



**APPEAL (LAND-2017-00523)
OF DENIAL FOR OF DEVIATION REQUEST (DEVREQ-2017-00454)
PLANNING DEPARTMENT REPORT TO HEARING EXAMINER**

MEMO TO: Sharon Rice, Hearing Examiner

FROM: Planning Department

DATE: July 19, 2017

PREPARED BY: Cameron Zapata, Planner (425) 556-2480

SUBJECT: ADMINISTRATIVE APPEAL OF DENIAL OF A DEVIATION
REQUEST TO UNDERGROUND OVERHEAD UTILITIES FOR A
DUPLEX PROJECT

REQUEST: The appellant is appealing the denial of a deviation request of the
requirement to underground the overhead utilities for a duplex project

HEARING DATE: July 19, 2017

ATTACHMENTS

EXHIBIT 1: Building Permit

EXHIBIT 2: Issues Matrix

EXHIBIT 3: Revised Plans

EXHIBIT 4: Issues Matrix 2

EXHIBIT 5: Deviation Request

EXHIBIT 6: Deviation Decision Letter

EXHIBIT 7: Appeal Application

EXHIBIT 8: Withdraw Letter

EXHIBIT 9: Deviation Request 2

EXHIBIT 10: Deviation Decision Letter 2

EXHIBIT 11: Appeal Application 2

EXHIBIT 12: Redmond Ordinance No. 2662

EXHIBIT 13: Power Pole Locations

EXHIBIT 14: Administrative Engineering Deviation

EXHIBIT 15: Emailing Allowing Duplex

BACKGROUND

Appellant

Project: Thomas Short, Jr. & Andrea Short
540 8th Avenue SE
Kirkland, WA 98033

Hamid Korasani
SAZEI Design Group, LLC
6608 110th Avenue NE
Kirkland, WA 98033

Applicant: Thomas Short, Jr. & Andrea Short
540 8th Avenue SE
Kirkland, WA 98033

Hamid Korasani
SAZEI Design Group, LLC
6608 110th Avenue NE
Kirkland, WA 98033

Pre-Application Date:

Appeal Filed: May 31, 2017

Hearing Date: July 19, 2017

Location: 13404 NE 100th Street

Parcel Size: The total area of the site is approximately 9,375 square feet.

Neighborhood: The proposed project is within the Willows/ Rosehill neighborhood as identified within the Comprehensive Plan.

Land Use Designation: This property is located in the Residential Innovative Zone, in the Willows/ Rosehill Neighborhood. The intent of the RIN zone is to promote smaller dwelling types for changing household sizes and ages single-families. These goals are further defined in the Comprehensive Plan Policy LU-35.

Zoning Designation: The subject site is zoned Residential Innovative Zone (RIN)

Surrounding Land Use and Zoning:

	<u>Zoning</u>	<u>Land Uses</u>
North:	RIN	Single-family residence
East:	RIN	Single-family residence
South:	RIN	Single-family residence
West:	King County (R4)	Single-family residence

Access: Vehicle access for this site is gained from 134th Avenue NE.

BACKGROUND

On November 9, 2015 a building permit application (Exhibit 1: Building Permit) was submitted for review for a new residential duplex. The proposed development consists of two attached dwelling units located at 13434 NE 100th Street.

At the time of the City's first review of the building permit, it was determined that frontage improvements would be required. On November 24, 2015, an issues matrix containing required corrections was sent to the applicant (Exhibit 2: Issues Matrix). On June 8, 2016, revised plans were resubmitted to the City for review (Exhibit 3: Revised Plans).

After the City's second review, it was concluded that the revised plans were not compliant with the Redmond Zoning Code requirement to underground utilities, RZC 21.17.020(B)(1) this section of Code states:

"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 (nine or fewer lots) 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."

The second issues matrix (Exhibit 4: Issues Matrix 2), containing required corrections, was sent on June 17, 2016, to the applicant. The issues matrix states the requirement to underground utilities per RZC 21.17.020 (B)(1). A deviation request to be exempt from the requirement to underground the overhead utilities for the proposed duplex was submitted for on February 15, 2017 (Exhibit 5: Deviation Request). This request was brought before the Technical Committee for their review on March 1, 2017 where the Technical Committee denied the deviation request to underground the utilities. The deviation decision letter (Exhibit 6: Deviation Decision Letter) was sent out by Staff on March 3, 2017.

During the 14 day appeal period, the City received an appeal application on March 16, 2017 (Exhibit 7: Appeal Application) prepared by Samuel Rodabough with Law Office of Samuel Rodabough (Appellant). The appeal addressed concerns that the deviation decision letter did not explain reasons why the decision by the Technical Committee to underground utilities was still required and the criteria it was based on. At a Technical Committee meeting on April 12, 2017, it was decided to withdraw the decision to deny the deviation request for undergrounding in order to thoroughly explain the reasons for denial, in a new decision letter. It was expressed to the applicant that they could revise and resubmit their request for the deviation (Exhibit 8: Withdraw Letter).

On May 4, 2017, a revised request to deviate from undergrounding requirements, prepared by Samuel Rodabough, was received by the City (Exhibit 9: Deviation Request 2). The deviation request was brought to the Technical Committee on May 17, 2017, where the request was denied by the Technical Committee, based on the criteria set forth in RZC 21.17.030; Requests to Modify or Rescind Requirements. The deviation decision letter was sent to the applicant on May 18, 2017 (Exhibit 10: Deviation Decision Letter 2). The letter states that per RZC 21.17.020, the

requirement to underground utilities is exempt if the project is a single-family residence or minor residential development; the subject project is neither. The letter also discusses the criteria in which the Technical Committee based its decision on, per RZC 21.17.030; Requests to Modify or Rescind Requirements.

During the 14 day appeal period, the City received an appeal application prepared by Samuel Rodabough on May 31, 2017. (Exhibit 11: Appeal Application 2)

JURISDICTION

The City of Redmond issued the Deviation Decision Letter to deny the request for exemption from the requirements to underground utilities on May 18, 2017. During the 14 day appeal period of this decision, the City of Redmond received one single appeal (Exhibit 11: Appeal Application 2). The appeal process outlined in Section 21.76.060 (I) of the Redmond Zoning Code establishes that the Hearing Examiner shall hear all appeals for decisions made by the Technical Committee, such as deviation requests.

In accordance with RZC Section 21.76.060(I), Appeal of Type II Decisions, the appellant is required to specify the basis of their appeal. An appeal must be based on an error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the public hearing or consideration of approval. The appellant must provide: 1) facts demonstrating that they were adversely affected by the decision, 2) a concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria, 3) the specific relief requested, and 4) any other information reasonably necessary to make a decision on the appeal.

BURDEN OF PROOF

The burden of proof for demonstrating that the City's decision to deny the deviation request to require undergrounding utilities at the Tom Short Duplex Project proposal was in error lies on the appellants, as outlined in Hearing Examiner's Rules, Burden of Proof.

APPELLANT'S BASIS FOR APPEAL

The appellant has appealed the Denial of the Deviation Request to underground utilities based upon the following assertions:

- 1) The intent of the Residential Innovative Zone (RZC 21.08.360) is to 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). Duplexes are expressly defined as single-family residences. 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 costs to underground utilities will cost in excess of \$100,000 (approximately 20% of the entire cost of the proposed duplex), contradicting the intent of the RIN Zone to promote more affordable residential units.
- 3) The removal of the existing utility pole will require the installation of three new poles, which could decrease safety and create new hazards, would not improve the appearance and aesthetics.
- 4) The Engineering Deviation Denial Letter does not discuss deviation approval criteria.
- 5) The Engineering Deviation Denial Letter does not contain any reference to, or analysis.
- 6) It is unclear if the decision criteria for deviation requests are codified in City Code.
- 7) Maintaining the utilities as above ground utilities will facilitate better maintenance, better accessibility and will be less expensive to maintain
- 8) Environmental benefits of maintaining above ground utilities include avoiding chromate copper arsenate and creosote poles from being installed and polluting the air and water through the sewer systems.
- 9) The environmental benefits to allowing the utilities to remain above ground would save natural resources and avoid unnecessary grading.

RELIEF SOUGHT BY APPEAL

The appellant is seeking the following relief through this appeal:

- *To have the project exempt from any requirement to underground utilities under RZC 21.17; or, if not exempt, a deviation allowing the utilities to remain above ground*

ANALYSIS of BASIS for APPEAL

The following is the criteria for applying for appeal as outlined in RZC 21.76.060I.2. Staff has provided an outline below of the appeal application questions that must be responded to in full

by the appellant as well as, an analysis of how the criteria for application/ appellant responses has or has not been properly met.

Per RZC 21.76.060I.2.: Commencing an Appeal

- a) **Who May Appeal. Any party of record may appeal the decision.** The applicant has appealed the deviation denial decision to require undergrounding.
- b) **Form of Appeal. A person appealing a Type I or II decision must submit a completed appeal form which sets forth the following:**

The appeal application was required to be submitted completely and in-full no later than June 1, 2017. The appeal was submitted within this required time period.

(b.i) Facts demonstrating how Appellants are adversely affected by the Decision

Response (by applicant) to question 1 of section B or the Application for Appeal

- The RIN lists types of single-family homes, including a duplex, the City has a past practice of excluding the requirement to underground utilities, and the proposed duplex should be exempt from the requirement.
 - *Staff finds that the proposed duplex, is not one dwelling unit, but is viewed as two dwelling units. Per RZC 21.78, a Dwelling Unit is defined as, "A single unit providing complete, independent living facilities for not more than one family and permitted roomers and boarders, including permanent provisions for living, sleeping, eating, cooking, and sanitation. A mobile home, manufactured home, modular home, apartment, condominium, townhouse, single-family attached or detached house, or accessory dwelling unit is considered to be a dwelling unit." The duplex contains two dwelling units, which exceeds the single-family residence and minor residential development threshold for exemption from undergrounding utilities. The duplex falls within the definition of Attached Dwelling Units, as defined in RZC 21.78 Definitions, "Two to four dwelling units with common or party walls on one or two sides but with separate front and/or rear access." This section of the RIN zone is only list of housing types that are allowed within the zone.*
- A goal of the RIN zone is to promote affordability, the requirement to underground utilities will cost \$100,000, or approximately 20% of the entire project, which contradicts one of the intents of the RIN zone.

- *Staff has not received an official statement from the applicant showing that the cost to underground utilities will total \$100,000. Nor has staff received an estimate of the total estimate of the cost of construction to verify if the infrastructure costs equal 20% of the cost of the project. The RIN zone is intended to promote diversity in homes of various sizes for diverse ages, family sizes, as well as affordability; not solely affordability.*
- The requirement to underground utilities will require the installation of three additional utility poles, which contradicts the goals set forth in RZC 21.17.020.
 - *This is not an accurate fact. Please see Exhibit 13: Power Pole Locations. The exhibit shows that there are currently two (2) existing power poles at the site (shown in green). These power poles will be relocated on NE 100th Street and one (1) additional pole will be installed near the North West corner of the lot along 134th Avenue NE (shown in red).*

(b.ii) Concise statement alleging errors of fact, law, and or procedure and the applicable review criteria

- Engaged in an unlawful procedure or failed to follow prescribed process
- Erroneously interpreted the law
- Reached a decision that is not supported by a preponderance of the evidence
- Reached a clearly erroneous decision

These errors have been expanded upon within the attached Appeal Application by the Appellant (Exhibit 11: Appeal Application 2).

- Duplexes should be considered single-family housing and/or minor development, and is not new commercial, industrial, or multifamily residential building
 - *A duplex is an attached dwelling unit, which is a type of single-family housing, however it serves multiple dwelling units, not just one dwelling unit. The impact to the site is double than that of one dwelling unit, exceeding the single-family residence exemption threshold.*
- The requirement to underground utilities per RZC 21.17.030, is not roughly proportional to the impact of the development
 - *Staff has not been provided with official cost estimates for undergrounding utilities or the cost of construction for the duplex to conclude if the requirement to underground is roughly proportional.*
- Decision of the Technical Committee fails to demonstrate “findings and conclusions” as required by RZC 21.17.030

- *Technical Committee did provide findings and conclusions in the Deviation Decision Letter. The Technical Committee found that a duplex (containing two dwelling units) is not seen as a single-family residence. The duplex exceeds the threshold of a single-family residence and minor development, which can be exempt from the undergrounding requirement. Since the development exceeds the threshold of a single-family residence and minor development, undergrounding utilities is required.*
- Decision of the Technical Committee fails to consider the facts and arguments raised in the deviation request (Exhibit 9: Deviation Request 2)
 - *Staff did consider all facts and arguments and it was determined that the project is not just one dwelling unit, but two dwelling units on one lot. The project is not a single-family home and exceeds the threshold of single-family residence or minor development to be exempt, which led to the decision to require undergrounding utilities.*
- Deviation Decision Letter fails to address the unique aspects of the site
 - *Staff did consider all aspects of the site, that the site is a corner lot and includes two frontages. The duplex will serve two dwelling units, and exceeds the exemption threshold of a single-family residence and minor development, and will require that utilities be undergrounded. The decision to require undergrounding utilities is consistent with what has been decided in the past.*
- Deviation Decision Letter fails to discuss the decision criteria of a deviation request
 - *The Deviation Decision Letter does discuss the decision criteria. The deviation requests an exemption from the requirement to underground utilities. This is a Request to Modify or Rescind Requirements, which follows the decision criteria set forth in RZC 21.17.030.*
- The decision criteria of a deviation request does not appear to be codified in City Code
 - *The deviation requested, asks to deviate from the requirement to underground utilities (RZC 21.17.020). The request does not meet the threshold to be an Administrative Engineering Deviation (Exhibit 14: Administrative Engineering Deviation), and is decided upon using the decision criteria set forth in RZC 21.17.030; Request to Modify or Rescind Requirements.*
 - *The responses to the Analysis for the Basis of Appeal are expanded upon in the Analysis of Assertions.*
 - *Staff has not addressed the Appellants response to the Administrative Engineering Deviation decision criteria because the deviation does not meet the*

threshold of an Administrative Engineering Deviation. The deviation requires to adhere to the decision criteria in RZC 21.17.030.

ANALYSIS OF ASSERTIONS

Statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria was not provided by the appellant, due to this fact staff has provided an analysis and response to nine general complaints or feelings submitted as part of the attached letter to the Application for Appeal.

- 1. The intent of the Residential Innovative Zone (RIN) (RZC 21.08.360) is to 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). Duplexes are expressly defined as single-family residences. The City has a past pattern of excluding the construction of single-family residences or minor residential development from the requirement to underground utilities.**

Per RZC 21.08.360, the intent of the RIN is to promote single-family housing types consisting of smaller dwelling units, which include duplexes. The duplex contains two dwelling units; per RZC 21.78, a Dwelling Unit is defined as, "A single unit providing complete, independent living facilities for not more than one family and permitted roomers and boarders, including permanent provisions for living, sleeping, eating, cooking, and sanitation. A mobile home, manufactured home, modular home, apartment, condominium, townhouse, single-family attached or detached house, or accessory dwelling unit is considered to be a dwelling unit." The duplex fits the definition of an Attached Dwelling Unit as defined in RZC 21.78 as, "Two to four dwelling units with common or party walls on one or two sides but with separate front and/or rear access." The proposed duplex exceeds the exemption threshold of one single-family from undergrounding requirements because of the additional dwelling unit added on the site.

- 2. The costs to underground utilities will cost in excess of \$100,000 (approximately 20% of the entire cost of the proposed duplex), contradicting the intent of the RIN Zone to promote more affordable residential units.**

Staff was not provided an estimate of the cost of the improvements to underground utilities and we are unable to conclude the proportionality between the costs of undergrounding versus the cost of construction.

Per RZC 21.17.020.B.1, a single-family residence is exempt from undergrounding. The appellant is proposing a duplex residential building which will serve two dwelling units, not one dwelling unit. City of Redmond Ordinance No. 2662 (Exhibit 12: Redmond Ordinance No. 2662) was adopted to provide relief from the requirement to underground utilities for the development of one single-family home on an existing lot. The proposed project will be providing two dwelling units on the parcel. A duplex is considered two (2) dwelling units, although it is allowed certain residential zones. The topic was discussed at the Technical Committee meeting on June 29, 2016, and found that the proposal was similar in impact to a short subdivision based upon addition of a second dwelling unit on-site.

3. The removal of the existing utility pole will require the installation of three new poles, which could decrease safety and create new hazards, would not improve the appearance and aesthetics.

The number of existing utility poles along the property frontage was stated incorrectly by the appellant. Please see Exhibit 13: Power Pole Locations. There are a total of two (2) existing utility poles along the property frontages. One is located at the northeast corner of NE 100th Street and 134th Avenue NE connecting the overhead wires to the east and west along NE 100th Street, and the other one is located approximately 30 feet north of it with guy wires anchored in the ground connecting the overhead wires to the north along 134th Avenue NE. With the undergrounding, these two existing utility poles will be moved away from this intersection and relocated in front of the other property corners located on NE 100th Street and 134th Avenue NE respectively, and one new pole will be added across 134th Avenue NE to connect the overhead wires to the west on NE 100th Street; (Exhibit 13: Power Pole Locations). By removing the existing pole at the intersection, it will provide better roadway safety and eliminate the clear zone issue. The new pole across 134th Avenue NE will be installed away from the intersection with guy wires because there will be no overhead wires to the east. Currently about 61% of the original overhead utility lines on 134th Avenue NE in the entire block between NE 100th Street and NE 104th Street were already undergrounded from a subdivision project. There are four (4) separate undeveloped parcels encompassed to the remaining 39% of the original overhead utilities lines. Two (2) of these four (4) parcels are in the process of obtaining the site construction permits with undergrounding the overhead utility lines along their frontages. One is a two-lot short plat and the other one is a single-family residential rebuild, and these two (2) parcels cover about 19% of the original

overhead utility lines. When the construction of the two (2) parcels is complete, only one (1) parcel (north of the appellant) will remain to have the overhead utility lines (approximately 11% of the original) along 134th Avenue NE in the entire block between NE 100th Street and NE 104th Street if the appellant's overhead utility lines (approximately 9% of the original) are required to be undergrounded per requirements. The remaining parcel north of the appellant has an oversize lot which has high potential to redevelopment and may trigger the undergrounding requirements. In that case, the entire block of 134th Avenue NE will eventually have no overhead utility lines and the overall aesthetics in this area will be greatly improved to this neighborhood.

The removed pole at the street intersection will eliminate safety and clear-zone issue that meets the purpose for undergrounding per RZC 21.17.020.A.3.

4. The Engineering Deviation Denial Letter does not mention the decision criteria for a deviation request and how the request does not meet any of the decision criteria.

Based on the information submitted, the deviation does not meet the requirements for relief from undergrounding utilities. The denial letter addressed (Exhibit 9: Deviation Decision Letter2) the following criteria, as listed in RZC 21.17.030: (i) the development contributes to the need for required improvement or dedication, and (ii) the required improvement or dedication is roughly proportional to the impact from the development. Technical Committee also considered 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. While they are not specifically listed in the decision criteria, Technical Committee concluded that the proposal does not provide a comparable or improved result, which is in the public interest. The existing poles impact the sight distance triangles for the proposed access points. Relocating them will remedy this. By not undergrounding at this time, the property owner is shifting the responsibility to underground to the City or Puget Sound Energy, which is not in the public interest.

5. The Engineering Deviation Denial Letter does not contain any reference to, or analysis.

This deviation request is covered by RZC 21.17.030 under Adequate Public Facilities and Undergrounding of Utilities (Exhibit 10: Deviation Decision Letter 2). Per RZC 21.17.030(i)

the proposed development contributes to the need for the required improvement. The project will be adding a second dwelling unit and second access point to the property.

The property development in question is being asked to underground utilities along the frontages of the lot. It is a corner lot along NE 100th Street and 134th Avenue NE, with access driveways proposed on both exterior sides. While the requirement involves improvements along two (2) property lines on NE 100th Street and 134th Avenue NE, it is not a unique aspect of this property. The property owners are only being required to underground their frontage, proportional to the undergrounding of the larger area that is occurring through redevelopment of the neighborhood in compliance with RZC 21.17.030(ii). As mentioned in the response to Question 4, the Technical committee did 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 per RZC 21.17.030(iii), and determined that the required improvements were proportional and that there were no modifications that would meet the intent of the requirement adequately.

6. It is unclear if the decision criteria for deviation requests are codified in City Code.

The decision criteria for this type of deviation is covered under RZC 21.17.030, Requests to Modify or Rescind Requirements. The City has a separate process for engineering deviation requests, which are more limited and administrative in nature (Exhibit 14: Administrative Engineering Deviation). These requirements are provided to give an applicant the ability to request design flexibility where warranted, based on site conditions or other mitigating factors. They are not codified, but are intended to give applicants guidance on preparing requests to deviate from specified design standards. The applicants request to deviate from the requirement to underground the overhead utilities is a deviation from the Redmond Zoning Code, not an Administrative Engineering Deviation, and the requirements for an Administrative Engineering Deviation are not applicable, only RZC 21.17.030 is applicable to this request.

7. Maintaining the utilities as above ground utilities will facilitate better maintenance, better accessibility and will be less expensive to maintain.

Above ground utilities can be damaged by severe storms and falling trees but underground utilities will not face this problem. The long term maintenance is less for underground utilities.

8. **Environmental benefits of maintaining above ground utilities include avoiding chromate copper arsenate and creosote poles from being installed and polluting the air and water through the sewer systems.**

The relocated poles will not cause any additional impact given that they are not additional poles. The new pole will meet current environmental requirements for treatment and construction. All three of the poles will only exist until the remainder of the street frontages are undergrounded. There is no environmental adverse impact for undergrounding dry utilities.

9. **The environmental benefits to allowing the utilities to remain above ground would save natural resources and avoid unnecessary grading.**

Leaving the existing utilities above ground will not benefit to the environment. Instead, putting them underground will allow the street trees to grow naturally without interruption or unnecessary trimming, and the outcome will benefit the environment.

STAFF RECOMMENDATION

Based on the analysis included in this report, staff recommends the Hearing Examiner deny the appeal of the City's decision requirement to underground utilities for a proposed duplex project.

CONCLUSIONS IN SUPPORT OF THE STAFF RECOMMENDATION

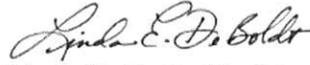
The appellant has the burden to prove that the City erred in issuing the Denial to the deviation request to underground utilities for a proposed duplex project. The appellant has provided no evidence to meet that burden and cannot establish that the City erred procedurally or substantively in issuing the denial.

The proposal was similar in impact to a short subdivision based on the addition of a second single-family residence on-site. Per RZC 21.17.020.B.1, a single-family residence is exempted

from undergrounding, but a duplex was not intended to meet this exemption because it functions as more than one single family residence.



Karen Haluza, Director
Department of Planning and
Community Development



Linda E. De Boldt, Director
Department of Public Works