



# CITY OF EDMONDS

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HEARING EXAMINER

DAVE EARLING  
MAYOR

**RECEIVED**  
APR 30 2012  
PLANNING DEPT.

## BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Phil Olbrechts, Hearing Examiner

RE: Kamila and Miroslaw Kanczugowski  PLN20120004	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
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### INTRODUCTION

The Applicants are requesting a variance to reduce a street setback from 25 feet to 7.5 feet in the RS-8 zone for a carport constructed without a building permit. The variance is denied.

### ORAL TESTIMONY

**March 22, 2012**

Mike Clugston, Edmonds Planner, stated that the hearing is in regard to a carport that was constructed without a building permit on 77 Place W. Attachment 1 of the staff report features a photo that shows the carport, a fence, and a retaining wall. The retaining wall and fence were built last year without permits, but currently permits have been obtained for these features. The variance request for the carport would reduce the 25ft required street setback to 7.5 ft. Normally, setback variance requests are made before structures are built, but not in this case. He submitted a public comment letter from Shirley Morris. Six criteria must be met in order to grant a setback variance under Edmonds' Code. None of the criteria were met for this project. There were no special circumstances on the site. Past additions on the lot have built out to the maximum boundaries. A permit granted in 2007 for a car garage on the property clearly indicated the 25ft. setback requirement. The request is not consistent with the comprehensive plan or the zoning ordinance. The structure was built without a building permit, thus it is incompatible with the surrounding

1 environment. Granting a variance in this case could encourage other residents to  
2 build without permits, thus the variance is detrimental to public health and welfare.  
3 The minimum variance is zero because the current structure is illegal. Staff  
4 recommends denial of this variance request because it does not meet any of the six  
5 required criteria. Staff also asked that the applicant apply for a building demolition  
6 permit in order to acquire the proper 25ft. setback. He noted that it is a corner lot and  
7 has 2 street setbacks. He added that the home is not unusually large. The intent of  
8 the comprehensive plan is that residents follow the rules and regulations, including  
9 seeking prior approval for building projects. However, the city has granted building  
10 permits in the past, post-construction if they met the criteria set forth in the code.

11 Kamila Kanczugowski, Applicant, stated that the carport is necessary for the lot. Her  
12 family was unaware that a roof extension required a building permit. The carport  
13 would need to be replaced with a different structure or tarp that might not be as  
14 aesthetically pleasing.

15 Loretta Olson stated she resides on the same street as Kamila Kanczugowski. Ms.  
16 Olson noted that the street is very busy. The carport looks very nice and if it was torn  
17 down, the alternative replacements would not be as visually appealing. The carport  
18 has no walls and should be considered a temporary structure. The retaining wall also  
19 has improved the lot and makes the whole neighborhood look nicer.

20 Alvin Rutledge asked that city staff provide the date when they discovered the carport  
21 had been built without permit. He further noted that there seems to be an increase in  
22 residents building without permits. He also questioned whether the carport is covered  
23 by the homeowner's insurance.

24 Mike Clugston noted that the carport is aesthetically pleasing. However, any  
25 structure must meet the designated city setbacks. The structure was constructed last  
year, and the variance application was submitted February 6<sup>th</sup>.

Kamila Kanczugowski stated that they started remodeling in 2001. For all previous  
changes, her family obtained the necessary permits. By approving this variance, it  
would encourage other neighbors to build similar structures that make the  
neighborhood more visually appealing.

#### 21 **April 12, 2012**

22 Daniel Kanczugowski, son of applicant, stated that he and his parents have attempted  
23 to better the community ever since they moved to their current home. They have  
24 completed projects in the neighborhood such as filling their ditches in order to  
25 improve aesthetics. In 2007, they built a garage on the south-side of their lot for  
storage. Several years later, they extended the garage roof in the form of an awning.  
They were not aware that this was considered a permanent structure (thus requiring a  
permit). He stated that he believes that the staff report is incorrect in saying the  
carport protrudes into the street and is on the property boundary line. He measured  
the carport as being 10ft. from the property boundary. He added that he does not

1 believe the carport is in violation of the variance criteria as stated in the staff report.  
2 He provided a petition signed by neighbors stating that the carport actually helps the  
3 aesthetics of the community (exhibit 12). He believes the carport is essential to rural-  
4 residential development.

5 Mike Clugston noted that the staff report stated that the carport protrudes into the  
6 street setback required by the city, not the actual street. Development is desired in  
7 residential area, but that development must be completed legally within city  
8 standards.

## 9 EXHIBITS

10 All seven exhibits listed on page 8 of the March 14, 2012 Staff Report were admitted  
11 into evidence as Exhibits 1-8. At hearing on April 12, 2012 the following exhibits  
12 were also admitted:

- 13 8. March 20, 2012 letter from Shirley Morris
- 14 9. March 14, 2012 staff report.
- 15 10. March 22, 2012 hearing recording
- 16 11. Rehearing notices
- 17 12. Petition
- 18 13. Written statement from Daniel Kanczugowski

## 19 FINDINGS OF FACT

### 20 **Procedural:**

- 21 1. Applicant. The Applicants are Daniel and Kamila Kanczugowski.
- 22 2. Hearing. A hearing was initially heard on the application on March 22,  
23 2012. However, some notices for that hearing date erroneously advertised that the  
24 hearings were cancelled on that date. Consequently a rehearing was held on April 12,  
25 2012. The recording of the March 22, 2012 hearing was entered as an exhibit to the  
26 April 12, 2012 hearing. The Hearing Examiner conducted both hearings at 3:00 p.m.  
27 at the Edmonds Public Safety Complex in the Council Chambers.

### 28 **Substantive:**

- 29 3. Site/Proposal Description. The Applicants are requesting a variance for a  
30 reduced street setback for an illegal carport. The carport was constructed without a  
31 building permit and encroaches 17.5 feet into the 25 foot street setback in the RS-8  
32 zone. The home is located on a corner lot and is, therefore, subject to two 25 foot  
33 street setbacks. From the site plans, it appears that the only other space for an  
34 alternate location on site for a carport would be behind the existing garage. Placing

1 the carport behind the garage would leave only a minimal amount of yard space for  
2 the home.

3 4. Characteristics of the Area. The site is located in a residential  
4 neighborhood in southeast Edmonds near Lake Ballinger; all nearby properties are  
5 zoned RS-8 and developed with single-family residences.

6 5. Adverse Impacts. Approval of the variance would result in significant  
7 adverse impacts to the Edmonds community. The adverse impacts of the proposal are  
8 constructing within a street setback area that has been legislatively determined to  
9 have to be free of structures in order to allow for the passage of light and air and  
10 create a sense of openness. The surrounding neighbors have for the most part  
11 testified that they support the variance and this negates any findings that any  
12 particular individuals are negatively impacted by the proposal. However, there are no  
13 unique or significantly compelling circumstances that justify the variance and its  
14 approval would set a harmful precedent that could serve to erode the integrity of the  
15 zoning regulations that have so carefully regulated the aesthetics and growth of the  
16 Edmonds community. A striking feature of the Edmonds community is the aesthetic  
17 design of its built environment which has been supported in no small measure by  
18 faithful adherence to Edmonds zoning standards. Further, even though present  
19 neighbors generally support the variance, future property owners may not be as  
20 tolerant. Finally, the Applicants' threats to replace the carport with something  
21 aesthetically undesirable if the variance is denied is not a compelling reason to  
22 approve the variance. The Applicants already have a garage and the addition of a  
23 carport is not an overriding necessity that justifies the addition of additional structures  
24 that undermine the aesthetics of the area.  
25

## CONCLUSIONS OF LAW

### 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-  
8).

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.

1 4. Relevance of Illegal Development Activities. In its application of the  
2 variance criteria, the staff report places considerable emphasis on alleged illegal  
3 permitting activities of the Applicants. Those activities are not relevant to the  
4 variance criteria and were not considered in the denial of the variance application.  
5 The City has an extensive set of code enforcement regulations and none of those  
6 regulations require or authorize the denial of variances as a code enforcement  
7 remedy. Nothing in the variance criteria expressly or impliedly require the  
8 consideration of unauthorized development activities of the type presented by staff.  
9 From a practical standpoint, the consideration of the legality of a an applicant's  
10 development activities can lead to untenable and wasteful situations. If a variance is  
11 denied solely because of unauthorized development activities, an applicant could be  
12 forced to dismantle an unauthorized structure and then rebuild the same structure with  
13 the requisite permits if they still needed it. This would result in a waste of both  
14 private and public resources. If the City desires to punish a developer for illegal  
15 activity, it should do so through its code enforcement process that has remedies  
16 designed for that purpose. If its code enforcement ordinances operate effectively, the  
17 City should still have the authority to levy fines against the Applicants of this case for  
18 their illegal activities, whether or not this variance application is approved.

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

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

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

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

23 5. The criterion is not met. At the outset the Applicants are not being  
24 deprived of any use rights and privileges permitted to other properties in the vicinity  
25 by denial of the variance. They already have a garage and they might even be able to  
place the carport behind the garage (although it is recognized that access under such a  
scenario may not be feasible). There is no evidence in the record that any other  
properties in the vicinity have both a carport and a garage nor could that be  
reasonably inferred.

1 Beyond the use rights issue, there are no significant special circumstances that  
2 necessitate the variance. The most compelling factor is that the Applicants property  
3 is a corner lot and is subject to two street setbacks and there is little room on the  
4 property to build outside these setbacks. Although this factor is moderately  
5 compelling, corner lots are not highly unique in any housing development and that  
6 factor by itself is not sufficient to satisfy the criterion.

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

10 6. The criterion is not met. As noted previously it is unlikely that any other  
11 properties have both a garage and carport so that the variance is necessary to enable  
12 the Applicants use rights enjoyed by others in the vicinity. Further, the significant  
13 encroachment into the street setback proposed by the Applicants when there is so  
14 little to justify it would most certainly constitute a grant of special privilege.

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

17 7. The proposal is not consistent with the comprehensive plan since its  
18 significant encroachment into the street setback would be highly incompatible with  
19 the street setbacks of surrounding residential development. Compatibility is required  
20 by the Comprehensive Plan under the comprehensive plan policies identified at pages  
21 3-4 of the staff report.

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

25 8. ECDC 16.20.000 provides that the purposes of the RS zones are to provide  
for single-family dwellings and nonresidential uses that complement and are  
compatible with single family use. The proposed addition is not compatible because  
it significantly encroaches into a street setback and there is no evidence in the record  
of any other similar encroachments in the surrounding RS-8 zoning district.

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

9. As determined in Finding of Fact No. 5, there are significant adverse  
impacts associated with the proposal, which in turn is significantly detrimental to  
public health safety and welfare and injurious to properties in the vicinity and zone.  
The criterion is not satisfied

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

3 10. As previously discussed, the variance is not necessary for the property  
4 owner to enjoy use rights enjoyed by other properties in the vicinity.

5 **DECISION**

6 The variance is denied. The Examiner has no authority to condition the denial as  
7 recommended by staff. *See In re King County Hearing Examiner*, 135 Wn.2d 312  
8 (2006)(King County regulations don't authorize Examiner denial with conditions);  
9 ECDC 20.06.008(A) (no authority to deny with conditions included in Examiner's  
decision making authority). Staff is, of course, free to impose deadlines to the extent  
authorized by its code enforcement process.

10 Dated this 27th day of April, 2012.

11 

12 Phil A. Olbrechts  
13 Edmonds Hearing Examiner  
14

15 **Appeal Right and Valuation Notices**

16  
17 This decision is final and only subject to appeal to superior court as governed by  
18 Chapter 36.70C RCW. Appeal deadlines are short (21 days from issuance of the  
decision) and the courts strictly apply the procedural requirements for filing an appeal.

19 Affected property owners may request a change in valuation for property tax purposes  
20 notwithstanding any program of revaluation.  
21  
22  
23  
24  
25

**DECLARATION OF MAILING**

**RECEIVED**  
APR 30 2012  
PLANNING DEPT.

Variances – PLN20120003 (Edmonds) and PLN2012004 (Kancyugowski)

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 28th day of April, 2012, I mailed, via First Class U.S. Mail, a true and correct copy of the Final Decision of the above captioned matters as follows:

**PLN20120003 (Edmonds) and PLN2012004 (Kancyugowski):**

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

Alvin Rutledge  
7101 Lake Ballinger Way  
Edmonds, WA 98020

**PLN2012004 (Kancyugowski):**

Kamila and Miloslaw Kanczugowski  
23811 77<sup>th</sup> Place West  
Edmonds, WA 98026

Daniel Kanczugowski  
23811 77<sup>th</sup> Place West  
Edmonds, WA 98026

Russell and Loretta Olson  
23800 77<sup>th</sup> Place West  
Edmonds, WA 98026

Michael Cimino and Mary Clara Horrigan  
7707 238<sup>th</sup> PL SW  
Edmonds, WA 98026

Jennifer Fillmore

7632 238<sup>th</sup> PL SW  
Edmonds, WA 98026

Sarah S. Mixson and Oshuna Oma  
23807 77<sup>th</sup> Place West  
Edmonds, WA 98026

**PLN20120003 (Edmonds):**

Roger Hertrich  
1020 Puget Dr.  
Edmonds, WA 98020

Jim Carson  
7735 168<sup>th</sup> PL SW  
Edmonds, WA 98026

Pam Lemcke  
City of Edmonds  
121 – 5<sup>th</sup> Ave. N.  
Edmonds, WA 98020

Rodney Langer  
CHS Engineers, LLC  
12507 Bel-Red Rd, Suite 101  
Bellevue, WA 98005

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 28th day of April, 2012.



Phil Olbrechts