



APPEAL APPLICATION FORM

To file an appeal of a Type I or II decision or a SEPA determination, please complete the attached form and pay the applicable fee by 5:00 p.m. on the last day of the appeal period.

Form submission and payment must be by **PERSONAL DELIVERY** at City Hall 1st Floor Customer Service Center c/o Office of the City Clerk-Hearing Examiner, 15670 NE 85th Street. Contact the Office of the Hearing Examiner with process questions at 425-556-2191.

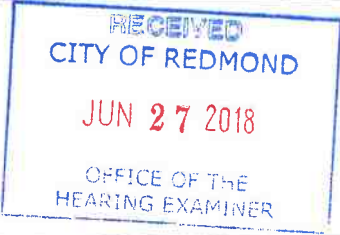
Standing to Appeal:

- **Appeal to the Hearing Examiner of a SEPA determination** - Any interested person may appeal a threshold determination, adequacy of a final EIS, and the conditions or denials of a requested action made by a nonelected City official based on SEPA. No other SEPA appeals shall be allowed.
- **Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II)** - the project applicant, owner, or any person who submitted written comments (party of record) prior to the date the decision was issued may appeal the decision. The written appeal and the applicable fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. on the 14th calendar day following the date of the decision.

Should the appellant prevail in the appeal, the application fee will be refunded (City of Redmond Resolution No. 1459). The application fee will not be refunded for appeals that are withdrawn or dismissed.

Hearing Examiner or City Council decision may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW Section 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

Please continue to page 2 to select your appeal type.

(Staff Use Only)	
File No: _____	
Date Received: _____	
Receipt No. _____	

Please check the applicable appeal:

- Appeal to the Hearing Examiner of a SEPA determination RZC 21.70.190(E). (Please be sure to understand the type of SEPA appeal you are filing, and if a further appeal to the underlying action is needed.)
- Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II) RZC 21.76.060(I)

Section A. General Information

Name of Appellant: EUGENE ZAKHAREYEV
Address: 5126 154TH AVE NE
City: REDMOND State: WA Zip: 98052
Email: EUGENEZ@OUTLOOK.COM
Phone: (home) ~~##~~ 425 285 9778 (work) _____ (cell) _____

Name of project that is being appealed: ANJUMAN E-BURHANI
File number of project that is being appealed: LAND-2013-00171
Date of decision on project that is being appealed: JUNE 13, 2018
Expiration date of appeal period: JUNE 27, 2018

What is your relationship to the project?
 Party of Record Project Applicant Government Agency

Pursuant to the Redmond Zoning Code, only certain individuals have standing to appeal a decision on application or appeal (See page 1 above). Below, please provide a statement describing your standing to appeal, and reference all applicable City Code citations.

SEE ATTACHMENT



Section B. Basis for Appeal

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please state the facts demonstrating how you are adversely affected by the decision:

SEE ATTACHMENT

2. Please provide a concise statement identifying each alleged error of fact, law, or procedure, and how the decision has failed to meet the applicable decision criteria:

SEE ATTACHMENT

3. Please state the specific relief requested:

SEE ATTACHMENT

4. Please provide any other information reasonably necessary to make a decision on the appeal:

SEE ATTACHMENT

Do not use this form if you are appealing a decision on a:

- Shoreline Permit (must be appealed to the State Shoreline Hearings Board *RZC 21.68.200(C)(6)(b)*)
- Shoreline Variance or a Shoreline Conditional Use Permit (must be appealed to the State Shoreline Hearings Board *RZC 21.68.200(C)(6)(c)*)
- Hearing Examiner decision on a SEPA appeal (not an appealable action as successive appeals are not allowed *RZC 21.70.190(D)*)
- Hearing Examiner decision on an application (must be appealed to Superior Court)
- City Council approval or denial (must be appealed to Superior Court *RZC 21.76.060(Q)*)

Appellant standing

Eugene Zakhareyev is a party of record to land use application LAND-2013-00171, and owns a house in the vicinity of the proposed development.

Please state the facts demonstrating how you are adversely affected by the decision

The development proposal at issue in this appeal will be constructed in the vicinity of appellant’s house and will have significant traffic, parking, noise and other land use impacts on the appellant and his family. The scale and bulk of the proposed building will result in drastic changes to the neighborhood character.

Please provide a concise statement identifying each alleged error of fact, law, or procedure, and how the decision has failed to meet the applicable decision criteria

The decision is erroneous because of the following:

(1) The City did not comply with additional regulations pertinent to the site driveway located on fully controlled limited access highway

The property driveway is located in a fully controlled limited access highway area which is regulated by a number of Washington state statutes. The changes in access are managed by the state agency, Department of Transportation (WSDOT).

Specifically, the type of approach permitted by WSDOT on the Deed to the City of Redmond is Type A single family residential 14’ as recorded on right of the way plan. This is the only type of access allowed; a religious facility does not have right of access to NE 51st Street.

(a) The city does not have authority to change the type of approach for the property

According to RCW 47.24.020(2), WSDOT maintains control on the streets that “*form a part of the route of state highways*”:

The jurisdiction, control, and duty of the state and city or town with respect to such streets is as follows:

...

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW; (emphasis added)

The only authority that is allowed to determine the type of approach in a fully controlled limited access highway area is WSDOT per WAC 468-58-010(1):

(1) "Fully controlled limited access highway" is a highway where the right of owner or occupants of abutting land or other persons to access, light, air, or view in connection with the highway is controlled to give preference to through traffic by providing access connections with selected public roads only, and by prohibiting crossings or direct private driveway connections at grade, with the exception of Type C and F approaches, where no other reasonable means of access exists as solely determined by the department. (emphasis added)

The deed granting the property rights to the City of Redmond in 1991 expressly states that the city has no right to change the access.

The [city] shall have no right of ingress and egress to, from and between said SR 520 and the lands herein conveyed and will maintain the control of ingress and egress to, from and between the lands herein conveyed and the lands adjacent theretoEXCEPT that [the city]...shall have reasonable ingress and egress to, from and between the lands conveyed and said Highway via off and on ramps.... (emphasis added)

The city has no authority to modify the limited access as conveyed, including changing the type of access or granting an easement over ROW.

(b) The city erred in allowing access for religious use

Religious institutions are a well-defined use that does not require special designations. Customarily, the types of approach in highway access management are classified by traffic intensity and peak patterns, with such uses as religious assemblies and schools classified as commercial type of access (meaning consistent with "non-residential" traffic patterns).

Thus AEB's proposal requires a commercial approach. However, the commercial type of approach required by the AEB project is expressly prohibited for fully controlled limited access highways per WAC 468-58-030(1)(a):

*(1) Fully controlled limited access highways:
(a) No commercial approaches shall be permitted direct access to main roadway but only to frontage roads when these are provided in the access plan or to the crossroads of interchanges outside the limits of full access control.*

(c) The city did not comply with the WSDOT requirements

Per WSDOT letter from Aug. 24, 2012, the applicant is required to provide value change determination for commercial access:

Since there is a change in use, a value determination for a commercial use as well as for a wider driveway, per Chapter 530.10 of WSDOT Design Manual must be prepared.

However, the city instructions to the appraiser did not specify the commercial approach but rather a Type C approach, therefore resulting in an incorrect and possibly lower appraisal amount.

The same WSDOT letter also stated:

The City required SSD and ESD must be met per design speed and the proposed modification must be evaluated and implemented to ensure adequate sight distances for the proposed access location.

Yet the city has granted the applicant Entering Sight Distance (ESD) deviation request. In addition to allowing shorter ESD, the deviation request requires relocation of existing bus stop thus affecting the intersection of NE 51st Street/154th Ave NE that already has limited sight lines.

(2) City erred in using the Type II Administrative review process for the application instead of the Type III Quasi-judicial review as follows from the project seating capacity.

The project parcel is zoned R-5, a zone where religious institutions are an allowed use. RZC 21.08.080 “R-5 Single-family Urban Residential”, Table 21.08.080C (30) requires following a Conditional Use Permit process for religious institutions with seating capacity between 250 and 750 seats:

30. A. Permitted use if less than 250 seats. A Conditional Use Permit is required for religious institutions with between 250 and 750 seats.

RZC 21.08.280 provides a method for calculating seating capacity:

B. Calculation of Seating Capacity. For the purposes of this regulation, a seat shall be defined as either:

- 1. One individual fixed seat; or*
- 2. A length of 18 inches on a pew or bench; or*
- 3. A measurement of seven square feet per person for the area seating the general assembly with movable chairs or other portable seating fixtures. The total area includes aisle space, but excludes areas such as stage and podium areas, space for musical instruments, and lobbies.*

Under International Building Code (IBC) Section 202, fixed seating is unambiguously defined as follows:

FIXED SEATING. Furniture or fixture designed and installed for the use of sitting and secured in place including bench-type seats and seats with or without backs or arm rests.

IBC is adopted via Redmond Municipal Code Title 15, 15.08.020.

Thus the seating capacity for the mosque needs to be calculated using the measurement of seven square feet per person and square footage of the areas associated with assembly use.

Using the prayer area for calculations yields seating capacity of over 250, instead of 147 as provided in the application.

With seating capacity over 250 seats, RZC 21.08.080 requires the Conditional Use Permit process. Per RZC 21.76.050 “Permit Types and Procedures”, C, Table 21.76.050B the review of conditional use permit applications should follow Redmond’s Type III review process.

(3) City erred in calculating required parking based on seating capacity.

RZC 21.08.280 provides a method for calculating seating capacity:

B. Calculation of Seating Capacity. For the purposes of this regulation, a seat shall be defined as either:

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Thus the seating capacity for the mosque needs to be calculated using the measurement of seven square feet per person and square footage of the areas associated with assembly use.

Using only the prayers area for calculations yields seating capacity of over 280, instead of 147 as provided in the application.

Thus the city must use seven square feet per person to calculate the seating capacity for the application and the number of seats for use in parking calculations per RZC 21.08.080.

(4) City erred in calculating proper setbacks based on proposed building height.

RZC 21.08.280.D mandates a minimum setback of 20’ with an increased setback of five feet for every one foot in building height over 30 feet, to the maximum height of 50 feet, for any size of facility - both for seating capacities of less than and greater than 250 people:

D. Development Criteria for Seating Capacities in a Residential Zone.

1. Places of worship with a seating capacity of less than 250 seats:

...

c. Buildings shall maintain a minimum setback of 20 feet from all property lines; building setbacks shall be increased by five feet for every one foot in building height over 30 feet;

d. The maximum building height does not exceed 50 feet inclusive of steeples, bell

towers, crosses, or other symbolic religious icons;

...

2. *Places of worship with a seating capacity of between 250 to 750 seats:*

...

b. Buildings shall maintain a minimum setback of 20 feet from all property lines;
c. The maximum building height may not exceed 50 feet, inclusive of steeples, bell towers, crosses, or other symbolic religious icons. However, building setbacks shall be increased five feet for every one foot in building height over 30 feet;

In RZC 21.78 (H Definitions), building height is defined as follows:

Height of Building or Structure. The vertical distance measured from the average finished grade around the building to the highest point of the structure. The approved average finished grade shall be measured by taking the smallest rectangle around the building and averaging the elevations at the midpoint of each side.

The highest points of the building are the minaret dome and mechanical room, both over 30'. The setback should be calculated as applied to the building envelope per RZC definition and not to the portion of the building with a minaret or mechanical room:

Setback. The distance between a property line and the corresponding parallel setback line.

Setback Line. A line beyond which, toward a property line, no structure greater than 30 inches above finished grade may extend or be placed except as permitted by the regulations of this title.

(5) City erred in calculating required parking for assembly use.

RZC 21.08.280.C.2 reads as follows:

*2. The use shall comply with the parking regulations **for assembly uses**, except that in no event shall parking be in excess of one space per three seats in a residential zone. (emphasis added)*

This regulation is unique to religious facilities in residential areas; religious institutions in other zones have fixed parking requirements.

Under the International Building Code (IBC), Assembly Uses include community halls, community indoor recreation and arts, entertainment and recreation facilities. In RZC each of these uses requires parking “*Adequate to accommodate peak use.*” See e.g., RZC 21.12.080B, 21.12.070B, and 21.08.020B. Indeed, the phrase “*Adequate to accommodate peak use*” appears in many sections of the Redmond code relating to parking. This reflects a determination of the City Council that overflow parking for large, unusual events not be permitted to impact adjacent properties.

IBC is adopted via Redmond Municipal Code Title 15, 15.08.020.

The “peak use” for a religious facility does not necessarily correspond with religious services, and will include social events such as weddings or other meetings. In fact, the project name as submitted and discussed at the community meetings was “*Anjuman E-Burhani Community Center*” indicating that religious use is not the only projected use, may not even be the main use and it may well be on par with community center uses in code. The worship area represents an insignificant portion of the overall 22,000+ sf building that includes multi-purpose areas, a kitchen, a storage area, dining facilities and classrooms.

The city is aware that more parking is required and the Decision includes a requirement for 29 valet parking stalls. However, Redmond Zoning Code makes no provisions for using double- or triple- parking on the lot by a valet as a substitute for required parking stalls on site. The neighborhood already has issues with the Metro commuters overflow parking, and the Decision does not address those in any way.

Therefore, the required parking calculation should be based on peak use rather than seating capacity should the two be different.

(6) City erred in reviewing traffic impacts of the project.

The city staff has been presented with multiple versions of traffic impact studies by the applicant, authored by JTE and then by TSI traffic engineers. Since 2014, the study has been changed/added to multiple times.

The comments to the application included critique of the traffic studies provided by TENW and William Popp Assoc. traffic engineering firms. There is no record of the city’s transportation engineers formally reviewing the critiques or the applicant responses (if any).

Issues with the studies provided by the applicant affect the projected traffic impacts, parking demands and concurrency demands. Some representative issues the city engineers failed to address in their review are:

- The local trip generation study conducted in the last version of the traffic study makes selective use of data available. In one representative example, the TSI study uses data for the last Friday of Ramadan as typical of peak attendance, yet the data suggests that in 2012-2013 there were at least 13 days with the same or higher attendance (based on earlier JTE study data);
- The traffic study presented assumes no changes to attendance based on a new, convenient location with new facilities available, compared to the applicant’s current location, which is under an unpermitted lease in the office park in Kirkland. The growth projections set are arbitrary;
- The access to the site will be right-in/right-out. The traffic study asserts that the patrons will not be using local streets for U-turns, rather than providing trip distribution figures. However, with most patrons arriving from the west or exiting SR-520, U-turns to access the site will be required, and the intersection of NE 51st Street and 154th Ave NE is not suited for U-turns due to limited sight distances;
- The traffic study uses data for two planned mosque projects as comparables rather than using existing mosques in Redmond or the existing Dawoodi Bohra mosques in the U.S. Using existing mosques’ actual data results in significantly higher numbers of trips projected and much higher parking demand.

(7) City erred in approving a guest apartment to be part of the building.

The project application as approved includes a guest apartment in addition to the parsonage. The guest apartment is not an allowed use in the R-5 zone per RZC 21.08.080, and it is not a common accessory use to religious facilities. As such, guest quarters should not be allowed.

(8) City erred in not applying scale, bulk and neighborhood character

The city policies and standards speak to new developments being of appropriate bulk and scale, and supportive of the neighborhood character. Redmond’s and Overlake’s Comprehensive plan policies speak to this:

LU-9 Maintain development regulations to promote compatibility between uses; retain desired neighborhood character; ... Through these regulations address features, including but not limited to:

- *Building height, bulk, placement and separation;*

...

LU-30 Allow some compatible nonresidential uses in Residential zones, such as appropriately scaled schools, religious facilities, ... Maintain standards in the Redmond Zoning Code for locating and designing these uses in a manner that respects the character and scale of the neighborhood.

...

OV-11 Provide for transitional uses and transitional building and site design to protect nearby residential neighborhoods. ...

- *Maintaining regulations on building bulk, building placement, site and building lighting, landscaping, noise control and other appropriate measures.*

...

OV-12 Enhance the character and environment of the Overlake Neighborhood to achieve the vision. ...

- *Buildings do not appear bulky or massive.*

The city’s design standards also speak to new developments being consistent with the neighborhood character and scale of the surrounding development (see RZC 21.60.020, RZC 21.60.040).

RZC defines “neighborhood character” as

Neighborhood Character. *The various elements of a neighborhood that give it a distinct “personality,” including but not limited to land uses (e.g., residential/commercial mix and population), urban design (e.g., bulk, scale, form)*

The comprehensive plan policies and design standards do not prevent religious uses but require them to be scaled appropriately. At the proposed scale, the bulk and height of the building is inconsistent with adjacent residences and thus does not satisfy the comprehensive plan policies and design standards.

The city has enforced scale & bulk requirements for other projects (e.g., Emerald Heights assisted living building project), therefore also bringing up the question of different standards of review depending on the project.

(9) City erred by not conditioning the application on overall building capacity.

The Decision discusses the traffic and parking impacts in terms of the seating capacity for the prayer area only. At the same time the prayer area represents about 10% of the total area of the building that includes multi-purpose areas, a rooftop deck, dining facilities, a kitchen, a storage area and twelve classrooms, together with two residences.

The Decision only conditions approval based on “seats” within the assembly area. Clearly that does not represent the *only* use of the building, and based on relative area the other uses may generate comparable or greater traffic and parking demand. The events or classroom use may include guests that are not members of the congregation.

The Decision failed to address such occurrences by conditioning the approval on 147 seating spaces in assembly area. The overall building capacity must be included in approval conditions.

(10) City erred by not incorporating any growth projections into its review process.

According to the applicant, there was no change to congregation size since the initial document submissions in 2012 (150 members and 60 families). The applicant stated that the overall number includes children as well.

The current seating capacity as approved allows for no growth whatsoever. At 147 seats the project is already over capacity (less than current 150 members), allows for no guests at religious events (prayer area capacity is already maxed out) and allows for no children to be added to the congregation.

Considering that many members of the congregation work in Internet Technology (IT), and considering Washington State migration patterns and reasonable birth rate projections, the notions that the congregation size went unchanged since 2012 (no births registered in six years, no members joined) and that the project is over the allowed capacity before it is issued building permits – before building permits were even applied for - defy common sense.

Even the applicant’s engineers’ traffic studies assume yearly growth of the community at 5%. According to the Decision, any growth at all will invalidate the entitlement, so even that growth is unacceptable.

The city ignored obvious discrepancies in approving maximum seating capacity and made no attempt to figure in reasonable growth forecasts for traffic and parking purposes. A condition must be included to limit the congregation to the current number and prohibit expansion.

(11) City erred by not complying with transit corridor preservation rules.

One stated goal of Redmond Zoning Code 21.28 is to “*(p)revent encroachment of structures into a future transit corridor*”. This section of the code applies to all properties in the High Capacity Transit Corridor and aims to “*(s)upport the extension of light rail to Overlake, Southeast Redmond, and Downtown Redmond as part of Sound Transit’s East Link Light Rail project*”.

Current Sound Transit ST3 plans require a 20’ easement on the west side of the project property for the placement of a noise abatement wall. The AEB project plan places a driveway in this area and the western portion of the building will have a setback of 20’ feet. That is clearly in conflict

with ST3 plans and thus goes against the intent, the stated goals and the requirements of the RZC 21.28:

21.28.030 Transit-Related Setbacks

A. No new structure may be built, or any existing structure expanded, between the property line and the transit-related setback line shown in the High Capacity Transit Corridor Preservation Map Book. These regulations do not apply to patios, outdoor seating and other easily removable structures.

...

D. The Technical Committee may expand, reduce, or waive the required setback in order to meet the purpose of this chapter,

Clearly, the noise abatement wall and driveway cannot be built on the same parcel of land. Additionally, since the wall will need a maintenance access on both sides it will affect the location of the AEB building. The city was informed of Sound Transit plans yet chose to ignore provisions of RZC 21.28.

Please state the specific relief requested

The Hearing Examiner should reverse the Decision and direct the City & the applicant to modify the project to comply with state and city regulations.

Please provide any other information reasonably necessary to make a decision on the appeal

The Appellant reserves the right to supplement or amend his appeal as warranted upon the availability of the additional documentation (the up-to-date project documentation was not made available to the Appellant at the time of the appeal filing) or other circumstances.