The Honorable Mariane Spearman
Hearing Date: July 19, 2013

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

BENCHVIEW NEIGHBORHOOD ASSOCIATION, a Washington Unincorporated Association, Petitioner, vs. CITY OF SEATTLE, a Washington Municipal Corporation; BLUEPRINT SERVICES, LLC, a Washington Limited Liability Company; DAVID BIDDLE, an individual Washington resident; ALL DAY CONSTRUCTORS, LLC, a Washington Limited Liability Company; and JMS HOMES, INC., a Washington Corporation; Respondents.	No. 13-2-05025-1 SEA CITY'S RESPONSE

I. Introduction

The City of Seattle ("City") applied its code to this Lot Boundary Adjustment ("LBA") in an objective and neutral manner consistent with its longstanding application of City code. While the City is sympathetic to Petitioner's concern that the LBA would change the neighborhood's character, the City cannot be swayed by the Petitioner's opposition or the applicant's position in making the LBA decision when the decision must be based on the code. Rather, the City is addressing the

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Petitioner's concerns in the only legally-appropriate manner — by considering possible code amendments to the small-lot exception code provisions.

Although the Petitioner's concerns cannot change the City's LBA decision, the City responded to their concerns in two detailed emails prepared by Andrew McKim. Mr. McKim, a Supervising Planner for the Department of Planning and Development, has been addressing the issues before this Court, house orientation and lot-area exceptions, for over two decades.[1]

The first issue before the Court, house orientation, is controlled by the code in effect when the house was built in 1952 (the "1952 code"). The 1952 code did not require the existing house had to be oriented towards 55th.[2] Instead, the 1952 code allowed the house to be oriented towards Manning when:

- The house met the "building line" or "front line"[3] setbacks from both Manning and 55th;
- The code allowed a rear yard to lie opposite the Manning or 55th building line setbacks;
- The code did not include a "front" or "front yard"; and
- The code did not address house orientation.

Here, the house may be oriented towards Manning with its rear yard opposite Manning and within lots 10/11. Further, a Manning orientation follows the City's long-standing position that a house's orientation is what allows the house to most conform to the yard and setback requirements for the lot(s) the house sits on.

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[1] Record at 750-51, Declaration of Andrew S. McKim at 1:20-2:7.

[2] 55th Avenue S.W. ("55th") and S.W. Manning Street ("Manning").

[3] Ordinance 78837 established "building line" as a term and within that term requires setbacks from the front line of lots on the same block.

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The second issue before the Court is applying the code's lot-area exceptions. This issue has two primary elements: The first element is whether the "75/80 rule"[4] applies to LBAs. City code expressly states that the 75/80 rule applies if the lot was established through a LBA,[5] as the LBA parcel was here.

The second element is whether lots 8, 9, and 10/11 are included in the "75/80 rule" mean-lot area calculation. When applying the 75/80 rule the code states that all lots on a "block face" — as applied here abutting Manning from 55th to 53rd — are included in the mean-area lot calculation. The 75/80 calculation therefore includes lots 8, 9, and 10/11 because these lots are within the Manning block face. Applied to LBA parcel A, the rule requires the parcel be at least 75% of the current lot zoning standard or 3,750 square feet, and 80% of the mean area of all the lots on the Manning block face or 4,051 square feet. At 4,395.5 square feet, parcel A complies with the 75/80 rule.

The Court should accord the Department of Planning and Development the deference it is due in applying City code and uphold the City's decision.

II. Issues

- The 1952 code required the existing house meet "building line" setbacks from both Manning and 55th, did not include "front" or "front yard," or dictate what street the house had to be oriented towards. The house conformed to the 1952 code when the Manning side of the house met the building line setback and the rear yard could be on lots 10/11. Could the house be oriented towards Manning and was lot 9 needed for the house's rear-yard?

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[4] Seattle Municipal Code (SMC) 23.44.010.B.1.a.

[5] SMC 23.44.010.B.1.a.2).

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- The 75/80 rule applies to LBAs. When applying this rule, the block face includes all lots abutting Manning including lots 8, 9, and 10/11. Parcel A is larger than the mean lot area of the lots on the Manning block face. Did parcel A meet the 75/80 rule?
- State statute and City code exempts LBAs from public notice requirements. The City did not give Petitioner individualized notice of the LBA although that did not prevent Petitioner from informing the City of its objections to the LBA. Was notice required?

III. Facts

A. Dave Biddle files the LBA application.

When the existing house was built in 1952, the property extended over 4 lots, 8, 9, 10, 11.[6] The house was built on two lots, 10/11.[7] The four platted lots are substandard in size because they were platted in 1890,[8] before the 1957 5,000-square-foot standard came into effect.[9] In 1985, decks were added to the house. A portion of one deck extended approximately four feet onto lot 9, while another deck extended several feet into the 10-foot Manning building line setback.[10]

In December 2012, Mr. Biddle applied for the LBA to adjust the platted lots.[11] As the LBA depicts, a portion of the building site occupied by lots 10 and 11 would become parcel A, portions of lots 9, 10, and 11 would become parcel B, and lot 8 and a portion of lot 9 would become parcel C.[12]

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[6] Record at 314.

[7] Record at 39.

[8] Record at 501.

[9] Ordinance 86300.

[10] Record at 315; Record at 27.

[11] Record at 9-20; Record at 27-28; Record at 38-40; Chapter 23.28 Seattle Municipal Code (SMC).

[12] Record at 18.

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B. The City considered and responded to Petitioner's concerns.

Although neighbors opposed to the LBA sent dozens of emails to the City,[13] two emails setting out the Petitioner' objections were sent to the City on January 22nd,[14] and January 28th.[15] These same objections are made in Petitioner's opening brief.[16] Mr. McKim's detailed analysis distributed by the Department on January 15th anticipated many of the objections in Petitioner's January 22nd and 28th emails.[17] And Mr. McKim's January 29th email addressed these objections once again in more detail.[18]

C. The City determined lot 9 could be developed or adjusted as a separate lot.

After receiving the application, the City determined lot 9 was unnecessary for the existing house's rear yard under the 1952 code.[19] Since the current house did not need lot 9 for a rear yard, the LBA application properly identified three separate building sites and lots that could be adjusted through the LBA process: lots 8, 9, and lots 10/11.[20]

The City found that 9 was unnecessary as a rear yard for the existing house on lots 10/11 because the deck on lot 9 could be removed as allowed by code,[21] and a rear yard for the house could have been located on the southerly portion of lots 10/11 under the 1952 code.[22] The City also found

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[13] Record at 51-272.

[14] Record at 292-294,

[15] Record at 310.

[16] Record at 754-755, Declaration of Andrew S. McKim at 5:15-6:13.

[17] Record at 199-203; Record at 751, Declaration of Andrew S. McKim at 2:16-20; Record at 752, Declaration of Andrew S. McKim at 3:16-20.

[18] Record at 336-337.

[19] Record at 200-201.

[20] Record at 337.

[21] SMC 23.44.010.B.1.d.4; Record at 200.

[22] Record at 200-201.

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the 1952 code did not require that the house had to be oriented towards 55th when: the code did not require front yards, and "building line" the term establishing setbacks from both Manning and 55th only established setback distances and not house orientation.[23]

D. The City determined lots 8 and 9 qualified for the "unimproved-lot" exception to the 5,000 standard.

The City also found that lots 8 and 9 met the lot-size exception allowing existing lots not occupied by a structure to be developed if: the lot's area is at least 50% of the minimum lot size or 2,500 square feet, and the lot was not needed to meet development standards for an existing structure on an adjacent lot (the "unimproved-lot" exception).[24]

The City determined lots 8 and 9 each were approximately 2,519 square feet, met the vacant-lot exception, and could be developed independently from lots 10/11.[25] By increasing the size of parcels B and C as compared to lots 8 and 9, the LBA made these two parcels more conforming to current lot-area standards.[26]

E. The City determined parcel A meets the "75/80 rule," an exception to the 5,000 standard.

The City found that parcel A complied with the 75/80 rule. Before the LBA, lots 10/11 had a combined area of approximately 6,552 square feet.[27] These two lots are considered one lot because the house is on both lots.[28]

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[23] Record at 336-337.

[24] SMC 23.44.010.B.1.d.3.

[25] Record at 40; Record at 201.

[26] Record at 16-17.

[27] Record at 40; Record at 199.

[28] Record at 40; Record at 201.

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Although the zoning is 5,000 square feet, the City determined the 75/80 rule allowed lots 10/11 to be adjusted through a LBA if parcel A is at least 75% of the minimum lot size, here 3,570 square feet, and at least 80% of the mean area of the lots along the Manning "block face."[29] Based on the definition of block face, there are 11 lots along the Manning block face.[30] The mean area of the 11 lots is 5,065 square feet, and 80 percent of that is 4,051 square feet.[31] Parcel A is 4,395.5 square feet,[32] and complies with the 75/80 rule.

F. Once the City determined the LBA met code it had to approve the application, and notice of the LBA was not required by State law or City code.

Under City's code, LBAs are Type I decisions.[33] LBA applications must be approved when the City determines the applications "conform to all applicable laws."[34] Public notice of LBA decisions is not required under State law.[35] Consistent with State Law, City code does not require public notice when a LBA application is received,[36] or a decision issued.[37] All City code requires is the permit applicant be notified in writing when the LBA has been approved.[38] The applicant's notification occurred on January 18, 2013 when the City issued a written decision approving the LBA and mailed a copy to Mr. Biddle.[39]

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[29] SMC 23.44.010B.1.a.

[30] Record at 343.

[31] Record at 15.

[32] Record at 18.

[33] SMC 23.76.004, Table A.

[34] SMC 23.76.028.B

[35] RCW 36.70B.140 (2).

[36] SMC 23.76.012.A.1.

[37] SMC 23.76.020.C.1.

[38] SMC 23.76.028.A.

[39] Record at 41.

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IV. Standard of Review

Under LUPA, the Petitioner carries the burden of showing the City violated one of the LUPA review standards including:[40]

- The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- The land use decision is a clearly erroneous application of the law to the facts; or
- The land use decision violates the constitutional rights of the party seeking relief.

LUPA decisions hold that when a court is reviewing a land use decision the "statute reflects a clear legislative intention that this Court give substantial deference to both legal and factual determinations of local jurisdictions with expertise in land use regulation."[41] Further, under the substantial evidence and clearly erroneous standards, courts defer to factual determinations of the highest forum that exercised fact-finding authority below.[42]

V. Argument

A. The City appropriately determined the existing house could have been built with a Manning orientation and that lot 9 was not required as a rear yard.

1. Lots not required for yards or setbacks serving adjacent structures are separate lots that may be developed or adjusted by LBAs.

The existing zoning code allows previously-established nonconforming-sized lots not needed for yard or setback purposes to be separate lots that can be developed or adjusted through a LBA:

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[40] RCW 36.70C.130 (The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards in (a) through (f) of this subsection has been met."); *Lakeside Indus. v. Thurston County*, 119 Wn.App. 886, 83 P.3d 433, *review denied* 152 Wn.2d 1015, 101 P.3d 107 (2004).

[41] *Timberlake Christian Fellowship v. King County*, 114 Wn.App. 174, 180, 61 P.3d 332 (2002).

[42] *Cingular Wireless v. Thurston County,* 131 Wn.App. 756, 768, 129 P.3d 300 (2006).

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> 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).[43]

Here, if lot 9 was not needed under the 1952 code as the rear yard for the existing house on lots 10/11, lot 9 could be developed or its lot lines adjusted by the LBA.

2. The 1952 code required the existing house meet "building line" setbacks from both Manning and 55th, did not address "front" or "front yard," and did not dictate house orientation.

In 1952, the City's zoning code contained two building line house-to-street setback standards that applied in a corner-lot context. The first is a minimum 10-foot setback, and the second is a setback greater than the 10 foot setback if other houses are built on the same street:

> BUILDING LINE:
>
> (a) No building . . . shall be constructed nearer than ten (10) feet to any street margin that constitutes the front line of any lot or lots in the same block"
> . . .
> Whenever at least thirty-five percent (35%) of all the property fronting on one side of a street between two intersecting streets is improved with dwellings and all of the dwellings in said area are set back from the street margin a minimum distance greater than ten (10) feet, then no new building . . . shall project beyond such minimum setback line . . ."[44]

This code did not differentiate between the Manning and 55th setbacks for house orientation purposes. Even the Petitioner acknowledges the 1952 code is silent on house orientation:[45]

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[43] SMC 23.44.010.B.1.d.2).

[44] Ordinance No. 78837.

[45] Record at 292.

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> We understand from DPD's analysis that the 1952 code is silent with regard to which street becomes the frontage on a corner lot. On that basis, DPD concludes that the 1952 Code did not require that the house on lots 10-11 be oriented toward one street or the other. We agree.

Mr. McKim summarized the City's position that the 1952 code does not dictate house orientation in his January 15th email: "the code does not dictate that the front lot line [building line] for the purpose of determining required yards must be the side used for the street address, or faced by the front door."[46] Further, "front" and "front yard" were not in the 1952 code and cannot dictate house orientation.

The City's position that it must determine house orientation based on what the 1952 code says is what is required by *City of Seattle v. Crispin* where the Washington Supreme Court determined the City cannot decide a LBA application on terms not in the code.[47]

Based on the above, this Court should find the 1952 code did not dictate house orientation based on terms not in the code.[48]

3. The City has consistently determined a house's orientation is what allows the house to most conform to the yard and setback requirements for the lot(s) the house sits on.

Mr. McKim explained the City's practice of determining house orientation in his January 29th email:

> It has been the consistent practice of this Department, for many years, to base conclusions about the orientation of existing houses on measurable dimensions of yards as opposed to design features such as the location of doors or walkways. I have attached some entries from minutes of our weekly internal Land Use Forum

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[46] Record at 200.

[47] *City of Seattle v. Crispin*, 49 Wn.2d 896, 905, 71 P.3d 208, 213 (2003) (regulation of land use must proceed under an express written code), citing *Burien Bark Supply v. King County,* 106 Wn.2d 868, 725 P.2d 994 (1986).

[48] *City of Seattle v. Fuller*, __ P.2d __, 300 P.3d 340, 343 (2013) ("The court must not add words where the legislature has chosen not to include them") citing *Restaurant Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003).

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meeting where Land Use Code questions raised by staff members are routinely discussed, reflecting this practice.[49]

The City's longstanding and consistent practice of basing orientation on measurable dimensions of yards as opposed to design features like front doors is demonstrated by the LBA approved in 1999 for the property immediately south of the existing residence at 3660 55th Avenue S.W ("3660 LBA"). Mr. McKim included the 3660 LBA as an example of the City's previous application of the 1952 code in a LBA context when he responded to the Petitioner's January 15th and 28th emails.[50]

Similar to the LBA Mr. Biddle applied for, the 3660 property owner applied for a LBA to adjust a lot line to construct a new house on that property.[51] In the 3660 LBA, the house's front door faced 55th just as the house's front door does in the LBA before the Court. And in the 3660 LBA, the City determined the house is oriented towards Orleans, just as the City determined the 3550 house is oriented towards Manning.[52] Based on the 1952 code and established practice, the City determined the 3660 house's orientation by building set-back lines and not by the front door's location.[53]

Further, in the 3660 LBA, the abutting vacant lot was not needed for rear yard purposes and could be treated as a separate lot for all development purposes.[54] This is exactly what the City determined when it concluded lot 9 was not needed for rear yard purposes and could be treated as a separate lot for all development purposes.

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[49] Record at 338.

[50] Record at 338.

[51] Record at 360-363.

[52] Record at 756-757, Declaration of Andrew S. McKim at 7:7-8-2.

[53] Record at 756-757, Declaration of Andrew S. McKim at 7:7-8-2.

[54] Record at 757, Declaration of Andrew S. McKim at 8:4-14.

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Here is a comparison of these two LBAs:

	3650 LBA	3660 LBA[55]
Location of front door, front walkway, garage door	55th	55th
LBA house orientation	Manning	Orleans
Location of rear yard under 1952 code	opposite Manning	opposite Orleans

Mr. McKim also included in his January 29th email examples from the City's Land Use Forum meetings where the City addressed house orientation in non-LBA contexts and determined the orientation is what allows the structure to most conform to the yard and setback standards for the lot(s) the house sits on.[56] The meeting summaries state:

- The choice between orientations hinges on which orientation causes the existing house to be more conforming to yard standards.[57]
- In these [corner lot] situations we choose the orientation under which the existing house is more conforming to current standards.[58]
- Based on the building outlines in the GIS [Geographic Information System], this orientation appears to be the most conforming.[59]

In summary, the City appropriately determined the 1952 code did not require the house be oriented towards 55th when "building line" established setback distances from both Manning and 55th, and did not establish house orientation.[60] Further, the code did not define or require front yards. On these bases, the City properly determined: the deck on lot 9 could be removed as the code

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[55] Record at 360-363.

[56] Record at 364-369; Record at 757, Declaration of Andrew S. McKim at 8:15-23.

[57] Record at 364.

[58] Record at 365.

[59] Record at 367.

[60] Record at 336-337.

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permits and the LBA plans indicate,[61] the rear yard for the existing house could have been located on the southerly portion of lots 10/11,[62] and the house could have been located in its present location without relying on lot 9 for rear yard purposes.[63]

Once the City found lot 9 was not required for a rear yard, the City appropriately found that lots 8 and 9, each approximately 2,519 square feet,[64] could be developed as separate building sites.[65] As Mr. McKim stated:

> Absent the deck, which is to be removed, the existing house could have been built to its current configuration under the standards in effect at that time, without requiring that Lot 8 or 9 be included as part of the building site [for lots 10/11]. Based on this, Lots 8 and 9 qualify for the lot area exception in Section 23.44.010.B.1.d.[66]

Therefore, lots 8 and 9 are separate building sites that can be enlarged through the LBA process. Courts must defer to the City's interpretation of its own zoning code — an area the City has authority and expertise in.[67] This Court should defer to the City's determination that the orientation of the house may be Manning under the 1952 code, that lot 9 is not needed for rear yard purposes for lots 10/11, and that lot 9 could be adjusted by the LBA.

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[61] SMC 23.44.010.B.1.d.4; Record at 000027.

[62] Record at 200-201.

[63] Record at 200-201.

[64] Record at 40; Record at 199.

[65] SMC 23.44.010.B.1.d.3; Record at 000040; Record at 000201.

[66] Record at 200-201.

[67] *Mall, Inc. v. City of Seattle*, 108 Wn.2d 369, 377-78, 739 P. 2d 668 (1987) ("It is a well established rule of statutory construction that considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement."); *see also Citizens for a Safe Neighborhood v. City of Seattle*, 67 Wn.App. 436, 440, 836 P.2d 235 (1992).

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4. Petitioner's arguments that lot 9 was required as a rear yard and the house could not have been built with a Manning orientation are unsupportable.

Petitioner attempts to support its claim that the house must be oriented towards 55th St. by importing "front" and "front-yard" into the 1952 code.[68] For support, Petitioner cites a dictionary definition of "front", a building code handbook, general zoning law treatises, and a 40-year old Maryland case.[69]

Petitioner's argument fails because the Court cannot import "front" or "front yard" into the 1952 code through dictionary definitions, building code handbooks, or inapplicable case law when these terms are not included in the 1952 code.[70] 1986 and 1975 zoning treatises and a 1991 building code handbook are inapplicable when applying 1952 Seattle zoning code that does not dictate house orientation. And the Maryland case, *Baltimore v. Swinski*, is inapplicable when the Baltimore code required front doors face a street, a requirement not in the 1952 or current zoning codes.

Based on the flawed assertion that "front" or "front yard" should be imported into the 1952 code, Petitioner cites a dictionary definition of "rear" to conclude the rear yard had to be on lot 9.[71] Although "rear yard" is a term in the 1952 code, it does not require a "front yard" to be given effect when the rear yard can be opposite the Manning building line as the City has consistently applied its code.

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[68] Opening Brief at 13:22-15:7.

[69] *City of Baltimore v. Swinski*, 235 Md. 262, 201 A.2d 368 (1964).

[70] *City of Seattle v. Fuller*, __ P.2d __, 300 P.3d 340, 343 (2013) ("The court must not add words where the legislature has chosen not to include them") citing *Restaurant Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003).

[71] Opening Brief at 16:10-17:7.

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Petitioner next cites the 3660 LBA as an example of why the house must front 55th.[72] But as described above, the City approved the 3660 LBA after determining under the 1952 code that: the house could have been built with a Orleans orientation, the rear yard could have existed behind the 3660 house on lots 12/13/14, and lot 15 was not needed as the rear yard for the house.[73] This example supports the City's decision, not Petitioner's argument. The examples of two other corner properties at the east end of the Manning/Orleans block cited by Petitioner provides no support when those corner properties do not contain undeveloped lots and would never be subject to the same orientation analysis.[74]

Petitioner also cites the 1952 code for the proposition that the orientation of the house was defined by the greater of the two setbacks the 1952 code required: 10 feet from Manning and 25 feet from 55th:[75]

> Section 18. Building Line
>
> (b) Whenever at least thirty-five percent (35%) of all the property fronting on one side of the street between two intersecting streets is improved with dwellings and all the dwellings in said area are setback from the street margin a minimum distance greater than ten (10) feet, then no new building . . . shall project beyond such minimum setback line. . . In the case of a corner lot . . . the above setback provisions may be waived . . . provided it does not come nearer than ten (10) feet to the lot line on one street and meets the setback on the other street.[76]

This code provision does not say, in a corner lot context, that the 10 foot setback or a greater setback defines house orientation. All this code provision says is the minimum setback

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[72] Opening Brief at 17:8-14.

[73] Record at 360-363; Record at 756-757, Declaration of Andrew S. McKim at 7:7-8-2.

[74] Opening Brief at 17:14-19; Record (S) at 530.

[75] Opening Brief at 15:8-16-9.

[76] Opening Brief at 15:8-16:9, citing Ordinance 78837 (1950), Part IV, Section 18.

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will be 10 feet, and the setback may be greater if more than 35% of the property fronting a street is built on.

Petitioner then argues that because Manning was not improved directly in front of the house when it was built, the house could not have been oriented towards Manning.[77] Section 17 of the 1952 code provides that "no lot shall be used for building purposes unless it shall have a frontage on a street or place."[78] The house fronts both Manning and 55th so when the house was built, the house could have been oriented toward Manning and the house would still have had "actual street frontage for access" off 55th.[79] This code provision did not dictate house orientation; it only required the lot have street access.

Finally, Petitioner claims that because a deck built on the north side of the house intrudes into the 10-foot Manning setback, the house could not have been built under the 1952 10-foot Manning setback.[80] According to Assessor's records the decks were added in 1985,[81] consistent with Mr. McKim's statement that the "[e]xterior decks were later added to the house."[82] Based on the record, the decks were not added when the house was built in 1952. Moreover, the existence of a nonconforming deck does not mean the house was not built to meet the 10-foot setback when the house is set back more than 10 feet from Manning.[83] Further, the deck can be removed to eliminate the setback intrusion in order for lot 9 to be developed and adjusted.[84]

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[77] Opening Brief at 18:6-19:12.

[78] Ordinance 45381, Part IV, Section 17(d).

[79] Opening Brief at 18:6-19-12.

[80] Opening Brief at 19:15-20-15.

[81] Record at 315.

[82] Record at 337.

[83] Record at 39; Record at 752, Declaration of Andrew S. McKim at 3:3-9.

[84] SMC 23.44.010.B.1.d.; Record at 752, Declaration of Andrew S. McKim at 3:3-9.

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B. The City determined parcel A was subject to the 75/80 rule and exempt from the 5,000 standard.

1. The 75/80 rules applies to lots adjusted by LBAs.

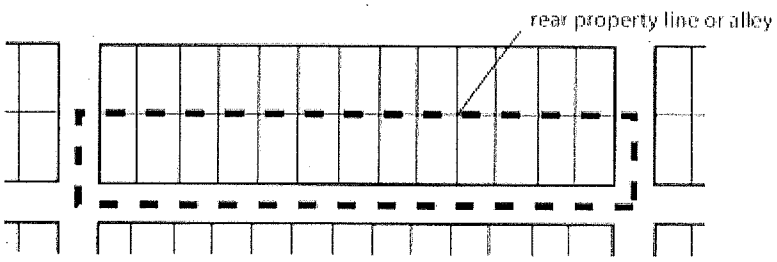
The 75/80 rule applies to LBAs, and when calculating if the adjusted lot meets the 75/80 rule, "the lots on the same block face within which the lot will be located" are included in the calculation:

> If the lot 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).[85]

A "block face" or "block front" by definition includes all the lots abutting a street that lie between intersecting streets. Here is the definition and supporting graphic:

> "Block face." See "Block front."
>
> "Block front" means the land area along one (1) side of a street bound on three (3) sides by the centerline of platted streets and on the fourth side by an alley or rear lot lines (Exhibit 23.84A.004 B).[86]

Exhibit 23.84A.004 B
Block Front



The 75/80 rule applies to all lots abutting Manning between 55th and 53rd. The language of the 75/80 rule — the lot must be at least 80 percent of the mean lot area "of the lots on the

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[85] SMC 23.44.010.B.1.a.2 (emphasis added).

[86] SMC 23.84A.004 "B".

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same block face" — and the block face graphic, calls for including lots 8, 9, and 10/11 into the mean-lot-area calculation.

Based on the code there are 11 lots along Manning with a total area of 55,712 square feet.[87] The mean area of the 11 lots is 5,065 square feet, and 80 percent is 4,051 square feet.[88] Parcel A complies with the 75/80 rule when it is larger than the mean lot area at 4,395.5 square feet.[89] The approach of including all the lots on a block face when applying the 75/80 rule is supported by Andy McKim's declaration that includes examples where the City included all the lots on the block face including the lots comprising the LBA when calculating the mean-lot area.[90]

Analyzing parcel A under the 75/80 rule conservatively, Mr. McKim included lot 8 from the LBA property and the eight other lots abutting Manning, and determined the mean lot area was 4,303 square feet, smaller than parcel A's 4,396.5 square feet.[91] Even under this conservative calculation the LBA complies with the 75/80 rule.

2. Petitioner's arguments that the 75/80 rule was misapplied are unsupportable.

Petitioner argues it is unclear if the 75/80 rule applies to parcel A, because the lot conformed to the 5,000 lot-size standard before the LBA.[92] This argument is incorrect. The code

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[87] Record at 15; Record at 343 (lots 8, 9, and 10/11; and eight other improved lots on the Manning block face.

[88] Record at 15.

[89] Record at 18.

[90] Record at 761; Record at 769; Record at 772.

[91] Record at 201.

[92] Opening Brief at 20:17-21:16.

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states the 75/80 rule applies to a "lot boundary adjustment."[93] Based on the unambiguous language of the code, the 75/80 rule applies to LBAs.

Similarly, Petitioner argues that Director's Rule 13-97 prevents applying the 75/80 rule because it would cause lots 10/11 to be less than 5,000 square feet.[94] Director's Rule 13-97 provides that boundaries of legally-recognized undersized lots may be adjusted if "no nonconformity of that lot or other lots involved in the Lot Boundary Adjustment is created or worsened."[95]

The 75/80 rule, however, expressly provides that "[i]f the lot was created by subdivision, short subdivision or *lot boundary adjustment*" and meets the 75/80 rule, the adjusted lot qualifies as an exception to the 5,000 lot-size standard.[96] And the Department has consistently allowed, as reflected by the LBA examples in the record, LBA-adjusted lots to be below the minimum lot size if the lot meets the 75/80 rule.[97] Moreover, a Director's Rule cannot contradict the code the rule implements.[98]

Petitioner also contends that lots, 8, 9, and 10/11 should be excluded from the 75/80 calculation.[99] That approach contravenes how a block face is defined by City code and how the City has applied the 75/80 rule.[100]

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[93] SMC 23.44.010.B.1.a.2.

[94] Opening Brief at 21:17-22:12.

[95] Department of Planning and Development (DPD) Director's Rule 13-97, effective November 3, 1996.

[96] SMC 23.44.010.B.1.a.2

[97] Record at 758, Declaration of Andrew S. McKim at 9:2-8; Record at 761-774.

[98] *Batchelder v. City of Seattle*, 77 Wn.App. 154, 162, 890 P.2d 25 (1995) (Director's Rule cannot contradict Seattle Municipal Code provision).

[99] Opening Brief at 22:24-23:21

[100] SMC 23.84A.004 "B"; SMC Exhibit 23.84A.004 B; Record at 760-774.

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The next argument offered by Petitioner is that applying the 75/80 rule to the lots on 55th supports denying the LBA because parcel A would be too small.[101] This argument ignores that the 75/80 rule only applies to the Manning block face and not on the 55th block face.[102]

Finally, Petitioner cites the 3660 LBA as an example of why the LBA here should not have been approved because lot A in the LBA before this Court was reduced below 5,000 square feet under the 75/80 rule, and lot 12/13/14 in the 3660 LBA was not reduced below 5,000 square feet.[103] The reason lots 12/13/14 in the 3660 LBA was not reduced below 5,000 square feet is because the house spanned all three lots. The house was therefore located in a manner that prevented the lot from being reduced below 5,000 feet under the 75/80 rule.[104]

C. Notice of the LBA is not required by State law, City code, or case law.

In Washington, local land use permitting procedures must conform to RCW Chapter 36.70B. RCW 36.70B imposes duties and limitations on such elements as notice of permit applications, determinations of application completeness, notice of decisions, and administrative appeals.[105] The statue allows local governments to exempt ordinary "administrative approvals" including "[l]ot line or boundary adjustments and building and other construction permits" from these duties and limitations.[106] Following that exemption, the procedures established by the City's Land Use Code for Type I decisions do not require notice or an opportunity for public comment.[107] The City

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[101] Opening Brief at 23:18-21.

[102] SMC 23.84A.004 "B"; SMC Exhibit 23.84A.004 B.

[103] Opening Brief at 23:22-24:4.

[104] Record at 360-363; Record at 757, Declaration of Andrew S. McKim at 8:10-14.

[105] RCW 36.70B.060 and 36.70B.110 - .130.

[106] RCW 36.70B.140 (2).

[107] SMC 23.76.012.A.1; SMC 23.76.020.C.1.

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must follow the procedures in its code. Indeed, one of the grounds for reversing a land use decision under LUPA is a failure by a municipality to follow required procedures.[108]

Petitioner cannot maintain a due process claim when the Washington State legislature and the City have determined notice of LBA decisions is not required.

VI. Conclusion

The City appropriately determined lot 9 was not needed as a back yard for lots 10/11 and could be developed and adjusted through a LBA when:

- The City consistently applied the 1952 code to the LBA before this Court and the 3660 LBA according to the code's terms; and
- The City has consistently determined a house's orientation is what allows the house to most conform to the yard and setback requirements for the lot(s) the house sits on.

Because the 1952 code yard and setback requirements for the existing house could be met on lots 10/11, lot 9 was not needed for back yard purposes, and lot 9 could be developed and adjusted by a LBA as it was.

The City also appropriately found that parcel A met the 75/80 rule and could be less than 5,000 square feet when:

- According to the 75/80 code language the rule applies to LBAs;
- The "block face" includes all the lots fronting Manning from 55th to 53rd; and

[108] RCW 36.70C.130(1)(a).

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- Parcel A may be smaller than 5,000 square feet if the adjusted lot is 80% of the mean-lot area. Here, the mean-lot area of the Manning block face is less than parcel A's lot size.

Because parcel A complied with the 75/80 rule it was appropriately approved.

For these reasons the City respectfully requests the Court deny Petitioner's appeal.

DATED this 1st day of July, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed a copy of the **City's Response** with the Clerk of the Court using the ECR system.

I further certify that on this date, I used the E-Service function of the ECR system, which will send notification of such filing to the below-listed:

Cynthia Anne Kennedy, cynthiakennedy@kennedylegalsolutions.com
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Patrick Downs, patrick.downs@seattle.gov

Dated this 1st day of July, 2013.

Rosie Lee Hailey
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