentary that the 2010 Infill Task Force never intended for an access lane to serve more than "a couple" of flag lots, taking everything together, he was persuaded that no more than two flag lots should be authorized on an access lane. He strongly recommended the Commission recommend allowing up to two flag lots on an access lane, in addition to the front lot or original structure.
- Commissioner Brockman reminded they had had many work sessions and a public hearing that resulted in a recommendation about substandard lots that the Council did not take. He opined he was not sure what would get approved by City Council.
- Chair Heape summarized the similarities:
 - Two recommendations to consider up to four flag lots
 - One recommendation for only one flag lot
 - One recommendation for up to two flag lots

Chair Heape asked for a recommendation.

Commissioner Arthur **moved** to recommend authorizing up to two additional flag lots to an existing parcel, for a total of up to three homes on the original parcel. Commissioner Sweers **seconded** the motion. [No vote was taken.]

Discussion followed. Chair Heape stated that had heard suggestions to have additional standards. The Commission also heard that it might make sense to look at the underlying zoning in terms of applying something citywide; R-3 or R-5 could possibly support additional flags while in R-7.5 or R-10 it might be more compatible to have larger and fewer flag lots. He questioned whether they should consider basing part of the criteria for allowing more than one flag lot on the underlying zoning.

Mr. Boone reminded the Commission that at this point in the process this was more of a straw poll than a vote.

Chair Heape polled the Commissioners. All of the Commissioners were in agreement with recommending up to two additional flag lots on an existing parcel, for a total of up to three lots on the original parcel.

Parking

Chair Heape stated there were a couple of options related to parking. He asked for comments:

- Commissioner Brockman stated that if they were to go the direction as discussed, two houses would be using the access lane and that current road widths didn't require any additional parking requirements. Commissioner Sweers concurred; under this scenario.

- Commissioner Arthur expressed that he still had concerns about parking and that they had not discussed the width of the private access lane, if it should remain at 20 feet. He stated he felt strongly that each residential unit should have enough driveway space to accommodate two cars, and his preference would be to require an additional parking space to those two, as well.
- Vice Chair Ward stated he completely agreed with Commissioner Arthur: two on-site parking spaces and one more in an additional location, either on the access way or on the lot.
- Commissioner Brockman asked if the front lot were accessing off the main street, would it still be required to have one additional parking spot on the access lane? Commissioner Ward clarified only the flag lots would be required to have an additional parking spot on the access lane.
- Ms. Hamilton clarified that there was a Code section that prohibited required parking in a setback. The parking would have to be outside of any setback to count toward the required parking. Mr. Boone added that the required parking space was typically in the garage and that currently there was only one required parking space for single-family development. He noted that it could be on a parking pad located outside the setback, in a carport, or in a garage.
- Commissioner Arthur noted he had observed a car parked in a driveway, but the concrete driveway wasn't long enough to accommodate the car so that he perceived the car was hanging out into the private access lane. He added that, on balance, there should be one additional parking space on the access lane near the flag lot residence in addition to what was required now for single-family development.
- Commissioner Brockman stated that currently in the flag lot standards the garage setback had to be 20 feet from the private access lane. He held that if a parking spot was required off the lot, it would reduce the amount of developable area for the partition. He pointed out that the Commission was already recommending reducing the development potential from nine to three lots. He noted that the access lane was 20 feet plus a five-foot vegetative strip and that the drives could not be combined, resulting in a 12-foot-wide driveway.
- Commissioner Baker stated that the Commission had heard a lot of concerns about parking and was in favor of requiring one additional on-site parking space for each flag lot, in addition to the current code requirement.
- Commissioner Brockman described how requiring two off-street parking spots would affect the locations of development on the site due to setback requirements.
- Ms. Hamilton confirmed that each parking spot was about 200 sq. ft.

Chair Heape summarized that there was a recommendation for requiring one additional parking spot for each flag lot. He polled the Commissioners and five of the six Commissioners were in favor.

Discussion followed about whether the additional parking spot should be on the private access lane or on the lot, as it was not clear during the polling. Commissioners asked staff if there were bump outs for parking on the access lane in the Hallinan Heights example or could people simply parallel park on the lane? Mr. Siegel clarified there had to be a minimum clear width of at least 14 to 16 feet wide for fire department access; any parking would have to be outside that; the dimensions for an on-lane parking space were 8.5 feet wide by 18 feet long minimum, with additional space needed for a taper. He advised that parking bays could be configured a lot of different ways and would be site specific; if it's one flag lot the parking could be parallel to the lot or at the end of the lane, as flag lots don't have street frontage. Mr. Siegel added that some of the public street facing lots didn't have on-street parking today.

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Commissioner Baker stated he believed there was consensus for an additional parking space on the access lane, not on the lot. Chair Heape observed that many of the concerns raised in testimony were related to visitor or worker parking, a situation where someone would not park their car in someone else's garage or in their driveway. Commissioner Ward stated he lived on a private lane that was paved, and with 20-feet of paving it was possible to park there and for a vehicle to also get by, this worked for occasional parking. He indicated that it seemed doable without a great deal of developable space being lost and a parking space was obtained. Commissioner Brockman noted he often drove through First Addition which had narrow paving and sometimes someone had to pull over to let someone else pass; this was not an unusual thing.

Chair Heape asked for a recommendation. Commissioner Arthur suggested requiring one additional parking space off-site, on the private access lane, in addition to the one required on-site parking space for a single-family dwelling. He added it might make sense to require the private access lane to be 22 feet wide or the appropriate width to accommodate fire department access and on-lane parking spots. It was suggested that a two-car garage could meet this requirement, but several Commissioners expressed concern that would not address the problem of workers and other occasional guests.

Chair Heape polled the Commission about requiring one additional parking space per flag lot to be located on the private access lane. Five of the six Commissioners were in favor.

The Commissioners discussed the remaining code amendment recommendations:

- Screening/Perimeter Fencing – Commissioners agreed with the staff recommendation.
- Screening and Access Lanes – Commissioners agreed with the staff recommendation.
- Lot Coverage and Floor Area – Commissioners agreed with the staff recommendation.
- Setback Distribution (R-5, R-3, R-0) – Commissioners agreed with the staff recommendation.
- Flag Lot Front Setback – Commissioners agreed with the staff recommendation.
- Garage Appearance Standards – Commissioners agreed with the staff recommendation.
- Orientation/Setbacks – Commissioners agreed with the staff recommendation.
- Lot Line Adjustments and Flag Lots – Staff and Commissioners further discussed this proposal and the example raised in testimony regarding the property on Phantom Bluff. The Commission asked for the language to be further clarified by staff, including the definitions of flag lot and access lane, and to remove any ambiguity.
- Delete Access Lane Connection Requirement – Commissioners agreed with the staff recommendation.
- Commissioner Brockman asked how the Commission could move forward the discussion regarding the width of local public roadways, including possible amendments to Chapter 42. Commissioner Brockman stated he was in support of recommending that staff pursue this further with the City Engineer. Commissioners were in support of this.

Commissioner Arthur **moved** to recommend to City Council the adoption of Ordinance 2759 (LU 17-0052), with the changes as discussed by the Commission, returning with the Findings, Conclusions and Order on October 23, 2017. Vice Chair Ward **seconded** the motion and the motion **passed 6:0.**

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7.2 Community Development Code Amendments – Street Connectivity Standard (LU 17-0053)

A request from the City of Lake Oswego for a text amendment to the Community Development Code to add an exception to the Street Connectivity Standard [LOC 50.06.003.4], that provides an alternative for complying with Metro Code Section 3.08.110. *Staff coordinator is Debra Andreades, Senior Planner.*

Commissioner Brockman **moved** to continue the hearing to October 23, 2017. Commissioner Arthur **seconded** the motion and the motion **passed 6:0.**

8. **OTHER BUSINESS**

None.

9. **SCHEDULE REVIEW**

Mr. Siegel reviewed the schedule, there were no new updates.

10. **ADJOURNMENT**

There being no other business Chair Heape adjourned the meeting at 11:15 p.m.