



CITY OF EDMONDS

121 5TH AVENUE NORTH • Edmonds, WA 98020 • (425) 771-0220 • FAX (425) 771-0221
HEARING EXAMINER

GARY HAAKENSON
MAYOR

RECEIVED
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PLANNING DEPT.

In the Matter of the Appeal of)	NO. APL20100002
)	
Jo Drake)	Drake Appeal
)	
)	
Of an Administratively Approved)	FINDINGS, CONCLUSIONS,
Accessory Dwelling Unit at)	AND DECISION
416 - 9th Avenue North, Edmonds)	
_____)	

SUMMARY OF DECISION

The appeal of the Planning Division's decision to approve a 299 square foot accessory dwelling unit above the garage of the single-family residence at 416 - 9th Avenue North in Edmonds, Washington is **DENIED**. The Appellant did not satisfy the burden of proof.

SUMMARY OF RECORD

Request:

Jo Drake (Appellant) appealed the City of Edmonds Planning Division's decision to approve a 299 square foot accessory dwelling unit at 416 - 9th Avenue North in Edmonds. The Appellant argued that decision was inconsistent with Edmonds Community Development Code (ECDC) 20.21.030.D.

Hearing Date:

The City of Edmonds Hearing Examiner conducted an open record appeal hearing on August 5, 2010. Immediately following the hearing, the Examiner conducted a site visit that consisted of driving past the subject property on 9th Avenue North, observing the Appellant's and Applicant's properties in the context of the surrounding residential development.

Testimony:

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

1. Gina Coccia, Associate Planner
2. Charles Greenberg, Attorney for Appellant
3. Jo Drake, Appellant
4. Darcy Klima, Appellant witness
5. Al Tomson, Applicant
6. Torstein Arsvold, property owner
7. Alvin Rutledge

Exhibits:

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

Exhibit 1 Planning Division Staff Report, dated July 27, 2010, with the following **Attachments:**

1. Appeal statement of Jo Drake, dated May 21, 2010
2. Additional statement of Jo Drake, dated June 2, 2010
3. Correspondence to Applicants for the Arsvold ADU from City Planning staff, dated May 24, 2010 and July 2, 2010
4. Notice of Appeal and Public Hearing, issued July 22, 2010
5. Administrative Approval of the Arsvold Accessory Dwelling Unit, PLN20090053, issued May 7, 2010, with the following attachments:
 - a. Land Use Application¹
 - b. Site Plan (revised)
 - c. Zoning and Vicinity Map
 - d. Floor Plans & Elevations (revised)
 - e. Notices and Affidavits of Posting, Publishing, and Mailing
 - f. ADU affidavit
 - g. Sample ADU covenant
 - h. Public Comment Letter from Jo Drake, including copies of four photographs

Exhibit 2 Appellant's presentation, (cover sheet plus the following **Attachments**):

- a. "Neighborhood Impact" (3 pages)
- b. "Comments re: Neighborhood Impact" (5 pages)
- c. "ADU Applications 2008-2010" (cover sheet plus 15 pages)

Exhibit 3 Applicant's statement, dated July 26, 2010

Issue on Appeal:

Whether the City incorrectly approved the 299 square foot ADU over the garage at 416-9th Avenue North in violation of ECDC 20.21.030.D.

¹ In the ADU decision, the attachments were numbered rather than lettered; however, the numbered attachments will be lettered in this decision. Please refer to Exhibit 1, Attachment 5, page 7 to cross reference the exhibits there listed in case of confusion.

Applicable Regulations:

ECDC 20.21.030.D, Location and Appearance. The single-family appearance and character of the residence shall be maintained when viewed from the surrounding neighborhood. The design of the accessory dwelling unit shall be incorporated into the design of the principal dwelling unit and shall be designed to maintain the architectural design, style, appearance and character of the main building as a single-family residence using matching materials, colors, window style, and roof design. The primary entrance to the accessory dwelling unit shall be located in such a manner as to be unobtrusive when viewed from the street. Whenever possible, new entrances should be placed at the side or rear of the building. Only one electric and one water meter shall be allowed for the entire building, serving both the primary residence and the accessory dwelling unit. Accessory dwelling units must be located within or attached to single-family dwelling units.

ECDC 21.05.015, Accessory Dwelling Unit, attached. At attached accessory dwelling unit is a structure attached to or constructed within a single-family dwelling which has living facilities for one individual or family separate from the primary single-family dwelling including at least, but not limited to, a kitchen, bathroom, and sleeping quarters. An ADU shall not have its own mailbox, water meter, gas meter, and all garbage must be kept within a screened area in common to the single-family home.

Upon consideration of the testimony, arguments, and exhibits submitted at the open record appeal hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Torstein and Irene Arsvold own the real property at 416 - 9th Avenue North in Edmonds, Washington. The site is at the intersection of 9th Avenue and Daley Street. On their behalf, Alf Tomson, their son (Applicant), requested approval of an accessory dwelling unit (ADU) to be built over the garage (File No. PLN20090053). The ADU would house the Arsvolds' daughter or others who come to care for Arsvolds at the house and, in the future, could provide a side stream of income. *Exhibit 1, Attachment 5.a; Tomson Testimony.*
2. The proposal consisted of a 299 square foot one-bedroom ADU above the existing garage with an external stairway and landing leading to the entrance on the south side of the house. During the City's review of the application, public comments opposing the ADU were submitted by Ms. Drake (Appellant) who lives directly south of the subject property. In response to the comments, the Applicant revised the proposal to move the proposed stairway and entrance nearer to the rear of the house so it would be less visible from the street. After considering public comments, the application materials, and the revised plans, City Planning Staff approved the ADU subject to conditions on May 7, 2010. *Exhibit 1, Attachment 5.*

3. On May 21, 2010, Ms. Drake timely submitted the instant appeal², arguing that ECDC 20.21.030.D, Location and Appearance, requires "the single-family appearance and character of the residence [to] be maintained when viewed from the surrounding neighborhood." Specifically, the Appellant alleged that the approved ADU would not be consistent with subsection D for the following reasons:

- The current design of the ADU still includes a two story addition above the garage with the entrance to the ADU, including a landing, clearly visible from the street. The ADU will appear as an apartment from 9th Avenue North (looking north) as well as from my house and the house to the east.
- Not only is this entrance visible from the street, the exposed stairway is visible from several rooms in my house and from my front and back yards.
- The entrance remains directly across from my master bedroom with visibility into my master bathroom and will eliminate all my privacy during the day and evening. It will also contribute increased noise for both the master bedroom as well as a second bedroom.

The Appellant argued that the approved addition would not be consistent with "the integrity of a single-family home appearance", "would not be at all in keeping with the other homes in the neighborhood", and would be "completely out of character with a single-family residence." *Exhibit 1, Attachment 1.*

4. The Appellant argued that the proposed addition will look like an apartment over the garage, which would block her northern view and detrimentally impact her property value. *Exhibit 1, Attachment 1; Drake Testimony; Exhibit 1, Attachment 5.h.*
5. The Appellant offered neighboring property owner Darcy Klima as a witness. Ms. Klima lives at 910 Daley, east of the Arsvolds' property, north of the Appellant's property, and adjacent to both. *Exhibit 1, Attachment 5.c.* Ms. Klima testified that the addition would look into her bedroom. She stated that she bought her home in February 2010 and would not have done so if she'd known the proposal was going to be built. *Klima Testimony.*
6. The Appellant offered argument that the homes at 912 - 9th Avenue North and 910 Daley Street should be considered "the surrounding neighborhood" for the purpose of evaluating ECDC 20.21.030.D, because they are the closest homes and would directly face the approved improvement. *Greenberg Argument; Exhibit 2.a and Exhibit 2.b.*

² Following prompting by Staff, the Appellant submitted an additional statement attesting that the Appellant had read the appeal and believed the contents to be true, dated June 2, 2010. Such a statement is required by ECDC 20.07.004.D.6 as part of a complete appeal application; one had been omitted from the May 21, 2010 appeal statement. *Exhibit 1, Attachment 2.* No party offered argument regarding the timeliness of complete appeal submission. Consistent with the City's treatment, the Examiner will consider the appeal as timely.

7. The Appellant conducted her own survey of ADUs approved in recent years, based on records she was able to obtain from the City. She collected evidence of twelve ADUs approved from 2008 to 2010, eight of which are located in what she characterized as the downtown area. She submitted online images or personal photos of seven of the homes. From the photos she offered, the Appellant argued that none of the seven ADUs is a studio over the garage and none is obvious as seen from the street. She noted that several of them were approved on very large lots and several had trees or shrubs surrounding the residence such that no separate entrance could be seen. *Exhibit 2c; Drake Testimony; Greenberg Argument.*
8. The Appellant argued that a studio ADU over a garage is inconsistent with the "integrity and character of a single-family home" because the second story unit would look "slapped on" and the external stairway would make it look like an apartment over the garage and look like an addition. She argued that the Applicant's intention to seek future income through rental was detrimental to her. *Exhibit 2.b; Greenberg Argument; Drake Testimony.*
9. As an alternative to the presently approved design, the Appellant suggested the following ideas: the ADU could be designed to have an interior entrance, with no stairway and landing outside the building; the entire upper floor could receive an addition to prevent the appearance of an apartment over the garage; and/or the entrance could be moved to the north side of the building. She suggested they could also use the converted living space inside the garage for an ADU. *Drake Testimony; Exhibit 2.c; Exhibit 1, Attachment 1; Exhibit 1, Attachment 5.h.*
10. The subject property has a Single-Family Residential (RS-6) zoning designation, and all surrounding properties are zoned either RS-6 or RS-12. *Exhibit 1, Attachment 5.* ADUs are permitted in the Single-Family Residential zones by administratively reviewed conditional use permit. *ECDC 16.20.010.D and 20.02.003.*
11. The existing home at 416 - 9th Avenue North was built in 1953. Since then, it has undergone more than one remodel, including enclosures of the garage and the breezeway. The property is included in the original land that comprised the City of Edmonds Plat, which incorporated in 1890. Throughout the area of the original plat, there have been additions and infill. Presently, the neighborhood contains what Staff described as an "eclectic mix" of house styles and types. *Exhibit 1, page 3; Coccia Testimony; Exhibit 1, Attachment 5.*
12. City Planning Staff submitted the position that the ADU as conditioned would maintain the single-family appearance and character of the residence. They based this on submitted plans indicating that the ADU would use a 4/12 pitched roof that would blend with the existing roof. A condition of ADU approval would ensure that window style, colors, and construction materials match the existing building. While the initial proposal placed the outside stairway and entrance closer to the street, the Applicant moved the location of the stairway to rear of the house, to reduce its visibility from the street, hiding the access as much as possible. *Coccia Testimony; Exhibit 1, Attachment 5.*

13. While most ADU applications seek to maximize the square footage (800 square feet is the maximum allowed), the instant project is modest at 299 square feet. Staff submitted the opinion that it is in keeping with the purposes of the ADU chapter. *Coccia Testimony; Exhibit 1, Attachment 5.*
14. There is no code-provision prohibiting an ADU over a garage. Staff present at the hearing testified to personal knowledge of at least two ADUs approved over garages in Edmonds. *Exhibit 1, page 3; Coccia Testimony; Tomson Testimony.*
15. The Applicant's building permit has been approved and is on hold pending the outcome of the instant appeal. So long as all portions of the proposed addition comply with bulk dimensional and setback requirements, the Applicant is free to remove the proposed kitchen and closet from the plans and proceed with construction of an addition that is not an ADU over the garage, including the outside second floor entrance. *Exhibit 1, page 3; Coccia Testimony.*
16. Regarding the Appellant's suggestion for moving the entrance of the ADU to the north of the subject property, Staff submitted the position that there is no code or policy reason to require such a plan change. *Coccia Testimony.* Moving the entrance to the north side would place the entrance on the intersection, making it visible from two streets. *Exhibit 1, Attachment 5.c*
17. The property owners are in their late 70s and 80s and live on a fixed income. According to testimony from the Applicant, they cannot afford an entire second story addition. In prudent planning for their future, they know they will require space for in-home help. Their future income will likely require supplementation from the rental of an ADU in order to remain in their home. The residence is on a corner at an intersection, resulting in limited ability to hide an entrance to an ADU. The owners could not move the addition and entrance to the north end of the home without giving up the only portion of the yard/outside area they can comfortably access. The property owners seek to take full advantage of their property as allowed by code. *Exhibit 3; Tomson Testimony.*
18. Notice of appeal and notice of hearing were provided consistent with the notice provisions of the Community Development Code. *Exhibit 1, Attachment 4.*
19. Public comment was accepted at the open record public hearing. One member of the commented on the intent of the ADU provisions specifically acknowledging in home care for elderly property owners as an appropriate use of an ADU. *Rutledge Testimony.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide appeals of Type II land use decisions, including decisions on applications for accessory dwelling units, pursuant to ECDC 20.01.003.C. The Hearing Examiner shall hold an open record appeal hearing for appeals of Type II administrative decisions where no open record predecision hearing was held on the land use application. *ECDC 20.06.001.A.*

Criteria for Review:

Pursuant to ECDC 20.06.008.A, after conducting an open record appeal hearing, the Examiner shall affirm, reverse, or remand a Type II land use decision for further development by the administrative decision maker.

Pursuant to ECDC 20.06.006.B, the Appellant bears the burden of proof in appeals of Type II land use decisions.

Conclusions Based on Findings:

1. The only code provision in question is ECDC 20.21.030.D, which contains five requirements:
 - a. The single-family appearance and character of the residence shall be maintained when viewed from the surrounding neighborhood.
 - b. The design of the accessory dwelling unit shall be incorporated into the design of the principal dwelling unit and shall be designed to maintain the architectural design, style, appearance and character of the main building as a single-family residence using matching materials, colors, window style, and roof design.
 - c. The primary entrance to the accessory dwelling unit shall be located in such a manner as to be unobtrusive when viewed from the street. Whenever possible, new entrances should be placed at the side or rear of the building.
 - d. Only one electric and one water meter shall be allowed for the entire building, serving both the primary residence and the accessory dwelling unit.
 - e. Accessory dwelling units must be located within or attached to single-family dwelling units.

As proposed and conditioned, the addition would match the existing structure's colors, materials, window styles, and roof pitch, being thus incorporated into the design of the existing home. Through these means, the proposal is compliant with the second requirement (listed as "b" above). The entrance was moved farther from the street to the rear of the south side of the building, in furtherance of the third requirement (listed as "c" above), in part as a response to the Appellant's initial comments. A condition of approval and building permit review would ensure compliance with the fourth requirement (listed as "d"). As proposed, the ADU is attached to the residence. This leaves only the question of "appearance and character of the single-family residence when viewed from the surrounding neighborhood". *Findings 2, 12, 13, 14, and 17.*

2. The Edmonds Community Development Code doesn't define "neighborhood" or "appearance and character of a single-family residence".³ ADUs are defined (see above) and are permitted in the RS-6 zone. *ECDC 20.05.015; ECDC 16.20.010.D.*
3. Considering all facts in the light most favorable to the Appellant, the project as approved would at worst result in an obvious addition over the garage or an obvious ADU when viewed from the Appellant's property. The essence of the Appellant's argument is that the obviousness of the ADU renders it inconsistent with the appearance and character of a single-family residence. This argument is not persuasive. ADUs are allowed in the RS zones. Relating to each specific, code-based direction on the appearance and function of the ADU, the project as conditioned complies with ECDC 20.21.030.D (as detailed in conclusion 1 above). The Appellant has cited no regulations that prohibit an ADU above a garage or that prohibit an outside stairway, landing, and entrance. The ADU provisions entail a high degree of specificity, dictating where entrances should be located and how many mailboxes and electric meters are allowed. Had the legislative body intended complete screening of the fact of the existence of an ADU, they could have so specified. There is no code provision that requires "stealthiness" of the ADU beyond the measures the project has already complied with. The Planning Department correctly determined that the project, as conditioned, satisfies the requirements of ECDC 20.21.030.D. *Findings 2, 12, 14, 15, and 17.*
4. Without definitions, the first sentence of ECDC 20.21.030.D is arguably capable of multiple interpretations. To the extent that the first requirement of ECDC 20.21.030.D (listed as "a" in conclusion 1 above) is ambiguous, deference to the interpretation of the administrative official charged with application and enforcement of the zoning code is appropriate. *Pinecrest Homeowners' Ass'n v. Glen A. Cloninger & Assoc.*, 151 Wn.2d 279, 290 (2004).

DECISION

The Appellant did not satisfy the burden of proof of demonstrating that the approval of the ADU is inconsistent with ECDC 20.21.030.D. Based on the preceding findings and conclusions, the appeal must be **DENIED** and approval of PLN2009-0053 is **AFFIRMED**.

Decision issued August 19, 2010.

Towell Rice Taylor LLC
City of Edmonds Hearing Examiners
By:



Sharon A. Rice

³ "Single-family dwelling" is defined as a detached building used by one family, limited to one per lot. *ECDC 21.90.080.*



CITY OF EDMONDS

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HEARING EXAMINER

GARY HAAKENSON
MAYOR

RECONSIDERATION AND APPEAL

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

REQUEST FOR RECONSIDERATION

Section 20.06.010 of the Edmonds Community Development Code (ECDC) contains the procedures for requesting reconsideration of a Hearing Examiner decision in appeals of Type II administrative decisions. Requests for reconsideration must be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision. The filing deadline is 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (as defined at ECDC 20.07.003) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered prior to the open record appeal hearing. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

APPEALS

Pursuant to ECDC 20.01.003(C), appeals of hearing examiner decisions on Type II administrative decisions shall be to the Snohomish County Superior Court as provided in ECDC 20.01.003(C) and 20.06.010(J), in accordance with the Land Use Petition Act (RCW 36.70C). LUPA appeals must be filed within 21 days of decision issuance. Filing a request for reconsideration is not a prerequisite to filing an appeal.

EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration, and any judicial appeal must be filed within 21 days of the decision on reconsideration.

NOTICE TO COUNTY ASSESSOR

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessor's Office.



CITY OF EDMONDS

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HEARING EXAMINER

GARY HAAKENSON
MAYOR

OFFICE OF THE HEARING EXAMINER CITY OF EDMONDS, WASHINGTON

In the matter of the appeal of)	
)	
Jo Drake)	Case No. APL-2010-0002
)	
Of an administratively approved)	
Accessory Dwelling Unit)	
at 416- 9th avenue North)	DECLARATION OF SERVICE
(File No. <u>PLN2009-0053</u>))	

I, Sharon A. Rice, the undersigned, do hereby declare:

- That I am a partner in the firm of Toweill Rice Taylor LLC, which maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and make this declaration in that capacity; and that I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Washington, over the age of eighteen (18), and competent to be a witness and make service herein; and that on June August 18, 2010 I served a copy of the decision in case APL-2010-0002 upon the following individuals at the addresses below by first class US Mail:

Jo Drake
412 - 9th Avenue North
Edmonds, WA 98020

City of Edmonds Planning Division
121 Fifth Avenue North, First Floor
Edmonds, WA 98020


Darcy Lima
910 Daley Street
Edmonds, WA 98020

Clerk of the Edmonds City Council
121 Fifth Avenue North, First Floor
Edmonds, WA 98020

Alvin Rutledge
7101 Lake Ballinger Way
Edmonds, WA 98026

Alf Tomson
3670 Shorewood Avenue
Greenbank, WA 98253

Torstein and Irene Arsvold
416 - 9th Avenue North
Edmonds, WA 98020

Charles Greenberg
209 Dayton Street Suite 105
Edmonds, WA 98020

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, this 18th day of August 2010, at Edmonds, Washington.



Sharon A. Rice, Toweill Rice Taylor LLC