



# Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



## NOTICE OF ADOPTED AMENDMENT

10/15/2009

**TO:** Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** City of Astoria Plan Amendment  
DLCD File Number 002-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

**DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL:** Thursday, October 29, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** Rosemary Johnson, City of Astoria  
Gloria Gardiner, DLCD Urban Planning Specialist

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# FORM 2

## DLCD NOTICE OF ADOPTION

This form **must be mailed** to DLCD **within 5 working days** after the final decision per ORS 197.610, OAR Chapter 660 - Division 18

**DEPT OF**

(See second page for submittal requirements)

OCT 08 2009

**LAND CONSERVATION  
AND DEVELOPMENT**

Local File No.: A09-02  
(If no)

Jurisdiction: City of Astoria

number, use none)

Date of Adoption: 10-5-09  
(Must be filled in)

Date Mailed: 10-7-09  
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 7-8-09

- |   |   |
|---|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment        | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment             |
| <input type="checkbox"/> New Land Use Regulation                  | <input type="checkbox"/> Other:                           |

(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Add Section 3.190(E) concerning Nonconforming Structures to allow reconstruction of single-family dwellings on substandard lots which comply with specific standards for reconstruction such as: single-family dwelling only, same square footage as original structure, within height limitation of zone, same number of off-street parking spaces as previous, substantial construction started within two years, compliance with all permitting and design review.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same". If you did not give notice for the proposed amendment, write "N/A". Same

Plan Map Changed from: to:

Zone Map Changed from: to:

Location: City wide Acres Involved:

Specify Density: Previous: New:

Applicable Statewide Planning Goals: Goal 5, Goal 9, Goal 10

Was an Exception Adopted? Yes:  No:

Does Adopted Amendment affect the areas in unincorporated Multnomah County where the Portland Zoning Code applies? Yes  No

DLCD File No.: 001-08 (16746) [15750]

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes:  No:

If no, do the Statewide Planning Goals apply. Yes:  No:

If no, did The Emergency Circumstances Require immediate adoption. Yes:  No:

Affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: Rosemary Johnson, Planner

Area Code + Phone Number: 503-

338-5183

Address: 1095 Duane Street

City: Astoria

Zip Code+4: OR 97103

Email Address: rjohnson@astoria.or.us

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## ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five

working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the ANotice of Adoption is sent to DLCD.

6. In addition to sending the ANotice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to [Larry.French@state.or.us](mailto:Larry.French@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

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revised: 01/01/2000

ORDINANCE NO. 09-04

AN ORDINANCE AMENDING THE ASTORIA DEVELOPMENT CODE SECTION 3.190 CONCERNING NONCONFORMING STRUCTURES

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Astoria Development Code Section 3.190 concerning Nonconforming Structures is amended by the addition Section 3.190(E) to read as follows:

3.190 NONCONFORMING STRUCTURES

"E. Reconstruction of Nonconforming Single-Family Dwelling.

Existing nonconforming single-family dwellings may be rebuilt in any zone if unintentionally destroyed by any means to an extent exceeding 80% of its fair market value as indicated in Section 3.190(D), provided the reconstruction of the dwelling complies with the following standards:

- 1. The dwelling shall be rebuilt on the same location on the lot, or in compliance with the setback standards for the underlying zone. This does not allow any construction beyond the property lines; and
2. The square footage of the replacement structure does not exceed the square footage of the original structure by more than 10%; and
3. The height of the building shall comply with the maximum height for the underlying zone; and
4. If the property is within an area subject to architectural design review standards, the design of the replacement structure shall comply with those architectural standards; and
5. The off-street parking spaces shall not be reduced from the number provided prior to the destruction of the dwelling; and
6. Substantial construction of the dwelling shall begin within two years of the date of destruction; and
7. All other City and Building Codes relative to construction, including but not limited to, geologic concerns, stormwater management, grading, driveways, sidewalks, etc. shall apply."

Section 2. Effective Date. This ordinance and its amendment will be effective 30 days following its adoption and enactment by the City Council.

ADOPTED BY THE COMMON COUNCIL THIS 5TH DAY OF OCTOBER, 2009.

APPROVED BY THE MAYOR THIS 5TH DAY OF OCTOBER, 2009.

Handwritten signature of Mayor over a line, with the word 'Mayor' printed below.

ATTEST:

Handwritten signature of Paul Benoit over a line, with the name 'Paul Benoit, City Manager' printed below.

ROLL CALL ON ADOPTION: Table with columns YEA, NAY, ABSENT and rows for Commissioner LaMear, Roscoe, Henningsgaard, Warr, and Mayor Van Dusen.

BEFORE THE CITY COUNCIL  
OF THE CITY OF ASTORIA

IN THE MATTER OF AN AMENDMENT REQUEST )  
)  
FOR THE FOLLOWING: AMENDMENT TO THE )  
DEVELOPMENT CODE CONCERNING )  
NONCONFORMING STRUCTURES )  
)  
APPLICANT: COMMUNITY DEVELOPMENT DIRECTOR, )  
1095 DUANE STREET, ASTORIA, OREGON 97103 )

ORDER NO. A09-02

The above named applicant filed a Request to amend the text of the Astoria Development Code by adding Section 3.190(E) "Reconstruction of Nonconforming Single-Family Dwelling" within the City limits of Astoria, Oregon.

A public hearing on the above entitled matter was held before the Planning Commission on August 25, 2009; and the Astoria Planning Commission closed the public hearing at the August 25, 2009 meeting and recommended that the City Council approve the request.

A public hearing on the above entitled matter was held before the Astoria City Council and the public hearing was closed at the September 21, 2009 meeting; and the Astoria City Council rendered a decision at the October 5, 2009 meeting.

The City Council found the proposed amendment to be necessary and orders that this application for an Amendment (A09-02) is approved and adopts the findings and conclusions of law attached hereto.

The effective date of this approval is 30 days following the signing of this order, subject to any attached conditions. *A copy of the application, all documents and evidence relied upon by the applicant, the staff report, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.*

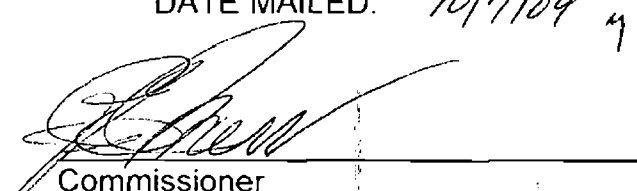
This decision may be appealed to the Land Use Board of Appeals (LUBA) by the applicant, party to the hearing, or a party who responded in writing by filing a Notice of Intent to Appeal with LUBA within 21 days after the land use decision becomes final as described by OAR 661-010-0010(3).

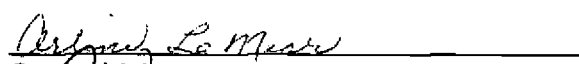
DATE SIGNED: October 5, 2009

DATE MAILED: 10/7/09

ASTORIA CITY COUNCIL

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner


\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

STAFF REPORT AND FINDINGS OF FACT

August 20, 2009

TO: PLANNING COMMISSION

FROM: ROSEMARY JOHNSON, PLANNER 

SUBJECT: AMENDMENT (A09-02) TO THE DEVELOPMENT CODE CONCERNING  
NON-CONFORMING LOTS AND SINGLE-FAMILY DWELLINGS

I. BACKGROUND SUMMARY

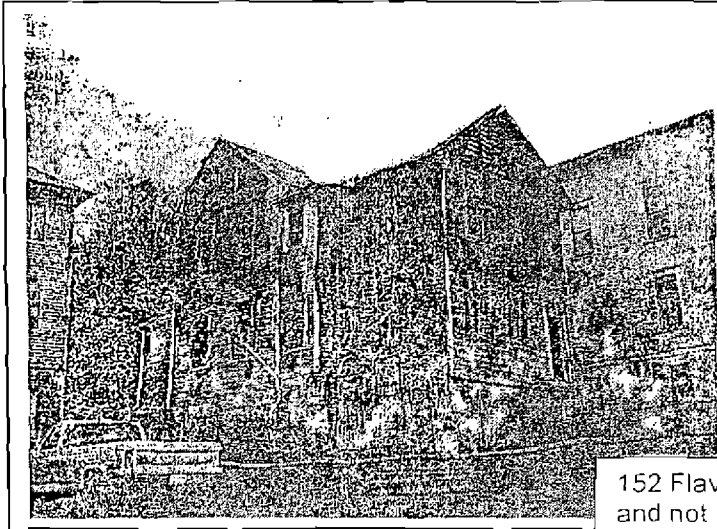
- A. Applicant: Brett Estes  
Community Development Director  
City of Astoria  
1095 Duane  
Astoria OR 97103
- B. Request: Amend the Development Code by adding Section 3.190(E) to allow reconstruction of single-family dwellings on substandard lots which comply with specific standards for reconstruction in all zones
- C. Location: City wide
- D. Zone: All Zones

II. BACKGROUND

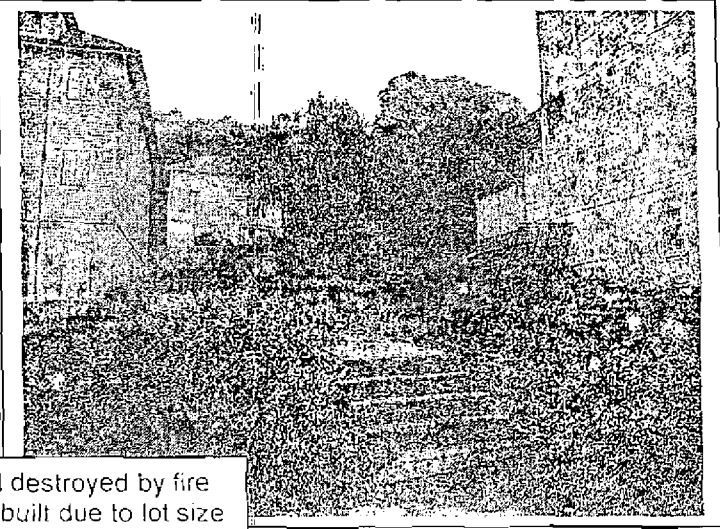
Over the years, there have been several single-family residential structures that were destroyed by various means that could not be reconstructed based on the current Codes relative to lot size, setbacks, lot coverage, and off-street parking requirements. Some single-family dwellings are also currently located in areas that are not zoned for that use. They pre-existed the zoning and have been allowed to continue in these zones as non-conforming uses but cannot be rebuilt should they be destroyed. This creates a problem for potential home owners as it is difficult to get financing or insurance on buildings that cannot be reconstructed. This has also been an issue with current home owners who cannot refinance their homes. Staff has spoken to numerous property owners and realtors about this issue over the years.

The current Development Code Section 3.190.D states that *"If a nonconforming structure or nonconforming portion of a structure is destroyed by any means to an extent amounting to 80% of its fair market value as indicated by the records of the County Assessor, it shall not be reconstructed except to conformity with the provisions of this Code."* The Code allows construction of a single-family dwelling as indicated in

Development Code Section 3.160 to 3.200, providing compliance with all current zoning regulations unless a variance has been obtained. Some of the regulations that would apply include, but are not limited to, required yard setbacks, maximum building height, and off-street parking which would be required in accordance with the Development Code. In addition, if the structure is located in a zone that does not allow dwellings, it cannot be reconstructed as a dwelling.



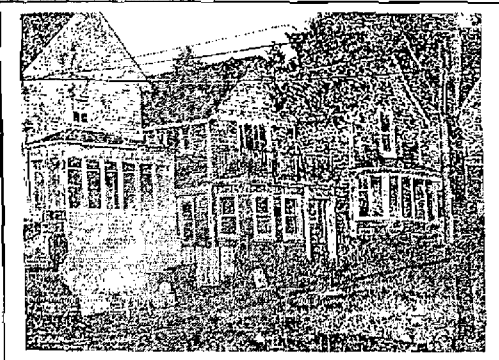
152 Flavel destroyed by fire and not rebuilt due to lot size



319 W Marine - existing SFD in commercial zone could not be rebuilt if destroyed due to commercial zoning



122 2nd Street - remodeled on substandard lot retaining the historic streetscape. If destroyed, it could not be rebuilt due to lot size.



Community Development staff, assisted by CREST researched how other cities handle this issue and a memo was presented to the APC at a previous work session. With the financing/insurance problem, the need for infill development in Astoria, and the results of the survey of other cities, a Code revision to allow reconstruction of destroyed single-family dwellings on substandard lots and reconstruction in non-

residential zones is being considered. The APC recommendation will be forwarded to the City Council for consideration at their September 21, 2009 meeting.

### III. PUBLIC REVIEW AND COMMENT

#### A. Planning Commission

A public notice was mailed to Neighborhood Associations on July 31, 2009. In accordance with Section 9.020, a notice of public hearing was published in the Daily Astorian on August 18, 2009. The proposed amendments are legislative as they apply City-wide. Any comments received will be made available at the Planning Commission meeting.

#### B. City Council

In accordance with Section 9.020, a notice of public hearing will be published in the Daily Astorian on September 14, 2009. Any comments received will be made available at the City Council meeting.

### IV. FINDINGS OF FACT

- A. Development Code Section 10.020(A) states that *"an amendment to the text of the Development Code or the Comprehensive Plan may be initiated by the City Council, Planning Commission, the Community Development Director, or the owner or owners of the property for which the change is proposed."*

Finding: The proposed amendment to the Development Code is being initiated by the Community Development Director.

- B. Section 10.050(A) states that *"The following amendment actions are considered legislative under this Code:*

1. *An amendment to the text of the Development Code or Comprehensive Plan.*
2. *A zone change action that the Community Development Director has designated as legislative after finding the matter at issue involves such a substantial area and number of property owners or such broad public policy changes that processing the request as a quasi-judicial action would be inappropriate."*

Finding: The proposed amendment is to amend the text of the Non-Conforming Structures section in the Astoria Development Code. The Code is applicable City-wide. Processing as a quasi-judicial action would be inappropriate.

C. Section 10.070(A)(1) requires that *"The amendment is consistent with the Comprehensive Plan."*

1. CP.005(5) concerning General Plan Philosophy and Policy Statement states that local comprehensive plans *"Shall be regularly reviewed, and, if necessary, revised to keep them consistent with the changing needs and desires of the public they are designed to serve."*

Finding: While the Comprehensive Plan and Development Code establish specific uses allowed in each zone and the maximum density allowed in those zones, the City was built over the last 200 year well before codes were established. That development included construction of single-family dwellings in areas that are now zoned commercial and on lots that are substandard by the codes.

The City has conducted a Buildable Lands Inventory, which was completed by CREST, dated June 2003, and determined that the amount of vacant lands is decreasing. The following are the results of that inventory relative to residential property:

	<u>Total Acreage</u>	<u>Vacant Acreage</u>	<u>% Vacant</u>
Residential zones	1,367.0	348.5	25.5%

Portions of the vacant land are not buildable and parcels for the construction of dwellings are becoming more limited. In 2008, the City initiated an on-going Buildable Lands Inventory which indicated in draft documents that while there was enough buildable land for a 20 year period, that most of it was concentrated in two large parcels in single ownerships. The City is in the process of the second phase of this Buildable Lands Inventory to determine exactly how much of the vacant land in the inventory is actually buildable.

With the growing need for buildable land, the costs associated with land purchase and development, and the current more cautious trend of lenders and insurance companies, the ability to reconstruct a destroyed single-family dwelling on a substandard lot or in a non-residential zone is critical. Reuse of these smaller lots allows for more affordable housing due to the reduction in land costs. The higher density created by the development of smaller lots is existing in these situations and the reconstruction would not change the pre-existing non-conformity. Therefore, with the standards proposed for reconstruction, the code amendment would help satisfy the needs and desires of the public.

2. CP.015(1) concerning General Land and Water Use Goals states that *"It is the primary goal of the Comprehensive Plan to maintain Astoria's existing character by encouraging a compact urban form, by*

*strengthening the downtown core and waterfront areas, and by protecting the residential and historic character of the City's neighborhoods. It is the intent of the plan to promote Astoria as the commercial, industrial, tourist, and cultural center of the area."*

CP. 015(2) concerning General Land and Water Use Goals states that *"It is a goal of the plan to encourage the development of public and private lands within the city limits, particularly areas that are presently serviced with sewer and water, prior to the extension of public facilities to areas outside the City."*

CP.020(1) concerning Community Growth - Plan Strategy states that *"Direction of future residential growth will be toward the infilling of areas such as Vista Park, Sonora Park South Slope, the Gateway Overlay Area, and Williamsport where services presently exist or are planned, prior to the development of new areas."*

Finding: The proposed amendment would allow for infill reconstruction of existing single-family dwellings should they be destroyed. This would utilize the existing sites and not create a need for a new building site that would reduce the stock of buildable land within the City limits. In many cases of the existing dwellings in non-residential zones, the lots are small and may not be conducive to non-residential development unless included as part of a larger scale redevelopment. This amendment would allow people to refinance their homes, obtain financing for home purchases, and obtain insurance on their homes.

3. CP.220(5) concerning Housing Policies states that *"Low and moderate income housing should be encouraged throughout the City, and should not be concentrated in one area."*

Finding: As noted above, the cost to purchase and develop land for residential use is high. To allow reconstruction of a destroyed single-family dwelling on a pre-existing substandard lot, would help reduce the costs associated with the construction and therefore help keep the housing costs lower allowing them to possibly be used for low and moderate income housing.

Finding: The request is consistent with the Comprehensive Plan as a result of the findings stated above.

- C. Section 10.070(A)(2) requires that *"The amendment will not adversely affect the ability of the City to satisfy land and water use needs."*

Finding: The proposed amendment would allow reconstruction of a single-family dwelling that has been destroyed. The pre-existing dwelling was

provided with City services which would not change. The reconstruction would allow infill development rather than use of other buildable land which is in limited supply within the City limits. The proposed amendment will not adversely affect the ability of the City to satisfy land and water use needs.

V. CONCLUSION AND RECOMMENDATION

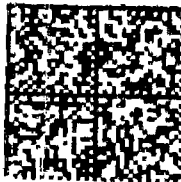
The request is consistent with the Comprehensive Plan and Development Code. Staff recommends that the Planning Commission recommend approval of the proposed amendment to the City Council for adoption.



CITY OF ASTORIA  
1095 Duane Street • Astoria, OR 97103

Plan Amendment Specialist  
DLCD  
635 Capitol St NE 150  
Salem OR 97301-2540

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