

**Appeal Statement
of
the Hearing Examiner's Decision
for the Willowdale Fence Height Variance**

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(City File No. PLN20130039 / Dated August 8, 2013)

The following is provided in appeal of the Hearing Examiner's decision regarding the Willowdale Fence Height Variance and prepared in accordance to ECDC 20.07.004(D):

1. *Appellant's name, address, and phone number:*

Barghausen Consulting Engineers, Inc.
18215 72nd Avenue South
Kent, WA 98032
Attn: Wayne Potter
(425) 251-6222

2. *A statement describing appellant's standing to appeal:*

Agent for Owner/Applicant

3. *Identification of the application, which is the subject of the appeal:*

The Hearing Examiner's decision regarding the Willowdale Fence Height Variance under City File No. PLN20130039.

4. *Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record:*

On behalf of the applicant/owner and the other residents in the Willowdale Townhome project, we believe the Hearing Examiner erred in his findings by failing to give sufficient consideration to key facts presented at the public hearing.

The Hearing Examiner concluded that special circumstances were not met because ECDC 20.85.010.A(1) specifies that past actions by a prior property owner, whether related to an applicant or not, do not qualify as a special circumstance. However, testimony was given at the public hearing that the City of Edmonds issued a Certificate of Occupancy to the prior owner/developer of the property. This is the action that enabled the prior owner to sell three of the four units to the current owners, two of whom also presented testimony at the hearing in support of the variance, hence the statement that they were "innocent purchasers."

If the City had not issued a Certificate of Occupancy to the prior owner/developer in advance of the fence height issue being resolved, the current owners testified they would not have purchased these units due to the lack of privacy. Although it may not be unusual for the City to issue such Certificates of Occupancy with potential unresolved code issues, it is our belief that such action in this specific case was the proximate cause of the current dilemma for the applicant and owners of the units, and that such action in this case directly led to the "special circumstances," which are, in fact, consistent with this criteria.

The Hearing Examiner did not afford sufficient weight to this fact, which we believe was the most critical aspect of this case, and the fact that resulted in the request for this variance.

We also believe that this is truly a unique circumstance that applies only to this specific property and this particular applicant, as it is highly unlikely that such a history of events would be repeated. Therefore, we do not believe the approval of this request for a variance will set a precedent.

The Hearing Examiner also erred in his finding that this would potentially be a grant of special privilege. The only testimony presented at the hearing was from the applicant, which confirmed the property immediately south of this project has a very similar situation with a 6-foot wood fence on top of a retaining wall. In fact, that retaining wall/fence combination is even higher than the subject property.

Instead of giving any weight to this fact, the Hearing Examiner chose to grant more weight to the statement by staff that the adjoining project "may be nonconforming." This is not factual testimony. This is an opinion represented by staff in lieu of factual testimony and should have been insufficient for the Hearing Examiner to reach the conclusion he did.

The only actual testimony of fact related to the physical evidence suggests it is a special circumstance, and we cannot presume to know whether this adjacent fence and wall were legally permitted or not. In the absence of such facts, it can just as easily be concluded that it was constructed to be conforming to codes in effect at the time.

Based on the above, we believe the record clearly supports the request of the applicant with respect to the criteria necessary for approval of the variance.

5. *The specific relief sought:*

Approval of the Willowdale Height Variance with respect to retaining the existing 6-foot fence height, which exceeds the maximum fence height of 4 feet as allowed by ECDC 17.30.000(D).

As the representative of the property owners, all information provided herein is accurate and true to the best of our knowledge.

X 
G. Wayne Potter

Date: 8.21.2013