

**INTERPRETATION OF THE DIRECTOR
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE**

In the Matter of)	
the Use of the)	Interpretation
Property at)	No. 07-008
1834 – S Lane Street)	DPD Project No. 3007656

Background

This interpretation was requested by attorney James Klauser on behalf of his client Michael Roland. Mr. Roland once owned both of the contiguous platted lots comprising the subject property. He now owns one platted lot, presently undeveloped with a structure, and has conveyed ownership of the contiguous lot, developed with a single family residence, to new owners. The lot owned by Mr. Roland was developed with a deck addition to the house on the contiguous lot. The deck was constructed in 1966 and demolished sometime after 2005. Each platted lot, individually, has an area less than the required minimum lot size for the applicable single family zone, although the two lots together exceed the minimum lot area requirement. At issue is whether the property may now qualify as two separate legal building sites under one or more of the exceptions to the minimum lot area requirement, as provided in the Land Use Code. Each platted lot presently has its own King County Assessor's Office property tax parcel number.

Findings of Fact

1. The subject property is addressed in Department of Planning and Development (DPD) records as 1834 South Lane Street. It is legally described as Lots 21 and 22, Block 34, Hill Tract Addition Supplemental. The Hill Tract Addition Supplemental plat was filed in 1904. A copy of a Geographic Information Service (GIS) land use map, showing the configuration of the property, is attached to this interpretation as Appendix A.
2. The applicable zoning for Lots 21 and 22 is SF-5000: Single-Family Residential, with a minimum lot size of 5000 square feet. Lots 21 and 22 are individually about 30 feet wide along their frontage on South Lane Street. They are each about 112 feet deep, and thus Lots 21 and 22 each have a total area of about 3,360 square feet, according to King County Assessor's records and as dimensioned on the GIS map.

3. According to microfilm copies of abstracts of title maintained by DPD, Lot 21 was owned by Frank Atwood prior to March of 1932. Lot 22 was separately owned by J. C. Barker prior to 1932.¹ The two lots remained in separate ownership by various owners until August 1950. The Treasurer of King County transferred Lot 21 to David Mar by tax deed recorded on August 11, 1950. Warren Dong transferred Lot 22 to Elsie Mar by warranty deed recorded on August 22, 1950. Elsie Mar's relationship to David Mar is not specifically described in the abstract record, but the next entry for Lots 21 and 22 shows them held together in the Estate of David Mar, with Elsie Mar as administratrix, in 1971. Lots 21 and 22 together were transferred by the Estate of David Mar to Elsie Mar by decree of distribution recorded December 30, 1971. No further entries appear for Lots 21 and 22 in the abstract records. The abstracts of title were updated by staff of the former Seattle Engineering Department until 1991, when the updating was discontinued.
4. According to records maintained in the DPD microfilm library, permission was granted to construct the house addressed as 1834 South Lane Street under Seattle Building Permit No. 220439, issued February 9, 1923. Permit No. 220439 describes the building site as Lot 22 only. Permission was then granted to construct a garage "to be used for 1830 and 1834" under Permit No. 230683, issued February 2, 1924. Permit 230683 describes the building site of the garage as Lots 22 and 23, together.² Permission was granted to construct a garage in the basement of the residence addressed as 1834 South Lane Street, and to extend a porch six feet under Permit No. 273992, issued January 31, 1928. No legal description is provided on the face of Permit 273992. Permission was granted to construct an addition to the 1834 South Lane Street house under Permit No. 361609, issued December 29, 1948. Again, no legal description is provided on the face of the permit, but the lot dimension is given as 30 feet by 112 feet.
5. Permission was granted to construct a deck addition and install seven windows and a sliding door in the existing 1834 South Lane Street residence under Permit No. 520606, issued December 16, 1966. Permit 520606 describes the building site as Lots 21 and 22, together. The permit further notes on its face that the proposed construction is an "Add," with a dimension of 10 feet by 20 feet and total area of 200 square feet. The permit also shows that D. S. Mar is the owner and the permit is signed "D. S. Mar." No more recent building permits for either Lot 21 or Lot 22 have been discovered in DPD records. A copy of Permit No. 520606 is attached to this interpretation as Appendix A.

¹ The abstracts of title were maintained by the former Seattle Engineering Department until 1991. The abstract books, although not updated after 1991, were then stored at DPD until 2007, when they were warehoused and replaced with microfilm copies of the books. The microfilm was reviewed in preparing this interpretation.

² Final approval of Permit 230683 was given on February 19, 1924. There is no information to suggest, however, that a garage for joint use by residents of the houses addressed as 1830 and 1834 South Lane Street currently exists. No demolition permit was discovered in DPD records either.

6. In December 2005, Mr. Roland wrote to Andrew McKim, Land Use Planner Supervisor at DPD, inquiring whether Lot 21 qualified as a separate legal building site. He received a reply from Mr. McKim dated December 20, 2005, stating in part as follows:

“Historic aerial photos of the site show what appears to be an attached deck, approximately 10’ by 20’, surrounded by a railing or wall on the east side of the house, extending over the platted lot line [between Lots 22 and 21] and onto Lot 21. We do not have plans on file, but must assume that the deck was more than 18 inches above grade. (A lower deck typically would not have required either a railing or wall around it, or a permit.) A deck more than 18 inches above grade, extending from a principal structure, is considered an attached portion of that principal structure. Based on these assumptions, we would conclude that a portion of the house at 1834 South Lane Street, an attached deck more than 18 inches above grade, straddled the platted lot line, and thus that Lot 21 cannot qualify under the lot area exception in Section 23.44.010 B4.”
7. In addition to his letter of December 2005, Mr. Roland sent a copy of a survey of Lots 21 and 22 prepared in November 2005 by Brent L. Eble, a Registered Professional Land Surveyor. The survey shows that the house addressed as 1834 South Lane Street is located entirely on Lot 22. In his response letter of December 20, 2005, Mr. McKim analyzed the information in the survey as follows:

“You have provided a survey documenting that there currently is no deck straddling the lot line, and that the wall of the house is 2.75 feet to 2.81 feet from the lot line. However, based on three different aerial photos, it is apparent that the deck was removed after 1987. Absent documentation that the former deck was within 18 inches of grade, we must conclude that a portion of the principal structure straddled the platted lot line after 1987, and thus that Lot 21 does not qualify as a separate legal building site, absent a variance from the lot area requirement.”
8. On January 12, 2006, Mr. Roland wrote a second letter to Mr. McKim, asking Mr. McKim to reconsider his opinion letter of December 20, 2005. Mr. Roland acknowledged that there had been a deck straddling the lot line between Lots 21 and 22 and indicated that the deck “came down during the first week” after he purchased the residence at 1834 South Lane Street. Mr. Roland further asserted in his letter that the deck was “rotten in places and was very close to the ground – (approximately 12 inches).” He enclosed a separate letter from Eddie Spillane, who states that he was asked by Mr. Roland to remove the deck. Mr. Spillane further states in his letter that “the deck was close to the ground, about a foot and

seemed to hold lots of moisture.” Mr. McKim responded with a second letter dated March 15, 2006, which says in part:

“Although the aerial photographs in our GIS system are fuzzy, we have subsequently obtained an aerial photograph that clearly shows the deck a flight of five steps up from the grade to the east, and apparently at the same level as the sliding door and the main floor of the house. I have enclosed a copy of this picture. It may be viewed on-line at <http://local.live.com/>. This supports our earlier conclusion that the deck was more than 18 inches above-grade, and thus is an attached portion of the principal structure extending onto Lot 21. On that basis, Lot 21 was used to meet development standards for an addition to the house, and under current code language, cannot qualify for the lot area exception as a result of demolition of the deck.”

A copy of the aerial photo, obtained from the local.live.com internet website, is attached to this interpretation as Appendix B.

Following the decision by Mr. McKim to not reconsider the conclusion of the first letter, the request for this interpretation followed. On page 2 of the request, Mr. Klauser writes in part as follows:

“1. In your letter at Exhibit (“B”), you frame the issue as ‘whether Lot 21, Block 34, Hill Tract Supplemental Addition, can be developed as a separate legal building site, according to the standards of Seattle’s Land Use Code.’ We believe the question is more basic than that. The key issues are:

A. Can the City of Seattle prohibit development on a legal building lot platted almost a century ago? and

B. Can the City of Seattle prohibit development on any building lot that is under independent ownership and whose owner is required by government to pay [and who duly pays] his/her property taxes?”

9. Seattle Municipal Code (SMC) Section 23.44.010 B provides four exceptions to the general rule of Section 23.44.010 A that a single-family-zoned lot must meet the minimum lot area requirement of its zone. The party requesting this interpretation does not contend that any of the first three exceptions apply to Lots 13 and 14, and therefore they are not discussed in this interpretation. Section 23.44.010 B provides in part as follows:

“B. Exceptions to Minimum Lot Area. The following exceptions to minimum lot area are subject to the limits of subsection B5. A lot which does

not satisfy the minimum lot area requirements of its zone may be developed or redeveloped as a separate building site according to the following:

1. In order to recognize separate building sites established in the public record under previous codes, to allow the consolidation of very small lots into larger lots, to adjust lot lines to permit more orderly development patterns, and to create additional buildable sites out of oversized lots which are compatible with surrounding lots, the following exceptions are permitted if the Director determines that:

a. The lot was established as a separate building site in the public records of the county or City prior to July 24, 1957 by deed, contract of sale, mortgage, property tax segregation, platting or building permit and has an area of at least seventy-five (75) percent of the minimum required lot area and at least eighty (80) percent of the mean lot area of the lots on the same block face and within the same zone in which the lot is located (Exhibit 23.44.010 A), or

b. The lot is or was created by subdivision, short subdivision or lot boundary adjustment, and is at least seventy-five (75) percent of the minimum required lot area and is at least eighty (80) percent of the mean lot area of the lots on the same block face within which the lot will be located and within the same zone (Exhibit 23.44.010 A); or

2. The lot area deficit is the result of a dedication or sale of a portion of the lot to the City or state for street or highway purposes and payment was received for only that portion of the lot, and the lot area remaining is at least fifty (50) percent of the minimum required; or

3. The lot would qualify as a legal building site under this section but for a reduction in lot area due to court-ordered adverse possession, and the amount by which the lot was so reduced was less than ten (10) percent of the former area of the lot, provided, that this exception shall not apply to lots reduced to less than fifty (50) percent of the minimum area required under subsection A of Section 23.44.010; or

4. The lot was established as a separate building site in the public records of the county or City prior to July 24, 1957 by deed, contract of sale, mortgage, property tax segregation, platting or building permit, and falls into one (1) of the following categories; provided that, lots on totally submerged lands shall not qualify for this exception:

b. The lot is or has been held in common ownership with a contiguous lot on or after the effective date of the ordinance from which this subsection derives [Ord. 113216, effective January 18, 1987] and is or has been developed

with a principal structure which is wholly within the lot boundaries; provided, that no portion of any contiguous lot is required to meet the least restrictive of lot area, lot coverage, setback or yard requirements which were in effect at the time of the original construction of the principal structure, at the time of its subsequent additions, or which are in effect at the time of redevelopment of the lot (Exhibit 23.44.010 B), or

c. The lot is or has been held in common ownership with a contiguous lot on or after the effective date of the ordinance from which this subsection derives and is not developed with all or part of a principal structure; provided, that no portion of the lot is required to meet the least restrictive of lot area, lot coverage, setback or yard requirements which were in effect for a principal structure on the contiguous lot at the time of the construction of the principal structure, at the time of its subsequent additions, or which are in effect at the time of the development of the lot (Exhibit 23.44.010 B); and provided further, that if any portion of the lot to be developed has been used to meet the parking requirement in effect for a principal structure on a contiguous lot, such parking requirement can and shall be legally met on the contiguous lot.

For purposes of this subsection B4, removal of all or any part of a principal structure or destruction by fire or act of nature on or after the effective date of the ordinance from which this subsection derives shall not qualify the lot for the minimum lot area exception (Exhibit 23.44.010 C);”³

10. SMC Section 23.44.010 C establishes the maximum lot coverage for structures in Single-Family zones at 35%. Section 23.44.010 D provides a number of exceptions to lot coverage limits. Section 23.44.010 D 2 provides in part as follows:

“2. Special Structures and Portions of Structures. The following structures and portions of structures shall not be counted in lot coverage calculations:

. . . .

c. Decks. Decks or parts of a deck which are eighteen (18) inches or less above the existing grade;”

SMC Section 23.44.014 provides regulations for yards in Single-Family zones, including a number of exceptions from standard yard requirements in Section 23.44.014 D. Subsection 23.44.014 D 11 provides as follows:

³ The last paragraph of subsection 23.44.010 B 4 was added by Seattle City Ordinance No. 113216 and became effective on January 18, 1987.

“11. Decks in Yards. Decks no greater than eighteen (18) inches above existing or finished grade, whichever is lower, may extend into required yards.

11. Seattle City Ordinance No. 113216 became effective January 18, 1987. The Introduction to Ordinance No. 113216 provides as follows:

“AN ORDINANCE relating to land use and zoning; amending Section 23.44.010 of the Seattle Municipal Code to limit the substandard lot area exception to exclude lots made vacant by demolition of existing housing.

WHEREAS, prior to 1953 the City of Seattle did not regulate the size of building lots; and

WHEREAS, in 1953 the City adopted Ordinance 82114 which established a minimum lot size of 5,000 square feet for the First Residence zones, which were forerunners of the Single Family zones established in 1957 and 1982; and

WHEREAS, prior to 1982 the Zoning Ordinance (86300) permitted only one previously platted and vacant lot to be developed; and

WHEREAS, the 1982 Land Use Code continued the same three minimum lot sizes as contained in the 1957 Zoning Ordinance and liberalized the substandard lot exceptions to encourage single family housing infill development on vacant land in single family zones even where contiguous lots in common ownership were also vacant; and

WHEREAS, the code provision in the 1982 ordinance for substandard lot exceptions has been misinterpreted to permit demolition of single family homes in order to create and develop two or more substandard lots; and

WHEREAS, it is still the intention of the City Council to encourage infill single family housing development on vacant land in single family zones, including development of vacant substandard lots, while maintaining the physical character of single family residential zones and encouraging rehabilitation of existing housing as provided in the adopted Single Family Policies SMC 23.16.002. . . .”

12. In February 1987, developers filed a complaint for declaratory relief, civil rights violation, injunction and damages, claiming that Ordinance 113216 was unconstitutional because it curtailed or eliminated the right of property owners to develop contiguously owned lots where the land area falls below a prescribed minimum. On review of a Superior Court decision dismissing the complaint on

a motion for summary judgment by the City of Seattle, the Washington State Court of Appeals stated, in part, as follows:

“Appellants contend that they should have a vested right to develop previously platted lots in accordance with minimum area requirements in effect at the time of platting. We disagree.

In Washington, an approved plat is immune from zoning changes for a period of 5 years from the date of filing the final plat. RCW 58.17.170. However, after the 5-year immunity period has run, the owners of contiguous lots could be required to comply with new zoning regulations.

[A]ppellants’ argument assumes that they have vested rights. The general rule in this state is that ‘a landowner obtains a vested right to develop land when he or she makes a timely and complete building permit application that complies with applicable zoning and building ordinances in effect on the date of the application.’ . . . In the present case, there is no evidence that appellants made an application for a building permit. Therefore appellants have not obtained vested rights.”

TEKOA Construction v. Seattle, 56 Wn. App. 28, 781 P.2d 1324 (1989).

13. Section 23.88.020 A provides as follows:

“A. Interpretations Generally. A decision by the Director as to the meaning, application or intent of any development regulation in Title 23, Land Use Code, or in Chapter 25.09, Regulations for Environmentally Critical Areas, as it relates to a specific property is known as an "interpretation." An interpretation may be requested in writing by any person or may be initiated by the Director. Procedural provisions and statements of policy shall not be subject to the interpretation process. A decision by the Director that an issue is not subject to an interpretation request shall be final and not subject to administrative appeal. A request for an interpretation and a subsequent appeal to the Hearing Examiner, when available, are administrative remedies that must be exhausted before judicial review of a decision subject to interpretation may be sought.”

Conclusions

1. In order to qualify as a legal building site under the Land Use Code, a lot must meet the minimum lot area requirement for its zone or else qualify for one of the codified exceptions to that requirement set forth in SMC Section 23.44.010 B, or

a variance from the minimum lot area requirement must be granted. If a lot is vacant, no portion of that lot may have been used to meet development standards for a structure on an adjacent lot. Finally, the lot must have street access meeting Land Use Code standards. The request for interpretation offers few specific arguments as to how Section 23.44.010 B should be applied to Lots 21 and 22. Instead, the request challenges the legality of applying Section 23.44.010 B to lots platted prior to its effective date, based on various constitutional and possibly state or federal legal grounds. Constitutional arguments, as well as arguments under state and federal law, are not within the jurisdiction of DPD or the City's Office of Hearing Examiner to review in a Code interpretation since, under Section 23.88.020 A, interpretations are limited to the meaning, application, or intent of development regulations.⁴ Therefore, this interpretation is limited to a discussion of how the five minimum lot area exceptions in Section 23.44.010 B apply to Lots 21 and 22.⁵ The application of each exception will be discussed.

2. The first exception, often known as the "Seventy-five Eighty Rule" is found at Section 23.44.010 B1. To qualify for this exception, a property must have an area at least 75 percent of the zone's minimum requirement, and at least 80 percent of the mean area of the other lots on the same block face. To qualify for the first part of this test, a lot in an SF 5000 zone would need an area of at least 3750 square feet. Since Lots 21 and 22 each have only about 3,360 square feet of area (Finding of Fact No. 2), they do not qualify for this exception.
3. Section 23.44.010 B2 applies to lots that were reduced in area as a result of a street dedication. The two lots in question are full platted lots, so there is no indication that the second exception applies.
4. Section 23.44.010 B3 applies to lots that would otherwise qualify for separate development, but were reduced as a result of an adverse possession claim. The two lots in question are full platted lots, so there is no indication that the third exception applies.
5. Section 23.44.010 B6 allows separate development of undersized lots approved as a part of a cluster development. The two lots in questions are full platted lots, created as part of a full subdivision in 1904 and predating the "clustering" provisions cited in this section. There is no indication that this exception applies.

⁴ Washington courts have previously rejected constitutional challenges to SMC Section 23.44.010 and Ordinance 113216, prohibiting demolition of housing to make undersized lots available for development. See TEKOA Construction v. Seattle, summarized in Finding of Fact No. 12.

⁵ There are six subsections in 23.44.010 B, which is titled "Exceptions to Minimum Lot Area." Subsection 23.44.010 B 5, however, is not strictly an exception to minimum lot area but rather a limitation on separate development of certain "substandard lots" in environmentally critical areas as set forth in SMC Chapter 25.09, Regulations for Environmentally Critical Areas. Lots 21 and 22 are not within an environmentally critical area, so subsection 23.44.010 B 5 is not at issue in this interpretation.

6. The remaining exception is the fourth exception, in SMC Section 23.44.010 B 4. It applies to historic lots of record prior to 1957, when the minimum lot area exceptions were first codified. Historic lots include parcels that are full platted lots, where the plat was recorded prior to 1957. However, the lot area exception has some limitations: If a lot has been held in common ownership with an adjacent lot, and a principal structure straddles the lot line and extends onto both lots, or the lot in question has been used to meet a development standard such as a yard requirement for a house on the adjacent lot, then the lots cannot qualify for separate development. Further, a lot that would not otherwise qualify for the exception cannot be approved as a separate site under the exception through removal of all or part of a principal structure after 1987. The DPD permit record shows that the house addressed as 1834 South Lane Street was built on Lot 22 only (Finding of Fact No. 4). However, the permit record further shows that a deck was built onto the house in 1966, and the permit for that deck, No. 520606, describes the building site as Lots 21 and 22 together. It also appears clear from the abstracts of title in City records that the two lots were under common ownership in 1966 at the time the deck was built and for many years thereafter. (See Finding of Fact No. 3.) One issue requiring further analysis, therefore, is whether the deck is a part of the principal structure and whether its construction consolidated Lots 21 and 22 into a single building site by development. A second issue is whether the recent removal of the deck qualifies the two lots as separate building sites once more. These issues are both interpretive, in that they require conclusions about the application of Section 23.44.010 B 4, and factual, in that they require sufficient information to reasonably determine that the deck in question was a structure more than 18 inches above grade and attached to the existing residence on Lot 22.
7. The most reasonable interpretation of the language on the face of Permit No. 520606 is that the deck was approved as a part of the principal structure and that its construction consolidated Lots 21 and 22 into one building site by development. The permit describes the property as Lots 21 and 22 and specifically says that “Lot is 60’ by 112’”. Since the dimensions of Lots 21 and 22 separately are 30 feet by 112 feet, the permit describes one “lot” as the two platted lots together. The permit also specifically says “construct deck addition” and notes above this language an “Add” of “10’ x 20’” with “total area” of 200 square feet. A value of \$600.00 is noted. (See Findings of Fact Nos. 2 and 5.) The permit is also signed by D. S. Mar as the owner, who is presumably the David Mar listed in the abstracts of title as the owner of Lots 21 and 22 (Finding of Fact No. 3). Since the only other authorized construction under the permit was to install some windows and a sliding door, it is reasonable to conclude that a structural addition to the house in the form of a deck was built. If no structure had been built, the permit would not have been needed.

8. Support for the position that the deck was a structural addition to the subject house is found not just on the face of Permit No. 520606 but also in aerial photographs of the site, particularly the photo described in Finding of Fact No. 8, from the internet website local.live.com. While the exact height of the deck structure cannot be determined from the photo, there clearly appear to be five steps as shown in the local.live.com aerial photo from the ground to the deck floor. It is reasonable to conclude that the height of five steps exceeds the minimum height of 18 inches which the Land Use Code establishes for regulation of decks as structures subject to development standards. Further, the aerial photo suggests that the deck is accessed from a sliding door (presumably the sliding door authorized as part of Permit No. 520606) and thus the deck is presumably at or close to the level of the main floor of the house, which is more than 18 inches above grade. The presence of steps leading to the back door suggests that the main floor level of the house is several feet above grade. While there is a statement in the record from the person hired to remove the deck, Eddie Spillane, that the deck was built “close to the ground – approximately 12 inches,” (see also Finding of Fact No. 8) Mr. Spillane’s statement must be weighed against the clear aerial photo. There is no reason to dispute the credibility of the testimony, but there is equally no basis to conclude that Mr. Spillane spent much time measuring the deck height. He was simply hired to demolish it and he did so, and only later supplied his recollection of the incident to the property owner.
9. Thus, an elevated deck was built over the lot line between Lots 21 and 22, and the deck must be considered attached to the existing house based on the building permit history. The second issue, then, is whether removal of the deck would qualify Lots 21 and 22 as separate legal building sites once again under SMC Section 23.44.010 B 4. DCLU has consistently concluded, for purposes of applying Section 23.44.010 B 4, that decks more than eighteen inches above grade at any point where they are joined to a single family residence, are part of the principal residential structure. As such, their removal after construction, particularly when built under permit, as is the case with the subject property, will not qualify an undersized lot for the minimum lot area exception. The rationale for concluding that elevated decks are part of the principal structure stems from their treatment under Sections 23.44.010 D and 23.44.014 D 11. (See Finding of Fact No. 15.) Section 23.44.010 D requires decks over eighteen inches above grade to be counted in lot coverage limits for structures, while Section 23.44.014 D 11 prohibits decks over eighteen inches above grade in required yards. Elevated decks are therefore parts of principal structures and, when constructed over a lot line, will consolidate undersized lots by development. If two undersized lots have been consolidated in this manner, they cannot again qualify for the lot area exception at Section 23.44.010 B 4 as a result of removal of the encroaching deck.

DECISION

Lots 21 and 22, Block 34, Hill Tract Addition, do not individually meet the minimum lot area requirements of the SF-5000 zone and were consolidated into one existing legal building site by construction of a deck addition over the common lot line. Removal of the deck encroachment occurred after January 18, 1987, and thus the undersized lots do not qualify for the historic lot area exception of Section 23.44.010 B 4. The lots also do not qualify for any other minimum lot area exception in Section 23.44.010 B and thus do not qualify for development as separate building sites.

Entered this 1st day of November, 2007.

_____(signature on file)_____.

William K. Mills

Senior Land Use Planner, Department of Planning and Development

WKM/07-008