



MEMORANDUM

Date: May 4, 2012

To: Edmonds City Council and Mayor Earling

From: Kernen Lien, Associate Planner
Woodway Elementary Preliminary Plat/PRD Remand

Subject: P-07-17/PRD-07-18
Closed Record Appeal
APL20120001 – APL20120004

Introduction

Below are the Planning Divisions responses to the appeals of Burnstead's Woodway Elementary Preliminary Plat/PRD applications. Consistent with the appellate court's decision and advice from the City Attorney, staff understands that the City Council's review is limited to the three remand items which are "*issues concerning the drainage plan, the perimeter, and opens space that we [the Court of Appeals] discuss in the opinion.*"¹ As such, staff's written responses below address those items that are specifically identified as remand items (perimeter buffer and open space) and two other issues that are tangentially related (Architectural Design Board review and conditions related to impervious surface). The City of Edmonds Public Works Department has addressed the issues concerning the drainage plan in a separate document.

Perimeter Buffer

The perimeter buffer requirements in the Planned Residential Development Code that the Burnstead application is vested to provides:

ECDC 20.35.050.C Perimeter Design. The design of the perimeter buffer shall either:

1. Comply with the bulk zoning criteria applicable to zone by providing the same front, side and rear yard setbacks for all lots adjacent to the perimeter of the development; and/or
2. Provide a landscape buffer, open space or passive use recreational area of a depth from the exterior property line at least equal to the depth of the rear yard setback applicable to the zone. If such a buffer is provided, interior setbacks may be flexible and shall be determined pursuant to ECDC 20.35.030. When the exterior property line abuts a public way, a buffer at least equal to the depth of the front yard required for the underlying zone shall be provided.²

¹ Record at 000081

² Record at 000523

Previously, Burnstead had requested reduced setbacks on the perimeter lots (20 foot street setbacks and 5 foot side setbacks)³. Since reduced setbacks were proposed, the application did not meet ECDC 20.35.050.C.1 cited above, and so a perimeter buffer consistent with ECDC 20.35.050.C.2 was required. The previous application only proposed a buffer along the west and south sides of the development⁴.

The appellate court found the application was not compliant with ECDC 20.35.050.C stating:

Here, Burnstead does not dispute that its proposal fails to comply with ECDC 20.35.050(C)(1). Clearly it does not comply. The plain words of the law require a *perimeter* buffer. Webster’s Third New International Dictionary defines “perimeter” as “the boundary of a *closed* plane figure.” The absence of buffers on the north and east side of the proposed plat violates the plain words of this law.⁵

On the revised application, Burnstead chose to apply standard RS-8 setbacks for all lots adjacent to the perimeter.⁶ Since standard RS-8 setbacks are applied, the application conforms to ECDC 20.35.050.C.1 and the perimeter buffer discussed in ECDC 20.35.050.C.2 is no longer required.⁷

In the April 27, 2012 email, Ms. Petso argued that not all perimeter lots have standard setbacks. According to ECDC 16.20.030 the standard minimum setbacks for the RS-8 zone are as follows:

Zone	Minimum Street Setback	Minimum Side Setback	Minimum Rear Setback
RS-8	25 feet	7.5 feet	15 feet

The original hearing examiner’s decision Condition 7 provided:

The Applicant shall provide a 15 foot side yard setback for proposed Lot 17 and proposed Lot 18 along those lots border with Tract E.⁸

And Condition 10 provided:

Proposed Lot 11 shall provide a 15 foot building setback on both the northern and western exterior property lines in order to ensure protection to and from the adjacent steep slope. Final building design should endeavor to locate the residence to the southern portion of the lot.⁹

Conditions 7 and 10 were adopted in the recent hearing examiner decision.¹⁰ With Conditions 7 and 10; Lot 11, Lot 17, and Lot 18 exceed the minimum setback requirements of ECDC 16.20.030 and the rest of the perimeter lots meet the minimum setback requirements.¹¹ Therefore, the application has applied the standard RS-8 setbacks for the perimeter lots, which complies with ECDC 20.35.050.C.1 and a perimeter buffer is not required¹².

³ Record at 000426

⁴ Record at 000426

⁵ Record at 000073 (Emphasis in the original.)

⁶ Record at 000088

⁷ Record at 000037

⁸ Record at 000397

⁹ Record at 000397

¹⁰ Record at 000023

¹¹ Record at 000088

¹² Record at 000037

Open Space

The open space requirements in the Planned Residential Development code that the Burnstead application is vested to provides:

ECDC 20.35.050.D Open Space and Recreation. Usable open space and recreation facilities shall be provided and effectively integrated into the overall development of a PRD and surrounding uses and consistent with ECDC 20.35.060(B)(6). “Usable open space” means common space developed and perpetually maintained at the cost of the development. At least 10 percent of the gross lot area and not less than 500 square feet, whichever is greater, shall be set aside as part of every PRD with five or more lots. Examples of usable space include playgrounds, tot lots, garden space, passive recreational sites such as viewing platforms, patios or outdoor cooking and dining areas. Required landscape buffers and critical areas except for trails which comply with the critical areas ordinance shall not be counted toward satisfaction of the usable open space requirement.¹³

The subject property is 5.61 acres (244,227 square feet)¹⁴, so pursuant to ECDC 20.35.050.D 24,422.7 square feet of usable open space is required. The tracts designated for open space are unchanged on the remand application¹⁵ from the previous application¹⁶. Four tracts totaling 25,185 square feet have been provided. Tract C (7,350 sq. ft.) is in the center of the development, Tract A (4,913 sq. ft.) and Tract F (3,566 sq. ft.) are located at the entrance to the development, and Tract E (9,356) is the wooded tract in the northeast corner of the development.

As discussed above, the previous application required a perimeter because Burnstead was requesting reduced setbacks for the perimeter lots. The appellate court found the open space provided by the previous application was not compliant with ECDC 20.35.050.D, because the perimeter buffer overlaid the open space on Tract A¹⁷ and the appellate court found “ECDC 20.35.050(D) prohibits perimeter landscape buffer from counting toward the usable open space requirement.”¹⁸

As discussed above, the revised application applied standard RS-8 zoning setbacks, which eliminated the requirement for a perimeter buffer. With the requirement for the perimeter buffer removed, the conflict noted by the appellate court of counting the perimeter buffer towards usable open space has also been removed. As a result, the revised remand application is compliant with the open space requirements of ECDC 20.35.050.D.¹⁹

The appeals raise a couple of issues related to the open space calculations; specifically, whether Tract E is a critical area and whether Tract A and Tract F are usable open space. Both of these items were addressed in the previous hearing examiner decisions and not one of the issues in the appellate court’s discussion that was the basis for the remand. Therefore, these are not specific remand items.

In the hearing examiner’s 2007 order on reconsideration the hearing examiner noted:

¹³ Record at 000523

¹⁴ Record at 000088

¹⁵ Record at 000088

¹⁶ Record at 000426

¹⁷ Record at 000426

¹⁸ Record at 000077 - 000078

¹⁹ Record at 000037

17. Open Space Calculation: Appellant asserts that some of the open space provide[d] by the applicant is not “useable” (Tract A and Tract F) and that Tract E may not be included within the calculation because it is a FWHCA [Fish and Wildlife Habitat Conservation Area]. ECDC 20.35.060(D) sets forth the open space requirements for a PRD and defines “usable open space” to mean common space developed and perpetually maintained at the cost of the development and includes, among other things, garden space. The Applicant submitted a conceptual landscape plan which denotes that both Tract A and F will be landscaped with lawn, shrubs, and trees – essentially creating a garden space in satisfaction with the PRD requirements.

As for Tract E, as noted with Findings of Fact 26 and 27 and *infra*, this area has been determined not to be a critical [area] and therefore is available for inclusion within the open space calculation. ECDC 23.90.010(A)(10) includes “urban open space and land useful or essential for preserving connections between habitat” as a critical area for the City. The key wording for this definition is the phrase – *useful or essential for preserving connections between habitat*. As noted in the Final Decision, the BPA easement along the subject property’s border provides this essential linkage. The approximate 9,000 square feet “protrusion” from the BPA easement does not serve this purpose and therefore does not meet the definitional requirements.²⁰

The revised application is compliant with the open space requirements outlined in ECDC 20.35.050.D.

Architectural Design Board Review

The appeals raise concerns that the ADB did not review the revised remand application. The revised application was not referred back to the ADB because the proposed changes were minor in character.²¹ There was no change to the overall layout of the development.²² Ms. Petso argues that the ADB reviewed specific home designs. The record does not support this assertion. The ADB staff report notes the housing types submitted with the application were “artistic renderings.”²³ The testimony of Tiffany Brown at the ADB meeting noted that the “exhibits that were put forward of homes to give the board an idea of what they are thinking.”²⁴ The ADB recommendations indicate further approval of specific designs will occur stating, “A variety of materials or building forms must be used on all sides of the homes; Building Plans for individual lots must be evaluated at time of building permit application review for consistency with ECDC 20.35.060 Design Criteria.”²⁵ Condition 10 on the original hearing examiner decision indicated, “Final building design should endeavor to locate the residence to the southern portion of the lot.”²⁶ And the hearing examiner in the remand decision noted, “It is clear from the record the building designs were meant to be conceptual in nature and are not binding to the final design.”²⁷

²⁰ Record at 000414 – 000415 (Emphasis in the original.)

²¹ Record at 000018

²² Record at 000088 and 000426

²³ Record at 000322

²⁴ Record at 000341

²⁵ Record at 000343

²⁶ Record at 000397

²⁷ Record at 000019

Former Condition 9 and Impervious Surface

The appeals also raise concern about the elimination of Condition 9 on the previous hearing examiner's decision²⁸ and replacing it with Condition 2 on the remand decision.²⁹ This was within the scope of the remand in that the amount of impervious coverage is related to the drainage report. The City of Edmonds does not have a maximum impervious surface regulation, but has a maximum allowable coverage that is related to structural coverage³⁰. Definitions for impervious surface, coverage, and structure are:

ECDC 18.30.010.V Impervious Surface

"Impervious surface" means a constructed hard surface area that either prevents or retards the entry of surface water into the soil. Impervious surfaces include, but are not limited to *rooftops*, patios, storage areas, concrete, asphalt, brick, gravel, oiled, packed earthen or other surfaces that similarly impede the natural infiltration of storm water. Open uncovered retention/detention facilities shall not be considered as impervious.³¹

ECDC 21.15.110 Coverage

Coverage means the total ground coverage of all *buildings or structures* on a site measured from the outside of external walls or supporting members or from a *point two and one-half feet in from the outside edge of a cantilevered roof*, whichever covers the greatest area.

ECDC 21.90.150 Structure

Structure means a combination of materials *constructed and erected* permanently on the ground or attached to something having a permanent location on the ground. Not included are residential fences less than six feet in height, retaining walls, rockeries, and similar improvements of a minor character less than three feet in height.

The maximum coverage in the RS-8 zone is 35% pursuant to ECDC 16.20.030. The impervious surface definition includes "rooftops", while the coverage definition counts coverage at two and one-half feet in from the edge of the roof. Furthermore, the definition of structure is a combination of materials constructed and erected on the ground. Merriam Webster's Collegiate Dictionary defines erect as "vertical in position."³² Driveways, sidewalks and other impervious surfaces flat on the ground are not considered in the City's coverage calculations.

Condition 2 in the hearing examiners remand decision³³ limits impervious surface to 3,000 square feet per lot. This number is consistent with the impervious surface coverage provided in the stormwater report³⁴. Since City of Edmonds code does not have a maximum impervious surface limit, Condition 2 helps reduce impervious surface consistent with ECDC 20.35.040.E³⁵ and ECDC 20.35.050.A.3³⁶ along with the use of two shared driveways (Tracts B and D).³⁷

²⁸ Record at 000397

²⁹ Record at 000023 – 000024

³⁰ ECDC 16.20.030 indicates that the maximum coverage within the RS-8 zone is 35%.

³¹ Record at 000509 – 000508 (Vested storm water code)

³² Merriam Webster's Collegiate Dictionary, Tenth Edition principal copyright 1993.

³³ Record at 000023 – 000024

³⁴ Record at 000105

³⁵ Record at 000522

³⁶ Record at 000522

³⁷ Record at 000088

The Burnstead application must still comply with the maximum coverage requirement of 35% as noted by Condition 15(b)(iv)³⁸ of the 2007 hearing examiner condition which has been retained.³⁹

³⁸ Record at 000399

³⁹ Record at 000023