CITY OF EDMONDS
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DEVELOPMENT SERVICES DEPARTMENT • PLANNING DIVISION

BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Phil Olbrechts, Hearing Examiner

RE: 9/11 Memorial (PLN20150017)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION.**

INTRODUCTION

The applicants have applied for a setback variance to enable the installation of a 9/11 memorial monument and relocation of an existing sculpture within the 20-foot front yard setback of Fallen Firefighter Memorial Park, located in front of the fire station at 275 6th Avenue S.. The memorial monument will be comprised of a one-ton steel beam recovered from ground zero of the World Trade Center attacks on September 11, 2001. Installation of the memorial will necessitate relocation of an existing sculpture honoring firefighter Captain Bill Angel within the front setback as well. The sculpture and monument will be located 15 feet from the street property line.

It is recommended that the City Council approve the variance request. The Park is almost completely encumbered by setbacks and there is no place to locate the memorial without a setback encroachment. The Park itself is an ideal location for the memorial as it already serves to memorialize a fallen firefighter, it is readily accessible to the public and it is located in front of a fire hall and close to downtown and the public safety building. The proposed location was selected as the result of an intense national and local review process of proposed locations for the memorial.

City engineering staff have reviewed the variance request and found no traffic hazard associated with the request.

ORAL TESTIMONY

Sean Conrad, City of Edmonds planner, summarized the staff report. The only part of the Memorial Park that isn't within a setback is a small area within the park that is not large enough to accommodate the proposed memorial.

Dave Erickson, firefighter, explained that the reason had to be placed in front of the fire hall in order to receive the artifact from the New York/New Jersey Port Authority. The applicants were awarded the artifact through a national competitive process and the award was based upon the proposed location. One of the criteria for award were that it had to be accessible without fee to the public.

Carrie Hite, Edmonds Parks, noted that Mr. Erickson had met with her several times to determine what would be the best location. Siting had been discussed amongst several cities and the proposed Edmonds site was found to be most ideal because it's already a memorial site for a fallen firefighter and is located in front of a fire hall.

Kathy Lambert, Edmonds engineering, testified that the engineering department had reviewed the proposal for public safety and found no impairment of site distance by the setback encroachment. During building permit review engineering will do added review for site distance safety.

EXHIBITS

The May 21, 2015 staff report along with its 6 attachments were admitted into the record as Exhibit 1 at the hearing. All references to "att." in this decision are referring to the attachments of the staff report. The staff power point was admitted as Exhibit 2.

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is the Firefighters of Local 1828 and Snohomish County Fire District #1

2. Hearing. The Hearing Examiner conducted a hearing on the application on May 28, 2015 at 3:00 p.m. at the Edmonds Public Safety Complex in the Council Chambers.

Substantive:

3. Site/Proposal Description. The applicants have applied for a setback variance to enable the installation of a 9/11 memorial monument within a 20 foot front yard setback of Fallen Firefighter Memorial Park, located in front of the fire station at 275 6th Avenue S.. The memorial will be comprised of a one-ton steel beam recovered from ground zero of the World Trade Center attacks on September 11, 2001. The steel beam will be flanked by two building silhouettes constructed of stainless steel and glass. A diagram of the proposed monument is attached to the staff report (Attachment 2). The existing sculpture in the park honoring Edmonds Fire Captain Bill Angel will be moved to the east approximately 20 feet to accommodate the 9/11 memorial. This sculpture, once moved, will also be within the setback and therefore is considered part of the proposal. The proposed monument and the existing sculpture honoring Captain Bill Angel would be located approximately 15 feet from the street property line and within the 20-foot street setback. A Residential zoning district is located immediately west of the fire station, thereby requiring a 25-foot setback. The proposed structure maintains 25-foot setbacks from the residentially zoned property.

4. Characteristics of the Area. The proposed location of the 9/11 Memorial monument is within a small, special use park, located on the north end of the public safety complex property. The Fallen Firefighter Memorial Park is located immediately north of Fire Station #17. The location of the park is at the corner of two streets, 6th Avenue North on its east side and Sprague Street on its north side. East of the park, across 6th Avenue North, is public property developed with a track and grand stands, skate park and Boys & Girls Club. North and east of the park are residential homes developed in multifamily housing buildings such as a tri-plex and four-plex. The zoning for the residential properties is a multi-family residential zone (RM-1.5). The location of the memorial and the property to the east are zoned for public use (P) (Attachment 3).

5. Adverse Impacts. There are no adverse impacts associated with the proposal. The primary issue of concern would be traffic safety and Edmonds engineering staff has determined that the proposed encroachment into the front yard setback of the park will not impair traffic site distance or otherwise create a traffic hazard. As a memorial of limited bulk and dimension the encroaching structure will not significantly disrupt the passage of light and air or create any aesthetic incompatibilities with adjoining public and multi-family uses.

6. Necessity for Variance. The need for the setback variance arises out of the small size and location of the Fallen Firefighter Memorial Park. As shown in the 8th slide of the staff power point presentation, Ex. 2, there is only a small area in the entire Fallen Firefighter Memorial Park that is not encroached by setbacks. The proposed memorial would not fit in this area. The proposed location is also necessary to maximize public visual access to the memorial, as it places the memorial near street frontage. The current use of the park as a memorial for a fallen fighter, its

accessibility to the public and its location in front of a fire hall all make it an ideal and unique location for the memorial. As testified by Mr. Erickson, these factors were the reasons the New York/New Jersey Port Authority awarded the memorial to the City of Edmonds. In addition to the national review process conducted by the Port Authority, the City of Edmonds itself has spent three years reviewing potential locations and found the proposed site to be the most ideal for the proposed memorial.

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. As authorized by ECDC 20.01.002(A), the Development Services Director has determined that the examiner's decision shall serve as a recommendation to the City Council pursuant to ECDC 17.00.030(C).

Substantive:

2. Zoning Designations. The subject property is Public Use (P).

3. Review Criteria and Application. ECDC 16.80.030(A) imposes a 20 foot front yard setback in the P zone. Since the applicants propose the placement of the proposed memorial and the existing statute 15 feet from the adjoining street, a variance is required. Variance criteria are set by ECDC 20.85.010, quoted below and applied through corresponding conclusions of law.

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

ECDC 20.85.010.A(1) – 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.*

a. *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.*
b. *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;

4. Special circumstances clearly support the variance application. As determined in Finding of Fact No. 6, almost the entire Park parcel is encumbered by setbacks and the Park itself is ideally and uniquely suited to accommodate the proposed memorial. The limited space of the Park also serves as a special circumstance justifying the relocation of the existing sculpture honoring Bill Angel within the front yard setback.

ECDC 20.85.010(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;*

5. The proposed variance is for a highly unique and publicly significant use that can only be accommodated under a very narrow set of locational parameters. Other public uses meeting the same objectives and limitations would likely be authorized in the P zone as well. No grant of special privilege is involved in this application.

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

6. Additions or improvements to the Fallen Firefighter Memorial Park is anticipated in the Parks, Recreation and Open Space (PROS) Plan adopted by City Council in February 2014. The PROS plan is adopted by reference in the Comprehensive Plan.

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;*

7. The proposal is consistent with the purpose of the P zone. ECDC 16.80.000 provides that the purpose of the P zone is to accommodate the siting and development of regional public facilities and to regulate the use of these lands to assure their continued availability for public use. The proposed memorial enhances the public use and appreciation for the surrounding public facilities and the individuals who dedicate their lives to public service.

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 adverse impacts associated with the proposal. Consequently, the proposal will not be significantly detrimental to public health, safety and welfare.

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. The requested variance is the minimum necessary to accommodate the proposed memorial and to maintain public visual access to the existing sculpture. As shown in 8th slide of the staff power point (Ex. 2), the only area that is not encumbered by setbacks is a small triangular area located in the back of the park. This area is not large enough to accommodate the proposed memorial. Further, placing the existing sculpture in this triangular area would block it from public view.

DECISION

It is recommended that the City Council approve the variance application subject to the following conditions:

1. The installation of the 9/11 Memorial monument, relocation of the existing sculpture honoring Captain Bill Angel, landscaping and lighting shall substantially comply with the plans submitted with this application.

2. The Applicant shall obtain a building permit prior to installing the monument.

3. Compliance with Engineering codes and construction standards will be reviewed with the building permit application for development of the site. Applicant is encouraged, wherever feasible, to incorporate pervious pavements, rain gardens and/or other low impact development techniques into the project design.

4. The location of the monument shall be in accordance with Edmonds City Code, 9.25, Street Obstruction and located such that the existing City utilities may be maintained, repaired, and operated.

Dated this 12th day of June 2015.

Phil A. Olbrechts

City of Edmonds Hearing Examiner

Appeal Right and Valuation Notices

This land use decision is final and subject to closed record appeal to the City Council as authorized by ECDC 20.01.003. Appeals must be filed within 14 days of the issuance

of this decision as required by ECDC 20.07.004(B). Reconsideration may be requested within 10 calendar days of issuance of this decision as required by ECDC 20.06.010.

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