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CLARK COUNTY  
WASHINGTON

## COMMUNITY PLANNING

### STAFF REPORT

TO: Clark County Board of County Commissioners  
FROM: Oliver Orjiako, Interim Director  
DATE: December 23, 2008  
SUBJECT: Follow-up on Infill Ordinance Hearing of December 9, 2008

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### BACKGROUND

On December 9, 2008, staff presented to the Board the recommendations of both the infill task force and the Planning Commission. The Board continued the hearing to December 30, 2008 for further consideration.

Staff was asked to look into changes to the variance ordinance, CCC Section 40.550.220, particularly with regard to lot area in the zones where infill is currently allowed (R1-5, R1-6 and R1-7.5). Attachment 1 shows one option that includes a variance for lot area. The concern with this approach is as follows:

- It essentially requires the responsible official to approve a Type I variance if a property cannot be developed pursuant to the standards of the underlying zone.
- There are minimal standards for approval.
- The proposed amendments would push applicants to use the Type III process rather than Type II, which is not the intent.

Furthermore, variance criteria are difficult to meet. Aside from allowing a variance to a qualifying standard (which the code does not allow), the disadvantage to this approach is that it would be next to impossible to justify, given the variance criteria.

Another option could be amending Section 40.220.010 Single Family Districts, if the infill ordinance is repealed. Proposed language is attached for your review (Attachment 2). This language could be adopted through the bi-annual code process if staff is directed to do so. The suggested change would:

- Provide for compatibility and protect established low-density residential neighborhoods.
- Provide a clear standard and minimize disputes.

Attachments

## Attachment 1

### 40.550.020 VARIANCES

A. Variances in this title shall be granted for numerical standards and not for any qualifying standards such as those for density or for density transfers.

B.A. Type I and II (Administrative) Variances.

1. The responsible official may grant a variance to the following numerical standards; including but not limited to:

- (a) setbacks;  
buffers;
- (b) building height;
- (c) landscaping,
- (d) lot coverage; and
- (e) lot dimensions. and

~~parking standards, but not including lot area, density or qualifying standards for programs such as infill or density transfer as provided in this title.~~

2. An application for a variance(s) ~~pursuant to this section~~ to the standards listed in Section 40.550.020(B)(1) shall be subject to Type I review if the variance(s) is for up to and including ten percent (10%) of the numerical standard(s) in question, except as provided in Section 40.550.020(E)(2), (A)(4).

3. The responsible official shall approve an a Type I administrative variance(s) if, based on substantial evidence in the record, the applicant has sustained the burden of proving the variance(s) complies with all of the following:

- a. Granting the variance(s) will not substantially detract from the livability or appearance of a residential area or from the desired character of a nonresidential area, or the variance(s) will substantially enhance the livability or appearance of a residential area or the desired character of a nonresidential area, such as by preserving or protecting significant natural, scenic, historic, cultural, open space or energy resources; and
- b. If variances to more than one (1) regulation are being requested, the cumulative effect of the variances shall be consistent with the purpose of the zone in which the site is situated.

C. Type II Administrative Variances.

1. The responsible official may grant a variance to the following numerical standards; including but not limited to:

- (a) setbacks;
- (b) buffers;
- (c) building height;
- (d) landscaping,
- (e) lot coverage;
- (f) lot dimensions; and

(g) parking standards, ~~but not including lot area, density or qualifying standards for programs such as infill or density transfer as provided in this title.~~

2. An application for a variance(s) ~~pursuant to this section to the standards listed in Section 40.550.220(C)(1)~~ shall be subject to Type II review if the variance(s) is for up to and including twenty-five percent (25%) of the numerical standard(s) in question, except as provided in Section 40.550.020(E)(2). ~~(A)(4)~~. The responsible official may not approve an administrative variance of more than twenty-five percent (25%) of a numerical standard.
3. The responsible official shall approve ~~an~~ a Type II administrative variance(s) if, based on substantial evidence in the record, the applicant has sustained the burden of proving the variance(s) complies with all of the following:
  - a. Granting the variance(s) will not substantially detract from the livability or appearance of a residential area or from the desired character of a nonresidential area, or the variance(s) will substantially enhance the livability or appearance of a residential area or the desired character of a nonresidential area, such as by preserving or protecting significant natural, scenic, historic, cultural, open space or energy resources; and
  - b. If variances to more than one (1) regulation are being requested, the cumulative effect of the variances shall be consistent with the purpose of the zone in which the site is situated; and
  - c. Adverse impacts resulting from the variance(s) are mitigated to the extent practical; and
  - d. The variance(s) does not substantially impair or impede the availability or safety of access that would otherwise exist for vehicles or for pedestrians, or alternative access is provided.

D. B. Type III Variances.

~~Approval Standards for a Type III Variance.~~ The review authority may permit and authorize a variance from the requirements of this title using a Type III process only when ~~unusual circumstances cause undue hardship would result from~~ in the application of this title. A variance shall be made only when all of the following conditions can be demonstrated; ~~and facts exist~~:

- 1.a. Unusual circumstances of that apply to the property and/or to the intended use of the property that do not apply generally to other property in the same vicinity or district; and
- 2.b. ~~Such variance is necessary for the preservation and~~ The need to preserve the enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same vicinity or district; and
- 3.e. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which property is located; and
- 4.d. That the granting of such variance will not adversely affect the realization of the comprehensive plan.

E. G. Procedures. Application and Fee.

1. A request for a variance may be initiated by a property owner or the property owner's authorized agent by filing an application with the responsible official. The application shall be accompanied by a site plan

prepared in accordance with Section 40.510.050, and other drawings or material essential to an understanding of the proposed use and its relationship to the surrounding properties. A fee shall be paid to the county at the time of filing the application in accordance with Chapter 6.110A.

2. 4. Relationship of Administrative Variance to Associated Applications.

- a. If an application for an administrative variance is associated with another application(s) subject to this title, or if it is reasonably likely and foreseeable that it will be associated with another application(s) subject to this title, then the application for the administrative variance shall be combined with the associated application(s) for processing and shall be subject to the same procedure type as the highest number procedure type application(s) with which it is combined.
- b. If an administrative variance is approved, and, subsequently, an application(s) subject to an equal or higher number procedure type is filed, the decision approving the administrative variance may be altered for good cause by the decision on the merits of subsequent application(s).
- c. If an administrative variance is proposed as a post-decision action, then it shall be subject to the procedure type required in Section 40.520.060.

*(Amended: Ord. 2006-05-01)*

## **Attachment 2**

### **40.220.010 SINGLE-FAMILY RESIDENTIAL DISTRICTS (R1-20, R1-10, R1-7.5, R1-6, and R1-5)**

#### **A. Purpose.**

1. The R1-20, R1-10 and R1-7.5 districts are intended to:
  - a. Recognize, maintain and protect established low-density residential areas.
  - b. Establish higher densities where a full range of community services and facilities are present or will be present at the time of development.
  - c. Provide for additional related uses such as schools, parks and utility uses necessary to serve immediate residential areas.

2. The R1-6 and R1-5 districts are intended to provide for higher single and duplex densities where a full range of community services and facilities are present or will be present at the time of development.

C. Development Standards.

4. ~~Where permitted, infill development shall be subject to the infill standards in Section 40.260.110.~~ Where permitted, townhouses shall be subject to the townhouse standards in Section 40.260.230.

9. For parcels of land in urban growth areas adopted prior to December 31, 1994, less than one (1) acre in size, within the R1-5 and R1-6 zoning districts, and that were created prior to October 1, 2002, the following standards shall apply:

- a. Minimum lot area shall be three thousand (3,000) square foot within the R1-5 zone, and four thousand (4,000) square foot within the R1-6 zone for single-family detached units.
- b. Minimum front setbacks shall be eighteen (18) feet to the garage door or carport and ten (10) feet to other buildings.
- c. Minimum rear setbacks shall be ten (10) feet.