SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

BENCHVIEW NEIGHBORHOOD ASSOCIATION,

Petitioner,

and

CITY OF SEATTLE, et al.,

Respondents.

CAUSE NO. 13-2-05025-1 SEA

MEMORANDUM DECISION

Facts

The property at issue is situated on the corner lot of SW Manning Street and 55th Avenue SW at 3650 44th Avenue SW. This property is in a "SF 5000," or single family zone where the standard lot size is 5000 square feet. The area was originally platted into 2500 square foot parcels, but the homes in the area span at least two of these smaller parcels due to Seattle's 5000 square feet per building lot requirement. The LBA ("Lot Boundary

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Adjustment") property is a double lot, spanning four of the originally platted small parcels, totaling 11,500 square feet.

In 1952, the house on the LBA property was built with its address, main entrance, walkway access and driveway access all orientated towards 55th Avenue. When this house was built, 55th Avenue was the only finished street adjacent to the LBA property and provided its sole vehicular and pedestrian access. Thus, Manning Street did not exist adjacent to the property at the time the home was built, and instead, was a dead-end east of the LBA property, stopping just west of 5344 SW Manning Street.

The LBA house was set back 24.43 feet from the west lot line along 55th Avenue, which is the same as the setback on the neighboring property to the south. The house was setback 11.53 feet from the north lot line, but featured a balcony that projected another few feet into the side yard. The property extended over lots 8, 9, 10 and 11 and the house was built on lots 10 and 11, 3.46 feet from the east lot line of parcel 10. The house was setback 38.58 feet from the south lot line, and a detached garage was built in this side yard in 1959. Parcel 8 served as the back yard for the LBA property. At some point, decks were added to the house and a portion of one deck extended four feet onto lot 9, while another deck extended several feet onto the 10 foot Manning building line setback.

On December 17, 2012 the owners of the LBA property in question applied for a Lot Boundary Adjustment with the City of Seattle, requesting to adjust the platted lots. The owner requested that a portion of the building site occupied by lots 10 and 11 be joined

together into 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.

The City's Department of Planning and Development ("DPD") processed this LBA application as a Type I administrative LBA decision. There is no provision for public comment or a hearing with a Type I LBA. Despite the lack of formal notice given, members of the Benchview Neighborhood Association ("BNA") submitted written comments and questions to the DPD opposing the LBA. The DPD responded with a letter on January 15, 2013.

On January 18, 2013, the City approved the LBA Application, creating three substandard lots sized 3,414 square feet, 3,781 square feet, and 4,396 square feet. The two smaller lots establish building sites facing adjacent to the LBA Property, along Manning Street and 55th Avenue. The third lot incorporates the existing house on the corner.

The Petitioner, Benchview Neighborhood Association, brought this motion to reverse the City's approval of the LBA based on its arguments that: (1) the City erred in approving the LBA, and (2) the City improperly classified this application as an LBA, thereby denying the citizens due process because no public notice was required.

Standard of Review

The Land Use Petition Act ("LUPA") is codified in Chapter 36.70C of the Revised Code of Washington. Under RCW 36.70C.130, the superior "court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met:"

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
(b) 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;
(c) The land use decision is not supported by evidence that is substantial when viewed in the light of the whole record before the court;
(d) The land use decision is a clearly erroneous application of the law to the facts;
(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or
(f) The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1)(a)-(f). "Standards (a), (b), (e), and (f) present questions of law [the court] review[s] de novo." *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300, 306 (2006) (citing *HJS Dev., Inc. v. Pierce County*, 148 Wn. 2d 451, 468, 61 P.3d 1141 (2003)). "Standard (c) concerns a factual determination that [the court] review[s] for substantial evidence supporting it." *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300, 306 (2006) (*citing Freeburg v. City of Seattle*, 71 Wn. App. 367, 371, 859 P.2d 610 (1993)). "The clearly erroneous standard (d) test involves applying the law to the facts" to "determine whether [the court] is left with a definite and firm conviction that a mistake has been committed." Id. (citing *Citizens to Preserve Pioneer Park, L.L.C. v. The City of Mercer Island* , 106 Wn. App. 461, 473, 24, P.3d 1079 (2001)).

"This statute reflects a clear legislative intention that the court give[s] substantial deference to both legal and factual determinations of local jurisdictions with expertise in land use regulation." *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 180-

81, 61 P.3d 332, 335-36 (2002). "In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct." RCW 36.70C.130(2)(emphasis added).

The Petitioner argues that the Respondent's approval of the LBA was improper because it was not supported by evidence that is substantial when viewed in light of the whole record before the court. RCW 36.70C.130(1)(c). "Substantial evidence" is evidence that would persuade a fair-minded person of the truth of the statement asserted based on consideration of all of the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority.

The LBA property is located in a zone where the minimum lot is 5,000 square feet. A lot that does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped separately under either of two exceptions: (1) the historic lot exception or (2) "the seventy-five/eighty rule." SMC 23.44.010(B)(1).

Historic Lot Exception

The Petitioner asserts that the DPD erred in applying the historic lot exception. To qualify for this exception, the lot must first meet the threshold requirements of (1) having an area at least 50 percent of the minimum square footage required and (2) the property must have been established as a separate building site in the public records of the county or City prior to July 24, 1957. SMC 23.44.010(B)(1)(d). In this case, lots 8, 9, 10, and 11 were each at least 2,500 square feet and the existing house on the property was built in 1952. Thus, the threshold requirements are satisfied.

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After the threshold requirements have been met, the property must fall into one of four categories listed in SMC 23.44.010(B)(1)(d)(1)-(4) to qualify for the exception. The City argued that the LBA qualified under subsection (2), which provides:

> 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

SMC 23.44.010(B)(1)(d)(2). The LBA property was held in common ownership with lots 8, 9, 10 and 11 and the house was built in 1952 wholly within its boundaries.

The issue is whether any portion of any contiguous lot is required to meet the setback or yard requirements. The parcel is to be evaluated under the lesser restrictive of the Land Use Codes in existence in 1952, when the house was built, or the current zoning code. The City found that the LBA property did not qualify as a historic lot under the current code because it could not meet the current setback or yard requirements. The current zoning code requires each property in a single-family zone to have a front yard that is at least 20 feet, a side yard that is 5 feet, and rear yard that is 20% of lot depth, but not less than 10 feet. SMC 23.44.014(A)-(C). The DPD found that when considering 55th Avenue as the front of the house, a portion of parcel 9 is needed to satisfy the current rear yard requirement for the existing house. Based on its failure to meet rear yard standards, DPD determined that Lot 9 could not be separately developed under the current code.

However, the DPD found that lot 9 did qualify for the lot area exception based on the 1952 Zoning Code because the house can be oriented towards Manning Avenue. The City cites to the 1952 Code:

> 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 dwelling sin 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. . .

Ordinance No. 78837. The DPD found that the 1952 code did not require that the property be orientated towards 55th Avenue because: (a) the code did not require front yards, and (b) the "building line" term establishing setbacks from Manning and 55th did not establish house orientation. DPD reasoned that the house could have fronted Manning Avenue, and if it was oriented towards Manning Avenue, the rear yard would have been located on the southern portion of lots 10/11 instead of on lot 9. As such, the City found that lot 9 was unnecessary as a rear yard for the house on lots 10/11 and that the LBA property could qualify as a historic lot.

The Petitioner argues that the City erred in applying the historic lot exception by ignoring the orientation of the existing house, which fronts 55th Avenue SW, failing to consider the fact that the existing house could not have fronted another street, and misapplying setbacks, ignoring the balcony and covered patio that extended into the side yard setback on the northern side of the lot.

The 1952 zoning code required back yards and side yards of a certain depth. Clearly in 1952 the front yard (the yard opposite the back yard) faced 55th Avenue because in 1952 Manning Street didn't exist. In 1952 the house was oriented towards 55th Street. However, there is nothing in the 1952 Code requiring the house to remain oriented towards 55th Street in 2013.

The Petitioners argue that the house had to be oriented towards 55th Avenue in 1952 because otherwise it would not have been able to satisfy the required 10 foot set back from Manning. The house was set back 11.53 feet from Manning Street and had a balcony that extended at least two feet from the house. (Pet. Brief, 7), S513. Although a balcony exists now, Respondents dispute that it existed when the house was originally constructed. The only evidence Petitioner was able to produce to establish this point was a declaration from a neighbor that the balcony existed in 1980 and a diagram depicting the outline of the house in 1952. S557. Plaintiff, having the burden of proof on this issue, has simply not presented sufficient evidence for this court to find that the balcony/porch existed on the house when it was originally constructed such that the house was required to be oriented towards 55th. If the house is oriented towards Manning, removal of the balcony would be permissible to allow separate development of lot 9. SMC 23.44.010(B)(1)(d)(4).

75/80 Rule

A lot that does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped separately under the "75/80 rule:"

> 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).

SMC 23.44.010(B)(1)(a)(2).

The Petitioner believes that the DPD erred when it applied the 75/80 exception to a standard-sized conforming lot so as to reduce it to a substandard-sized lot; failed to compare the LBA Property with the other lot on the 55th Avenue block face; and included the LBA Property in the comparison with the other lots on the Manning Street block face to determine the mean lot area.

First, the Petitioner argues that based on the threshold language in (B)(1) the 75/80 exception only applies to "[a] lot that does not satisfy the minimum lot area requirements of its zone," and lots 10/11 conform to the minimum lot area requirements of the SF 5000 zone. However, SMC 23.44.010(B)(1)(a)(2) clearly states that the rule applies to a "lot boundary adjustment."

Secondly, the Petitioner argues that the City failed to analyze the 55th Avenue block face. Under the Code, a "block face" or "block front" is 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). 55th Avenue does not meet the definition of "block face" or "block front" because although the houses on 55th Avenue are bound on three sides by the center line of platted streets, the two houses at 3650 and 3660 55th Avenue are not bound on the 4th side by an alley or rear lot lines.

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Finally, although Petitioner concedes that the 75% rule is satisfied, it claims that the City erred by including a portion of the LBA property with other lots on the block face when applying the second prong of this rule (the 80% prong). The City calculated that 11 lots exist along Manning with a total area of 55, 712 square feet, a mean area of these lots is 5,065 square feet, and 80 percent of this is 4,051 square feet. The City argued that the Parcel A created by the LBA complied with the 75/80 rule because it is 4,395 square feet, which is larger than the mean area lot. [See Table B below].

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. SMC 23.44.010(B)(1)(a)(4). The deck may not have existed at the time the house was originally constructed, but it clearly existed at the time of application. Lots 10-11 are tied to lot 9 by the deck that crosses the lot line. For purposes of the historic lot exception, SMC 23.44.010(B)(1)(d), unenclosed decks may be removed to allow separate development of the lots. This provision explicitly applies to the historic lot exception SMC 23.44.010(B)(1)(d)(4). There is no similar provision pertaining to removing decks in the 75/80 rule. In at least one prior decision where a house had a porch/deck that spans the LBA lot line, DPD counted the lots as one parcel. *Analysis and Decision of the Director of the DPD* #3014664, p. 3, Allen Decl. at S534. In its calculation, the City has counted lots 10 and 11 as one lot because the house spans both lots. With the deck of the house extending four feet onto lot 9, the City should have counted lots 9, 10 and 11 as one lot.

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Counting lots 9, 10 and 11 as one parcel, a minimum lot size of 4,527 square feet is required. [See table A below]. Lot A, at 4395 feet, does not meet this requirement. The City's application of the 75/80 rule was clearly erroneous because it did not include parcel 9 in its determination that lots 10/11 were at least 80% of the mean lot area of the rest of the lots on the block face.

TABLE A:

	Petitioner's Calculations
700770-0125	5,500
700770-0135	6,000
700770-0145	5,400
700770-0155	5,900
700770-0170	5,956
130930-0061	5,956
130930-0070	5,286
130930-0085	5,000
130930-xxxx (Lot 8)	2,519
130930-xxxx (Lots 9, 10, 11)	9,071
Total	56,688
Mean of 10	5,658
80%	4,527

TABLE B:

	City's Calculations
700770-0125	5,500
700770-0135	6,000
700770-0145	5,400
700770-0155	5,900
700770-0170	5,956
130930-0061	5,956
130930-0070	5,000

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130930-0085	5,000
130930-xxxx (Lot 8)	2,500
130930-xxxx (Lot 9)	2,500
130930-xxxx (Lots 10, 11)	6,500
Total	55,712
Mean of 11	5,064
80%	4,051

Classification of the Application as an LBA

The Court can reverse a land use decision if it "violates the constitutional rights of the party seeking relief." RCW 36.70C.130(1)(f). Petitioner argues that by classifying the LBA as a Type I administrative process that does not require public review, the public was deprived of their due process rights to be notified and given an adequate opportunity to be heard before this application was approved. Lot Boundary Adjustments are classified as type I administrative processes. SMC 23.76.004. As such, "[n]o notice of application is required." SMC 23.76.012. The purpose of a Lot Boundary Adjustment "is to provide a method for summary approval of lot boundary adjustments which do not create any additional lot, tract, parcel, site or division, while insuring that such lot boundary adjustment satisfies public concerns of health, safety, and welfare. SMC 23.28.010.

There were no additional lots created as a result of this application since the LBA property was originally four lots (lots 8, 9, 10, and 11) and was being adjusted into three lots. The adjustment of boundary lines within a parcel of property does not create additional lots.

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City of Seattle v. Crispin, 149 Wn.2d 896, 902-06, 71 P.3d 208 (2003). Therefore, it was proper for the City to classify the application as an LBA type I which does not require public input.

Conclusion

Viewing at the evidence in the light most favorable to the party that prevailed below (Respondents) and with due deference to the ordinance interpretation by the DPD, this court has determined that:

1. The City's decision that the Historic Lot Exception applies is AFFIRMED.
2. The City's decision that lots 10 and 11 meet the 75/80 rule is REVERSED.
3. The City's decision to classify the application as LBA 1 is AFFIRMED.

DATED this 24th day of July, 2013.

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Case Title:	BENCHVIEW NEIGHBORHOOD ASSN VS SEATTLE CITY OF ET AL
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