

MEMORANDUM OF LAW

DATE: December 18, 1991
TO: Tom Story, Deputy Director, Planning Department
FROM: City Attorney
SUBJECT: Municipal Code Section 101.0101.23 Front Property Line -
Defined; Application to a Double-Ended Lot

This Memorandum of Law is prepared in response to your request that this office issue a written memorandum concerning the interpretation of the section referenced above in the situation presented by a lot with frontage on two streets, a double-ended lot.

Subsection 3 of Municipal Code section 101.0101.23 provides:

The front property line is in the case of a lot (either interior or corner) extending from one street to another, the lines separating the lot from the streets on both frontages except where the right of vehicular access has been waived to one of the streets as required by a governmental agency, the line separating the lot from this street becomes the rear property line. Emphasis added.

In order for a property line to be considered a rear property line instead of a front property line, the right of vehicular access must have been required to be waived by a governmental agency. A voluntary waiver by a property owner for the purpose of avoiding the setback associated with a front property line does not qualify as a waiver "required by a governmental agency."

A required waiver of access rights is usually, if not exclusively, associated with the approval of subdivision maps. The Subdivision Map Act authorized the City to require such waivers beginning in 1965. (Stat 1965, c. 1738.) The subsection in question was added to the Municipal Code in August of 1966 (Ordinance No. 9316 (New Series)). Because the Subdivision Map Act authorized the City to require waiver of access rights, it is apparent that the language of the subsection of Municipal Code section 101.0101.23, which refers to required waiver of access rights, was added in recognition of the provisions of the Subdivision Map Act and provides relief from the impacts associated with such required waiver at least as to a double-ended lot.

It has been suggested that the emphasized language of subsection 3 refers to the procedure for waiving access rights rather than a requirement by a governmental agency to waive access. This interpretation would require that the language be read to mean "in the manner required by a governmental agency." This interpretation is inconsistent with the plain meaning of the subsection and, in light of the history of the subsection and the Subdivision Map Act, is

inconsistent with the apparent intent of the City in enacting the subsection.

The foregoing analysis is further supported by the fact that until 1966 the provisions of Municipal Code section 101.0101.23 defined front property line to include both ends of a double-ended lot. There was no reference to waiver (Ordinance No. 9316 (New Series)).

JOHN W. WITT, City Attorney

By

Frederick C. Conrad

Chief Deputy City Attorney

FCC:lc:600(x043.2)

Enclosures

ML-91-107