

## MEMORANDUM OF LAW

DATE: November 26, 1991  
TO: Sharren Carr, Zoning Administrator, Planning Department  
FROM: City Attorney  
SUBJECT: Applicability of Municipal Code Section 101.0407(D)(2)(b)(2)  
to Merged Lots in the R-1-5 Zone

At the November 6, 1991, Board of Zoning Appeals (the "Board") hearing, an issue arose as to the applicability of San Diego Municipal Code section 101.0407(D)(2)(b)(2) to merged lots in the R-1-5 zone. You and the Board requested a legal opinion from this office as to the specific case before the Board at that time and how that code section should be applied in the future under a similar factual scenario.

This memorandum will address the specific case before the Board on November 6. However, while it may also provide guidance as to future situations before the Board or the Zoning Administrator, each case should be reviewed individually.

### Background

The pertinent facts are as follows: The applicant's property was made up of three contiguous lots, each with a width of approximately 25 feet. One building spanned the three lots and the applicants were in the process of building an addition. The structure is in the R-1-5 zone.

In 1989, pursuant to San Diego Municipal Code section 102.0802, the City of San Diego merged the three parcels into one. That action was recorded in the office of the County Recorder on December 28, 1989. The effect of this lot merger was:

From and after the recordation of notice of merger, the merged parcels, units or lots shall constitute a single parcel for all regulatory purposes and no component parcel, unit or lot of the merged parcel shall thereafter be separately conveyed.

San Diego Municipal Code section 102.0802.

The addition to the existing structure observed a zero foot street side yard. In addition, it encroached approximately four inches into the required rear yard for that zone.

The applicants originally came before the Board of Zoning Appeals seeking a variance for the rear yard encroachment. The variance was granted by the Zoning Administrator, with conditions, in September of this year.

Shortly thereafter, a neighbor appealed the Zoning Administrator's decision regarding the rear yard setback and raised a new issue concerning the zero foot setback in the street side yard. This memorandum concerns the latter issue.

Municipal Code Section 101.0407(D)(2)(b)(2)

The issue revolves around the proper application of Municipal Code section 101.0407(D)(2)(b)(2), given the 1989 lot merger. It states in pertinent part:

Street Side Yard. . . . No street side yard shall be required for any lot in an R-1-5 Zone which has a width of 50 feet or less, and which has not been resubdivided.

Only one of the three lots merged in 1989 is along side the street in which the street side yard setback is in question.

It appears that the act of merging the three lots created one lot which is approximately seventy-five feet in width, and that the provision of section 101.0407(D)(2)(b)(2) no longer applies.

Municipal Code section 101.0101.34 defines a lot as "a parcel of land . . . individually designated with a number or letter on . . . a subdivision or parcel map recorded with the County Recorder." When the three lots are merged and that act was recorded with the County Recorder, the new lot was given a parcel number of 451-738-08-00-0.

Furthermore, Section 102.0802 makes the effect of merger that the merged parcels, units, or lots are considered "a single parcel for all regulatory purposes."

Conclusion

Given the legal effects of merger, the issue of the street side yard setback should be remanded to the Zoning Administrator and a new hearing should be held on whether a variance from the code should be granted in this case.

Please call me if you have any questions.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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