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DEVELOPMENT SERVICES



Town of Woodway

WASHINGTON

August 20, 2013

Kernen Lien, Sr. Planner
Development Services Dept., Planning Div.
CITY OF EDMONDS
121 Fifth Avenue North
Edmonds WA 98020

RE: Appeal of Architectural Design Board Decision Regarding PLN20130022 -
Point Edwards Building 10

Dear Mr. Lien:

The Town of Woodway hereby submits an Appeal to the Edmonds City Council pursuant to ECDC 20.07.004. In accordance with Section C, the following information is presented:

1. Appellant: The Town of Woodway; Carla A. Nichols, Mayor; 23920 - 113th Place West, Woodway, Washington 98020.
2. Standing: The Town of Woodway has submitted numerous comments regarding this project and Town officials have testified before the Architectural Design Board ("ADB") and the City Council. The Town of Woodway is a Party of Record and has standing to submit an Appeal.
3. Application: PLN20130022 - Point Edwards Building 10 Design Review.
4. Statement of Grounds for Appeal and Statement of Facts: The Decision of the ADB does not conform to nor meet the design criteria set forth in ECDC 20.11.030 and the Urban Design General Objectives of the Community Culture and Urban Design Element of the City's Comprehensive Plan.

While the ADB was specifically directed to enter written Findings and Conclusions and has now done so, such *post hoc* rationalizations cannot obscure the fact that the ADB's Decision in certain key aspects is unsupported by the record, and is contrary to the standards and criteria as mentioned above. Specifically, the Town of Woodway appeals based on the following:

a. C.8.a ↓ Building 10 is a long, high and massive building that as proposed, will block the views of single family residences to the south. Stepping back the building does not reduce / modulate the height of the structure. A practical method to reduce the bulk and mass is to reduce the height of the building to four stories with the east wing reduced to three stories.

b. C8.c ↓ The height and mass of the building are inconsistent with the criterion. The east wing of the building is five stories high, and since there are no other five story buildings in the "Edmonds bowl" the building does not connect with the balance of other buildings at Pt. Edwards and the City of Edmonds. The building is out of scale and character with the surrounding homes. The ADB findings do not address this issue nor attempt to demonstrate how the criterion is met.

c. C.10. B and C ↓ The cobra head lighting on the south west side of Pine Street is inconsistent with both design criteria C.10. B. and C. The City's standard street light masts are much higher than the architectural lights on the north side of Pine and cast a greater and brighter photogrammetric lighted area that spills off site into adjacent existing residences. The Cobra lights are out of character with the design aesthetic of the streetscape infrastructure. The dissimilar street lighting design (architectural lights on one street frontage and utilitarian cobra head lights on the other

street frontage) expresses a visual lack of coordinated site/ infrastructure planning. The Cobra head lights should be replaced with architectural lighting as was originally agreed to between the Town and the developer. The ADB's findings on this point (Finding 18) do not address the aesthetic and design conflicts, but instead recite only that the City was not party to the agreement with the developer and the Town.

d. C.13.c ↓ The finding that the single family residence to the south is "substantially higher" and thus their view is preserved is contrary to the facts in the record. Placing a four and five story building in front of a single family resident that is 27 feet high where the difference in the ground level grade at the parking lot to the ground level grade of the single family resident is only 24' (164' versus 188') is not "substantially higher". Although the trellis on top of the rockery will help screen the view of the building, it does not preserve views of Puget Sound. .

e. C.13.d ↓ The finding is misleading and inaccurate. This Comprehensive Plan Objective includes the following language: "Integrate buildings into their site by stepping the mass of the building along steep sloping sites." The finding states that the "southern (uphill) facade of the building extending above average grade is two stories in height". The building actually extends three stories in height above the average grade, since the parking lot/building sits atop the average historical grade with the surface parking lot planned to sit on top of that parking structure. Thus the parking structure plus two stories of residential units equates to three stories above the average grade and should be included in the calculation; IE average grade is 151 and top elevation is 191. (See submittal

package slide #27) As proposed, Building 10 is not being "stepped" into the slope, rather, it is being installed on top of the slope. (Note: This applies to Design Criteria D.1.a. as well).

f. D.1.a. This finding completely ignores how the building will meet the requirement to preserve views. The ADB does not attempt to offer any explanation as to what mitigation could be done to meet this requirement. This design objective clearly has not been met.

g. D.1.b. This finding completely ignores the design objective which requires maintenance of the small scale of "historic Edmonds". The finding instead compares the building with the other Point Edwards buildings, which are clearly not part of historic Edmonds.

h. D.2.b. ↓ The finding states that stepping back the building will reduce the bulk and mass of the building. Stepping back a portion of the building will not reduce the bulk unless the height of the building is also stepped "down". The finding also states that the footprint has been reduced 25% from the original proposal. This is true however it's not relevant since the proposal under review is the current proposal not the original 2006 proposal. Although the footprint has been decreased the height has been increased over the original proposal.

5. Specific Relief Sought: The Town of Woodway requests that the City of Edmonds City Council reverse or modify the Decision of the ADB. If the Council chooses to modify the Decision, the Town of Woodway requests that the Application be modified to:

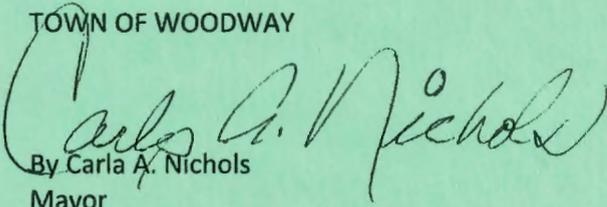
a. Reduce the building from five stories to four;

b. Step the eastern portion of the building down to three stories; and

c. Require all street and parking lot lighting to be consistent with the architectural standards already installed in the Point Edwards community and on the north side of Pine Street.

6. Statement of True Facts: As the Mayor of Woodway, I have read the Appeal and submit that the contents are true.

TOWN OF WOODWAY


By Carla A. Nichols
Mayor

WDT/nkr

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Town of Woodway
WASHINGTON



September 26, 2013

Laura Petso
City Council President

Re: Point Edwards Building 10
Project File PLN20130022

Dear Councilmember Petso,

The Town of Woodway submitted a timely appeal because, in its view, the decision of the Architectural Design Board approving the design of Building 10 did not conform to nor meet the Design Criteria set forth in ECDC 20.11.030 and the Urban Design General Objectives of the Community Culture and Urban Design Element of the City of Edmonds' Comprehensive Plan. As a consequence, the Town is requesting that the Council modify the ADB's decision approving Building 10's design to require the stepping down of the eastern wing of Building 10 to 3 stories and reducing the western wing from 5 stories to 4 and requiring street and parking lot lighting to be consistent with that already installed in the Pt. Edwards community on the north side of Pine Street or, in the alternative, to reverse the decision of the ADB.

The City of Edmonds has historically been a leader in the development of design review regulations, and pursuant to Chapter 20.10 of the Community Development Code, the purpose of the design review regulations is to encourage development which preserves the aesthetic environment of the City of Edmonds and to encourage development with features that adapt to topography and other natural features and to minimize incompatible and unsightly development.

The Town of Woodway believes that, on a broad level, the ADB erred in approving the design of proposed Building 10 because it does not conform to these overarching goals of the design review regulations. Namely, Building 10 is not compatible with the neighborhood or the topography of the Point Edwards site and will detrimentally impact the Town of Woodway, and particularly the fifteen or so homes situated adjacent in the neighborhood of the Estates, from whom the Town has received multiple complaints and concerns.

The Edmonds City Council has established guidelines for the ADB to follow in making its decisions to ensure that incompatible development is not allowed at the expense of the surrounding communities. And, unfortunately, the ADB did not follow the guidelines for making their decision as established by the Council in Chapter 20.11 governing design review decisions.

Initially of course, the ADB's decision contained no findings and no explanation of why it approved the project and how the project met the criteria for approval. The Town and others had to appeal this decision, submit appeal letters, and attend the July 2 City Council closed record hearing where it was announced that the matter would be remanded to the ADB to enter findings.

The ADB met on August 7 for this purpose. At that meeting it became apparent that upon actual review and consideration of the criteria, at least one Board Member thought that the project, as submitted, did not meet certain criteria. As reflected in the draft minutes, page 2, the Board Member was cut short by the Chair who stated that the ADB was not authorized to change its decision, but only to offer reasons for the prior decision. The Town believes that this process fundamentally subverts the very purpose of requiring any administrative board to explain its decision by reference to specific findings of fact tied to the specific criteria of approval. Here, the ADB was forced to adopt post hoc rationalizations for a flawed decision. Instead, the ADB should have been allowed to change its decision if it were unable to justify its original decision with reference to the approval criteria.

In any event, the ADB's Findings are not supported by the record and are contrary to the City's standards and criteria.

The ADB's Findings did not discuss Design Criteria 20.11.030(A)(4), which states in part that

Long, massive, unbroken or monotonous buildings shall be avoided in order to comply with the purposes of this chapter and the design objectives of the comprehensive plan. This criterion is meant to describe the entire building. All elements of the design of a building including the massing, building forms, architectural details and finish materials contribute to whether or not a building is found to be long, massive, unbroken or monotonous.

This criteria is not met by the current design.

- The tops of both the eastern and western wings of the building are at the same level, creating a monotonous, massive, long building design.
- Using a variety of materials and colors and some roof modulation by placing peaks on the roof does not resolve the issue because even with these added features, the building still gives the impression of a massive building in comparison with the rest of the buildings in Point Edwards with a continuous height along the entire expanse of the building.
- Therefore, it is appropriate for the decision to be modified to require stepping down of the eastern portion of the building or be reversed

The ADB's Findings are flawed regarding Design Objective C.8.a: *Do not use repetitive monotonous building forms and massing in large multi-family or commercial projects.* and Design Objective C.8.c: *Retain a connection with the scale and character of the City of Edmonds*

through the use of similar materials, proportions, forms, masses, or building elements and C.13.d Integrate buildings into their site by stepping the mass of the building along steep sloping lines.

- Even the staff report concluded Building 10 to be out of character with the Point Edwards Development. It also stated that the stepping down the eastern portion would still result in one of the tallest buildings in the Point Edwards development. The Findings ignore these inconvenient facts and instead reach conclusions that are not supported in the record.
- The rest of the Point Edwards buildings contain three levels of residential units and Buildings 8 and 9 appear to have 4 stories because of the underground parking garage. Building 10 is also out of character with the Woodway single-family residences that are located above the development on the hillside.
- In addition, the eastern wing is not stepped in accordance with the slope of the hillside.
- Therefore, the Town believes it is entirely consistent with the Point Edwards site and the topography of the steep slopes surrounding the site to go beyond the recommendation of staff to step down the eastern wing to 4 stories and require that the eastern wing be stepped down to 3 stories and the western wing to 4 stories.

Design Objectives C.8.a and C.8.c address the scale and character of a building, and Design Objective D.1.b requires a project to *maintain the smaller scale and character of historic Edmonds*. The Findings compare Building 10 with other buildings in the Point Edwards development and make no effort to demonstrate how Building 10 is within the scale and character of surrounding single-family homes. No effort is made to explain how a five-story building maintains the “smaller scale and character of historic Edmonds”.

Design Objectives C.13.c and C.13.d are not met. The Findings are factually flawed as the views of the single-family homes to the south are not preserved and those homes are not substantially higher in elevation.

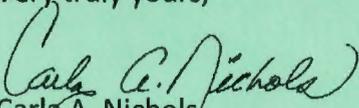
Finally, the ADB’s Findings are flawed regarding Design Objective C.10.b: *Minimize potential for light to reflect or spill off-site*. The Town requested that Cobra lamps on high poles be exchanged with low, shielded, architecturally appropriate lights to match those already existing on the north side of Pine Street. The Findings contain conclusory statements not supported in the record.

- The current design would not meet this criteria because the cobra lamps are not hooded and do not prevent the spillage of light off site to the Woodway residents located within 100 feet of the site.
- Moreover, the cobra lamps on high poles are inconsistent with the rest of the lighting along Pine Street.

The Town incorporates its prior appeals and appeal letter herein.

In conclusion, the project must be modified to require stepping down of the eastern wing of Building 10 to 3 stories and reducing the western wing from five stories to 4 and requiring street lighting to be consistent with that already installed in the Pt. Edwards community on the north side of Pine Street.

Very truly yours,



Carla A. Nichols

Mayor

RICHARD E. GIFFORD PLLC

October 4, 2013

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DEVELOPMENT SERVICES
COUNTER

Rick Gifford
E-mail: rick@rgiffordlaw.com

Mr. Kernen Lien, Senior Planner
City of Edmonds, Planning Division
122 – 5th Avenue
Edmonds, Washington 98020

Hand Delivered

Re: PLN20130022, 50 Pine Street, Edmonds, Reply to APL20130007

Dear Mr. Lien:

This letter is submitted on behalf of Edmonds Pine Street LLC, the property owner and Applicant herein, in response to the Town of Woodway's appeal of the Architectural Design Board's May 16, 2013 design review approval under PLN20130022 and the additional argument made by Mayor Carla A. Nichols by letter dated and filed with the City on September 26, 2013 ("Collectively, "Woodway Appeal").

All citations to the Record are to the complete written record compiled by staff for this matter and available on the City Council's webpage, by stamped page number. References to the May 15, 2013 ADB transcript are shown as "Transcript at ___".

A summary of the proposal, its procedural history, and the review's standards governing the ADB and City Council proceedings herein is set forth in Sections I-III of Applicant's reply to the appeal of Clair and Bill Widing and Jon and Laura Fleming ("Widing-Fleming Appeal") dated and submitted to the City contemporaneously with this letter. More detailed information on these aspects of the proposal is available at Record 0004-05; 0240-243; 0481-490; and Transcript at 6-13.

A. Reply to Appellant's Arguments

Appellant Woodway periodically has participated in public processes relating to the Point Edwards development over the last 11 years. Appellant did not comment on or

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appeal the City's DNS following SEPA review of the proposal earlier this year but appeals the substantive decision of the ADB. The following responses cover both Woodway's August 21, 2013 appeal and its September 26, 2013 argument in support thereof.

Woodway asserts generally that the Board's decision does not conform to the City's design standards and identifies nine conclusions of law that allegedly have no support in the Record. Woodway objects generally to the Council's action in remanding this matter to the ADB for entry of consistent findings and conclusions, a mandate followed by staff and the Board that resulted in the Findings, Conclusion and Decision of the Board dated August 7, 2013 ("FC") that have been returned to the Council in response to its order.

Woodway's contentions are underlined below, followed by Applicant's response:

1. The FC do not discuss Design Criteria 20.11.030(A)(4). This is untrue and also misapprehends the referenced Code section. Findings and Conclusions 2-4 at FC page 6 expressly refer to and determine compliance with the standards generally outlined in the referenced criterion, and dozens of other provisions confirm satisfaction of the UDGs under the Comprehensive Plan, which the Code identifies as the specific standards by which compliance with the general design criteria in ECDC Ch. 20.11 are to be measured. ECDC 20.11.020(A). See Record 0017, Staff Summary Points 2 and 3.
2. FC 4.a.C.8.a and C.8.c. Appellant argues its own interpretation of these provisions in relation to the proposal, but fails to cite to the Record and relies principally on the advisory comments and opinions of staff to support its claim, rather than looking to the Record and the deliberations, statements, findings, and conclusions of the ADB. These are statements of opinion, lacking any evidentiary or probative weight. Evidentiary support for the Board's findings/conclusions may be found, *inter alia*, at Record 0023-25, 0034-44, 0056-60, 0469, and 0575, and at Transcript 3, 12, 14-16, and 28.
3. FC 4.a.D.1.b. The Board concludes that UDG D.1.b is satisfied. Its additional comments in FC 4.a.C.8.d further support its decision on this point. Again, Appellant argues in a conclusory manner from its perspective and

- interpretation, not from the Record. Additional support for the Board's determinations that the proposal conforms to Edmonds patterns and to the surrounding setting, notably the Point Edwards project itself, is found, *inter alia*, at Record 0034, 0056-58, and 0060, and at Transcript 15, 16, and 27-28.
4. FC 4.a.C.13.c. Woodway contends the Board's findings of sufficient buffering and view preservation are flawed, apparently on the theory that any view impact is fatal, which is not the standard. This is not what the UDG states and Woodway's contrary opinions are immaterial. The Board's determinations show an awareness of the evidence and of the relevant screening, buffering, and view considerations. The primary view protection issues under the UDGs are for views to the west toward Puget Sound and the Olympics, in any case, and these views will not be materially impacted from within Edmonds, if at all. Evidentiary support is found, *inter alia*, at Record 0018, 0039-40, 0044, 0052, 0066, 0072-73, 0356, 0462, and at Transcript 14, 17.
 5. FC 4.a.C.13.d. The referenced finding and conclusion is accurate and substantiated on the Record. The building does, in fact and by design, step or terrace into the hillside along its steepest slope, like the other residential buildings in Point Edwards as they step downhill. The proposed building shows just two stories above grade on the uphill (high) side, and four or five stories on the downhill (low) side, depending on wing. Other buildings in Point Edwards have up to four stories of structure exposed on their downhill faces. As the Board confirmed, there is a visual step along/down the hillside. See Record 0037, 0039-40, 0070, 0072, 0074, -461-62, -466, 0494-95, 0504, and Transcript at 14-16.
 6. FC 4.a.C.10.b and C.10.c [sic]. We assume Woodway's reference in its appeal to UDG C.10.c was unintentional, which deals with creating a sense of welcome and activity. Woodway says nothing about this aspect of the design in the Appeal and supplementary argument. As for UDG C.10.b, the

contention pertains to the Town's desire that the City require Applicant to replace existing City standard Cobra street lights along the south side of Pine Street in the City with special, architectural light standards, not required by the City's requirements and which the City will not maintain and has no authority to mandate. The Town's preference was not accepted by the ADB, and is not required to be accepted by the City. The City has no legal authority to require Applicant to replace the existing City street lights or to install the non-conforming light standards. Any such action would be voluntary by Applicant and would require both City and Woodway acknowledgement, consent, and agreement as to future maintenance and replacement, among other considerations. Moreover, the referenced UDG refers only to light coming from the project and spilling off-site, and therefore is inapposite. As demonstrated in the Record, the proposed on-site lighting meets City standards and requirements and was found by the ADB to supply adequate illumination and security. Record 0011-12, 0059, 0068.

7. FC 4.a.D.1.a. The proposed building does not impact views to the west toward Puget Sound and the Olympic Range from within Edmonds, as previously noted and as the ADB's finding/conclusion states. No impact. No issue. No mitigation. These proceedings are not under SEPA, which is the appropriate setting for broad consideration of potential view impacts. Woodway had the opportunity to appeal the City's environmental determination, but did not. Appellant's observation is baseless and may simply reflect a misreading of the referenced guideline, limited as it facially is to west-facing views.
8. FC 4.a.D.2.b. Appellant's contentions here are muddled. The ADB's finding/conclusion is clear and speaks for itself and is supported by ample evidence in the Record. Appellant cites to nothing, leaving the argument

empty. Relevant material presented to the Board can be found, *inter alia*, at Record 0024, 0028, 0031, 0036, 0038, 0041-42, 0060, and 0070-75.

In the main, Appellant's contentions are unsupported by evidence in or reference to the Record, and Appellant therefore does not meet its burden of proof to definitively show that the Board's determinations are without evidentiary support or legally void, and thus clearly erroneous. We submit no such sufficient showing is possible on this Record.

The Record contains considerable evidentiary support for the Boards determinations and the FC, individually and in the whole. The Board made clear that it reached its conclusions based on the project's conformance with Edmonds design guidelines and standards, prior staff and ADB input and direction, and consistency with existing conditions in Point Edwards. Transcript at 26-28. There was one dissenting vote out of six for the Board's decision in May, and all six Board members voted to approve the FC as accurately reflecting their determinations and consistent with the decision rendered. Transcript at 29; ADB Minutes of Regular Meeting, August 7, 2013 at 4. Even without the benefit of presumed validity, the Record contains more than sufficient supporting evidence for each and every finding and conclusion made by the ADB and for its approval of this proposal.

Appellant leans too much on staff's non-binding advisory input in areas where the Board disagreed with staff in design matters. The ADB is free to follow or depart from staff's design suggestions so long as the Record and controlling Code and Comprehensive Plan provisions sufficiently support its actions and decisions, as clearly is the case here.

As the designated and authorized design review decision maker, the ADB must assess the valid evidence presented to it in light of the applicable standards and guidance, and reach a reasonable decision, sometimes balancing ideas that are in a healthy tension (such as UDGs like D.4.e calling for design compatibility with the surrounding built environment and those like E.1.d mandating design originality and distinctiveness). The guidelines exist, as specified in ECDC 20.11.020(A) to provide appropriate direction and clarity for applicants. But the concepts embodied in the

UDGs require reasonable subjectivity and must be balanced in the holistic design review process, as has been demonstrated in this instance. It is the Board's duty and challenge to exercise reasonable and appropriate discretion, within the bounds of the written guidelines in order to strike an acceptable balance, neither violating the spirit of the guidelines nor imposing unreasonable or unpredictable burdens on applicants. See ECDC 20.11.020(A).

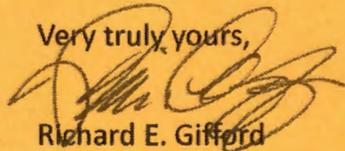
In the face of some confusing movements and suggestions by staff, the Board proceeded consistently and coherently under the controlling design standards and carefully followed the Council's directive to issue supporting findings and conclusions. The resulting decision that is before the Council on closed record review is well supported by the Record and satisfies all legal tests and standards.

B. Conclusion and Requested Relief

In summary, Appellant's concerns and arguments are not meritorious, lack evidentiary support, and fail to meet the required burden of proof.

Based on the foregoing, the Woodway Appeal fails. The Applicant respectfully requests that the Council dismiss the Appeal and sustain the determinations and decision of the ADB reflected in its May 16, 2013 written decision.

Very truly yours,



Richard E. Gifford
Attorney for Applicant,
Edmonds Pine Street LLC

REG/mmi