

**BEFORE THE HEARING EXAMINER
FOR CITY OF REDMOND**

In the Matter of the Appeal of)	NO. DEVREQ-2017-00464
)	BPLN-2015-02128
)	
Thomas and Andrea Short, and)	
Hamid Korasani)	
)	
of a May 18, 2017 City denial of a)	
Request for Deviation from code)	FINDINGS, CONCLUSIONS, AND
provisions requiring undergrounding of)	DECISION
utilities for a project at 13404 NE 100th St.)	
<u>Redmond, Washington.</u>)	

SUMMARY OF DECISION

The Appellants did not satisfy the burden of proof demonstrating that the City's denial of the requested deviation was unsupported by a preponderance of the evidence or was clearly erroneous. The appeal must be **DENIED**.

SUMMARY OF RECORD

Request/Appeal:

Hamid Korasani, P.E., on behalf of and together with property owners Thomas and Andrea Short (all three are Appellants in the instant appeal), requested a deviation from a City requirement to underground overhead utility lines in conjunction with a proposal to construct a duplex at 13404 NE 100th Street in Redmond. The Technical Committee denied the request on May 18, 2017, and the Appellants timely filed an appeal on May 31, 2017.

Hearing Date:

Following a June 13, 2017 pre-hearing conference, the City of Redmond Hearing Examiner conducted an open record appeal hearing on July 19, 2017. At hearing, the Appellants agreed to extend the decision issuance deadline by five business days.

Testimony:

At the open record appeal hearing, the following individuals presented testimony under oath:

For Appellants:

1. Hamid Korasani, P.E., Sazei Design Group, LLC, Appellant
2. Andrea Short, Appellant

Attorney Samuel A. Rodabough represented the Appellants at the hearing.

For the City:

1. Cameron Zapata, Planner
2. Steven Fischer, Development Services Planning Manager
3. Lisa Rigg, Development Engineering Manager
4. Andy Chow, Transportation Engineer

Attorney Jim Haney represented the City at the hearing.

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

Appellants' Exhibits (identified in Findings by A prefix)

- A-1. City of Redmond, permit file for DEVREQ 2017-00148
- A-2. City of Redmond, permit file for DEVREQ 2017-00464
- A-3. City of Redmond, permit file for BPLN 2015-02128
- A-4. Procedures for Requesting and Approving Engineering Deviation Requests (Dec. 14, 2016)
- A-5. Parcel Data, King County Department of Assessments, Parcel No. 1246700231 (July 2017)
- A-6. Parcel Map, King County Department of Assessments, Parcel No. 1246700231 (updated March 2017)
- A-7. Parcel Map, King County Department of Assessments, Parcel No. 1246700231 and vicinity (retrieved July 2017)
- A-8. Chapter 21.17 Redmond Zoning Code, Adequate Public Facilities and Undergrounding of Utilities (effective September 15, 2012)
- A-9. Redmond Zoning Code 21.08.070, (Residential Innovative) Single-Family Urban Residential (effective October 26, 2013)
- A-10. Redmond Zoning Code 21.08.360, Residential Innovative Zone (effective October 26, 2013)
- A-11. City of Redmond Ordinance, 2662 (effective Sept. 15, 2012)
- A-12. Photo of subject property, taken by counsel for Appellants (July 2017), depicting the subject property from NE 100th Street
- A-13. Photo of subject property, taken by counsel for Appellants (July 2017), depicting the subject property and street from NE 100th Street
- A-14. Photo of subject property, taken by counsel for Appellants (July 2017), depicting the subject property from 134th Avenue NE
- A-15. Photo of subject property, taken by counsel for Appellants (July 2017), depicting the subject property and street from 134th Avenue NE
- A-16. Amended Appeal of Deviation/Modification Request Denial, dated June 16, 2017

City of Redmond Exhibits (identified in Findings by R prefix)

- R-1. Building Permit –November 9, 2015

- R-2. Issues Matrix—November 24, 2015
- R-3. Revised Plans—June 8, 2016
- R-4. Issues Matrix 2—June 17, 2016
- R-5. Deviation Request—February 15, 2017
- R-6. Deviation Decision Letter—March 3, 2017
- R-7. Appeal Application—March 16, 2017
- R-8. Withdraw Letter—April 12, 2017
- R-9. Deviation Request 2—May 4, 2017
- R-10. Deviation Decision Letter 2—May 18, 2017
- R-11. Appeal Application 2—May 21, 2017
- R-12. Redmond Ordinance No. 2662—September 12, 2012
- R-13. Power Pole Locations—June 30, 2017
- R-14. Administrative Engineering Deviation June 30, 2017
- R-15. Email Allowing Duplex—Email from staff to Applicant responding to Code Interpretation to allow Duplex--March 2, 2016
- R-16. City's PowerPoint Presentation
- R-17. Amended Appeal of Deviation/Modification Request Denial, dated July 19, 2017

Other Documents in the Record

- Order Dismissing (first) Appeal, dated April 19, 2017
- Order Setting Hearing and Pre-Hearing Document Exchange Schedule, dated June 13, 2017
- Appellants' Witness and Exhibit List
- City of Redmond's Witness and Exhibit List
- Appellants' Brief on the Merits

Upon consideration of the argument, testimony, and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

Project Background

1. The property that is the subject of this appeal is located at 13404 NE 100th Street in Redmond. The owners are Appellants Thomas and Andrea Short. The subject property is approximately 9,375 square feet in area and is developed with a 740-square-foot single-family residence. The lot has frontage on both NE 100th Street and 134th Avenue NE, but vehicle access to the existing residence is from 134th Avenue NE. *Exhibit R-17, pages 2-3; Exhibit R-3, Sheet A1; Exhibits A-5 and A-15.*

2. The Appellants propose to replace the existing residence with a duplex. The total floor area of the structure would be 4,205 square feet, including garage floor area, with a building footprint of 2,924 square feet. The duplex would consist of "attached dwelling units" as defined in the Redmond Zoning Code (RZC)¹ because the units would share a common wall on one side and each unit would have separate front and rear access points. Vehicle access to Unit A would be from NE 100th Street and vehicle access to Unit B would be from 134th Avenue NE. *Exhibit R-17, page 2; Exhibits R-1 and R-3.*

Regulatory Background

3. The subject property is located in the Residential Innovative Zone (RIN), as are abutting parcels to the north, east, and south. The property to west is within unincorporated King County and is zoned R4. *Exhibit R-17, pages 2-3.*
4. The subject property is located within the Willows/Rosehill Neighborhood as identified in the Comprehensive Plan. *Exhibit R-17, page 2.*
5. The purposes of the RIN zone, as described in the RZC, are to:
 1. Implement the goals, policies, and purposes described in the Redmond Comprehensive Plan and Redmond Zoning Code for Low Moderate Density zones and for the Residential Innovative Zone.
 2. Provide a type of single-family housing (smaller dwelling units such as a cottage, size-limited dwelling or duplex) that responds to changing household sizes and ages (e.g., small families, single-person households, retirees).
 3. Provide opportunities for households of various sizes, ages, and incomes to live in a neighborhood by promoting diversity in the size, type and price of new single-family development.
 4. Blend new development with existing residential development to help maintain neighborhood character.
 5. Help to provide appealing and active streetscapes that promote a more walkable and enjoyable neighborhood experience for residents and avoid concentrations of a single housing type or size in one location by interspersing dwellings and lots of various sizes within a residential development.

RZC 21.08.360.A; Exhibit A-10.

6. Attached dwelling units of up to two units (i.e., a duplex) are allowed in the Willows/Rosehill Neighborhood of the RIN zone. *RZC 21.08.070.B.*
7. The City's regulations specific to attached dwelling units are established in RZC 21.08.260. One of the stated purposes of these is to "reduce development costs related to

¹ Two to four dwelling units with common or party walls on one or two sides but with separate front and/or rear access. *RZC 21.78.*

construction and the provision of utilities, which in turn may help to reduce housing prices in support of affordability goals." *RZC 21.08.260.A.*

8. The zoning code establishes the following requirements for wiring and electrical equipment that are relevant to the proposal:

Existing aerial wiring shall be relocated underground and new facilities installed underground within a property and within the public right-of-way abutting the property when one or more of the following occurs:

- a. Subdivisions are developed;
- b. Short subdivisions are developed;
- c. Local improvement districts and utility local improvement districts are developed;
- d. Street or utility improvements are undertaken;
- e. Binding site plans are developed;
- f. New commercial, industrial, or multifamily residential buildings are constructed;
- g. Remodeling or additions to existing commercial or industrial buildings, or conversions to these uses that increase gross floor area by 50 percent or more, or any alterations or repairs which exceed 100 percent of the value of the previously existing structure, and to multifamily residential buildings whenever any alterations or repairs exceed 100 percent of the value of the previously existing structure; or
- h. Building complexes or other projects are developed and are of a size to warrant undergrounding.

RZC 21.17.020.B. The City interprets the ordinance as exempting the construction of a single-family residence and other minor residential development. *Exhibits R-6 and R-16.*

9. Requests to have the undergrounding requirement modified or rescinded may be made pursuant to RZC 21.17.030, which requires the decision maker to determine: "whether (i) the development contributes to the need for the required improvement or dedication and (ii) the required improvement or dedication is roughly proportional to the impact from the development." The ordinance further specifies that "the decision maker shall consider whether credits, latecomer's fees, or other measures can be used to modify the required improvement, dedication, or transfer so that it is roughly proportional to the impact from the development." *RZC 21.17.030.*
10. The purposes of the undergrounding requirement, as described in the RMZ, are to:
1. Eliminate safety issues caused by damaged overhead lines;
 2. Reduce the number of service interruptions caused by storms;
 3. Remove utility poles which are a hazard along streets; and

4. Improve the appearance and aesthetics of the public ways.

RMZ 21.17.020.A.

Procedural Background

11. The Appellants submitted a building permit application for the duplex on November 9, 2015. The City reviewed the application and on November 24, 2015 identified required corrections, including that frontage improvements would be required.² The Appellants submitted revised plans on June 8, 2016. During review of the revised plans, the City identified the requirement to underground utilities per RZC 21.17.020.B.³ *Exhibits R-1, R-2, R-3, and R-4; Hamid Korasani Testimony.*
12. Appellant Hamid Korasani submitted a deviation request from the undergrounding requirement on February 15, 2017. The request was reviewed by the Technical Committee and denied on March 3, 2017. The Technical Committee did not address the criteria in RZC 21.17.030, but based the denial on the conclusion that the duplex is not a single-family residence or other minor residential development such as a remodel or addition, and that almost all of the overhead utilities on 134th Avenue NE had been undergrounded or were scheduled to be undergrounded. The Appellants appealed the decision on March 16, 2017, but due to the City's subsequent withdrawal of the decision on April 12, 2017, the Hearing Examiner dismissed the appeal on April 19, 2017. *Exhibits R-5, R-6, R-7, and R-8; Order Dismissing Appeal.*
13. Mr. Korasani submitted a revised deviation request from the undergrounding requirement on May 5, 2017. The basis for the request was that a duplex should be considered a single-family residence or minor residential development based on its inclusion in the list of single-family housing types in RZC 21.08.360.A.2. Such interpretation, he argued, would be consistent with the planning goals of the RIN zone. He submitted that the cost to underground the utilities would be in excess of \$100,000, and that undergrounding in this case would be contrary to the goals of RZC 21.17.020 because three poles would need to replace two being removed. Mr. Korasani submitted that the proposed frontage improvements - including sidewalks, wheelchair ramps, and drainage ditch on NE 100th Street - would be adequate mitigation. The request followed the submission requirements for an Administrative Engineering Deviation as shown on the City's website. *Exhibit R-9; Exhibit R-11, Attachment C; Exhibit R-14.* Appellants Tom and Andrea Short, through their attorney, submitted supplementary argument in favor of the deviation request, based on the criteria for granting an Administrative Engineering Deviation. *Exhibit R-11, Attachment B; Exhibit R-14.*

² Another key correction item was that the lot area was too small for a duplex per RZC 21.08.260. However, on March 25, 2016 the City issued an interpretation that the regulation does not apply to duplexes in the RIN zone, thereby resolving the issue. *Exhibit R-15; Exhibit R-2.*

³ The "Issues Matrix" shown as Exhibit R-4 shows undergrounding as a "recommendation," but not a correction item. However, City personnel later told Mr. Korasani that it was a requirement. *Exhibit R-4; Testimony of Mr. Korasani.*

14. The Technical Committee denied the revised deviation request on May 18, 2017, reiterating that the duplex is not exempt as a single-family residence or other minor residential development, and concluding that the criteria contained in RZC 21.17.030 were not satisfied. Specifically, the decision stated that proportionality is satisfied because undergrounding would be limited to property frontage, that other measures would leave a gap in undergrounding and would shift the burden of undergrounding on the City or PSE, contrary to the public interest. *Exhibit R-11, Attachment A; Exhibit R-10.*
15. The Appellants filed an appeal of the Technical Committee's second decision on May 31, 2017. A prehearing conference was conducted on June 13, 2017, at which the Appellants requested (and were granted) the opportunity to clarify the appeal to respond to the criteria set forth in RZC 21.17.030. The original appeal focused on the criteria for an Administrative Engineering Deviation, which are not applicable to the undergrounding requirements set forth in RZC 21.17.020. *Exhibit R-14 and Lisa Rigg Testimony.* The Appellants submitted an amended appeal statement on June 16, 2017. *Exhibit 11; Exhibit A-16.*

Issues on Appeal

16. The Appellants alleged the following errors in their appeal (paraphrased):
 - 1) The project should be exempt from RZC 21.17.020 because it constitutes single-family housing per RZC 21.08.360.2 or minor residential development, and does not constitute a new commercial, industrial, or multifamily building. The City has a past pattern of excluding the construction of single-family residences or minor residential development from the requirement to underground utilities.
 - 2) The project satisfies the criteria of RZC 21.17.030 because the development does not contribute to the need for the improvements, and the required improvements are not roughly proportional to the impact of the development. The property is already developed with a residence that is served by utilities, and the existing utilities are adequate for the proposed duplex. The costs to underground utilities will be in excess of \$100,000 (approximately 20% of the entire cost of the proposed duplex), contradicting the intent of the RIN zone. Further, one of the poles that would need to be removed from the property frontage was placed at that location in 2016 - with City approval - as part of development of a subdivision to the south of the subject property. The Appellants are now being required to move that pole at their expense.
 - 3) The Technical Committee did not adopt adequate findings and conclusions as required by RZC 21.17.030.
 - 4) City did not consider that requiring undergrounding would thwart the purposes for undergrounding set forth in RZC 21.17.020, because the improvements would result in a greater number of poles rather than a fewer number of poles. The requirements would not remove utility poles, improve aesthetics, eliminate safety issues, or reduce the number of service interruptions.
 - 5) Technical Committee decision did not consider the applicable criteria.

- 6) Technical Committee decision did not address merits of requested deviation in its decision, such as the subject property being a corner lot and that the undergrounding would result in additional poles.
- 7) Technical Committee decision does not contain justification of denial.
- 8) The requested deviation is consistent with the Administrative Engineering Deviation criteria as shown on City website.⁴

Exhibit A-16.

Characterization of Land Use

17. The City argued that the duplex is a multifamily structure because it constitutes two attached dwelling units. RZC 21.78 (the definitions section of the zoning ordinance) defines a dwelling unit as "a single unit providing complete, independent living facilities for not more than one family ...," attached dwelling unit as "two to four dwelling units with common ... walls on one or two sides but with separate front and/or rear access," and multifamily structure as "a structure that includes multiple primary dwelling units" *Testimony of Mr. Zapata; Exhibit R-16.*
18. The Appellants' argument that the duplex is or is analogous to a single-family residence was based on language in RZC 21.08.360.A.2 - the purpose statement for the RIN zone - that lists a duplex as an example of small or alternative single-family housing. The Appellants argued that exempting the duplex from the undergrounding requirement would be consistent with the purposes of the RIN zone because it would allow for diversity of housing type and housing affordability, and would be consistent with the legislative intent behind Ordinance 2662 (the requirements now codified as RZC 21.17). Ordinance 2662 provides that "the City of Redmond desires to amend the Zoning Code as it pertains to adequate public facilities and undergrounding of utilities in order to relieve minor residential development from high cost burdens without compromising existing Comprehensive Plan policies or Zoning Code objectives." *Exhibit R-12; Appellants' Brief on the Merits.*

Technical Issues

19. There are two utility poles in the right-of-way along the subject property frontage, including one at the corner of 134th Avenue NE and NE 100th Street, and one on 134th Avenue NE a short distance north of NE 100th Street. If the power lines were to be undergrounded along the subject property frontage, these existing poles would be replaced by a total of three poles, including one on 134th Avenue NE at the northwest corner of the subject property, one on NE 100th Street at the southeast corner of the

⁴ Although previous City staff members might have directed the Appellants to these criteria initially (see Testimony of Ms. Rigg and Amended Appeal), it is clear that the Administrative Engineering Deviation criteria are not applicable to the proposed deviation from RZC 21.17.020. Consequently, the Appellants' arguments related to the Administrative Engineering Deviation criteria will not be further addressed in this decision. As stated on the webpage, an Administrative Engineering Deviation can only be approved from the Standard Specifications and Details, the Stormwater Technical Notebook, Appendices 2, 3, and 7 of the RZC, the Design Requirements for Water and Sewer System Extensions, the Bicycle Facilities Design Manual, the Illumination Design Manual, the Roundabout Design Manual, and the Traffic Signal Design Manual. *Exhibit R-14.*

subject property, and one on NE 100th Street on the opposite side of 134th Avenue NE (i.e., along the frontage of the adjacent property to the west). *Exhibit R-13; Exhibit R-11, Attachment A*.

20. The existing pole on 134th Avenue NE was installed in November of 2016 due to the development of a subdivision immediately south of the subject property. The developer of that project was required to remove a pole from its own property frontage, and consequently a new pole had to be installed along the subject property frontage. *Exhibit R-11, Attachment B; Hamid Korasani Testimony*.
21. Approximately 61% of the original overhead utility lines on 134th Avenue NE in the block between NE 100th Street and NE 104th Street have already been undergrounded as a result of a subdivision project. The remainder serves four parcels, including the subject property. Two of these parcels are being redeveloped, one with a two-lot short plat and one with a single-family residence. Both of these projects will be undergrounding utilities along the property frontages, comprising approximately 19% of the remaining utility lines. Other than the subject property, the only parcel remaining with overhead utility lines would be the parcel immediately to the north, which is large enough in area to have redevelopment potential and contains an older residence. With the requirement to underground utilities along the subject property frontage, there would eventually be no overhead utility lines on the block of 134th Avenue NE between NE 100th Street and NE 104th Street. *Exhibit R-17, pages 11-12; Exhibit R-16; Andy Chow Testimony*.
22. The existing utility poles will be within 10 feet of the paved traveled surface after the required frontage improvements are installed. Specifically, the existing pole at the intersection of 134th Avenue NE and NE 100th Street conflicts with the frontage improvements required for the development, and would likely need to be relocated regardless of whether the utilities are undergrounded. The required street width (edge to edge) for NE 100th Street is 30 feet, and the required street width for 134th Avenue NE is 28 feet. The frontage improvements would include a sidewalk with ADA ramps at the intersection. *Andy Chow Testimony; Exhibit R-11, Attachment A (photo of poles) and Frontage Improvement Plan*.
23. It is not known how much it would cost the Appellants to underground utilities along the property frontage, remove the existing poles, and install poles at the required locations. Puget Sound Energy (PSE) will not provide a cost estimate until such time that a design is submitted, and the Appellants have not submitted a design. However, based on informal communications with PSE, the Appellants submitted that the cost would exceed \$100,000 due to the extent of the work and the special circumstances of the subject property, including an unusually high number of drainage structures in NE 100th Street that would need to be relocated. In addition to the costs associated with removing existing and installing new poles, there would be costs associated with trenching, permitting, traffic control, and coordinating all utilities. In comparison, the typical cost to underground distribution lines in conjunction with single-family residential development ranges from \$30,000 to \$65,000. *Hamid Korasani Testimony; Exhibit R-11*.

24. The City submitted that the cost to underground utilities for a project to the north of the subject property, based on information provided by the project contractor, was \$265 per linear foot. If that cost were applied to the distance required for the subject property frontage, the cost would be approximately \$53,000. *Andy Chow Testimony.*
25. Despite the fact that undergrounding utilities along the subject property would not reduce the number of utility poles on or near the site, the work would provide significant safety benefits by removing the poles from the intersection. This would allow for an unobstructed ten-foot-wide "clear zone" (a distance measured from the edge of the concrete ribbon along the roadway that should be free of visual obstruction), improve sight distance, and reduce potential for collisions. The new poles would be guyed poles that would sit farther back. *Andy Chow Testimony.*
26. The project already requires grading, and the amount of additional grading required to underground utilities would not be significant. *Andy Chow Testimony.*

Nexus/Proportionality

27. The City submitted the position that the proposed duplex contributes to the need for undergrounding because it adds a dwelling unit and a street access point to the transportation network in the vicinity. This would add traffic to an area with safety issues due to the location of existing utility poles. Further, power is less reliable when provided through overhead lines, and this project would add a residence to an area with less reliable power. The City argued that adding units to a substandard condition constitutes an impact requiring mitigation pursuant to *Sparks v. Douglas County*.⁵ *Lisa Rigg Testimony; City Attorney Jim Haney Argument.*
28. The City contended that requiring anything less than undergrounding the entire frontage would not provide the same level of safety as undergrounding. The Technical Committee considered alternatives and determined them not feasible. The City considers the requirement proportional because the Appellants would only be responsible for the property frontage. The cost would be a small portion of the overall cost of undergrounding the entire area. *Lisa Rigg Testimony; City Attorney Jim Haney Argument.*
29. The Appellants argued that, per the criteria for nexus and proportionality set forth in *Burton v. Clark County*⁶, the overhead utility lines are not a public problem, because the majority of residences in the RIN zone are single-family residences, and single-family residences are exempt from the undergrounding requirement. The Appellants further argued that the alleged public safety and aesthetic problems associated with utility poles would be exacerbated by the undergrounding requirement, not improved by the undergrounding requirement. With respect to proportionality, the Appellants argued that undergrounding at \$100,000 to \$110,000, with a duplex construction cost of \$600,000 to \$650,000, would be disproportionate to the impacts of the development, particularly with

⁵ *Sparks v. Douglas County*, 127 Wn.2d 901 (1995).

⁶ *Burton v. Clark County*, 91 Wn.App. 505 (1998).

respect to the cost of moving the pole that was installed last year - which would constitute requiring the Appellants to mitigate the impacts of a third party's development. The Appellants argued that not only would requiring them to address the third pole recently moved into their site's frontage by another developer be unfair, but so would moving the poles into the neighboring property's frontage, in effect passing the buck and requiring that property owner to assume costs resulting from their project. *Hamid Korasani Testimony; Appellants' Brief on the Merits; Appellant Attorney Samuel Rodabough Argument.*

CONCLUSIONS

Jurisdiction:

Pursuant to Redmond Zoning Code (RZC) 21.76.050 and RZC 21.76.060.I, Technical Committee decisions are Type II decisions that are appealable to the Hearing Examiner.

Criteria for Review of the Appeal:

Pursuant to RZC 21.76.060.I.4, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The Hearing Examiner shall accord substantial weight to the decision of the Technical Committee. The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type II decision is not supported by a preponderance of the evidence or was clearly erroneous.

Conclusions Based on Findings:

1. The Appellants have not carried their burden of proving that the Technical Committee's determination that the duplex is not exempt from the undergrounding requirement was unsupported by a preponderance of the evidence or was clearly erroneous.
 - a. The duplex is not a single-family residence. It consists of two dwelling units, rather than one dwelling unit, as does a single-family residence; in effect, it is two single-family residences. The language in RZC 21.08.360.A cited by the Appellants in support of their argument that the duplex is a single-family residence is not a formal definition, but rather one of a list of examples of smaller dwelling units. Such language should be limited to its context and not applied to other chapters of the RZC, which are governed by the definitions contained in RZC 21.78. The Appellants did not argue that the City has misinterpreted the applicable definitions. *Findings 1, 2, 8, 10, 17, and 18.*
 - b. The duplex is also not minor residential development. The Technical Committee considers minor residential development to be a remodel or addition, and the proposed duplex is not analogous to these development types. The project would replace one single-family residence with two single-family residences, each with its own access onto a different street. These features make it more similar in impact to a two-lot short plat than a single-family residence, and a two-lot short plat would require undergrounding of utilities. *Findings 1, 2, 8, 12, 14, 17, and 18.*

2. The Appellants have not carried their burden of proving that the Technical Committee's determination that the project does not satisfy the requirements of RMZ 21.17.030⁷ was unsupported by a preponderance of the evidence or was clearly erroneous.
 - a. The duplex would contribute to the need for the improvement because it would add an additional dwelling unit accessing utilities, and because traffic would be added directly to two streets in an area where sightlines are obstructed by poles. Moving the existing poles in order to underground the utilities would have a tendency to mitigate the problem by improving the safety of the intersection consistent with the purpose of the ordinance to "remove utility poles which are a hazard along streets" (RMZ 21.17.020.A. It is the location of the existing poles - not simply the existence or number of the poles - that constitutes a safety problem. With respect to aesthetics, the project would be an incremental step towards eliminating the poles and overhead lines from the streetscape. *Findings 2, 17, 19, 22, and 25.*
 - b. Because the Appellants are only required to underground along the property frontage, and other properties in the area have been required or will be required to construct similar improvements along their own property frontages, the requirement is proportional to the impact of the development. The Appellants did not provide a detailed cost estimate to support their argument that the requirement is disproportionate. However, even if the Appellants' estimate of \$100,000 or \$110,000 is accurate, the record contains no evidence aside from the assertion that the overall development cost is unreasonable or significantly higher than other projects similar in scale. In their materials, the Appellants submitted that the typical cost to underground distribution lines in conjunction with single-family residential development ranges from \$30,000 to \$65,000. While the estimated cost to underground overhead lines along the frontage is significantly higher, it must be

⁷ RZC 21.17.030 Requests to Modify or Rescind Requirements

A. Requests to Modify or Rescind Requirements.

1. An applicant may request that the decision maker modify or rescind a required improvement, dedication, or transfer if the requirement does not meet all of the provisions of RZC 21.17.010.B.2.
2. The applicant shall explain what condition justifies the modification or rescission. The request shall be made in writing and be made no later than the end of the appeal period for the approval that imposes the required improvement, dedication, or transfer.
3. The decision maker shall adopt written findings and conclusions documenting its decision to approve or deny the request. The findings and conclusions shall document whether (i) the development contributes to the need for the required improvement or dedication and (ii) the required improvement or dedication is roughly proportional to the impact from the development. The decision maker shall consider whether credits, latecomer's fees, or other measures can be used to modify the required improvement, dedication, or transfer so that it is roughly proportional to the impact from the development.
4. As a condition of approving an exception, the decision maker may require:
 - a. Those dedications or improvements necessary to mitigate the impacts of the development; and
 - b. The applicant to furnish and implement an interim improvement plan to mitigate the impacts of the development. Any interim improvement plan may include a covenant consenting to formation of a local improvement district and a plan for the installation of improvements that will bring the facility up to the adopted level of service standards. Any requirement to prepare an interim plan shall be proportionate to the scale of the proposed development.

remembered that the improvements are to serve two dwelling units. Shared between the two units, it is not clear that the additional cost would be disproportionate.
Findings 8, 14, 16, 23, 24, 27, 28, and 29.

2. Evidence and arguments not addressed in these findings and conclusions were, respectfully, not found persuasive.

DECISION

Based on the preceding findings and conclusions, the appeal is **DENIED**. The Appellants have not satisfied the burden of proof to show that the City's denial of the requested deviation was unsupported by a preponderance of the evidence or was clearly erroneous.

Decided August 9, 2017.

By:



Sharon A. Rice
City of Redmond Hearing Examiner