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BEFORE THE HEARING EXAMINER
CITY OF REDMOND

In the Matter of the Appeal of
John Devore,
Of the June 28, 2018 Denial of Reconsideration
Request for a second driveway at 11235 165th Court
NE, Redmond.

Appeal No. LAND-2018-00794
DEVREQ2018-00530

CITY'S PRE-HEARING BRIEF

I. INTRODUCTION

John Devore (“Appellant”) seeks a deviation from residential driveway related code requirements in order to install a second driveway at his property located at 11235 165th Court NE, Redmond. Throughout the course of the deviation request process Appellant has been represented by George Balmore with Per-spek-tiv. (Hereafter, collectively “Appellant”) Appellant submitted a deviation request which was denied. Following the denial of the original deviation request, the Appellant submitted a reconsideration request, which was similarly denied. The instant appeal was filed on July 19, 2018.

II. STATEMENT OF FACTS

Mr. Devore owns a 0.95 acre property located at 11235 165th Court NE, Redmond. The home is zoned R-1 (Single-Family Restrained) with a Comprehensive Land Use designation of

1 Single-Family Constrained. Appellant desires to make modifications to the site which includes
2 the addition of a new second driveway as depicted in Appellant's site plan. Appellant's Exhibit
3 8. The site plan created by Appellant identifies the subject parcel location as being located along
4 165th Court NE, but completely fails to identify NE 113th Street, which intersects 165th Court
5 NE directly at the entrance to the new proposed new second driveway. *Id.* Further, Appellant's
6 Tree Preservation Plan also identifies 165th Court NE but fails to identify NE 113th Street.
7 Appellant's Exhibit 17. Aerial photography clearly shows the intersection of 165th Court NE and
8 NE 113th Street located next to the North-East corner of the property. City Exhibit 8; City
9 Exhibit 6, p.3. The aerial photographs (City exhibit 8; City Exhibit 6, p.3) include notations by
10 City staff to indicate the approximate location of the proposed second driveway in relation to the
11 intersection not shown on the site plan and tree plan. The parcel viewer aerial photograph (City
12 Exhibit 10) shows a construction disturbance which traces the proposed new second driveway
13 location coming out into the intersection.

14 165th Court NE dead ends both to the North and to the South of Appellant's property.
15 City Exhibit 8. That North to South stretch of roadway provides 15 parcels with their sole means
16 of access in and out of the subdivision. *See Id.* Each of those 15 parcels must drive through the
17 intersection of 165th Court NE and NE 113th Street, which is the intersection where Appellant
18 seeks to place a new second driveway. *See Id.*

19 In advance of submitting the deviation request at issue in this Appeal, the City provided
20 Appellant with the City's *Procedures for Requesting and Approving Engineering Deviation*
21 *Requests.* *See* City Exhibit 9. The City's procedures include an outline of all the required
22 elements of a deviation request along with a requirement that applications must include clear
23 written documentation with exhibits as needed to explain how the proposed deviation addresses
24 the bulleted criteria. City Exhibit 9, Sections 1 and 2. Then, on April 30, 2018 the City of
25 Redmond received the Appellant's Engineering Deviation Request. City Exhibit 3. The
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1 deviation request is dated March 1, 2018, but that date does not correspond to the date the
2 document was received by the City, which was actually April 30, 2018.

3 Following receipt of the April 30, 2018 request, the City's Deviation Review Team met
4 to consider Appellant's deviation request. The Deviation Review Team carefully reviewed the
5 deviation request and evaluated the impact to the project. The Deviation Review team
6 determined that the request should be denied. Lisa Rigg, as Development Engineering Manager
7 wrote a letter to Appellant dated May 25, 2018 in which she explained that the deviation request
8 was denied. City Exhibit 4.

9 On June 8th, 2018 the Appellant filed a Reconsideration Request for the previously
10 denied deviation request decision. City Exhibit 5.

11 Following receipt of this reconsideration request the Deviation Review Team gathered a
12 second time per the requirements for reconsiderations outlined in City Exhibit 9, Section 6. At
13 this second Deviation Review Team meeting staff reviewed the deviation request in the context
14 of the reconsideration and analyzed a PowerPoint presentation which included information
15 relevant to the request. City Exhibit 6.

16 The Deviation Review Team recommended denial of the reconsideration due to (1) the
17 proximity to the intersection, (2) limited sight distance to the north, (3) regulations limiting the
18 number of driveways to one, and (4) a dangerous or confusing traffic pattern should the driveway
19 be constructed. The Technical Committee denied the request through a letter dated June 28,
20 2018, signed by Lisa Rigg. City Exhibit 2.

21 This appeal was filed on July 19, 2018 challenging the City's denial of the deviation
22 request. Appellant's Exhibit 1. The Hearing Examiner limited the scope of the appeal to
23 argument and evidence addressing whether or not the June 28, 2018 denial of the deviation
24 request is supported by facts and is consistent with applicable regulations and policies of the
25 City. Order Setting Hearing and Pre-Hearing Exchange Schedule, p.3.

1 required for development. These technical regulations and standards are found in
2 the appendices to the RZC. Upon adoption by the Technical Committee, the
3 appendices have the force of law and shall be complied with by all developers and
4 property owners. In the event of any conflict between the appendices and
5 provisions of the RZC, the RZC shall control.”

6 RZC 21.02.050. Accordingly, the City adopted Appendix 2 – *Construction Specification and*
7 *Design Standards for Streets and Access* which therefore have the force of law and shall be
8 complied with by all developers and property owners. (Version of Appendix 2 in effect at time
9 of deviation request has been made City Exhibit 11)

10 Appendix 2 dedicates an entire section to driveway standards and specifications. RZC
11 Appendix 2, (D). “Driveways, as used in this appendix, shall refer to vehicle entrances to
12 individual lots and the intersection of access corridors with public streets.” RZC Appendix 2,
13 (D). Because Appellant’s proposed second new driveway is a vehicle entrance to his individual
14 lot, and therefore falls squarely within the definition of a “driveway,” it is subject to the
15 standards and specifications of RZC Appendix 2, (D).

16 Appellant’s proposed second new driveway is not permitted for three reasons. First,
17 driveways shall be limited to one per parcel per street frontage, except if allowed by the technical
18 committee. Appendix 2 (D)(4)(a). Appellant has an existing driveway at his property and is
19 seeking to install a second driveway. See Appellant’s Exhibit 8. This second new driveway is
20 not allowed without technical committee approval. This restriction has no limitation or
21 restriction based on the classification of the road as public or private. As noted above, driveways
22 are vehicle entrances to individual lots and there can only be one per parcel.

23 Second, there is an outright prohibition against permitting any driveway within 150 feet
24 of the nearside face of the curb of the intersecting street or from any other such driveway.
25 Appendix 2 (D)(4)(b). Where infeasible or undesirable, then driveways shall be located as far
26 from the nearside curb or driveway. Appellant’s proposed new second driveway is located
directly in the middle of a three-way intersection with zero setback, which violates this
prohibition. “Intersecting street” is not defined in the code, but “intersection” is defined.

1 “Intersection” is a location “where two or more public and/or private alleys, roads, streets, or
2 commercial, industrial, or multifamily residential driveways meet or cross.” RZC 21.78 (I).
3 Again, the definition of an intersection includes both public and private roads/streets.
4 Accordingly, the intersection of 165th Court NE and NE 113th Street, which are two private
5 streets, qualifies as an intersection and within 150 feet of which no driveway shall be permitted.

6 Third, “driveways shall not be permitted where, in the judgment of the Technical
7 Committee, dangerous or confusing traffic patterns would result.” Appendix 2 (D)(4)(f). The
8 placement of the proposed new second driveway, which is located in the middle of an
9 intersection as well as on the curve of 165th Court NE, creates both a dangerous and confusing
10 traffic pattern that could not be approved under (D)(4)(b) and (f).

11 Based on these three provisions included in Appendix 2, the City would not permit
12 Appellant to install his new second driveway as proposed. Appellant disagreed with that
13 position and sought a deviation from these requirements.

14 **C. Deviations from engineering standards.**

15 Appendix 2 allows “design deviations in specific situations where conditions warrant and
16 are properly documented.” A deviation request is not a challenge to the established restrictions,
17 it is a request to depart from those established restrictions. Argument and evidence attempting to
18 address the baseline restrictions on driveways is not relevant to this appeal. This appeal centers
19 on the Appellant’s request to deviate from established criteria and the City’s review of that
20 request. Both the standards for a deviation request as well as the standards for the review of such
21 a request are outlined in the city’s Procedures for Requesting and Approving Engineering
22 Deviation Requests. City Exhibit 9.

23 *1. Deviation Requests.*

24 Deviation requests may be made according to the City’s Procedures for Requesting and
25 Approving Engineering Deviation Requests. City Exhibit 9. Deviation requests must include the
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1 elements contained in Section 1 of the City's Procedures. *Id.*, at p.1. Additionally, the
2 application must include clear written documentation to explain how the proposed deviation
3 addresses the criteria contained in Section 2 of the City's Procedures. *Id.*, at p.2. Included in
4 Section 2 is a requirement that the application meets requirements for safety. *Id.*, at bullet 2.
5 This safety requirement is the element at issue with the proposed new second driveway.
6

7 Appellant's deviation request only mentions safety once: "We also don't ever want to
8 create a dangerous situation for anyone, but this location is perfect for the client and provides
9 great unobstructed visibility down either street to the sides and straight down the road we would
10 access from." City Exhibit 3, p.2. This one mention of visibility is the entire extent of
11 Appellant's discussion of safety for this deviation. This minimal discussion lacks any "clear
12 written documentation with exhibits... to explain how the proposed deviation address[es]...
13 safety." City Exhibit 9, p.2.
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15 Deviation requests are screened and reviewed by the City's Deviation Review Team,
16 which has the responsibility to provide recommendations on the deviation request to the
17 Development Engineer. City Exhibit 9, p.3. Deviation Review Teams may include members
18 representing Complete Streets, Water and Sewer, Storm water, Maintenance, and Fire. *Id.*, at p.2.
19 Deviations from standards may only be granted upon evidence that the deviation is in the public
20 interest and the requirements for safety have been fully met. *Id.*, at p.1. Appellant's deviation
21 request, which the Deviation Review Team reviewed, fails to provide any "clear written
22 documentation" that explain how the proposed deviation is in the public interest or addresses
23 safety.
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25 Mr. Chow and Ms. Rigg will testify that the deviation review team met to discuss the
26 Devore deviation request in order to make a recommendation to the Development Engineer. The

1 first issue raised in review was that the site plan submitted by Appellant was inaccurate because
2 it left NE 113th Street off the plan. By leaving this street off the site plan, the intersection
3 located directly at the proposed new second driveway was not properly identified. The
4 Deviation Review Team recognized this issue and reviewed the deviation request with aerial
5 images of the parcel and surrounding area in hand. In this review, the Deviation Review Team
6 was concerned that the proposed new second driveway location will create unsafe situations due
7 to the proximity to the uncontrolled intersection and sight lines.
8

9 The Deviation Review Team made its recommendation to the development engineer that
10 the Devore Deviation Request Application should be denied. Lisa Rigg, as development
11 engineer, then issued the City's May 25, 2018 denial of the deviation request. City Exhibit 4.
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13 *2. Reconsideration of deviation denials.*

14 Ms. Rigg's May 25, 2018 denial of the deviation request included instructions on how to
15 properly file a reconsideration of that decision. City Exhibit 4, p.1. Further, the Procedures
16 previously provided to Appellant also include the reconsideration process. City Exhibit 9, p.4.
17 Reconsiderations must identify new reasons supporting the reconsideration as well as additional
18 supporting justification. City Exhibit 4, p.1; City Exhibit 9, p.4.
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20 Mr. Devore's reconsideration focuses entirely on his code interpretation of various terms
21 used in Appendix 2 in an attempt to show that his proposed new second driveway is not
22 governed by the very regulations he is seeking a deviation from. The reconsideration concludes
23 with the penultimate opinion that "[due] to this being a private road system we don't think any of
24 this deviation even applies."
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1 First, reconsiderations are not the mechanism to challenge the underlying need for a
2 deviation. Reconsiderations must outline new reasons supporting the deviation from code
3 standards and provide additional supporting justification. Arguing that the code requirements for
4 driveways do not apply to his parcel is not a proper reconsideration.

5
6 Second, the code interpretation put forth by Appellant, if considered here, is inaccurate.
7 Appellant argues that the definitions of key terms mean that the requirements apply to public
8 roads only. Appellant claims that the driveway requirements within Appendix 2 are “based on
9 driveways as vehicle entrances to individual lots AND the intersection of ACCESS
10 CORRIDORS with PUBLIC STREETS.” City Exhibit 5. (Emphasis in original.) He further
11 states that “Driveway and Street all are referring to a public road...” *Id.* This position misstates
12 the relevant code definitions.

13
14 The very first sentence of the driveways section states “Driveways, as used in this
15 appendix, shall refer to vehicle entrances to individual lots and the intersection of access
16 corridors with public streets.” RZC Appendix 2(D). This definition contains two clauses: (1)
17 vehicle entrances to individual lots, and (2) the intersection of access corridors with public
18 streets. Appellant seeks to read these two clauses together such that the public streets portion of
19 the second clause modifies the individual lots portion of the first clause. This is simply not how
20 the sentence is constructed. Appellant’s reading, if true, would mean that all driveway
21 restrictions contained in the driveway section would apply only to driveways on public roads.
22 This is in direct contradiction to the restrictions outlined in Appendix 2 which include a
23 limitation that “Driveways shall be limited to one per parcel per street frontage...” Appendix 2
24 (D)(4). This restriction pertains to “street frontage” which is defined as “the length along a
25 public or private right-of-way upon which a structure, business, or lot directly abuts.” RZC 21.78
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1 – Street Frontage. Therefore, the one per parcel restriction clearly applies to driveways on both
2 public and private rights-of-way. This particular restriction could not exist under Appellant’s
3 reading of the driveway definition. Further, the zoning code definition of “driveway” is
4 consistent with the Appendix and defines driveway as “an access which serves a lot, structure, or
5 parking area.” RZC 21.78 – Driveway. The reasonable plain reading of the Appendix 2
6 definition of a driveway, the consistency with the zoning code definition, as well as the usage of
7 the term throughout Appendix 2 as a whole, shows there is no baseline restriction of the
8 driveway regulations to public streets only.
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10 Per the City’s Deviation Procedures, the Deviation Review Team will consider requests
11 for reconsideration of deviation denials and make a recommendation to the Technical
12 Committee, which will issue a decision on the reconsideration. City Exhibit 9, p.4. Despite the
13 deficiencies of the reconsideration, the Deviation Review Team again met to consider the
14 deviation request reconsideration. The PowerPoint presentation included at City Exhibit 6
15 outlines the Deviation Review Team’s review of the reconsideration. The same issues were
16 raised at this review as were raised originally because no new reasons related to safety were
17 brought up in support of the reconsideration. The Deviation Review Team (traffic operations
18 and safety engineering, transportation, and LR-transportation) recommended denial of the
19 reconsideration request. City Exhibit 6, p.9. Since this property has an existing driveway with
20 the option to design the oversized vehicle maneuver around onsite, the Deviation Review Team
21 determined that the onsite option would be a safer approach instead of allowing the proposed
22 new second driveway. Ms. Rigg provided Appellant with the Technical Committee’s decision
23 that the “reconsideration request is denied due to (1) the proximity to the intersection, (2) limited
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1 sight distance to the north, [3] regulations limiting the number of driveways to one, and (4) a
2 dangerous or confusing traffic pattern should the driveway be constructed.” City Exhibit 2.
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4 **V. CONCLUSION**

5 For all the above reasons, Mr. Devore’s challenges are either unsupported by the Zoning
6 Code or misinterpret its provisions. Mr. Devore failed to properly support his deviation request
7 as well as his reconsideration and the City’s denial of both are well supported by the evidence
8 and are not erroneous. The Hearing Examiner should deny Mr. Devore’s appeal.
9

10 DATED this 17th day of September, 2018.
11

12 OGDEN MURPHY WALLACE, PLLC

13
14 By 
15 Daniel P. Kenny, WSBA #44547
16 Attorney for City of Redmond
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1 **DECLARATION OF SERVICE**

2 I, Daniel Kenny, an employee of Ogden Murphy Wallace, PLLC, make the following
3 true statement:

4 On the date below, I sent a true and correct copy of this document via email to all parties
5 to this Appeal, as follows:
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PARTY	EMAIL
<i>Office of the Hearing Examiner</i> Cheryl Xanthos, Deputy City Clerk	cdxanthos@redmond.gov
<i>Appellant</i> John Devore George Belmore – Designated Representative	gabelmore@mac.com
<i>City of Redmond</i> Ben Sticka, Planner	bsticka@redmond.gov

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15 I declare under penalty of perjury under the laws of the State of Washington that the
16 foregoing is true and correct.

17 EXECUTED at Seattle, Washington this 17th day of September 2018.

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Daniel Kenny