

AUG 15 2017

CITY CLERK
CITY OF SHORELINE**CITY OF SHORELINE HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION****PROPOSAL INFORMATION SUMMARY**

Project: North City Water District Special Use Permit and Variance

File Numbers: SPL17-0038 and PLN17-0043

Applicant: Denny Clouse for the North City Water District

Property Location: 15555 15th Avenue NE

Recommendation: Planning and Community Development Department:
Approve the Special Use Permit with conditions; Deny the Variance

Public Hearing: August 1, 2017

Introduction

The North City Water District (“District”) seeks a Special Use Permit to construct a maintenance facility for the District in a Residential zone. In addition, the Applicant seeks a Variance for an eight-foot high fence to be established around portions of the maintenance facility. A public hearing on the application was held on August 1, 2017, in Council Chambers at Shoreline City Hall, 17500 Midvale Avenue North in Shoreline. The City of Shoreline (“City”) Planning and Community Development Department (“Department”) was represented by Steve Szafran, Senior Planner. The District was represented by Denny Clouse. The exhibits admitted into the record are listed at the end of this decision. The Hearing Examiner inspected the site on August 10, 2017.

For purposes of this decision, all section numbers refer to the Shoreline Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record, the Hearing Examiner enters the following findings of fact, conclusions and decision on the application.

Findings of Fact

1. The District seeks a Special Use Permit for the purpose of relocating its existing maintenance facility from 16906 15th Avenue NE to a new location at 15555 15th Avenue NE, which is zoned Residential with a base density of six dwelling units per acre (“R-6”), and is the site of this permit proposal. The District has identified the maintenance facility as an essential service, and the facility will be constructed to be operational in the event of a natural disaster. In addition, the District has applied for a Variance to increase the

maximum fence height around the site from six-feet to eight-feet. The Special Use Permit and Variance applications have been consolidated for review pursuant to SMC 20.30.130.

2. The proposal includes five structures, which will serve for enclosed workshops, vehicle parking and maintenance areas, offices, storage, a decant facility, and other uses. An existing church building will be demolished.

3. The site is approximately 3.2 acres in size. It is bounded on the north by NE 158th Street, on the east by 15th Avenue NE, on the west by 14th Avenue NE, and on the south by single family homes. The site is accessed via NE 158th Street, which is classified as a local street, and 15th Avenue NE, which is classified as a principal arterial.

4. Property to the north across NE 158th Street, south, and west across 14th Avenue from the site, is zoned R-6 and developed with single-family residences. Property to the east is zoned Fir Crest Campus zone, and is developed with the Fircrest School including the school, special needs housing and administrative offices.

5. The Department received written public comments on the proposal, and additional comments were received at a District neighborhood meeting on April 25, 2017. Exhibit 1. A summary of issues raised by neighbors at the meeting is included as an attachment to Exhibit 1, the Staff Report. Members of the public attended the hearing. Keith Loften, Andrew Bibick, Lois Preston, and Kim Anderson, spoke expressing concerns and asking questions about the proposal's landscaping, and impacts on property values, traffic access, and traffic.

6. The District contends that the requested Variance for the fence height increase will be necessary to provide security for the property. The District believes that an additional two feet of height is necessary to help deter "curious young adventurers," who are more likely to be present in this residential area. The fence will not serve as a visual deterrent, as the District plans to use a chain-link or mesh fencing material that will maintain visibility of vegetation on the property. The District also stated that it was aware of other eight-foot high fences in the area. At the close of the hearing, the District asked to provide evidence of other eight-foot fences in the area, and the record was left open for that purpose.

7. The District submitted eight photos of eight-foot fences from various locations in the City. Exhibit 5. The Department submitted comments in response to these photos. Exhibit 7. The District's photos showed six different eight-foot fences. Of these, only two were in the vicinity of the proposal, and of those two, only one was also on property zoned R-6. This one fence encompasses property owned by the Shoreline School District, which was developed in 1965, prior to the incorporation of the City of Shoreline. City permit records show only repair activity for that fence, and identify it as a non-conforming use.

8. A SEPA Determination of Non-Significance was issued for the proposal on March 29, 2017 by the District, acting as lead agency, and was not appealed.

9. The Department reviewed the proposal and issued its Staff Report recommending that the Special Use Permit be approved with the conditions set forth in the Report. Exhibit 1. At the hearing, the Department recommended denial of the Variance.

Applicable Law

10. A Special Use Permit allows the City "to locate a regional land use, not specifically allowed by the zoning ... but that provides a benefit to the community and is compatible with other uses in the zone in which it is proposed. A Special Use Permit is granted subject to conditions placed on the proposed use to ensure compatibility with adjacent land uses." SMC 20.30.330.A.

11. The Code's decision criteria for a Special Use Permit are listed in SMC 20.30.330.B:

1. The use will provide a public benefit or satisfy a public need of the neighborhood, district or City;
2. The characteristics of the special use will be compatible with the types of uses permitted in the surrounding areas;
3. The special use will not materially endanger the health, safety and welfare of the community;
4. The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use, unless the proposed use is deemed a public necessity;
5. The special use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
6. The special use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts;
7. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties;
8. The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title; and
9. The special use is not in conflict with the standards of the critical areas overlay.

12. The purpose of a zoning variance is to serve as a "mechanism by which the City may grant relief from the zoning provisions and standards of the Code, where practical difficulty renders compliance with the Code an unnecessary hardship." SMC 20.30.310.A.

13. The Code's decision criteria for a Variance are listed in SMC 20.30.310.B:

1. The variance is necessary because of the unique size, shape, topography, or location of the subject property;
 2. The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;
 3. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;
 4. The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;
 5. The variance is compatible with the Comprehensive Plan;
 6. The variance does not create a health or safety hazard;
 7. The granting of the variance will not be materially detrimental to the public welfare or injurious to:
 - a. The property or improvements in the vicinity, or
 - b. The zone in which the subject property is located;
 8. The variance does not relieve an applicant from:
 - a. Any of the procedural or administrative provisions of this title, or
 - b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
 - c. Use or building restrictions, or
 - d. Any provisions of the critical areas regulations, Chapter 20.80 SMC, Critical Areas, and is located outside the shoreline jurisdiction regulated by the Shoreline Master Program, SMC Title 20, Division II;
 9. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;
 10. The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; or
 11. The variance is the minimum necessary to grant relief to the applicant.
14. The City Comprehensive Plan provides:

Policy CD 4 - "Buffer the visual impact on residential areas of commercial, office, industrial, and institutional development."

Policy CD 13 - "Encourage the use of native plantings throughout the city."

Policy CD 14 - "Encourage development to consolidate onsite landscaping areas to be large enough to balance the scale of development."

Policy CD 23 - "Utilize landscaping buffers between different uses to provide for natural transition, noise reduction, and delineation of space while maintaining visual connection to the public amenity."

Policy CD 26 - "Where appropriate and feasible, provide lighting, seating, landscaping, and other amenities for sidewalks, walkways, and trails."

Goal U 2 - "Facilitate the provision of appropriate, reliable utility services, whether through City owned and operated services, or other providers."

Policy U 4 - "Support the timely expansion, maintenance, operation, and replacement of utility infrastructure in order to meet the anticipated demand for growth identified in the Land Use Element."

15. SMC 20.30.130 provides "An applicant may elect to submit a consolidated project permit application. Such request shall be presented by the applicant in writing and simultaneously with submittal of all applications to be consolidated. The Director shall determine the appropriate procedures for consolidated review and actions. If the application for consolidated permit process requires action from more than one hearing body, the decision authority in the consolidated permit review process shall be the decision making authority with the broadest discretionary powers."

Conclusions

1. The Hearing Examiner has jurisdiction to make a decision on this application pursuant to SMC 20.30.060 and SMC 20.30.130. Under Rule 3.6 of the Rules of Procedure for Administrative Hearings of the City of Shoreline, the applicant has the burden of establishing that the application complies with "applicable City and State statutes and laws and regulations."
2. The Department's Staff Report (Exhibit 1 pages 3-8), provides a thorough analysis of the application's consistency with the Special Use Permit criteria and the applicable Comprehensive Plan Land Use Policies. That analysis is adopted by reference.
3. The Department's Staff Report (Exhibit 1 pages 12-16), provides a thorough analysis of the application's consistency with Variance criteria 4-11. That analysis is adopted by reference.
4. Variance criterion 1 requires the applicant to demonstrate that the variance "is necessary because of the unique size, shape, topography, or location of the subject property." The District did not fulfill this criterion, because the District did not introduce any empirical evidence demonstrating that an eight-foot fence will provide greater security than a six-foot fence. While there may be a greater need for security due to the location of the subject property in a residential area, the District did not demonstrate that its plan of adding two feet to the fence will satisfy that need.
5. The District argued that with a shorter fence it would suffer the hardship of increased costs due to the need for more staff time to provide security for the property. However, where the District has not demonstrated that the increased fence height would provide the sought after security, its arguments as to a potential increase in costs for additional security are also unsubstantiated. The District did not demonstrate that strict enforcement of the fence height restrictions creates an unnecessary hardship. Thus, the Variance application does not meet variance criterion 2.

6. Variance criterion 3 requires the District to demonstrate that “[t]he subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone.” As noted, only one fence example provided by the District was located on property in the vicinity of and under identical zoning as the proposal, and that one example is a non-conforming use established prior to the current code restrictions. Thus, the District did not demonstrate that it will be deprived of a use enjoyed by properties in the vicinity and which are identically zoned.


7. The Special Use Permit application meets all the applicable requirements of the Comprehensive Plan and SMC 20.30.330.B and should therefore be approved.

8. The Variance application does not meet all the applicable requirements of the SMC 20.30.310.B and should therefore be denied.

Decision

The Special Use Permit is **APPROVED** subject to the conditions listed on page 17-18 of the Staff Report. The Variance is **DENIED**.

Entered this 15th day of August, 2017.



Ryan P. Vancil
Hearing Examiner

Exhibits

1. Staff Report with Eleven Attachments
2. Email Correspondence from Virginia King, Dated 8/1/17
3. Department Powerpoint Presentation
4. District Site Profile
5. Photos of Example Eight-Foot Fences
6. Post-hearing Email Correspondence
7. City Response to Exhibit 5
8. City Objection to District's Request