

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS**

2 Phil Olbrechts, Hearing Examiner

<p>3 RE: Dent Setback Variance</p> <p>4</p> <p>5</p> <p>6 PLN-2011-0072</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b></p>
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7 **INTRODUCTION**

8 The applicant is requesting a side yard setback in order to build an addition to an  
9 existing home. The subject lot is 42 feet wide and the side yard setbacks account for  
10 35 feet of that width, leaving only 7 feet for development. The variance is approved.

11 **ORAL TESTIMONY**

12 Gina Coccia, Associate Planner for Edmonds, stated that staff had received a public  
13 comment letter from Kim Tran on January 12, 2012 (exhibit 9). Ms. Coccia testified  
14 that she deduced that Kim Tran is a neighbor with property to the south of the  
15 applicant's property. She added that she came to this conclusion by reviewing the  
16 property owner list. Ms. Coccia noted that Ms. Tran referenced a variance in her  
17 letter, Variance V1989-28. Ms. Coccia commented that she did not come across this  
18 specific variance when she was doing her research of previous variances for the  
19 neighborhood in question. V1989-28 was located in archives, according to Ms.  
20 Coccia. She stated that the applicant has provided a survey completed by a licensed  
21 professional. Ms. Coccia testified that this survey demonstrates that, contrary to what  
22 Ms. Tran believes, Ms. Tran's property does not extend out beyond the setback  
23 variance. The building code requires buildings to be built at least 5ft away from each  
24 other, thus even if there was conflict the building could not be constructed within 5ft  
25 of Ms. Tran's building, according to Ms. Coccia.

Ms. Coccia testified that the width of the lot is 42 feet and the setbacks are 35 feet, and  
added that the setbacks on each side are 5ft on the north and south property line. Ms.  
Coccia noted that she is unsure of the separation of the house from the south (along  
Ms. Tran's property line). She stated that the proposed house addition is shown about  
5ft from the property line on the plans provided.

Paul Dent, applicant, stated he has nothing to add.

Kim Tran, 16340 75<sup>th</sup> Pl W Edmonds, stated that she is unsure of where her property  
line is located. She noted that she has been on vacation for the past three weeks, and  
thus she has been unable to speak with the applicant about the property line and  
according variances. She testified that the previous owner of her home (who was the

1 builder) told her the property line was straight from the roof eave to the next house.  
2 She stated that she is worried the addition will make the house end right at her  
3 property line and make the homes very close together. Ms. Tran commented that she  
believes the property line is at the end of the rockery. She added that she does not  
know if the property line is diagonal with the v-shaped rockery.

4 Ms. Coccia stated that the property lots are very narrow in this area, and the Dent's  
5 property meets the 5ft setbacks.

## 6 EXHIBITS

7 All 8 exhibits listed on page 8 of the November 29, 2011 Staff Report were admitted  
8 into evidence, in addition to the staff report itself. At hearing a January 12, 2012  
email from Kim Tram was admitted as Exhibit 9.

## 9 FINDINGS OF FACT

### 10 Procedural:

- 11 1. Applicant. The applicants are Paul and Jenelle Dent.  
12  
13 2. Hearing. The Hearing Examiner conducted a hearing on the application  
14 on January 12, 2012 at 3:00 p.m. at the Edmonds Public Safety Complex in the  
Council Chambers.

### 15 Substantive:

16 3. Site/Proposal Description. The Applicants request a variance to ECDC  
17 16.20.030, which imposes side yard setbacks totaling 35 feet for both sides of lots in  
18 the RS-20 district. The Applicants' lot is only 42 feet wide, leaving seven feet for  
19 development. The Applicants request that this 35 foot total be reduced to ten feet to  
20 allow a house addition to be placed within five feet of the side yard property lines.  
21 The existing three-bedroom home has a 928 square foot first floor and a 672 square  
22 foot lower level. The existing home is located on the western end of the lot and the  
23 new addition is proposed just for the east side of the home. The proposed  
24 development will expand the home to a four bedroom house with a two car garage.  
25 The record does not provide any information on housing sizes in the vicinity, but in  
Edmonds it is reasonable to presume that a 1,600 square foot home is relatively small.  
The Applicants' proposed expansion to a four-bedroom home with a two car garage is  
presumed to be more consistent with the size of the homes in the vicinity with the  
same zoning. The existing lot and home were legally established under the County's  
jurisdiction, which justify approval of the variance. The lot is well under half the  
required lot width for the zone, and well under half the minimum lot area for the  
zone.

1 4. Characteristics of the Area. The subject lot is located in a residential  
neighborhood and the use is existing and will not change.

2 5. Adverse Impacts. No significant adverse impacts are reasonably  
3 anticipated from the administrative record of this project.

4 Kim Tran, a neighboring property owner to the south, asserts that the Applicants  
5 property line runs along the eve of their roof line and that authorizing the variance  
6 would cut off a rockery that separates her home from the proposed addition. It is  
7 difficult to understand what Ms. Tran is asserting. As depicted in the site plans, Ex.  
8 5, the variance would not result in any encroachment into the rockery and also would  
9 not result in any encroachment past the property line alleged by Ms. Tran, i.e. the  
10 roofline of the Applicants' currently existing home. Ms. Tran's assertion that the  
11 property line is along the Applicants' roofline is also inconsistent with her statements  
12 that her home has a five foot variance from the Applicants' property line. The  
13 separation between her home and the Applicants' proposed addition as depicted in the  
14 Ex. 5 site plans is ten feet, which would be consistent with the five foot setbacks  
depicted by the Applicants in their site plans. To the extent that Ms. Tran is asserting  
a trespass on her property, the Examiner does not have the authority to adjudicate  
ownership rights/property boundaries. See *Halverson v. Bellevue*, 41 Wn. App. 457  
(1985). If Ms. Tran believes that the addition will result in a trespass onto her  
property she is encouraged to speak to an attorney on how to resolve her boundary  
issues in a court of law. If she has a valid trespass issue and acts quickly enough she  
may be able to acquire injunctive relief against the Applicants that would prohibit any  
trespass.

15 Ms. Tran also raises concerns about fire safety due to the proximity of the  
16 addition to her home. Fire separation is governed by the Uniform Fire Code ("UFC")  
and the addition will be required to comply with the UFC fire separation requirements  
in order to qualify for building permit approval.

17 Finally, Ms. Tran also raises a concern about "wall to wall" homes, which could  
18 be reasonably construed as expressing a concern over aesthetic impacts. Ms. Tran's  
19 shoreline views are apparently already blocked by the Applicants' existing home and  
from what information is in the record it doesn't appear that the eastern addition will  
20 result in any significant additional view blockage.

21 As to view impacts beyond those affecting the Trans, the staff report notes that  
the subject property slopes down to the shoreline and that because of this slope the  
home will appear to be one story (15 feet) in height.

22 The staff report also notes that a critical areas waiver has been issued for the  
23 project and that no adverse environmental impacts are anticipated. There is no  
evidence to the contrary.

## 24 CONCLUSIONS OF LAW

### 25 Procedural:

1. Authority of Hearing Examiner. ECDC 20.85.020 provides the Hearing Examiner with the authority to review and act upon variance applications as Type III-A.

**Substantive:**

2. Zoning Designations. The area is zoned Single-Family Residential (RS-20).

3. Review Criteria and Application. Variances to setback requirements are set by ECDC 20.85.010, quoted below and applied through corresponding conclusions of law.

**ECDC 20.85.010:** *No variance may be approved unless all of the findings in this section can be made.*

**ECDC 20.85.010.A(1) – Special Circumstances:** *That, because of special circumstances relating to the property, the strict enforcement of the zoning ordinance would deprive the owner of use rights and privileges permitted to other properties in the vicinity with the same zoning.*

a. *Special circumstances include the size, shape, topography, location or surroundings of the property, public necessity as of public structures and uses as set forth in ECDC 17.00.030 and environmental factors such as vegetation, streams, ponds and wildlife habitats.*

b. *Special circumstances should not be predicated upon any factor personal to the owner such as age or disability, extra expense which may be necessary to comply with the zoning ordinance, the ability to secure a scenic view, the ability to make more profitable use of the property, nor any factor resulting from the action of the owner or any past owner of the same property;*

5. The existing lot and home were legally established under the County's jurisdiction, which justify approval of the variance. The lot is well under half the required lot width for the zone, and well under half the minimum lot area for the zone. Without the variance the applicant would only have seven feet of lot width to develop. These factors constitute special circumstances that satisfy the criteria above

**ECDC 20.85.010(B) – Special Privilege:** *That the approval of the variance would not be a grant of special privilege to the property in comparison with the limitations upon other properties in the vicinity with the same zoning;*

6. The existing three-bedroom home is only 1,600 square feet in area. The proposal is to expand to a four-bedroom house and two car garage. The record does not contain information on how large the expanded home will be or whether this size

1 is comparable with other homes in the vicinity with the same zoning. However, it is  
2 reasonable to conclude that in Edmonds 1,600 square foot homes are unusually small  
3 and that the variance is necessary to expand to a size of homes more typically found  
4 within the vicinity with the same zoning. The criterion is satisfied.

5 **ECDC 20.85.101(C) – Comprehensive Plan:** *That the approval of the variance will*  
6 *be consistent with the comprehensive plan;*

7 7. See Section VI of the staff report, adopted and incorporated by this  
8 reference as if set forth in full.

9 **ECDC 20.85.010(D) – Zoning Ordinance:** *That the approval of the variance will be*  
10 *consistent with the purposes of the zoning ordinance and the zone district in which*  
11 *the property is located;*

12 8. ECDC 16.20.000 provides that the purposes of the RS zones are to provide  
13 for single-family dwellings and nonresidential uses that complement and are  
14 compatible with single family use. The proposed expansion will result in a home that  
15 is of comparable size to surrounding homes. The expansion is consistent with the  
16 purposes of the RS-20 zone. The staff report also concludes that, other than the  
17 setback requirements subject to the variance application, the proposal is consistent  
18 with the requirements of the RS-20 zone and there is no evidence to the contrary.  
19 The criterion is satisfied.

20 **ECDC 20.85.010(E) – Not Detrimental:** *That the variance as approved or*  
21 *conditionally approved will not be significantly detrimental to the public health,*  
22 *safety and welfare or injurious to the property or improvements in the vicinity and*  
23 *same zone;*

24 9. As determined in the findings of fact, there are not significant adverse  
25 impacts associated with the proposal. This criterion is satisfied

**ECDC 20.85.010(F) – Minimum Variance:** *That the approved variance is the*  
*minimum necessary to allow the owner the rights enjoyed by other properties in the*  
*vicinity with the same zoning.*

10. The variance is the minimum necessary to enable the property owner to  
have a reasonably sized home compared to other homes in the vicinity. There is  
nowhere else on the property the home could be expanded without a variance.

## DECISION

1 All variance criteria are met and the variance request is approved.

2 Dated this 27th day of January, 2012.

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5 Phil A. Olbrechts  
6 Edmonds Hearing Examiner

7 **Appeal Right and Valuation Notices**

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9 This decision is final and only subject to appeal to superior court as governed by  
10 Chapter 36.70C RCW. Appeal deadlines are short (21 days from issuance of the  
11 decision) and the courts strictly apply the procedural requirements for filing an appeal.

12 Affected property owners may request a change in valuation for property tax purposes  
13 notwithstanding any program of revaluation.

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**DECLARATION OF MAILING**  
Variance – Paul and Jenelle Dent  
PLN20110072

I, Phil Olbrechts, make the following declaration:

1. I am a resident of the State of Washington, over the age of 18 years, not a party to this action, and competent to be a witness herein.

2. On the 27th day of January, 2012, I mailed, via First Class U.S. Mail, a true and correct copy of the DECISION ON RECONSIDERATION on the above captioned matter to the following:

Paul and Jenelle Dent  
166330 75<sup>th</sup> Place W.  
Edmonds, WA 98020

Kim Trans  
16340 75<sup>th</sup> Pl. W  
Edmonds, WA 98020

Diane Cunningham  
121 5<sup>th</sup> Ave N  
Edmonds, WA 98020

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Granite Falls, Washington, this 27th day of January, 2012.

  
PHIL A. OLBRECHTS