

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

Lisa Parriott

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

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

**SDCI Interpretation No. 16-006
(SDCI Project No. 3026248)**

Background

Lisa Parriott, a property owner adjacent to the property addressed as 3036 39th Ave SW, has requested this interpretation. The Seattle Department of Construction and Inspections (SDCI) has issued a letter to the owner of the subject property expressing the opinion that the parcel at 3036 39th Ave SW is a legal building site, separate from the property addressed as 3038 39th Ave SW. The question for interpretation is whether the parcel qualifies as a separate legal building site under the Historic Lot Exception to minimum lot area requirements in the Seattle Land Use Code.

Findings of Fact

1. The property in question is addressed in SDCI records as 3036 39th Ave SW. According to records maintained by SDCI, the property is described as the South 16 $\frac{2}{3}$ feet of Lot 14 and North 16 $\frac{2}{3}$ feet of Lot 15, Block 1, J. Walther Hainsworth's 1st Addition to West Seattle. For convenience, this property is referred to as "Parcel B" in this interpretation. Parcel B is not developed with any structure.
2. Parcel B is currently held in common ownership with the property to the south, which is the site of the house addressed as 3038 39th Ave SW. That property, referred to in this interpretation as "Parcel A," is described as the South 8 $\frac{1}{2}$ feet of Lot 15 and Lot 16, Block 1, J. Walther Hainsworth's 1st Addition to West Seattle. Parcels A and B are both in an area zoned SF 5000: Single-Family Residential, with a general minimum lot area requirement of 5,000 square feet. Parcels A and B each have an area of approximately 3,167 square feet, based on their platted dimensions. Neither of these parcels, individually, meets the general minimum lot area requirement of the zone.
3. Several exceptions to the minimum lot area requirement are provided in the Land Use Code, at SMC 23.44.010.B. A copy of that section is appended to this interpretation and incorporated in these findings.
4. Based on research performed when the minimum lot area standards were revised in 2014, an estimated 44 percent of lots in SF 5000 zones have areas less than 5,000 square feet. Of the eleven other lots on the block front that includes Parcels A and B, all but one are less than 5,000 square feet in area.

5. By letter to the Department received November 18, 2015, the property owner, Clifford Low, requested a determination that Lot B qualifies as a separate legal building site. On January 5, 2016, SDCI issued a legal building site letter to Mr. Low, with the preliminary opinion that Lot B qualifies as a separate legal building site through application of the Historic Lot Exception, pursuant to SMC 23.44.010.B.1.d.
6. Prior to July 1930, Robert and Mary Alice Coulthard owned lots 13, 14, 15 and 16 of Block 1, J. Walther Hainsworth's 1st Addition to West Seattle. For convenience, this property is referred to as "the original Coulthard property."
7. Permit No. 294395, issued July 15, 1930, allowed the Coulthards to construct a residence with a basement garage accessed from the alley. The permit identified the building site as Lot 16 and the South 8 ½ feet of Lot 15. That property, which is Parcel A, comprised the southern one-third of the original Coulthard property. None of the permit records for the existing house on Lot A include Parcel B as part of the development site of that house.
8. On December 5, 1930, the Coulthards conveyed Lot 13 and the North 8 ½ feet of Lot 14 to Sadie Arkell. That property was the northern one-third of the original Coulthard property. Permit No. 297240, issued December 12, 1930, allowed Ms. Arkell to construct a residence addressed as 3030 39th Avenue SW. The permit identified the building site as Lot 13 and the North 8 ½ feet of Lot 14. No permit records for the house addressed as 3030 39th Avenue SW describe Parcel B as part of the legal building site for this house.
9. There are no permits discovered in SDCI records that include Parcel B as a part of a site description. The Coulthards maintained ownership of Parcels A and B until conveying them to Marion and Benjamin Rose on May 5, 1931.
10. Abstracts of title maintained by SDCI show that Parcels A and B have been in common ownership since at least 1930, when the Coulthards owned both lots. On August 8, 1937, the Roses conveyed to John and Anne Costello the South 16 ¾ feet of Lot 14 and all of Lots 15 and 16 (both Parcels A and B). On September 9, 1942, the Costellos conveyed to Jack F. and Ella M. Butler the South 16 ¾ feet of Lot 14 and all of Lots 15 and 16 (both Parcels A and B). The Butlers held this property until 1965.
11. City of Seattle Sewer card 6664, started in 1928, shows parcel lines that delineate Parcel B as separate from Parcel A and the house at 3030 39th Ave SW. City of Seattle Sewer Plat 6664, entered in 1931, includes a line separating the north 16 feet of Lot 15 from Parcel A.
12. The City first adopted a process for short subdivision of land in 1972, by Ordinance No. 101027. Prior to that time, property was effectively divided simply by deed, when a portion of a larger lot was sold, or by building permit, when a portion of a larger lot was called out in a legal description on a permit.
13. Seattle's zoning codes have included minimum lot area standards for single-family zones since Ordinance 81476 was adopted in 1952. Exceptions for historic lots of record were provided from the start. Records associated with a 1953 amendment (Ord. 82114) reflect that the intent of the exception was to protect the investments of parties who had acquired and set aside a parcel, with the expectation that it could be separately developed.

14. Two policies in Seattle's Comprehensive Plan specifically relate to minimum lot area requirements for Single Family zones:

LU66 Use minimum lot size requirements to maintain a low-density residential environment while reflecting differences in development conditions and the densities and scale of housing in various single-family residential areas.

LU67 Permit exceptions to minimum lot size requirements to recognize building sites created in the public records 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 provide housing opportunity through the creation of additional buildable sites which are compatible with surrounding lots and do not result in the demolition of existing housing.

Conclusions

1. Under Section 23.44.010.B.1.d, there are three types of public records that are relevant to determining whether property qualifies for the historic lot exception. These records are deeds, plat records, and building permits. Parcel B contains only portions of platted lots, and therefore does not qualify as a separate building site based on platting. According to SMC 23.44.010.B.1.d.1), "a lot is considered to have been established as a separate building site by **deed** if the lot was held under separate ownership from all abutting lots for at least one year" (emphasis added) There is no evidence that Parcel B was held under separate ownership from all abutting lots for at least one year.
2. Since neither platting nor deed records apply to Parcel B, the public records that determine whether it qualifies for the historic lot exception are the building permit records. Building permits were issued in 1930, five months apart, for houses on the south one-third and the north one-third of the original Coulthard property. Neither of those permits included the middle one-third, Parcel B, in the site descriptions. It is SDCI's determination that Parcel B was established as a separate building site based on the building permits issued for the adjacent lots, which did not include Parcel B as part of either development site. The limits placed on lots held in common ownership under Section 23.44.010.B.1.d.1 only apply to historic lots created by deed. Therefore, the fact that Lot B was held in common ownership with Lot A is irrelevant.
3. The Historic Lot Exception does not require that we determine the subjective intent of the Coulthards, but it does require that we consider whether the public records reflect that Parcel B was treated as a separate building site. When the owners built their house on the southern portion of their property, they could just as easily have included Parcel B, or even the entirety of the original Coulthard property, in the site description. However, a portion of the property was consciously and deliberately omitted from the site description. By calling out only Parcel A, the owners effectively carved off the remainder of the property. The only logical reason for doing this was to preserve that remainder for separate development.
4. Less than five months later, the northern one-third of the original Coulthard property was sold and a permit was issued for a house on that property. Again, Parcel B was excluded, and thus preserved for separate development.

5. In 1930, there was no formal process for short subdivision of land. The Coulthard property was split into three equal pieces, as a matter of public record, using the processes available at that time, which included describing portions of the original property in building permits. While not a record used for determining legal building sites, the sewer card (started in 1928) and sewer plat (entered in 1931) of this street also reflect that Parcel B was contemplated as a separate site, consistent with the Department's conclusion under the Historic Lot Exception.

6. It has been argued that the fact that Parcels A and B have continued to be held together over the years, through multiple conveyances, should now disqualify Parcel B for separate development. But the Historic Lot Exception is very clear about what actions cause a lot of historic record to cease to qualify. If a portion of a principal structure is built over a lot line onto the parcel, or the parcel is otherwise used to meet a development standard for a neighboring house, it will no longer qualify for the exception. If the parcel is used to meet a parking requirement for a neighboring house, it will not qualify unless that parking requirement is met elsewhere. Continued common ownership of two abutting parcels, or conveyance of those parcels together, are not listed as factors that would cause the exception to cease to apply. There is no evidence that Parcel B has ever been developed with any structure related to the house on Parcel A, or used to meet parking requirements or other development standards associated with improvements on Parcel A. In short, subsequent to the actions in 1930 that first established Parcel B as a separate lot in the public record, there have been no actions that would cause it to cease to qualify for the Historic Lot Exception.

7. It has also been argued that the purchase price for Parcels A and B together, in recent transactions, is not consistent with an expectation that these parcels are separate legal building sites. Again, this is not listed as a factor to be considered under SMC 23.44.010.B.1.d.

Decision

The property described as the South 16 ⅔ feet of Lot 14 and the North 16 ⅔ feet of Lot 15 (Parcel B) is a separate legal building site based on the Historic Lot Exception, pursuant to SMC 23.44.010.B.1.d. The original Coulthard property was effectively subdivided into three equal lots, as reflected by the 1930 building permits, which called out the north one-third and the south one-third of that property, both excluding the middle one-third (Parcel B). No subsequent actions have caused Parcel B to cease to qualify for the exception, based on the code standards. Parcel B qualifies for development as a separate legal building site.

Entered this 9th day of December, 2016.



David Graves, Senior Land Use Planner
Department of Planning and Development