



CITY OF EDMONDS

121 5TH AVENUE NORTH • EDMONDS, WA 98020 • (425) 771-0220 • fax (425) 771-0221

HEARING EXAMINER

MIKE COOPER
MAYOR

In the Matter of the Application of)	NO. PLN-2010-0070
)	
Snohomish County PUD #1)	Richmond Park Substation
)	Fence Variance
)	
For a Variance)	FINDINGS, CONCLUSIONS,
_____)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The request for a variance from the maximum fence height standards established in Edmonds Community Development Code (ECDC) 17.30 to allow replacement of an existing fence surrounding the electric power substation at 9005 - 244th Street SW in Edmonds, Washington **should be APPROVED.**

SUMMARY OF RECORD

Request:

Dennis Wermcrantz, on behalf of Snohomish County Public Utility District #1 (PUD, Applicant), requested a variance from the maximum fence height standards of the city's zoning ordinance to allow replacement of an existing fence surrounding the electric power substation at the corner of 244th Street SW and 90th Avenue West in Edmonds, Washington. The new fence would be the same height as the existing fence. It is proposed in conjunction with a substation equipment upgrade.

Hearing Date:

The Edmonds Hearing Examiner conducted an open record hearing on the request on January 20, 2011. The Examiner conducted a site visit, observing the site in the context of surrounding development.

Testimony:

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

1. Gina Coccia, Planner, City of Edmonds
2. Dennis Wermcrantz, P.E., Applicant Representative
3. Jim Simpson, C.E., Snohomish County PUD#1
4. Al Rutledge

Exhibits:

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

1. Planning Division Staff Report, dated December 28, 2010, with the following attachments:
 1. Zoning and Vicinity Map
 2. Land Use Application
 3. Applicant's Criteria Statement
 4. Photographs of similar fencing
 5. Preliminary Site Construction Plans
 6. Notice affidavits
2. Comments submitted by Al Rutledge, dated received January 6, 2011

Upon consideration of the testimony and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested a variance from the maximum fence height standards established in ECDC 17.30 to allow replacement of an existing fence surrounding the existing Snohomish County PUD "Richmond Park" electric power substation at 9005 - 244th Street SW in Edmonds, Washington.¹ *Exhibit 1, pages 1-2; Exhibits 2 and 3.*
2. The subject property is located in a single-family residential neighborhood zoned RS-8 west of Highway 99. The site is just north of the Snohomish/King County border, and City of Shoreline residential development abuts 244th Street SW to the south. *Exhibit 1, page 3; Exhibit 1, Attachment 1.*
3. The Richmond Park Substation was built on-site approximately 40 years ago. The original equipment is still in use. According to Applicant representatives, the substation equipment is nearing the end of its useful life and must be replaced to avoid interruptions in electric service. The footprint of the substation will change with installation of the new equipment, requiring relocation and replacement of the existing fence. *Simpson Testimony.* The existing vegetation that screens the southern property line would be retained and new vegetation to provide additional screening is proposed as part of the substation upgrade. *Exhibit 1, page 3; Exhibit 1, Attachment 5.*
4. The existing fence is comprised of seven feet of chain link topped with three strands of barbed wire, for a total height of eight feet. The proposed new fence would have the same dimensions and materials. *Simpson Testimony.* The proposed height is specified in the National Electric Safety Code (NESC) Part 1, Section 11. As proposed, the new

¹ The subject property is known as Tax Parcel Number 00463302900100. *Exhibit 1, Attachment 2.*

fence would have the same height and configuration as fences at the PUD's 84 other substations. *Exhibit 1, Attachments 3 and 4; Simpson Testimony.*

5. The zoning code allows a maximum fence height of six feet in residential districts, stating: "Unless a variance is first obtained, no fence shall be more than six feet in height as measured from the top of the fence to the lowest original grade. *ECDC 17.30.000.C.*
6. The purpose of the excess fence height is to protect the public from the energized electric conductors and equipment in the substation. *Exhibit 1, Attachment 3; Simpson Testimony; Wermcrantz Testimony.*
7. Planning Staff concurred that there would be no detriment to the public health, safety, and welfare, noting on the contrary that the taller fence would better protect public safety. *Coccia Testimony; Exhibit 1, page 3.*
8. Staff noted that that proposed seven-foot fence with three strands of barbed wire would satisfy the fencing provisions of the Community Facilities Chapter regarding substations, which state: "electrical substations shall be adequately screened from adjacent residential properties with a solid wall or sight-obscuring fence not less than six feet in height." *ECDC 17.100.050.B; Exhibit 1, pages 3, 5; Coccia Testimony.*
9. The subject property has a Comprehensive Plan land use designation of Single Family Urban I. Staff identified the following Comprehensive Plan policies as applicable to the instant request:

Utilities Element, Other Utilities, A.3: Utility structures should be located whenever possible with similar types of structures to minimize impacts on surrounding neighborhoods. When such locations are not available, utility structures should be located or sited so that they are as unobtrusive as possible and are integrated within the design of the site and surrounding area. Free-standing structures should be discouraged when other siting opportunities are available. (Comp. Plan, page 101)

Residential Development

B.5: Protect residential areas from incompatible land uses through care control of other types of development and expansion based on the following principles:

B.5.a. Residential privacy is a fundamental protection to be upheld by local government.

B.5.b. Traffic not directly accessing residences in a neighborhood must be discouraged.

B.5.c. Stable property values must not be threatened by view, traffic, or land use encroachments.

B.5.d. Private property must be protected from adverse environmental impacts of development, including noise, drainage, traffic, slides, etc.

(Comp. Plan, pages 69-70). *Exhibit 1, page 2.*

10. The use and its impact on surrounding parcels and views will not change as a result of the fence height variance (nor of the utility improvement project). Additional landscaping is proposed, which will enhance existing levels of privacy for surrounding residences. The proposed fence height would have no impact on traffic, noise, views, privacy, drainage, or other environmental functions and values. Both the proposed new fence and the substation improvements would be reviewed through a building permit process, during which compliance with all applicable codes regarding items such as drainage would be ensured. *Exhibit 1, page 2; Coccia Testimony; Simpson Testimony.*
11. The City's Engineering Division reviewed the proposed variance and informed the Planning Division that there would be no sight distance concerns as a result of the variance. *Exhibit 1, page 3; Coccia Testimony.*
12. Staff noted that other fence height variances for Local Public Facilities have been approved, citing the ten-foot fence height at Edmonds Elementary School near Puget Drive. *Exhibit 1, page 3; Coccia Testimony.*
13. Notice of Application and Public Hearing were posted on-site, published in *The Herald*, and mailed to surrounding property owners within 300 feet of the site. *Exhibit 1, page 2; Exhibit 1, Attachment 6.*
14. Public comment offered at the open record hearing included: questions regarding public safety; the security of the PUD gear/equipment during construction; and a statement that the crime watch report reflected no criminal activities in the immediate vicinity of the site. *Rutledge Testimony.*
15. The Applicant representatives provided some information regarding construction procedures. The initial remodel of the site, including removal of the existing fence and installation of the proposed fence, would take two months. Complete installation of the new substation equipment would take another two to three months. The substation upgrade is anticipated to be done by September 2011. The PUD has standard procedures to ensure public safety during construction periods. The timing of right-of-way encroachments and the entire construction process would be reviewed by the City during building permit review. *Simpson Testimony; Wermcrantz Testimony; Coccia Testimony.*

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CONCLUSIONS

Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide variance requests pursuant to ECDC 20.01.003.A and .C and ECDC 20.85.020. However, pursuant to ECDC 17.00.030, when a variance is needed in a case of public necessity for a structure that is not consistent with the zoning ordinance, a variance may be heard and considered by the Hearing Examiner whose action shall be in the form of a recommendation to City Council.

Criteria for Review:

Pursuant to ECDC 20.85.010, no variance may be approved unless all of the following findings can be made:

A. 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.

1. 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. (emphasis added)

2. 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;

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;

C. Comprehensive Plan. That the approval of the variance will be consistent with the comprehensive plan;

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;

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;

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.

Conclusions Based on Findings:

1. The PUD's obligation to comply with the fencing requirements of the National Electric Safety Code in the provision of electric service constitutes a public necessity that is a "special circumstance" pursuant to the City's variance provisions at ECDC 20.85.010.A.1. *Finding 4.*
2. The requested fence height variance based on public necessity would not constitute special privilege. Other substations and other types of public facilities are required and able to obtain fence height variances when necessary to protect public safety. *Finding 12.*
3. The proposal is consistent with applicable provisions of the City of Edmonds Comprehensive Plan. No impacts to views, traffic, drainage, or the environment would result from one-foot of additional chain link fence height plus three strands of barbed wire. *Findings 9 and 10.*
4. The fence height variance is expressly contemplated in the zoning ordinance and would be consistent with the Community Facilities Chapter. *Findings 5 and 8.*
5. The fence height variance would not be detrimental to surrounding properties. It would replace an existing fence of the same height and configuration. Existing screening vegetation along the south lot line would be retained, and additional vegetation would be planted as part of the substation upgrade project. The two extra feet of barrier height are required by national safety standards to separate the public from energized electric equipment. *Findings 3, 4, 6, and 7.*
6. If the fence height variance is not approved, the necessary substation upgrade would not be able to proceed. Eventually, the existing equipment will fail, resulting in interruption of electric service in the region. *Finding 3.*

RECOMMENDATION

Based on the preceding findings and conclusions, the request for a variance from the maximum fence height standards to allow replacement of an existing fence surrounding the electric power substation at 9005 - 244th SW in Edmonds, Washington **should be APPROVED.**

Recommended February 2, 2011.



Sharon A. Rice
City of Edmonds Hearing Examiner



CITY OF EDMONDS

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HEARING EXAMINER

MIKE COOPER
MAYOR

OFFICE OF THE HEARING EXAMINER CITY OF EDMONDS, WASHINGTON

Regarding the request of)	
)	
Snohomish County PUD)	Case No. PLN-2010-0070
)	
)	
For a Public Necessity Variance)	DECLARATION OF SERVICE
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I, Sharon A. Rice, the undersigned, do hereby declare:

- That the "Offices of Sharon Rice Hearing Examiner PLLC" maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and I make this declaration in that capacity; 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 February 2, 2011, I served a copy of the decision in case PLN-2010-0070 upon the following individuals at the addresses below by first class US Mail:

Dennis Wermcrantz, P.E.
PO Box 1107
Everett, WA 98206

Edmonds Development Services
121 Fifth Avenue North, First Floor
Edmonds, WA 98020

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

Tom Hendricks, P.E.
PO Box 1107
Everett, WA 98206

Alvin Rutledge
7101 Lake Ballinger Way
Edmonds, WA 98026

Jim Simpson
PO Box 1107
Everett, WA 98206

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, this 2nd day of February 2011 at Edmonds, Washington.

Sharon A. Rice