

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

3807 East Jefferson Street

**DPD Interpretation No. 12-002
(DPD Project No. 3013360)**

Background

This interpretation was requested by Dan Duffus of Soleil LLC. At issue is whether the western half of the property at 3807 East Jefferson Street qualifies for development as a separate legal building site according to a lot area exception provided in the Land Use Code. The interpretation request follows up on an opinion letter, issued on March 2, 2012, which concluded that the portion of the property did not qualify for the lot area exception.

Findings of Fact

1. The property addressed 3807 East Jefferson Street is at the southeast corner of East Jefferson Street and Erie Avenue. It is a full platted lot, Lot 7, Block 36, Yesler's Third Addition. It is currently held as a single tax parcel, King County Assessor's Parcel No. 982920-0205. The lot is in an SF 5000 zone: Single Family Residential, subject to a minimum lot area requirement of 5,000 square feet. As platted, the lot is 60' by 110', and the Assessor estimates its area to be 6,600 square feet.
2. There is a house on the property, situated on the eastern half of the lot, away from Erie Avenue. There is also a structure on Lot 8, to the south, also situated on the eastern half of that property. It is currently addressed 418 Erie Avenue.
3. According to abstracts of title formerly maintained by the City, from 1904 until 1914 the west half of Lot 7 was under common ownership with the west half of the north 49 feet of Lot 8, to the south. This property was owned by Baird, then Moss, then Converse. During this time, the east half of Lot 7, the east half of the north 49 feet of Lot 8, and Lot 6 (to the east of Lot 7) were all owned by Anna Remer. Remer acquired the west half of Lot 7 and the west half of the north 49 feet of Lot 8 in 1914, so that she had all of Lots 6 and 7 and the north 49 feet of Lot 8. She conveyed all of this property to Kinnear in 1923, and Kinnear acquired the remainder of Lot 8, as well as Lot 9 to the south, in 1927. Kinnear sold off Lot 6 in 1938, and retained ownership of Lots 7, 8 and 9 until 1972, when Lots 7 and 8 were each sold to separate parties.¹

¹ The owner of the property has pointed to a 1926 deed from Oscar Smith to Kinnear conveying his interest in Lot 8 as evidence that Lot 8 in its entirety was the subject of a separate conveyance prior to the 1927 conveyance to Kinnear, and thus that the west half of Lot 7 was separately held for some period. But the City abstracts show that this was a quitclaim deed, conveying only that portion of Lot 8 that Mr. Smith owned at that time, which according to the abstracts was the south 6 feet of Lot 8.

² The property owner has pointed out that the records for some years used a bracket in some places to suggest that the properties on different lines on the ledger were held in combination, and has suggested that the failure to

4. The houses on the eastern portions of Lots 7 and 8 were built during the period when the west half of Lot 7 and the west half of the north 49 feet of Lot 8 were under common ownership, and under separate ownership from the eastern portion of Lots 7 and 8, where the houses were built. The house on the eastern half of Lot 7, addressed as 3807 East Jefferson Street, was built in 1907 under Permit No. 49668. The legal description provided for the site was the east half of Lots 7 and 8. The house on the eastern portion of Lot 8 was built under Permit No. 64341, issued in 1908. This permit is barely legible, but appears to describe the site as the east half of Lot 8. That house was originally addressed as 3809 East Jefferson, but has since used the address 418 Erie Avenue.
5. DPD has records of three subsequent permits for the house at 3807 East Jefferson Street: Permit No. 144048, issued in 1915 for a concrete basement wall, did not include a legal description of the site. Permit No. 550455, issued in 1973, authorized enclosure of the front porch of the house, and included all of Lot 7 in the legal description of the site. Permit No. 564440, issued in 1976, authorized addition of two uncovered decks, and again described the site as Lot 7. The plans associated with that permit reflected work that was entirely on the east half of Lot 7.
6. Prior to the early 1940s, King County tax records were maintained in a ledger format. When a property consisted of portions of multiple platted lots, the different platted lots or portions of platted lots included in the property were listed on separate ledger lines. Consistently with this practice, the west half of Lot 7, the east half of Lot 7, the west half of the north 49 feet of Lot 8, the east half of the north 49 feet of Lot 8 and the south 6 feet of Lot 8 were each listed on separate ledger lines in the 1905 and 1910 tax records, even though some of these abutting portions of lots were under common ownership at the time. This separate listing, on five ledger lines, appears to have continued after the properties were consolidated, until 1941, when the record for all of Lot 7 appeared on a single line. (That year, three separate lines were still provided for the three portions of Lot 8.) Since the Assessor moved to the current system, which assigned tax parcel numbers to individual parcels and initially maintained records for separate parcels on separate cards, all of Lot 7 has been included in Parcel No. 982920-0205.
7. The minimum lot area requirements for Single Family zones, and the codified exceptions to those requirements, are found at Seattle Municipal Code Section 23.44.010.A and 23.44.010.B. A copy of those subsections is appended to this interpretation and incorporated as a finding of fact. Subsequent to the request for interpretation, Subsection 23.44.010.B was modified by Ordinance No. 123978, which took effect on September 20, 2012. Prior to that ordinance, the introductory paragraph of subsection 23.44.010.B.1.d read: "The lot was established as a separate building site in the public record 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 of the following categories:" [Emphasis added.]
8. There is no evidence that the west half of Lot 7 was ever used to meet parking requirements for the existing house at 3807 East Jefferson. A portion of Lot 7, mostly in the east half, is mapped as an environmentally critical area due to steep slope, and the entire platted lot is mapped as a potential slide area.
9. No evidence has been provided that the lot area of the desired parcel, the west half of Lot 7, was reduced as a result of adverse possession or condemnation for a street. The property is not within a clustered housing planned development, a planned residential development or a development clustered according to allowances for environmentally critical areas.

10. The rules for vesting of a project are codified at Section 23.76.026. For projects that are not subdivisions or short subdivisions, do not entail design review and do not involve decisions that are appealable to the City Hearing Examiner, vesting occurs with the submission of a complete building permit application, and the project is considered under the Land Use Code provisions in effect at that time. No building permit application has been submitted for the western half of Lot 7.

Conclusions

1. Based on the above information, the west half of Lot 7 is a portion of a platted lot that has always been under common ownership with one or more of the abutting properties. It has never, on its own, been separately mortgaged, conveyed by a deed or called out on a building permit. From 1904 to 1914 it was held together with the north 49 feet of the west half of Lot 8, under separate ownership from all other abutting properties. The various portions of Lots 7, 8 and 9 were then consolidated, and Lot 7 in its entirety was later split off.
2. The west half of Lot 7 was on a separate line in the historic tax records, when they were maintained in the ledger format, however that is not a sufficient basis to say that it was historically “established as a separate building site” within the meaning of the former code language: It is apparent that the convention under that recording system was to place portions of different platted lots, no matter how small, on different lines. This was consistent with the headings and columns, which did not allow portions of more than one platted lot to be listed on the same line. Portions of platted lots were separately listed in this manner even in cases where development as separate lots could not possibly have been contemplated based on their size or configuration, or where a single house extended onto portions of multiple lots. For example, the south 6 feet of Lot 8 was on a separate line, but no reasonable person would conclude that this *established* that strip *as a separate building site*, as required to qualify for the lot area exception.²
3. In order for the parcel in question to qualify for the lot area exception in Section 23.44.010.B.1.d the code doesn’t merely require that it have been separately reflected in a public record. The code says that it must have been “established as a separate building site.” In light of the fact that parcels that clearly were not contemplated for separate development or capable of being separately developed were listed on separate ledger lines in the historic tax records, the listing of a parcel in this manner, on its own, cannot be said to have had the effect of establishing the parcel *as a separate building site* in the public record. There also is some question whether the listing of portions of lots on separate lines in the tax records is appropriately regarded as a “property tax segregation” within the meaning and intent of the former language of the code, or whether it was merely a record-keeping convention.

² The property owner has pointed out that the records for some years used a bracket in some places to suggest that the properties on different lines on the ledger were held in combination, and has suggested that the failure to use a bracket to combine the west half of Lot 7 and the west portion of Lot 8 reflects a conclusion that these two parcels were not intended to be combined. However, the use of brackets in this manner appears not to have been consistent, even with properties such as the south 6 feet of Lot 8 which by its dimensions clearly was meant to be a part of a large parcel rather than a separate building site.

4. Even if we were to conclude that the listing of the west half of Lot 7 on a separate ledger line in the historic tax records constituted a “property tax segregation,” and further, that that record had the effect of “establish[ing]” that parcel “as a separate building site in the public record,” such records no longer provide a basis for the codified lot area exception, after Ordinance No. 123978. There is no vested permit for development of the west half of Lot 7, and any new application will be subject to current code standards.
5. In order for a lot to qualify under the “75/80 Rule” lot area exception provided in Section 23.44.010.B.1, a lot must have an area at least 75 percent of the minimum requirement for the zone and at least 80 percent of the mean area of the lots on the same block face. The west half of Lot 7 has an area of approximately 3,300 square feet, which is short of the 3,750 square feet that would be needed to pass the first part of the 75/80 Rule test.
6. There also is no basis for a conclusion that the parcel in question, the west half of Lot 7, qualifies under any of the other lot area exceptions provided, such as the exception for lots reduced through adverse possession or condemnation for a street.

Decision

The west half of the property at 3807 East Jefferson Street does not qualify for development as a separate legal building site under any of the lot area exceptions in Section 23.44.010.B.

Entered this 28th day of February, 2013.

(signature on file)

Andrew S. McKim
Land Use Planner – Supervisor

SMC 23.44.010 Lot requirements

A. Minimum Lot Area. The minimum lot area shall be:

S.F. Zone	Minimum Lot Area Required
S.F. 9600	9,600 sq. ft.
S.F. 7200	7,200 sq. ft.
S.F. 5000	5,000 sq. ft.

Submerged lands shall not be counted in calculating the area of lots for the purpose of these minimum lot area requirements, or the exceptions to minimum lot area requirements provided in this section.

B. Exceptions to Minimum Lot Area Requirements. The following exceptions to minimum lot area requirements are allowed, subject to the development standards for undersized lots in subsection 23.44.010.C, except as limited under subsection 23.44.010.B.2:

1. A lot that does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped separately under one of the following circumstances:

a. "The Seventy-Five/Eighty Rule."

- 1) If 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 75 percent of the minimum required lot area and at least 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 A for 23.44.010), or
- 2) If the lot is or was created by subdivision, short subdivision or lot boundary adjustment, is at least 75 percent of the minimum required lot area, and is at least 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 A for 23.44.010).
- 3) For purposes of this subsection 23.44.010.B.1.a, if the platting pattern is irregular, the Director will determine which lots are included within a block face.
- 4) A determination whether a lot qualifies for this exception shall be made on the basis of facts in existence as of the date of application for a short plat or building permit for that lot.
- 5) New lots created pursuant to subsection 23.44.010.B.1.a.2 shall comply with the following standards:
 - a) for a lot that is subdivided or short platted, the configuration requirements of subsections 23.22.100.C.3 and 23.24.040.A.9 or with the modification provisions of subsections 23.22.100.D and 23.24.040.B, as applicable; or
 - b) for an existing lot that is reconfigured under the provisions of Chapter 23.28, the configuration requirements of subsection 23.28.030.A.3 or with the or modification provisions of subsection 23.28.030.A.4.

b. 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, payment was received for only that portion of the lot, and the lot area remaining is at least 50 percent of the minimum required.

c. The lot would qualify as a legal building site under subsection 23.44.010.B 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 10 percent of the former area of the lot. This exception does not apply to lots reduced to less than 50 percent of the minimum area required under subsection 23.44.010.A.

- d. The lot has an area at least 50 percent of the minimum required under section 23.44.010.A, and 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, platting or building permit, and falls into one of the following categories:
- 1) The lot has not been held in common ownership with any contiguous lot after January 17, 1987, or
 - 2) The lot is or has been held in common ownership with a contiguous lot after January 17, 1987 and is or has been developed with a principal structure that is wholly within the lot's boundaries, but only if no portion of any contiguous lot is required to meet the least restrictive of lot area, lot coverage, setback or yard requirements that were in effect at the time of the original construction of the principal structure, at the time of its subsequent additions, or that are in effect at the time of redevelopment of the lot (Exhibit B for 23.44.010), or
 - 3) The lot is or has been held in common ownership with a contiguous lot after January 17, 1987 and is not developed with all or part of a principal structure, but only if no portion of the lot is required to meet the least restrictive of lot area, lot coverage, setback or yard requirements that 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 that are in effect at the time of the development of the lot (Exhibit B for 23.44.010). 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 must continue to be met on the lot to be developed or alternative parking that meets the requirements of this Land Use Code must be provided for the contiguous lot.
 - 4) For purposes of subsection 23.44.010.B.1.d, removal of all or any part of a principal structure or destruction by fire or act of nature on or after January 18, 1987, does not qualify the lot for this minimum lot area exception (Exhibit C for 23.44.010) except that minor features containing no interior floor area including but not limited to eaves and unenclosed decks extending onto an adjacent property do not serve to tie the properties together for purposes of this exception, and these features may be removed to allow separate development of the lots if they otherwise qualify; or
- e. The lot is within a Clustered Housing Planned Development pursuant to Section 23.44.024, a Planned Residential Development pursuant to Section 23.44.034, or a development approved as an environmentally critical areas conditional use pursuant to Section 25.09.260.
- f. The lot is or was created by short subdivision of a lot containing more than one existing single family dwelling unit pursuant to Section 23.24.046.

2. Limitations

- a. Development may occur on a substandard lot containing a riparian corridor, a shoreline habitat and shoreline habitat buffer, a wetland and wetland buffer, or a steep slope and steep slope buffer pursuant to the provisions of Chapter 25.09, Regulations for Environmentally Critical Areas, if the following conditions apply:
- 1) The substandard lot is not held in common ownership with an adjacent lot or lots at any time after October 31, 1992, or
 - 2) The substandard lot is held in common ownership with an adjacent lot or lots, or has been held in common ownership at any time after October 31, 1992, if proposed and future development will not intrude into the environmentally critical area or buffer.
- b. Lots on totally submerged lands do not qualify for any minimum lot area exceptions.