

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

In the Matter of the Appeal of)	NO. LAND-2018-00794
)	
)	
John Devore)	
)	
)	
Of the denial of deviation request)	
DEVREQ-2018-00530 to allow)	FINDINGS, CONCLUSIONS, AND
a second driveway at)	DECISION
11235 165th Court NE, Redmond)	
_____)	

SUMMARY OF DECISION

The Appellant did not satisfy 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. The appeal must be **DENIED**.

SUMMARY OF RECORD

Request/Appeal:

John Devore (Appellant) requested a deviation from Redmond Zoning Code (RZC) Appendix 2(D)(4)(a) to allow a second driveway at his residential lot at 11235 - 165th Court NE in Redmond. The City denied the deviation request on May 25, 2018 and denied a request for reconsideration on June 28, 2018. The Appellant filed the appeal on July 19, 2018.

Hearing Date:

The City of Redmond Hearing Examiner conducted an open record appeal hearing on September 24, 2018. At the hearing, the parties agreed to a decision issuance deadline of October 15, 2018.

Testimony:

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

For Appellant:

1. John Devore, Owner/Appellant
2. George Belmore, Per-spek-tiv, Appellant's Agent
3. Debi Riley, Permit Coordinator, Per-spek-tiv

For the City:

1. Ben Sticka, Planner, City of Redmond
2. Andy Chow, P.E., Senior Transportation Engineer, City of Redmond
3. Lisa Rigg, P.E., Development Engineering Manager, City of Redmond

Attorney Daniel Kenney represented the City of Redmond at the hearing.

Exhibits:

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

Appellant Exhibits (denoted by a D prefix in findings)

1. Appeal application form
2. [none offered]
3. Video by Debi Riley of the proposed driveway access, filmed September 10, 2018
4. Photos by George Belmore of the proposed driveway access, dated July 17, 2017
5. Procedures for requesting and approving engineering deviation requests provided by the City to Appellant (7 pages), dated December 14, 2016
6. Reconsideration request letter from Perspektiv to Technical Committee, dated June 8, 2018
7. Request to construct a second driveway letter from Perspektiv to Technical Committee, dated March 3, 2018
8. Site plan, dated April 30, 2018
9. Response to deviation request May 25th letter from Lisa Rigg to Perspektiv
10. Response to reconsideration from Lisa Rigg to Perspektiv, dated June 28, 2018
11. Plat map, Equestrian Tracts(2 pages), September 27, 1977
12. Redmond Zoning Code Article VII Definitions (3 pages)
13. Redmond Zoning Code Appendix 2, Construction Specification and Design Standards for Streets and Access
14. Construction plans and calculations for garage, by Legacy Buildings, LLC, dated September 22, 2017
15. Drainage plans and calculations for drainage and site clearing from Development Engineering
16. Revised septic design from HSDM, accepted by King County Health Department February 16, 2019
17. Tree preservation plan, Wetland Studies & Solutions/A Davey Group, September 18, 2017

City Exhibits (denoted by a C prefix in the findings)

1. Appeal Staff Report
2. City's denial of a request for reconsideration, dated June 28, 2018 (Staff Report Exhibit 5)
3. Appellant's initial deviation request, submitted April 30, 2018 (Staff Report Exhibit 1)
4. City's denial response to Appellant, dated May 25, 2018 (Staff Report Exhibit 2)
5. Appellant's request for reconsideration of a May 25, 2018 denial, dated June 8, 2018 (Staff Report Exhibit 3)

6. Technical Committee slide show used for reconsideration request, dated June 20, 2018 (Staff Report Exhibit 4)
7. Deviation timeline, dated July 30, 2018 (Staff Report Exhibit 7)
8. Location map, dated August 1, 2018, created by Andy Chow for the staff report and to mirror the map created for the Deviation Review Team's PowerPoint slideshow (Staff Report Exhibit 8)
9. City of Redmond Procedures for Deviation Requests (Staff Report Exhibit 9)
10. King County Parcel Viewer Aerial Image of Devore Parcel, created on September 13, 2018
11. Redmond Zoning Code Appendix 2 (version in effect at time of deviation request, photocopy of staff desk copy)
12. Staff PowerPoint

Other Documents in Record

- Order Setting Hearing and Pre-Hearing Schedule, dated August 1, 2018
- Appellant's Witness and Exhibit List
- City's Witness and Exhibit List
- City's Supplemental Witness and Exhibit List
- City's Prehearing Brief

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 Lot 20 of the Equestrian Tracts subdivision, which is located at 11235 165th Court NE in Redmond. The Appellant is John Devore, owner of Lot 20. *Exhibits D1, D8, and D11.*
2. The subject property is 0.95-acres in area and is developed with a single-family residence. *Exhibits C1 and C10.*
3. The lots of Equestrian Tracts are served by a private street system accessed from NE 116th Street. The internal private streets include NE 113th Street, which provides the sole ingress and egress from the subdivision, and three cul-de-sac streets. Northeast 113th Street and two of the cul-de-sac streets form an irregular, three-legged intersection at the subject property frontage, with NE 113th Street perpendicular to the subject property and aligned with the northern property boundary, and the cul-de-sacs curving to the northwest and the southwest in a rough "Y". *Exhibits C1, C6, C8, C10, and D11; Andy Chow Testimony.*

4. The residence on site is served by an existing driveway located near the southern property boundary. This driveway would remain in use. *Exhibits D-7 and D-8.*
5. The Appellant requested an engineering deviation to allow a second driveway on site, to be located at the northeast corner of the subject property in front of a proposed detached garage. The location, which aligns with NE 113th Street, is an unimproved area that the Appellant already uses for street access. *Exhibits C8, C10, D7, and D8; John Devore Testimony.*

Regulatory Background

6. The subject property is located in the Single-Family Constrained (R-1) zone, as are abutting parcels to the north, east, and south. The property to west is within the Single-Family Urban Residential (R-4) zone. *Exhibit C1.*
7. The subject property is located within the Education Hill Neighborhood as identified in the Comprehensive Plan. *Exhibit C1.*
8. Redmond Zoning Code Appendix 2 Section D ("Construction Specification and Design Standards for Streets and Access") contains the following provisions that are relevant to the appeal:

D. Driveways. Driveways, as used in this appendix, shall refer to vehicle entrances to individual lots and the intersection of access corridors with public streets....

4. Location and Number of Driveways.

- a. Driveways shall be limited to one per parcel per street frontage, except that the following is permitted subject to the approval of the Technical Committee: one driveway for each 150 feet of local street frontage
- b. The City shall not permit any driveway within 150 feet of the nearside face of the curb of the intersecting street or from any other such driveway. In the event it is either impossible or undesirable to separate by 150 feet, then driveways shall be located as far away from the nearside of curb of the intersecting street or any other such driveway. Separations less than 150 feet shall obtain approval from the Technical Committee. The separation requirements shall typically not be applied between single-family driveways on local streets.

.....

- f. Driveways shall not be permitted where, in the judgment of the Technical Committee, dangerous or confusing traffic patterns would result.
- g. Driveways shall be aligned wherever possible with existing driveways on the opposite side of the street. This requirement shall typically not be applied between single-family driveways.

Exhibit C11.

9. The introduction to RZC Appendix 2(D) specifies that the Director of Public Works “may approve design deviations in specific situations where conditions warrant and are properly documented.” *Exhibit C11*. The City’s engineering deviation request procedures, which were provided to the Appellant, specify that deviations must meet specific criteria, including in relevant part that the deviation produces “a comparable or improved result, which is in the public interest,” and that the deviation meet “requirements for safety, public health, function, fire protection, transit needs, appearance, maintainability, and any other criteria deemed relevant by the city.” *Exhibits D5 and C1*.

Procedural Background

10. The Appellant submitted the engineering deviation request (dated March 1, 2018) on April 30, 2018. *Exhibits C1, C3, and C7; Andy Chow Testimony*. The grounds for deviation stated in the request included (paraphrased):

- Other lots in the neighborhood have two driveways.
- Proposed location would not require tree removal.
- Proposed location provides a more direct access to proposed garage; using the existing driveway would require more disturbance of front yard for approach and would require a three-point turn for ingress and egress.
- The 150-foot driveway spacing requirement specified in RZC Appendix 2(D)(4) “shall typically not be applied between single-family driveways on local streets.”
- Location “provides great un-obstructed visibility down either street to the sides and straight down the road we would access from.”
- The second driveway would not be heavily used.

Exhibits C3/D7.

11. The City Development Engineering Manager, a professional engineer, denied the deviation request on May 25, 2018. The stated reasons for denial included that RZC Appendix 2(D)(4)(a) limits driveways to one per residential lot, that 2(D)(4)(b) requires driveways to be at least 150 feet from an intersection, and that an on-site turnaround would be feasible to serve the same purpose as the second driveway. *Exhibit D9*.
12. The Appellant timely requested reconsideration of the denial decision on June 8, 2018. The Appellant’s argument in support of reconsideration was that the driveway regulations set forth in RZC Appendix 2(D) only apply to driveways off public streets. *Exhibit D6*.
13. The Redmond Technical Committee, which is the designated decision-making body for requests for reconsideration of deviation decisions, denied the Appellant’s request for reconsideration on June 28, 2018, citing the proximity to the intersection, limited sight distance to the north, regulations limiting the number of driveways to one, and a dangerous or confusing traffic pattern that would result from approval. The City rejected

the Appellant's argument that the driveway regulations only apply to public streets. *Exhibits D10 and D5.*

14. The Appellant filed an appeal of the Technical Committee's decision on July 19, 2018. *Exhibit D1.*

Appeal Issues

The Appellant's deviation and reconsideration requests were reviewed and discussed extensively by City transportation engineering staff, including senior transportation engineers and managers, prior to denial. The City documented four meetings at which the requests were considered. The engineers reviewing the project identified safety issues with locating the driveway at the irregular three-legged intersection, and concluded that the driveway would create a confusing traffic pattern. There are no streetlights in the area or traffic control devices at the intersection. The sightline to the north is limited by a curve in the intersecting street and by mailboxes. *Exhibits C6 and C7; Andy Chow Testimony; Lisa Rigg Testimony.*

15. The Appellant did not present any site-specific empirical evidence (e.g., traffic data, sightline measurements) to support the safety of the proposed driveway with the initial deviation request, with the request for reconsideration, or with the appeal. *Exhibits D1, D6, and D7.* While the Appellant submitted photographs and a video from the proposed driveway location, these were taken approximately 10 feet from the edge of the road and are not indicative of compliance with the sight clearance requirements. *Testimony of George Belmore and Debi Riley; Exhibits D3 and D4.* Appellant's agent George Belmore contended that Equestrian Estates is a rural plat with private roads throughout, a speed limit of 25 mph, and speed bumps everywhere. He argued that because there is no through traffic (only one plat entrance), there are low volume traffic patterns and "common sense" dictates that drivers would see and have adequate time to react to traffic entering and exiting the proposed driveway. Mr. Belmore acknowledged that he is not a transportation engineer, that he did not look up City's sight distance standards, and that the Appellant did not retain a transportation engineer for site specific traffic evidence. *George Belmore Testimony.*
16. The City sight clearance requirement is determined by a triangle with legs extending 20 feet back from the traveled way and 65 feet down the traveled way. The triangle formed by these dimensions must be clear of obstructions wider than 18 inches between two and eight feet off the ground. *Andy Chow Testimony; Exhibit C1.*

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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 Appellant has not carried his burden of proving that the Technical Committee's determination was unsupported by a preponderance of the evidence or was clearly erroneous.
 - a. Per RZC Appendix 2.D, "*Driveways*, as used in this appendix, shall refer to vehicle entrances to individual lots and the intersection of access corridors with public streets." This definition is unambiguous and includes the driveway proposed. The definition contains two distinct parts, indicating that it applies to (1) vehicle entrances to individual lots, and (2) the intersection of access corridors with public streets. The sentence is not structured in a manner that would allow the interpretation offered by the Appellant; following the phrase "vehicle entrances to individual lots" with the phrase "with public streets" does not result in a grammatically correct or coherent sentence. Appendix 2.D applies, limiting the subject parcel to one driveway. *Findings 8 and 12.*
 - b. The Appellant's proposed second driveway would not be set back 150 from the intersecting street; it would be at the intersecting street and would in fact resemble a fourth leg of the three-legged intersection. RZC Appendix 2.D.4.b allows a reduction in the 150-foot setback requirement when it would be impossible or undesirable to maintain the setback; however, in this case there is an existing driveway on site that appears to be located consistent with City standards (i.e., as far from the intersection as possible), and it would be feasible for that driveway to serve the detached garage. In the instant case, it would *not* be undesirable to maintain the required 150-foot setback because of unsafe and confusing conditions that would result from the proposed second driveway. The language that the separation requirements "shall typically not be applied between single-family driveways on local streets" does not apply in this instance because the separation at issue would not be between two single-family driveways, but between a single-family driveway and an intersecting street. *Findings 3, 4, 5, 8, 10, 15, and 16.*
 - c. The preponderance of the evidence is in support of the City's determination that the driveway would result in a dangerous or confusing traffic pattern contrary to RZC

Appendix 2.D.4.f. The City provided the testimony of two professional engineers, as well as maps and aerial photographs. The Appellant did not provide credible evidence to the contrary or argument sufficiently persuasive to overcome the deference due to the Technical Committee. *Findings 15, 16, and 17.*

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 record presented fails to show that the City's denial of the requested deviation was unsupported by a preponderance of the evidence or was clearly erroneous.

Decided October 15, 2018

By:



Sharon A. Rice
City of Redmond Hearing Examiner