



## CITY OF EDMONDS

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DEVELOPMENT SERVICES DEPARTMENT • PLANNING DIVISION

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### BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Phil Olbrechts, Hearing Examiner

<p>RE: Downtown Public Restroom</p> <p>Variance (PLN20160031) and Conditional Uses (PLN20160030)</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMENDATION</p>
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### INTRODUCTION

The City of Edmonds requests a variance and conditional use permit to install a prefabricated 520 square foot 11-foot high public restroom building in a portion of the parking lot south of City Hall at 121 5th Ave. N. The variance is to eight applicable development standards, including minimum height, allowed uses, access and landscaping as well as four design standards. The conditional use permit and variances are approved subject to conditions.

### TESTIMONY

Michael Clugston, associate planner, summarized the proposal.

Patrick Doherty, City of Edmonds Community Services and Economic Development Director, noted that he called together an ad hoc design committee composed of a member of the design review board, a member of the historic commission and a member of the arts commission. They made recommendations on design based upon the intent of the ECDC. The committee made several suggestions that have been integrated into project design, including brick facade, marquee awning, storefront appearance, and ability to integrate artwork into the façade. The restroom facility is a

1 pre-fabricated building and the ad hoc committee's design suggestions will be added  
2 to the building.

### 3 EXHIBITS

4 Exhibit 1 Staff Report dated July 8, 2016 w/ 5 attachments (listed on page 2 of  
5 the staff report)

### 6 FINDINGS OF FACT

#### 7 Procedural:

- 8 1. Applicant. City of Edmonds.
- 9 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
10 application on July 14, 2016 at 3:00 pm in the Council Chambers of the Edmonds  
11 Public Safety Complex.

#### 12 Substantive:

- 13 3. Site and Proposal Description. The City of Edmonds requests eight variances and  
14 a conditional use permit to install a prefabricated public restroom building in a  
15 portion of the parking lot south of City Hall at 121 5th Ave. N. The proposal will  
16 replace two existing portable toilets. The restroom will be a 520 square foot 11 foot  
17 tall prefabricated building with after-market design treatment to conform to design  
18 suggestions made by an ad hoc design committee formed by the Edmonds  
19 Community Services and Economic Development ("CSED") Director. There will be  
20 no change to the existing pedestrian or vehicular access points from 5<sup>th</sup> Avenue or the  
21 alley. The existing parking stalls and landscaping will be reconfigured to provide  
22 space for a small plaza north of the restrooms, with a net loss of only one or two  
23 parking stalls in the surrounding parking lot. The City Council recently allocated  
24 the funding for the project and a building permit has been applied for  
25 (BLD20160728).

The staff report identifies that the applicant needs a variance to the eight development standards addressed below:

- 22 a. **ECDC 16.43.030.B.2** imposes a 12 foot height minimum for the proposed  
23 building since the subject parcel has street front on 5th Avenue. The proposed  
24 height is 11 feet.
- 25 b. **ECDC 16.43.030.B.7** only authorizes commercial uses within 45 feet of 5<sup>th</sup>  
Avenue. The proposal is not for commercial use.
- c. **ECDC 16.43.030.B.4** requires the entrances to commercial buildings on street  
fronts to be within seven inches of sidewalk grade. The administrative record

1 doesn't clearly identify the proposed grade separation – as far as can be  
2 discerned from the project drawings the grade separation is only six inches. If  
3 the grade separation does exceed that required by ECDC 16.43.030.B.4, it is  
4 minor. Note that in any event ECDC 16.43.030.B.4 arguably doesn't apply  
5 because the proposed use is not commercial and also does not front 5<sup>th</sup>  
6 Avenue.

7 d. For parking lots with less than 50 parking stalls, **ECDC 20.13.030.E** requires  
8 at least 17.5 square feet of landscaping with a list of design standards for  
9 landscaping features. The staff report doesn't identify the net loss in  
10 landscaping area created by the proposal or what design standards are subject  
11 to the variance. The project plans show three planting areas that will be  
12 removed by the project, but some of this loss will be off-set by some new  
13 plantings to the 5<sup>th</sup> Ave. street entrance to the parking lot. The removal of  
14 planting areas from the parking lot appears to be motivated by a desire to  
15 reduce the loss of parking, but that issue was not expressly addressed by staff  
16 in the administrative record.

17 e. **ECDC 22.43.010** requires that buildings convey a visually distinct base and  
18 top and also requires that building facades respect and echo historic patterns.  
19 It isn't apparent how the proposal fails to meet these design standards.  
20 Nonetheless, it is clear from the elevation drawings in Ex. 1, att. 2 that the  
21 City has done all it reasonably can to design the modest sized building with a  
22 top that is visually distinctive from its base. The use of brick materials for the  
23 façade also appears to provide some consistency with the historic  
24 development patterns of surrounding buildings.

25 f. ECDC 22.43.020 requires buildings to be oriented towards the adjoining  
street. The applicant proposes to have the restroom doors face to the north,  
perpendicular to 5<sup>th</sup> Avenue. If the building had to face 5<sup>th</sup> Avenue it would  
significantly reduce the width of the access point to the surrounding parking  
lot.

g. ECDC 22.43.030 requires a list of minor design features to improve visual  
interest along the ground level of buildings facing pedestrian streets. The  
proposed building is simply too small to reasonably accommodate all of these  
features.

h. ECDC 22.43.050 requires transparent windows for buildings facing the street.  
That clearly is not appropriate for a restroom facility.

4. Characteristics of the Area. City Hall is located to the north. Surrounding uses  
are a mix of government buildings and commercial uses.

5. Adverse Impacts of Proposed Use. There are no significant adverse impacts  
anticipated from the proposal. The ECDC does not require any parking for the

1 proposal. The proposal will result in the loss of one or two parking spaces from the  
2 City Hall parking lot. It is unclear from the record whether the proposal will detract  
3 from any parking required for the site, so a condition of approval will require that  
4 parking not be reduced below minimum applicable parking standards. The staff  
5 report notes that restrooms will be regularly maintained by the City, which addresses  
6 concerns about garbage and odor. As further noted in the staff report, the proposal  
7 will not interfere with any vehicular or pedestrian circulation.

8 Seven of the eight development standards subject to the variance request are primarily  
9 designed to address aesthetic impacts. The requested modifications to these design  
10 standards should not result in any loss of aesthetic appeal as staff has ensured that the  
11 proposed design is fully compatible with surrounding uses. As testified by the CSED  
12 director, the restrooms were subject to the design suggestions of an ad hoc design  
13 review committee that ensured that the proposed design would be compatible with  
14 surrounding development. As a result of this design review, a structural canopy is  
15 proposed to be added to the pre-fabricated building to provide interest and weather  
16 protection on the north façade by the plaza and the east façade over the sidewalk  
17 along 5<sup>th</sup> Avenue. Several design details will be added to the building to provide  
18 additional interest on those facades: light fixtures, overlain brick at the parapet and  
19 base, and three illuminated Plexiglas display cases at 5<sup>th</sup> Avenue. See Ex. 1, att. 2,  
20 Sheet L9. The display cases will include a rotating selection of art, event posters and  
21 the like. As designed and with the proposed plaza and landscaping, the proposal will  
22 not result in any significant adverse aesthetic impacts.

## 23 CONCLUSIONS OF LAW

### 24 **Procedural:**

25 1. Authority of Hearing Examiner. ECDC 20.01.003 provides that the  
hearing examiner will hold a hearing and issue a final decision on conditional use  
permit applications. ECDC 17.00.030(C) requires that examiner decisions on  
variances be recommendations to the City Council for public structures and uses. The  
conditional use application is consolidated with the variance application as  
recommendations to the City Council per ECDC 20.01.002(C).

### 26 **Substantive:**

27 2. Zoning Designations. The proposal is located in the Downtown Mixed  
Commercial (BD2) zone.

28 3. Permit Review Criteria. ECDC 17.100.050(A)(1) requires a conditional  
use permit for public facilities in the BD2 zone. Conditional use criteria are governed  
by ECDC 20.050.010. Variance criteria are governed by ECDC 20.85.010. All  
applicable criteria are quoted in italics below and applied through corresponding  
conclusions of law.

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**CONDITIONAL USE PERMIT**

**ECDC 20.050.010:** *No conditional use permit may be approved unless all of the findings in this section can be made.*

A. *That the proposal is consistent with the comprehensive plan.*

4. The public restroom project is included in the Capital Facilities Plan (Ex. 1, att. 4), which is an element of the 2015 Comprehensive Plan. A public restroom is also mentioned in Goal D.3 for the Downtown/Waterfront Activity Center (p 48) and in Goal E.6 for Economic Development (p 114) in the Comprehensive Plan.

**ECDC 20.05.010(B):** *Zoning Ordinance. That the proposed use, and its location, is consistent with the purposes of the zoning ordinance and the purposes of the zone district in which the use is to be located, and that the proposed use will meet all applicable requirements of the zoning ordinance.*

5. The staff report analysis of Zoning Ordinance compliance, located at pages 4-5 of the staff report, is adopted and incorporated by this reference as if set forth in full.

**ECDC 20.05.010(C):** *Not Detrimental. That the use, as approved or conditionally approved, will not be significantly detrimental to the public health, safety and welfare, and to nearby private property or improvements unless the use is a public necessity.*

6. As determined in Finding of Fact No. 5, the proposal will not create any significant adverse impacts. Consequently, it is concluded that the proposal will not be significantly detrimental to the public health, safety and welfare or to nearby properties or improvements.

**ECDC 20.05.010(D):** *Transferability. The hearing examiner shall determine whether the conditional use permit shall run with the land or shall be personal. If it runs with the land and the hearing examiner finds it in the public interest, the hearing examiner may require that it be recorded in the form of a covenant with the Snohomish County auditor. The hearing examiner may also determine whether the conditional use permit may or may not be used by a subsequent user of the same property.*

7. The conditional use permit shall be personal as requested by the applicant. The use should be personal because the proposal is designed to facilitate public events and services to which the applicant is uniquely qualified as a public entity to sponsor and/or facilitate.

**VARIANCE**

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

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

- 7 1. *Special circumstances include the size, shape, topography, location or*  
8 *surroundings of the property, public necessity as of public structures and*  
9 *uses as set forth in ECDC 17.00.030 and environmental factors such as*  
10 *vegetation, streams, ponds and wildlife habitats.*
- 11 2. *Special circumstances should not be predicated upon any factor personal*  
12 *to the owner such as age or disability, extra expense which may be*  
13 *necessary to comply with the zoning ordinance, the ability to secure a*  
14 *scenic view, the ability to make more profitable use of the property, nor any*  
15 *factor resulting from the action of the owner or any past owner of the same*  
16 *property;*

17 8. The criterion is met for all eight variance requests because the restroom is a public  
18 necessity as determined by the City Council in its decision to include the restroom  
19 facility in the capital facilities plan of the comprehensive plan. The variance is not  
20 necessary due to any factor personal to the City of Edmonds.

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

24 9. The City of Edmonds needs the variance in order to provide restroom facilities to  
25 persons who are participating in outdoor City events and/or who are exploring the  
downtown area. The City just wishes to provide restroom facilities to the persons it  
serves in the same manner that any other allowed use in the vicinity and zone is  
authorized to provide restroom facilities to its patrons. In this regard the granting of the  
variance would not be a granting of special privilege.

**ECDC 20.85.010(C) – Comprehensive Plan:** *That the approval of the variance will*  
*be consistent with the comprehensive plan;*

10. The proposal is consistent with the comprehensive plan for the reasons identified  
in Conclusion of Law No. 4.

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

1 11. The proposal is consistent with the purpose of the BD2 zone and the  
2 purpose of the Zoning Code. ECDC 16.43.000(A) provides that one of the purposes  
3 of the downtown business zone is to promote downtown Edmonds as a setting for  
4 retail, office and entertainment supported by Edmonds residents and visitors from  
5 throughout the region. The proposed outdoor restrooms will facilitate the provision of  
6 outdoor events in the downtown area, ultimately assisting in the promotion of the  
7 downtown area as contemplated by ECDC 16.43.000(A). ECDC 16.00.010(B)  
8 provides that one of the purposes of the zoning code is to protect the character and the  
9 social and economic stability of the various uses authorized by the zoning code. The  
10 public restrooms implement this purpose by facilitating community events and making  
11 it easier for persons to explore the downtown area by foot.

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

11 12. The criterion is met for the reasons identified in Conclusion of Law No. 6.

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

14 13. As noted previously, the applicant wishes to provide restrooms to its  
15 patrons, which is an amenity that all surrounding uses is able to provide. Given the  
16 small scale of the proposal, the requested variances are the least necessary to  
17 accomplish this objective. The proposed building is simply too small to reasonably  
18 accommodate the design features required by the development standards subject to the  
19 variance request. Other reasons why the variance is the minimum necessary are  
20 outlined in Finding of Fact No. 3, which generally identifies the necessity for each  
21 variance request.

## 22 **RECOMMENDATION**

21 The proposed conditional use and variance applications are consistent with all  
22 applicable development standards as outlined in this decision. The conditional use and  
23 variance requests should be approved subject to the following conditions of approval:

- 24 1. The conditional use permit shall be personal to the City of Edmonds and is not  
25 transferable.
2. The proposal may not result in the loss of parking spaces to the extent that such  
reduction in spaces would violate applicable parking standards.

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Dated this 20th day of July, 2016.

  

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Phil A. Olbrechts

City of Edmonds Hearing Examiner

This document serves as a recommendation to the City Council. The City Council will make the final decision on the permit applications based upon evidence admitted into the administrative record by the hearing examiner. Please contact the Edmonds Planning Division, 425-771-0220, to determine when the recommendation will be considered by the City Council and how citizens can participate in the City Council review.