



# CITY OF EDMONDS

121 5th AVENUE NORTH • EDMONDS, WA 98020 • (425) 771-0220 • fax (425) 771-0221  
www.edmondswa.gov

HEARING EXAMINER

DAVE EARLING  
MAYOR

## BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Phil Olbrechts, Hearing Examiner

<p>RE: George and Virginia Olson</p>   <p>PLN20120047, PLN20120048 and PLN20120049</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b></p>
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### INTRODUCTION

The Applicants are requesting three variances to construct a single-family home. A street setback variance is requested to construct a driveway bridge and associated stairs. A height variance is requested to increase allowed height from 25 feet to 28 feet. A side yard variance is requested to construct a “bump out” along the side of the home to provide for more natural light of the daylight basement. The street setback variance is approved. The other two variances are denied.

### ORAL TESTIMONY

Mike Clugston, Associate Planner, stated that the application is for three variance requests. The variances are for a proposed single-family residence at 15500 75<sup>th</sup> Place West. The applicant’s parcel is the northern most parcel in Edmonds. The applicant applied for a building permit in August, 2012. The parcel is located in the North Edmonds Earth Subsidence and Landslide Hazard Area, a known area of potential landslides and soil movement. During review of the original building permit, Edmonds staff determined that the proposal showed a bridge structure that was not compliant with setbacks for the zone. Setbacks for the zone are 25ft, but the structure was clearly at a 3ft setback. The applicant chose to apply for a variance to reduce this setback. This variance request proposes to reduce the regular required 25ft street setback to 0ft, allowing for the construction of a bridge-driveway approach from 75<sup>th</sup> Place W to the residence and steps down from the driveway to the residence’s front door. Additionally, the applicant applied for two other variance requests. PLN 20120048 proposes to increase the maximum allowed height for the single-family residence from 25 ft to 28ft to allow for a 5:12 pitched roof. This roof is at a greater pitch and has a higher upper floor ceiling than was proposed in the original building permit. PLN20120049 proposes to reduce the minimum required north side setback to allow for the construction of a bump-out on the north side of the

1 house which would project 3 ft into the required setback. The bump-out was not  
2 shown in the original building permit.

3 Mr. Clugston testified that public notice of the application and hearing was given on  
4 January 31, 2013. Five comment letters were received. He submitted these  
5 comment letters as exhibits 14-18. Variances have to meet six criteria listed in EDC  
6 20.85: special circumstances, special privilege, comprehensive plan, zoning  
7 ordinance, not detrimental, and minimum variance. The first variance for street  
8 setback meets the special circumstances because of the environmental constraints.  
9 Keeping the construction away from the steeper, western portion of the site will  
10 benefit the soil and result in less grading. In regard to special privilege, the first  
11 variance meets this criteria, and all five of the homes in the area have received  
12 setback variances from 75<sup>th</sup> Place W. This variance meets the comprehensive plan as  
13 the plan approves of minimizing grading and custom built homes. A code compliant  
14 driveway could have been designed; however, it would push the whole development  
15 further to the west and down slope. The variance is not detrimental and impacts the  
16 slope less. Finally, this is the minimum variance necessary to construct the bridge  
17 and driveway.

18 In regard to the height variance, Mr. Clugston noted that the original building permit  
19 did not include the additional 3ft of height. There does not appear to be a special  
20 circumstance for the extra height. Additionally, no special privilege is apparent. It is  
21 unlikely that the 3 extra feet would be detrimental to neighbors as there is only one  
22 home to the east, and the proposed home will still be lower topographically. A  
23 residence could be built at the approved height, thus this is not the minimum variance  
24 necessary. In regard to the bump-out variance, Mr. Clugston repeated that this was  
25 also not on the original building permit application. No special circumstances or  
privileges are apparent. The bump-out would not impact views in the areas or be  
detrimental to the public health, safety, or welfare. It is not a necessary addition, thus  
it does not meet minimum variance.

In regard to public comments, Mr. Clugston stated that several comments were  
received from Mr. Degan, the neighbor to the subject parcel's south. According to  
Mr. Clugston, Mr. Degan is concerned with ownership and upkeep of some  
landscaping features; however, this concern is a civil matter and irrelevant.  
Additionally, Mr. Degan's expressed concern over slope stability. Mr. Clugston  
noted that geotechnical studies were required and conducted for the parcel.  
Additionally, stormwater is addressed by the building permit. All stormwater  
generated from newly created impervious surfaces will have to be detained onsite and  
then tight-lined to the bottom of the slope, adjacent to the railroad tracks. The  
Shelton and Thorpe letters addressed whether the application met variance criteria.  
Snohomish County Parks and Recreation sent a comment letter asking if the site  
setback could be reduced. The County is concerned with tree and soil health which  
will be dealt with in the building permit process.

1 In conclusion, Mr. Clugston testified that Edmonds staff recommends the  
2 bridge/driveway variance be approved with one condition. The one condition is that  
3 the 0ft street setback applies only to the driveway structure as proposed in the  
4 building permit. Staff recommends denial of the height variance because it does not  
5 meet each of the six criteria. Likewise, staff recommends denial of the bump-out  
6 variance request. The applicant could build several feet further to the west. Grading  
7 and filling restrictions would not prevent them from building to the west, but would  
8 most likely trigger the need for a shoreline permit. Mr. Clugston believes the plan is  
9 to build the driveway on some form of piling structure. Filling the driveway area is  
10 an alternative, but may require a variance anyway because, within setbacks, structures  
11 can only be three ft. Staff does not believe this is the only location for the driveway  
on the site; however, based on the building permit, this is the best location. The staff  
report lists several past variances that were granted in the area, but it is not a  
comprehensive list. Past variances in the area have been granted for garages to have  
larger heights. It is unclear why these variances were granted, and, if applied for  
today, these variances probably would not be granted. Now, the City Council does  
not want variances granted unless they actually meet the six criteria. In the 1980s and  
1990s, Edmonds granted many variances without necessarily meeting the special  
privileges criteria.

12 James Thomas, architect and applicant representative, stated there have been two  
13 recent topographical surveys of the property. As you walk south to north, the  
14 property slopes in that direction. The northernmost point of the property line is 6ft  
15 higher than the southern property line. The slope of the northern property line is  
16 close to 70 percent, and there is a retaining wall that increases the percentage. The  
17 narrowness of 75<sup>th</sup> Place W and this steep slope make it impossible to access the  
18 property from the north. Building the driveway with the setback would result in the  
19 need for a retaining wall and create a dangerous situation for those backing up on the  
20 driveway. The original design needed 750 yards of cut-and-fill. The new design  
21 creates a minimum impact area with a setback in the front, north, south, and a 200ft  
22 shoreline setback. The applicant is not trying to avoid obtaining a shoreline permit,  
23 but instead is attempting to make a smaller footprint. The previous design included a  
daylight basement that would require a lot of cut. The site is difficult to build upon  
and the applicant wanted to limit the number of trucks transporting dirt. The new  
design has greatly limited cut. The only cut will be the 2ft perimeter of grading, the  
inside of the house grading, and the dirt pulled out for the required 25ft piers for the  
engineering design. The applicant is taking the minimalist approach. The bridge  
allows the applicant to avoid cutting into the property. The bridge will be concrete  
and then have a wood-frame structure to support it on the slope. There will be  
ventilation under the driveway.

24 In regard to the public comments, Mr. Thomas noted that the applicant has used a  
25 team of geotechnical engineers, hired an arborist to create a vegetation plan, and  
utilized a structural engineer. The railroad has approved the draining program of  
moving stormwater down slope towards the tracks via a retention pipe. The applicant  
is taking the low impact approach. In regard to the height variance, Mr. Thomas

1 testified that the house could be built with a flat roof, but it would not drain very well.  
2 A 3:12 roof and a 5:12 roof are not substantially different. The house cannot be built  
3 farther from the Degan house because of the northern slopes. More cut and tree  
4 cutting would be required to change the site plan. Mr. Thomas believes that  
5 Snohomish County will approve of the plan once they receive the arborist report that  
6 was conducted. The applicant wants to protect the railroad, the neighbors, and the  
7 new home from landslides. The house could be pushed to the west, but that would  
8 create a larger footprint. The 3ft height addition would have no adverse impacts and  
9 meets the city's comprehensive plan. Edmonds determines single-family residence  
10 height via 4-corner averaging. They draw a box around the house, find the midpoint  
11 of the house, and average them. This approach is universal and does not account for  
12 lots that are sloped. The baseline is 2.5 ft below the ground floor, thus, without the  
13 slope, the height requirements would be met.

14 George Olson, owner of the property, stated that he is not attempting to add value to  
15 his house with the side bump-out. He plans on living in the home for the rest of his  
16 life and is not building to sell. The side build-out is part of a sewing room, and the  
17 bump provides for the largest amount of natural sunlight as possible. It will greatly  
18 increase the quality of life for his wife.

19 Mr. Thomas added that the west light is not appropriate for sewing because there is  
20 too much glare. Overhead, northern light is ideal for the proposed use.

## 21 EXHIBITS

22 All fourteen attachments listed on page 13-14 of the staff report were admitted into  
23 evidence as Exhibits 1-14. At hearing on February 14, 2013 the following exhibits  
24 were also admitted:

- 25 Exhibit 15 email from Marilyn Degan dated 2/13/13
- Exhibit 16 email from Jim and Jane Shelton dated 2/13/13
- Exhibit 17 email from David Thorpe dated 2/12/13
- Exhibit 18 email from Snohomish County Parks dated 2/12/13

## 26 FINDINGS OF FACT

### 27 Procedural:

- 28 1. Applicant. The Applicants are George and Virginia Olson.
- 29 2. Hearing. A hearing was held at 3:00 pm on 2/14/13 at the Edmonds City  
30 Council meeting chambers.

### 31 Substantive:

1 3. Site/Proposal Description. The applicants propose three variances for the  
2 construction of a single-family home at 15500 75<sup>th</sup> Place West. PLN20120047  
3 (“street setback variance”) proposes to reduce the regular required 25’ street setback  
4 to 0’ to allow for the construction of a bridge/driveway approach from 75<sup>th</sup> Place  
5 West to the residence and steps down from the driveway to the residence’s front door.  
6 PLN20120048 (“height variance”) proposes to increase the maximum allowed height  
7 for the single-family residence from 25’ to 28’ to allow for a 5:12 pitched roof.  
8 PLN20120049 (“side yard variance”) proposes to reduce the minimum required north  
9 side setback to allow for the construction of a bump-out on that side of the house  
10 which would project 3’ into the required setback.

11 Mr. Thomas applied for a building permit to construct a house and related site  
12 improvements on the subject lot on August 23, 2012 (BLD20120858), and the  
13 building permit application was determined to be complete on October 1, 2012  
14 (project plans from the building permit application are included as Attachment 1).  
15 During the initial review period, the Planning Division determined that the proposed  
16 bridge/driveway structure and steps did not comply with the required street setback  
17 for the zone (Attachment 2). To resolve this concern, the driveway approach would  
18 either have to be redesigned to be code-compliant or a variance would have to be  
19 obtained to reduce the regularly required 25’ street setback for the RS-20 zone. The  
20 Applicant applied for a variance (PLN20120047) on December 21, 2012 to reduce the  
21 regularly required 25’ street setback to allow construction of the bridge/driveway and  
22 steps as proposed in the building plans from August 23, 2012 (Attachment 3). Along  
23 with the bridge/driveway variance request, however, the Applicant included the side  
24 yard variance and height variance requests.

25 The project site is vacant. The site slopes steeply down from 75th Place on the east  
to the Burlington Northern Santa Fe tracks and Puget Sound on the west. The eastern  
portion of the site is somewhat less steep, where the proposed residence is to be  
located (Attachment 1a). Because the site is located within the North Edmonds Earth  
Subsidence and Landslide Hazard Area (ESLHA), geotechnical peer review of the  
building permit materials BLD20120858 was required (Attachment 7).

4. Characteristics of the Area. The project site is the northernmost parcel on  
75th Place West, immediately adjacent to Meadowdale Beach Park. The surrounding  
neighborhood is zoned for large lots (RS-20 and RS-12) due to the widespread  
presence of critical areas in the vicinity. While there are still some vacant parcels  
along this length of 75th Place, most lots are developed with single-family residences.

5. Adverse Impacts. There are no adverse impacts associated with the  
requested variance. The most significant impact that would normally be anticipated  
would be the view impacts associated with the height variance, but aerial photographs  
in the record show that the home is not located within any view corridors of  
surrounding homes. Further, the home will be placed along a steep slope and will  
only project above the adjoining street by only a few feet.

1 In assessing the impacts of the variance request, it should be noted that only the  
2 impacts of the variance are at issue, not the house as a whole. Even if one were able  
3 to successfully argue that the home could not be built “but for” the variances and as a  
4 result all impacts should be considered, those impacts would be adequately addressed  
5 by the City’s extensive development standards. Constitutional due process and  
6 takings law requires highly adverse impacts in order to deprive the applicants of any  
7 opportunity to develop the lot and no such impacts are reasonably inferred from the  
8 record.

9 In two comment letters, Ex. 10 and Ex. 15, Thomas and Marilyn Degan noted they  
10 are engaged in a boundary dispute with the applicant over the location of the southern  
11 boundary line. The requested variances do not affect the location of the southern  
12 boundary line. The approval of the street setback variance should be flexibly  
13 interpreted to authorize the displacement of the driveway further north if necessary to  
14 accommodate a resolution of the boundary dispute. The Degans also expresses  
15 concern over the geological stability of a soldier wall that will be built on the west  
16 side of the home as well as stormwater run-off issues. The variance requests do not  
17 affect the west wall or the stormwater issues raised by the Degans. As noted in the  
18 staff report, slope stability and stormwater will be addressed during building permit  
19 review.

20 Snohomish County also raises concerns over slope stability and site drainage. The  
21 only slope stability and site drainage issues attributable to the variance that would  
22 affect the county would be from the proposed side yard variance, which involves a  
23 relatively minor area. As noted in response to the Degan comments, slope stability  
24 and stormwater will be addressed during building permit review. There is nothing in  
25 the record to suggest that the City’s comprehensive development standards are  
inadequate to properly mitigate the stormwater and slope stability impacts. Snohomish County also raises concern that grading activity may affect tree health on its property. Given that the side yard variance could facilitate grading that could impact the roots of Snohomish County trees, this could be a relevant concern. If the side yard variance were to be approved, an arborist report and associated mitigation could be required to mitigate tree impacts as requested by the County.

## 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:**

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

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

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

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

11           a.           *Special circumstances include the size, shape, topography, location or*  
12 *surroundings of the property, public necessity as of public structures and*  
13 *uses as set forth in ECDC [17.00.030](#) and environmental factors such as*  
14 *vegetation, streams, ponds and wildlife habitats.*

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

21           4.           The criterion is met for the street setback variance and not met for the  
22 other two variance requests.

23           As to the street setback variance, there are special circumstances and environmental  
24 constraints on the parcel that would support the granting of a street setback variance  
25 for the bridge/driveway and steps. The lot is steeply sloped and situated within the  
mapped Earth Subsidence and Landslide Hazard Area. While a code-compliant  
driveway approach could be created for the site (Ex. 3d), it would result in pushing  
the proposed house closer to the steeper western portion of the parcel as well as  
requiring more extensive grading. Constructing the proposed bridge/driveway and  
steps would minimize the impact to the slope and soils at the site (Ex. 1a, 1c and 1f).

The special circumstances criterion as applied to the height variance raises the most  
difficult issue of these variance requests. Although the steep slopes of the property  
have deprived the applicants of structural height that is usually available to others,  
that loss of height does not deprive the applicants of “rights and privileges” as  
required by the criterion quoted above.

1 As testified by the applicant, the steep slope of the property results in an allowed  
2 structure height that is approximately 2.5 feet lower than what would be allowed for a  
3 home on a level lot. This is because according to the uncontested testimony of the  
4 applicant, application of the City's height definition measures height 2.5 below the  
5 ground floor of the home. As a result, special circumstances related to the property  
6 (the steep slope) are cutting 2.5 feet out of the applicant's height allowance.

7 Although special circumstances may be causing some hardship for the applicants, the  
8 criterion quoted above requires that those special circumstances "*deprive the owner of*  
9 *use rights and privileges permitted to other properties in the vicinity with the same*  
10 *zoning*". The loss in 2.5 feet in allowable height does not qualify as a loss of "*rights*  
11 *and privileges*". Although the applicant has referenced several fairly old variance  
12 decisions where height variances have been granted, those decisions all appear to  
13 concern fairly significant losses in development potential. "Rights and privileges"  
14 should not be construed as attaching to any loss of development potential, regardless  
15 of how trivial. This interpretation would spur frivolous zoning requests, a  
16 corresponding waste of administrative resources and an unnecessary degradation of  
17 the integrity of the zoning code. As to height, the applicants would have a more valid  
18 claim if they could assert that the 2.5 loss of height results in the inability to building  
19 a reasonably sized two story home. Yet the only hardship the applicants can identify  
20 is a lower pitch that will result in unspecified less effective drainage. Further, as  
21 noted in the staff report, the applicants had submitted a prior building permit  
22 application that was able to comply with the City's height requirements. The height  
23 request fails to comply with the "special circumstances" criterion because it does not  
24 deprive the applicants of any substantial development potential that would qualify as  
25 rights and privileges available to others in the vicinity.

26 There are no special circumstances that support the side yard variance. The lot is not  
27 unusually narrow and there are no other features that necessitate more lot width to  
28 build a reasonably sized home. If the applicants need to have a "bump out" for  
29 northern light, then can reduce the length of the home by three feet in order to do so.  
30 They can even make up for the loss area in length reduction by expanding the home  
31 further west.

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

35 5. The criterion is met as to the street setback variance. As noted in the staff  
report, street setback variances have been granted to all developed lots along 75<sup>th</sup>  
Place West for driveway access or a garage. From a broader perspective, the  
applicant seeks to have vehicular access to a single-family home without having to  
push a home into the face of a steep slope as well as a significant amount of grading.  
Vehicular access is a substantial property right that would not be denied to other  
property owners in the vicinity with the same zoning.

1 As to the height variance, for reasons similar to those identified in COL No. 4, the  
2 applicant has not been deprived of any development potential substantial enough to  
3 qualify as a privilege under the special privileges criterion.

4 As to the side yard variance, there is nothing in the record that would suggest that any  
5 other home in the vicinity would be authorized to build a “bump out” solely to allow  
6 for northern light exposure. Granting of the variance would clearly constitute a grant  
7 of special privilege.

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

10 6. The street setback variance is consistent with the comprehensive plan  
11 policies identified at page 4-16 of the staff report because the variance would help  
12 minimize disturbance of steep slopes. The height variance does not appear to conflict  
13 with any comprehensive plan policies. The side yard variance is nominally not  
14 consistent with the policies identified in the staff report because it reduces privacy  
15 and design harmony by reducing separation from lot lines. However, it is recognized  
16 that the adjoining use is currently a public park and these types of considerations are  
17 not significant for park use.

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

21 7. ECDC 16.20.000 provides that the purposes of the RS zones are to provide  
22 for single-family dwellings and nonresidential uses that complement and are  
23 compatible with single family use. Given the lack of adverse impacts and the  
24 proposed residential use, the street setback and height variance requests are consistent  
25 with this purpose. For the reasons stated in preceding COL, there are some nominal  
privacy issues with the requested side yard variance.

**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;*

8. As determined in Finding of Fact No. 5, there are no significant adverse  
impacts associated with the proposal. Consequently the criterion is met.

**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.*

9. As to the street setback variance, the requested variance is the minimum  
necessary for reasonable vehicular access, as discussed in more detail in COL No. 5.

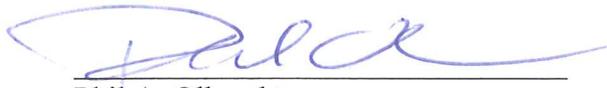
1 The requested height variance is not the minimum necessary, since the denial of the  
2 variance would not deny the applicants rights enjoyed by others as discussed in the  
3 interpretation of "rights and privileges" in COL No. 4. The requested side yard  
4 variance is not the minimum necessary since, as discussed in COL No. 4 and 5, the  
5 applicants would not be deprived of any rights by denial of the variance.

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**DECISION**

The street setback variance (PLN20120047) is approved. The side yard and height  
variances (PLN20120048 and PLN20120049) are denied.

Dated this 1<sup>st</sup> day of March, 2013.



Phil A. Olbrechts  
Edmonds Hearing Examiner

**Appeal Right and Valuation Notices**

This decision is final and only subject to appeal to superior court as governed by  
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.

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