

**APPEAL (LAND-2017-01240)
OF ZONING INTERPRETATION OF ARTICLE I, SECTION 21.04.020B OF THE
REDMOND ZONING CODE
PLANNING DEPARTMENT REPORT TO HEARING EXAMINER**

MEMO TO: Andrew Reeves, Hearing Examiner Pro-Tem

FROM: Planning Department

DATE: February 20, 2018

PREPARED BY: Ben Sticka, Planner

SUBJECT: ADMINISTRATIVE APPEAL OF CITY'S ZONING INTERPRETATION OF ARTICLE I, SECTION 21.04.020B OF THE REDMOND ZONING CODE, AS IT RELATES TO SITE PLAN ENTITLEMENT (LAND-2017-00727).

REQUEST: The appellant is appealing the City's Zoning Interpretation of Article I, Section 21.04.020B as it relates to Site Plan Entitlement (LAND-2017-00727) for the proposed Rose Hill Cottages development.

HEARING DATE: February 27, 2018

ATTACHMENTS

EXHIBIT C-1: General Application
EXHIBIT C-2: Zoning Interpretation Letter
EXHIBIT C-3: City Position Email
EXHIBIT C-4: Appeal Application Form
EXHIBIT C-5: Public Comments
EXHIBIT C-6: Property Viewer Screen Shot
EXHIBIT C-7: GIS Disclaimer
EXHIBIT C-8: Technical Committee Notes
EXHIBIT C-9: Draft Additional Information Letter

BACKGROUND

Appellant: Toll WA LP c/o Aaron Hollingbery
9720 NE 120th Pl. Suite 100

Kirkland, WA 98034

Applicant: Toll WA LP c/o Aaron Hollingbery
9720 NE 120th Pl. Suite 100
Kirkland, WA 98034

Zoning Interpretation Issued: December 13, 2017

Appeal Filed: December 27, 2017

Hearing Date: February 27, 2018

Location: Located at the northeast corner of 132ND Ave NE and NE 112TH Place, Redmond, WA 98052

Parcel Size: The total area of the site is approximately 8.37 acres.

Neighborhood: The proposed project is located within the Willows/Rose Hill neighborhood.

Land Use Designation: This property is located in the Single-Family Urban and Single-Family Constrained, land use designations within the Willows/Rose Hill Neighborhood.

Zoning Designation: The subject site is split zoned, with both R-4 (Single-Family Urban Residential) Zone and R-1 (Single-Family Constrained) Zone, located in the Willows/Rose Hill Neighborhood.

Surrounding Land Use and Zoning:

	Zoning	Land Uses
North:	R-4 (Single-Family Urban Residential) Zone and R-1 (Single-Family Constrained) Zone	Single-Family Homes
East:	BP (Business Park)	Offices
South:	R-4 (Single-Family Urban Residential) Zone and R-1 (Single-Family Constrained) Zone	Undeveloped/Single-Family Homes

West:	City of Kirkland zoning	City of Kirkland single-family residences
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Access: Vehicle access for this site is from 132nd Avenue NE.

SEPA: Has not been issued. For the underlying land use permit. A checklist has been submitted as a part of the land use application Site Plan Entitlement (LAND-2017-00727).

NOTICE OF DECISION: Not issued for the project.

In accordance with RZC Section 21.76.060(I), Appeal of Type I 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.

BACKGROUND

The application for a Site Plan Entitlement (LAND-2017-00727) was filed with the City of Redmond on August 3, 2017 by Toll WA LP for a 28-unit cottage development (Exhibit C-1: General Application). Pursuant to Redmond Zoning Code [RZC 21.76.060(E) (1)], Decisions on Type II applications are made by the Technical Committee. The decision of the Technical Committee shall be based on the criteria for the application set forth in the RZC, and shall include any conditions necessary to ensure consistency with the applicable development regulations. Approvals of a Site Plan Entitlement are valid for a two-year time period pursuant to Redmond Zoning Code [RZC 21.76.090(C)]: Approval of a Type I, II, or III application shall expire two years from the date approval was final unless significant action proposed in the application has been physically commenced and remains in progress.

A Notice of Application was prepared and posted on August 9, 2017 with a comment period that ended August 30, 2017. During the comment period, staff received four comments. Upon completion of the comment period, staff recorded the comments and shared them with the applicant (Exhibit C-5: Public Comments).

On August 16, 2017, The City of Redmond Technical Committee reviewed the proposal and asked staff to schedule a meeting with the applicant, in order to discuss the applicant's interpretation of the split zoning and how they applied it to the subject site (Exhibit C-8:

Technical Committee Notes). On August 30, 2017 an additional information letter relating to the land use application was drafted, but not signed by the members of the Technical Committee, due to the outstanding questions related to the issue of split zoning on the subject site (Exhibit C-9: Draft Additional Information Letter). On August 31, 2017 staff met with the applicant to discuss their interpretation and how it was applied to the subject site.

In the subsequent months, staff reviewed the applicant's interpretation and consulted with the City attorney to discuss the split zoning and how it would be applied to the subject proposal. On December 13, 2017, the City of Redmond, Planning Department, mailed an Administrative Interpretation signed by Karen Anderson, Planning Director to the applicant (Exhibit C-2: Zoning Interpretation Letter), which outlines how properties that have two zones are to be addressed.

It is this action (the creation of the administrative interpretation) that the appellant is appealing.

JURISDICTION

In accordance with RZC Section 21.76.060(I), Appeal of Type I 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 issue the zoning interpretation letter on December 13, 2017 was in error lies on the appellant, as outlined in Hearing Examiner Pro-Tem's Rules, Burden of Proof.

APPELLANT'S BASIS FOR APPEAL

The appellant has appealed the City's decision issuing the Administrative Interpretation. The applicant's appeal is based upon the following assertions:

1. The City's position is an error of law and procedure and the Administrative Interpretation is subject to appeal.

2. This Administrative Interpretation violates Redmond Zoning Code [RZC 21.76.070 (D) (1)], which prohibits using an Administrative Interpretation to amend or change the Code.
3. The Administrative Interpretation is inconsistent with the City's disclaimers relating to the accuracy of the Zoning Map and City's GIS mapping.
4. The December 13, 2017 Administrative Interpretation violates subsections of Redmond Zoning Code [RZC 21.76.100 (c) and (d)]. Letter (c) states: "In the case of conflicts between parts of the RZC or between the RZC and other rules, regulations, ordinances, or statutes lawfully adopted by other authority having jurisdiction within the City, the most restrictive shall govern. In the case of conflicts between the text, maps, and other charts of the Redmond Zoning Code, the text shall govern unless otherwise stated." Letter (d) states: "Interpretation of the Official Zoning Map shall be as set forth in Redmond Zoning Code" [RZC 21.040.020 (B)].
5. Uncertainty exists as to the R-4/R-1 zoning boundary on the Rosehill Cottages property.

RELIEF SOUGHT BY APPEAL

The applicant is seeking the following relief through this appeal:

- 1) Reverse the Administrative Interpretation.
- 2) Alternatively, if the Hearing Examiner denies the request, allow the applicant to file a request for Administrative Interpretation.

ANALYSIS of BASIS for APPEAL

The criteria for applying for an appeal as outlined in Redmond Zoning Code [RZC 21.76.060) (I) (2)]. Applicant filed its appeal within the required time period and meets the requirements for an appeal.

ANALYSIS OF ASSERTIONS

Staff offers the following rebuttal to each major contention raised in Appellant's appeal statement.

1. The applicant believes that the City's position is an error of law and procedure.

The burden of proof for an appeal falls solely upon the applicant. The applicant is incorrect with respect to their position of error of law. The Redmond Zoning Map is available online through the Redmond Zoning Code in a digital/electronic format. The zoning map boundaries as shown in the

City's GIS system can be identified with precision and can be scaled within the City of Redmond's Property Viewer. Therefore, the assertion is incorrect as there is no uncertainty (Exhibit C-6: Property Viewer Screen Shot).

2. This Administrative Interpretation violates RZC 21.76.070.D.1 which prohibits using an Administrative Interpretation to amend or change the Code.

The applicant's analysis of the Code is incorrect. The Administrative Interpretation does not modify the Code, but provides clarity to the Code. Redmond Zoning Code [21.76.100 (D)] indicates that the purpose of this section is to define the responsibilities, rules, procedures, and requirements for the interpretation of the Redmond Zoning Code. The Code Administrator shall be responsible for interpreting the provisions of this Code, except where expressly provided otherwise. Despite the matter line in the Administrative Interpretation, the City's letter simply follows this interpretive procedure.

3. The conclusion of the Administrative Interpretation is inconsistent with the City's disclaimers relating to the accuracy of the Zoning Map and City's GIS mapping.

The burden of proof for an appeal falls solely upon the applicant. The applicant has failed to provide any evidence that there are inconsistencies with the actual Zoning Map or Geographic Information Systems maps other than referencing disclaimers. The appellant asserts that the "City opted to use a GIS mapping system that is not even referenced in the Zoning Code." This assertion is incorrect as the Administrative Interpretation is based on the Zoning Map, which is in fact found in the Redmond Zoning Code (RZC 21.04.020). The assertions are incorrect as for purposes of determining boundary lines, the applicant is able to make measurements to determine boundary lines by using the Redmond Property Viewer, which is found on the City's website. The Property Viewer disclaimer states: "The data has been tested for accuracy and are properly functioning" and "The property viewer can be used to research basic property information and research specific zoning regulations that apply to a property." (Exhibit C-7: GIS Disclaimer)

4. The December 13, 2017 Administrative Interpretation violates Redmond Zoning Code 21.76.070 [21.76.070(D) (4) (c) (d)]. Subsections c. and d. Letter c. states: In the case of conflicts between parts of the RZC or between the RZC and other rules, regulations, ordinances, or statutes lawfully adopted by other authority having jurisdiction within the City, the most restrictive shall govern. In the case of conflicts between the text, maps, and other charts of the RZC, the text shall govern unless otherwise stated. Letter d. states: Interpretation of the Official Zoning Map shall be as set forth in RZC 21.040.020B.

The Zoning Map is found in Redmond Zoning Code (RZC 21.04.020). The appellant's asserts that the interpretation is in error of Redmond Zoning Code [21.76.070 D (4) (c) (d)]. Letter (c) states:

In the case of conflicts between parts of the RZC or between the RZC and other rules, regulations, resolutions, ordinances, or statutes lawfully adopted by other authority having jurisdiction within the City, the most restrictive shall govern. In the case of conflicts between the text, maps, and charts of the RZC, the text shall govern unless otherwise stated. Letter (d) states: “Interpretation of the Official Zoning Map shall be set forth in [the subsection on zoning map interpretation].” As to subsection (c), Applicant does not point to any particular text the City should have prioritized over the map at issue in this case. As to subsection (d), the City agrees that administrative interpretation of the zoning map “shall be as set forth in RZC 21.04.020.B”—the question is what that code section means when applied to this case.

5. Uncertainty exists as to the R-4/R-1 zoning boundary on the Rosehill Cottages property.

The applicant indicates that the City relied on an unreliable mapping system, but does provide evidence that errors exist on either the Zoning Map or Geographic Information Systems. Uncertainty does not exist with respect to the boundaries of the zones as shown in the Redmond Zoning Code (RZC 21.04.020), Zoning Map, and as indicated in the Administrative Interpretation dated December 13, 2017 (Exhibit C-2: Zoning Interpretation Letter). This interpretation is further supported by the definition of “uncertainty” found in the Merriam Webster dictionary, which defines uncertainty as follows: “as not known” and “not constant.” If the applicant’s assertions about uncertainty were correct, all zoning boundaries would be “uncertain” regardless of a parcel being split zoned or not. Therefore, the interpretation is correct. The Zoning Map resides as a layer within the City’s geographic information systems database, and as such, is accurate to the parcel layer. Accuracy, is supported as the Property Viewer disclaimer states: “The data has been tested for accuracy and are properly functioning” and “The property viewer can be used to research basic property information and research specific zoning regulations that apply to a property.” Measurements can be easily scaled from this data to determine boundary lines. Easily, is supported as the tools provided within the property viewer by allowing scalable measurements in-order to determine inches, feet, meters, miles, etc. Furthermore, the City has processed thousands of applications and assumed no challenges with respect to accuracy of zoning boundaries, split zoned or otherwise.

STAFF RECOMMENDATION

Based on the analysis included in this report, staff recommends that the Hearing Examiner Pro-Tem uphold the administrative interpretation as it applies to Rosehill Cottages (LAND-2017-00727), (Exhibit C-2: Zoning Interpretation Letter).

CONCLUSIONS IN SUPPORT OF THE STAFF RECOMMENDATION

The appellant has the burden to prove that the City erred in issuing the administrative interpretation, as it relates to Site Plan Entitlement (LAND-2017-00727), (Exhibit C-2: Zoning Interpretation Letter). The appellant has provided a statement and no evidence required to meet that burden and could not establish that the City erred procedurally or substantively in issuing the Administrative Interpretation.

Karen Anderson

Karen Anderson, Director
Department of Planning and
Community Development



Mike Paul, Deputy Director
Department of Public Works