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CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 5331

A RESOLUTION regarding the appeal of Edwin H. Hearing from an interpretation of the Bellevue Land Use Code, No. AAD 90-8; entering Findings of Facts and Conclusions; and denying the appeal.

WHEREAS, on May 9, 1990, upon request of Edwin Hearing, the Department of Design and Development issued a written interpretation of provisions of the Bellevue Land Use Code relating to the application of the boundary line adjustment process to two lots located at 2425 Killarney Way S.E.; and

WHEREAS, on May 9, 1990, the Department of Design and Development issued a written interpretation of the Land Use Code in which it determined that the boundary line adjustment process was not available with regard to these lots; and

WHEREAS, on May 29, 1990, Mr. Hearing filed an appeal of the interpretation; and

WHEREAS, on July 26, 1990, a hearing was held before the Bellevue Hearing Examiner on the appeal; and

WHEREAS, on September 7, 1990, the Hearing Examiner entered Findings of Fact, Conclusions, and a Recommendation that the appeal be denied; and

WHEREAS, on October 22, 1990, the recommendation of the Hearing Examiner was considered by the City Council, and the Council has determined to adopt the recommendation of the Hearing Examiner, enter certain additional findings and conclusions, and deny the appeal; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby adopts the "Findings of Fact, Conclusions, and Recommendation of the Hearing Examiner in the Matter of the Appeal of Edwin H. Hearing from an Interpretation of the Bellevue Land Use Code, No. AAD 90-8."

Section 2. The Council hereby enters the following additional findings of fact:

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A. Lot 2, which is now 2,200 square feet in area, would be 4,680 square feet in area if the proposed boundary line adjustment were granted. The area of Lot 1 after such adjustment would be approximately 20,320 square feet.

B. The statutory authority for the City to approve boundary line adjustments is contained in RCW 58.17.040(6), which exempts from platting requirements:

"6. A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;" and

Bellevue Land Use Code 20.45B.260, exempting boundary line adjustments from platting requirements, was enacted pursuant to RCW 58.17.040(6).

C. Subsection C of Bellevue Land Use Code 20.20.070 provides:

"C. Notwithstanding paragraph A above, a nonconforming lot in a residential (R-1-R-30) land use district failing to meet or exceed 70% of minimum area, width and depth requirements of the district in which it is located may not be used for a building site if at any time since the effective date of the ordinance which first established a minimum lot area, width, depth or street frontage requirement larger than the lot contains or annexation, whichever was later, has a person, partnership, corporation or marital community owning said lot simultaneously owned additional contiguous property. Such lots must be combined with additional contiguous property sufficient that the area, width and depth of the combined property each meets or exceeds 70% of the minimum requirements of the land use district in which the property is located. This paragraph does not constitute a waiver of any of the requirements of boundary line adjustment procedure."

D. The appellant has owned Lot 1 since 1960 and Lot 2 since 1963. The lots are contiguous.

E. The zoning on appellants property is R-1.8, a residential district which provides for a minimum lot size of 20,000 square feet. That classification, or a similar classification requiring the same classification, has been on the property since its inclusion in the City of Bellevue at the time of its incorporation in 1953.

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Section 3. The Council makes the following additional conclusions, as a separate and independent ground for the decision in sections 4 and 5 hereof:

A. Under subsection C of of Bellevue Land Use Code 20.20.070 a non-conforming lot in a residential land use district which does not meet or exceed 70% of the minimum area requirement for that district may not be used for a building site if at any time since the effective date of the ordinance first establishing such minimum area a person owning said lot has simultaneously owned existing contiguous property.

B. Lot 2 is non-conforming as to area, and does not meet or exceed 70% of the area requirement of the land use district in which it is located.

C. Lots 1 and 2 are contiguous, and have been simultaneously owned by appellant since 1963, which was after the effective date of the ordinance placing the existing area requirement on the property.

D. Given the total area of combined Lot 1 and 2, there is no possible way to divide the lots so as to result in two lots meeting the 70% requirement.

E. Because Lot 2, as it would exist under the proposed adjustment, would not meet the 70% requirement, it could not be used as a "building site."

F. Under RCW 58.17.040(6) and Land Use Code 20.20.070.C, a boundary line adjustment is not allowed where a resulting lot is not a lawful building site.

Section 4. The Council concludes that the appellant has not carried the burden of proof and has not produced evidence sufficient to support the conclusion that the appeal should be granted, and further finds that the determination of the Department of Design and Development is supported by a preponderance of the evidence.

Section 5. The Council adopts the recommendation of the Hearing Examiner and denies the appeal.

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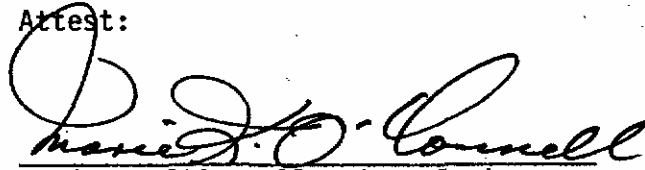
Section 6. This decision of the City Council may be appealed to Superior Court in accordance with Bellevue Land Use Code 20.35.535. Any such action must be filed in Superior Court no more than 20 calendar days following the date of passage of this resolution.

PASSED by the City Council this 26th day of November, 1990, and signed in authentication of its passage this 26th day of November, 1990.

(SEAL)


Terry Lukens, Mayor

Attest:


Marie K. O'Connell, City Clerk