

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

**LISA PARRIOTT et al.**

From a decision Issued by the Director,  
Department of Construction and  
Inspections

Hearing Examiner File:  
**MUP-16-019 (SE); MUP-16-020 (SE)**

(SDCI Project No. 3024037)

**SDCI RESPONSE TO  
APPELLANT PARRIOTT'S  
BRIEF REGARDING  
DECISION TYPE**

At issue is whether an appeal of a special exception decision, allowing separate development of a lot under 3,200 square feet in area according to the criteria in SMC 23.44.010.B.3, on its own creates jurisdiction for the Hearing Examiner to consider whether the Historic Lot Exception, a lot area exception provided in SMC 23.44.010.B.1.d, was correctly applied. SDCI's position is that the Historic Lot Exception is a development standard independent of the discretionary criteria for the special exception, and that the question regarding application of the Historic Lot Exception would not be properly before the Hearing Examiner absent a request for a Land Use Code interpretation.

The appellant asserts that qualification for one of the lot area exceptions should be regarded as one of the discretionary criteria applied in approving a special exception for a development on a lot less than 3,200 square feet in area. The basis for this argument is that the plain language of SMC 23.44.010.B.3<sup>1</sup> supports this reading, that legislative history in the form of a Director's Report reflects this intent, and that this reading is supported by a comparison of that section to other special exception provisions in the Land Use Code.

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<sup>1</sup> Section 23.44.010.B.3 provides in part:

3. Special exception review for lots less than 3,200 square feet in area. A special exception Type II review as provided for in Section 23.76.004 is required for separate development of any lot with an area less than 3,200 square feet that qualifies for any lot area exception in subsection 23.44.010.B.1. The special exception application shall be subject to the following provisions:

- a. The depth of any structure on the lot shall not exceed two times the width of the lot...
- b. Windows in a proposed principal structure facing an existing abutting lot that is developed with a house shall be placed in a manner that takes into consideration the interior privacy in abutting houses, provided that this provision shall not prohibit placing a window in any room of the proposed home.
- c. In approving a special exception review, additional conditions may be imposed that address window placement to address interior privacy of existing abutting houses.

SDCI disagrees with the position that the plain language of subsection 23.44.010.B.3 reflects that qualifying for a lot area exception is meant to be treated as a discretionary criterion for the special exception approval. Section 23.44.010.B, at the outset, states that “The following exceptions to minimum lot area requirements are allowed, subject to the requirements in subsection 23.44.010.B.2 and further subject to the requirements in subsection 23.44.010.B.3 for any lot less than 3,200 square feet in area....” Section 23.44.010.B.3 also reflects that a special exception is required for lots under 3,200 square feet in area that otherwise qualify for a lot area exception. By our reading, the language at the beginning of subsection 23.44.010.B.3 (“A special exception...review...is required for separate development of any lot with an area less than 3,200 square feet that qualifies for any lot area exception....”) identifies the class of lots that require a special exception review. By contrast, the conditions described in subsections 23.44.010.B.3.a, b and c are the discretionary criteria for the special exception review. This is supported by the language immediately before those three subsections: “The special exception application shall be subject to the following provisions:” That language suggests that the discretionary criteria are comprised of the ensuing provisions, and nothing else.

This understanding is consistent with other special exception provisions throughout the Land Use Code, including the ones cited by the appellants. In virtually every case there is introductory language identifying what may be allowed as a special exception, followed by criteria that are almost always enumerated in separate lettered or numbered subsections.<sup>2</sup> If the intent had been to treat the qualification for a lot area exception as one of the criteria, it would have been listed below, in a separate enumerated subsection with the other criteria.

As a contrasting example, see the criteria for review of a short subdivision, in SMC 23.24.040: Conformance to the applicable Land Use Code provisions is one of the enumerated criteria for that Type II decision, and thus the issue of how development standards have been applied could properly be considered by the Hearing Examiner upon appeal of a short subdivision, without requiring that an interpretation be requested.

Finally, we do not agree that the language in the Director’s Report associated with the adoption of this special exception requirement may be taken as reflecting an intention that qualification for a lot area exception would be a part of the special exception review. The report simply states the undisputed facts that development of a lot under 3,200 square feet in area requires a special exception, and that that process provides for public notice and an opportunity for appeal. The proposed development in this case was reviewed consistently with this understanding: A special exception was indeed required, and there was public notice, and appeals were filed.

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<sup>2</sup> See SMC Sections 23.22.100.D, 23.24.040.B, 23.42.106.B.4, 23.44.046.B, 23.45.545.E, 23.47A.010.E, 23.47A.012.D, 23.47A.022.D.2.b, 23.49.017.H, 23.49.019.C.2, 23.50.026.C.2, 23.50.027.F, 23.54.020.C, 23.55.040, 23.58A.042.D.2, 23.54.01023.71.016.B.2, 23.71.044, 23.75.040, 23.75.095.D, and 23.75.180.B.1.

SDCI respectfully requests that the Hearing Examiner support the Department's position that an interpretation request is necessary in order to raise questions about application of the historic lot exception in this case, and that she not issue the order to the contrary requested by the appellant.

Dated November 14, 2016.



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