

ORDINANCE NO. 1106

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE, ZONING AND BOUNDARY LINE ADJUSTMENTS, ELIMINATING THE PROCEDURE ALLOWING FOR NONCONFORMING LOT COMBINATIONS AS A RESULT OF NEW CASE LAW, DESCRIBING EXCEPTIONS TO THE MINIMUM LOT AREA REQUIREMENTS, ALLOWING TWO OR MORE LEGALLY NONCONFORMING LOTS TO BE COMBINED INTO ONE LOT, AND ALLOWING DEVELOPMENT OF A LOT EVEN THOUGH A PORTION OF THE LOT HAS BEEN DEDICATED OR SOLD TO THE CITY OR STATE FOR STREET PURPOSES, REPEALING GIG HARBOR MUNICIPAL CODE SECTION 16.03.004 AND ADDING A NEW SECTION 17.01.100 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City recognizes lots that have been established through recorded plats under previous codes as legally nonconforming lots; and

WHEREAS, the City adopted a code provision that would allow an owner of two or more legally created nonconforming lots to combine such lots through a boundary line adjustment, even if the application would transform a legally created lot into a substandard, undersized lot (GHMC Section 16.03.004); and

WHEREAS, the Washington Court recently addressed this issue, and determined that RCW 58.17.040(6) does not allow a local jurisdiction to approve a boundary line application that would transform a legally created lot into a substandard, undersized lot (*Mason v. King County*, 134 Wn. App. 806, 142 P.3d 637 (2006)); and

WHEREAS, the owner of two or more legally nonconforming lots may desire to combine the lots into one, even if the resulting lot does not meet the minimum lot area requirements for the underlying zone, but the owner may not be able to do so with a boundary line adjustment or under the subdivision code; and

WHEREAS, the City believes that the combination of two or more legally nonconforming lots is desirable, even if the resulting lot does not meet the code, because the resulting lot will conform to the existing code to a greater degree; and

WHEREAS, the City seeks to encourage the dedication and/or sale of property to the City and state for street purposes, without necessity of a “friendly condemnation action” to legalize the remaining lot; and

WHEREAS, the City's SEPA Responsible Official issued a DNS for the proposed amendments on September 12, 2007 pursuant to WAC 197-11-340, which was not appealed; and

WHEREAS, the City Community Development Director forwarded a copy of this Ordinance to the Washington State Department of Community, Trade and Economic Development on August 22, 2007, pursuant to RCW 36.70A.106; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on October 8, 2007; and

WHEREAS, the Gig Harbor City Council voted to adopt this Ordinance during the second reading on October 22, 2007; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Section 16.03.004 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Section 17.01.100 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

17.01.100 Exceptions to Minimum Lot Area.

A lot which does not satisfy the minimum lot area requirements of the applicable zone may be developed as a separate building site, according to the following:

A. Combination of legally nonconforming lots. A property owner of two or more lots that are legally nonconforming as to lot area may request that the lots be combined into one larger lot, even if the resulting lot does not satisfy the existing lot area requirements in the underlying zone, as long as the Director determines that the property owner has submitted sufficient evidence to demonstrate that the original lots are legally nonconforming. In addition, the lot combination shall satisfy the requirements of and be processed according to the procedures in chapter 16.03 GHMC, with the exception of Subsection 16.03.003(B). This section does not apply in any overlay district to allow the combination of any lots created through the Mixed Use Overlay District (MUD), a Planned Unit Development (PUD) or Planned Residential District (PRD).

B. Dedication of property to the public. That portion of a lot remaining after dedication or sale of a portion of the lot to the City or state for street or highway purposes shall be a separate building site, as long as the area of the remaining lot is at least 3,000 square feet.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 22nd day of October, 2007.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 10/3/07
PASSED BY THE CITY COUNCIL: 10/22/07
PUBLISHED: 10/31/07
EFFECTIVE DATE: 11/5/07
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