

MEMORANDUM

*Community Development & Environmental Services Division
Department of Zoning and Land Development Review*

To: Joseph K. Schmitt, Administrator, CDES

From: Susan Murray, AICP, Director, Zoning Department
Bill Hammond, Director, Building Department
Tom Kuck, Director, Engineering Department

Date: May 16, 2005

Subject: Legal Non-conforming lot splits

Chapter 9 of the Land Development Code (LDC) provides that within the zoning districts established by the LDC or amendments that may be later adopted, there may exist lots, structures, and uses which were lawful before this Code was adopted or amended, but which would be prohibited or restricted under the terms of this Code or future amendments. It is the intent of this Chapter to permit these nonconformities to continue until they are voluntarily renovated or removed, but not to encourage their survival. It is further the intent that the nonconformities shall not be enlarged upon, expanded, intensified, or extended, nor be used as grounds for additional other structures or uses prohibited elsewhere in the same district. A lot existing at the effective date of an ordinance that does not meet the minimum area requirement of the district in which the lot is located results in a legal non-conforming lot.

Historically, much litigation in this area results from the failure of an ordinance to deal unambiguously with a wide variety of nonconforming situations. The LDC provides that when a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in the development standards for that zoning district, then the lot may be used as proposed just as if it were conforming; however the intent is to encourage or require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified therein.

Consistent with the intent of this Chapter, former section 1.8.2.C. (now Chapter 9.03.03) of the Land Development Code was amended on June 16, 2003, to clarify that legal non-conforming lots combined for development purposes, i.e., on which a single family residential structure has since then been built, could not thereafter be separated by demolition of that structure in order to revert to the original non-conforming lots. This prohibition has not,

however, been consistently applied by CDES staff and was not fully recognized as having applicability to previously constructed single family residences on such combined legal non-conforming lots. Therefore, it is our recommendation that in order to apply the current and future contemplated regulations pertaining to lot splits and recombinations, a property owner may only lawfully demolish a structure or structures built on a "combined lot" under the following scenarios so as to allow the combined lots to be legally considered to have retained their original, individual legal non-conforming status in order to build one single-family residence on each legal non-conforming lot.

The following scenarios describe situations wherein single-family homes may be lawfully built on individual legal nonconforming (LNC) lots, some of which may have been combined with one or more other LNC lots, either for tax or development purposes, to create a legal, conforming "combined lot."

1. Any situation where an affected property owner or agent has applied for or has been issued a valid building permit prior to June 16, 2003, to build a single-family residence on one of two LNC lots previously developed as one conforming lot and who has commenced construction. A second residence could subsequently be built on the other LNC lot, regardless of the then current ownership.
2. Any situation where an affected property owner or agent has applied for or has been issued a valid demolition permit prior to June 16, 2003, has commenced demolition, and can provide competent substantial documentary evidence that his or her future development plan was to rebuild multiple single family dwelling units on former LNC combined lots. The County Manager and County Attorney, or their designees will evaluate the evidence of this intent on a case-by-case basis.
3. Any situation other than 1. and 2., above where an affected property owner was expressly authorized to demolish and rebuild in writing by a CDES employee via a response letter, between June 16, 2003 and February 28, 2005. The response letter must be on County letterhead and signed by a CDES County employee. If the County response letter addressed a site-specific situation, eligibility would only apply to that property and the property owner(s) referenced in the letter. If the response letter provided general information, then only that individual could apply the letter to any property he or she then owned. However, as stated, in either scenario just described, eligibility would only be for the individual(s) who requested the response in writing and to whom it was addressed. In the case of conflict or other scenarios where authorization of the proposed demolition and reconstruction by a CDES employee can be conclusively documented, the County Manager and County Attorney, or their designees, would make the final determination on a case-by-case basis.
4. Any property owner who executed a contract for purchase between June 16, 2003 and February 28, 2005, of what were once LNC lots wherein the agent, seller, or buyer can now provide competent substantial documentary evidence that the buyer entered into the contract with the intent to demolish a then existing lawfully permitted structure (s) so as to revert back to multiple lots of LNC status in order to construct a single family dwelling unit on each non-conforming lot.

The following scenarios will also allow a Single Family residence to be built on a single LNC lot, provided all other development standards are met:

A. A property owner owns one or more LNC lots combined under one folio number for tax purposes, but which remain undeveloped, and which are then approved under the County's lot split and recombination regulations then in effect.

B. A property owner owns one or more LNC lots combined under one folio number, but where development has occurred only on a single lot, and which are then approved under the County's lot split and recombination regulations then in effect as to the undeveloped LNC lot(s), provided all setback requirements, are met or were met at the time of legal construction, for the existing structure on the developed lot.

C. A property owner owns lots combined under one folio number wherein development occurred on more than one lot, but the remaining lot(s) were left undeveloped. The developed lots are not eligible to be converted back to non-conforming lots except as otherwise allowed by guidelines 1. through 4., above; however, the undeveloped lot(s) will retain and may revert to their LNC lot status provided as to the undeveloped LNC lot(s) that they are then approved under the County's lot split and recombination regulations then in effect, and all setback requirements are met, or were met at the time of legal construction, for the existing structure on the combined lots.

D. Any situation wherein the combination of one or more LNC lots creates a legally conforming lot, regardless of development status.

E. Any development scenario that meets the current requirements of the then current Land Development Code.

F. The lawful prior construction and subsequent lawful demolition of a duplex or multi-family dwelling constructed on two or more LNC lots and its replacement by a duplex or multi-family dwelling, subject to meeting the minimum area requirements for each unit.

G. The lawful prior construction and subsequent lawful demolition of a single-family residence constructed on two or more LNC lots and its replacement by a duplex or multi-family dwelling, subject to meeting the minimum area requirements for each unit.

Prior to the release of this Division's determination on how to handle properties which may or may not fall under the circumstances outlined above, we recommend that an administrative process be developed in order to allow staff to consistently and properly assess those situations wherein a property owner believes he or she may qualify for the issuance of a permit under any of the scenarios outlined above. Specifically it is our recommendation that:

- a. application requirements are defined,
 - b. document distribution and flow is defined,
 - c. procedures are established for review,
 - d. time frames for review are established, and
 - e. review staff is identified.
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It is further recommended that an applicant who is dissatisfied with the outcome of the initial administrative process, may file for an administrative appeal to staff's decision to an administrative "board" comprised of the Directors of the Zoning Department, Building Department and Engineering Department. Further, property owners may opt to avail themselves of the Vested Rights determination process or the Official Interpretation process as outlined in the Land Development Code or a hybrid relying on both of these processes to resolve these concerns as expeditiously as possible.