

City of Yelm

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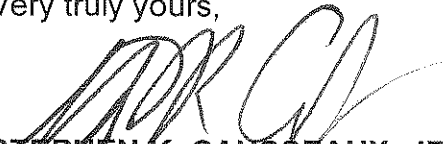
Jason and Tara Rudis
Erica Isabel
16519 92nd Avenue S.E.
Yelm, WA 98597

RE: 2020.0288.VA0001

Dear Applicants:

Transmitted herewith is the Report and Decision of the City of Yelm Hearing Examiner relating to the above-entitled matter.

Very truly yours,



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/jjp
cc: Parties of Record
CITY OF YELM

OFFICE OF THE HEARING EXAMINER

CITY OF YELM

REPORT AND DECISION

CASE NO.: 2020.0288.VA0001

APPLICANTS: Jason and Tara Rudis
Erica Isabel
16519 92nd Avenue S.E.
Yelm, WA 98597

PLANNER: Tami Merriman

SUMMARY OF REQUEST:

Variance from the strict interpretation of City of Yelm Unified Development Code standards for residential driveway width as an ADA reasonable accommodation.

SUMMARY OF DECISION: See Decision.

PUBLIC HEARING:

After reviewing Community Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on November 3, 2020, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT 1** - Community Development Department Staff Report
- EXHIBIT A** - Variance Application Package
- EXHIBIT B** - 2005 Building Permit Site Plan
- EXHIBIT C** - 2012 Photo of Site
- EXHIBIT D** - 2020 Photo of Site
- EXHIBIT E** - Public Comment

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

TAMI MERRIMAN appeared, presented the City Staff Report, and testified that the applicants constructed a driveway wider than the code allows. The City provided proper notice by mailing it to agencies and neighbors and publishing it in the paper. She received comments from two subdivision residents and the homeowners association. The request is exempt from SEPA review. The applicant is requesting the wider installed driveway as a reasonable accommodation due to the disability of their son. According to the ADA definition, a nexus must exist between the accommodation requested and the disability. The Yelm Municipal Code (YMC) allows variances where strict adherence to the code would cause a loss of property rights. The YMC allows two onsite parking stalls and a 24 foot wide driveway. The reasons for the width limitations include the sidewalks and planter strips that provide open space and vegetation along the streets. Each driveway stall requires a nine foot by 23 foot area. In addition, the ADA requires parking stalls to provide a landing for the disabled. On the applicants' site, a ten foot wide utility easement is located behind the curb and gutter. The applicants constructed their driveway over the easement. Utility companies require a sleeve over the lines and pipes so that repairs don't require a tearing up of the driveway. She then discussed the variance criteria and specifically the necessity to show loss of property rights. The City tried to find a way for the applicants to meet the variance criteria. A variance based on medical needs does not fall into the facts necessary to support the variance. The applicants request the variance because of the need of a family member to have a wider parking space. The City acknowledges that three parking spaces are needed, and three nine foot by 20 foot spaces would create an apron width of 27 feet. Adding a five foot wide landing allows a 32 foot wide, parking area. However, the City cannot justify the full, 46 foot width requested by the applicants. The applicants would also need to reduce the parking space width near the street to protect the utility easement. She recommends a 27 foot wide approach and then behind the easement, a 32 foot width. She also believes it unnecessary to install the sleeve under the concrete.

TARA RUDIS, applicant, appeared and testified that they need the extended width due to a disabled nephew. They need more room for him to safely exit a vehicle. The City is recommending a three car driveway with additional landscaping. They would need the entire driveway width straight into their property from the street.

MS. MERRIMAN responded by testifying that the five foot by 20 foot pad from the street does not benefit the family. The expansion could begin 15 feet from the rear of the curb.

ERICA ISABEL appeared and testified that the driveway is close to the street. She is afraid that the child would run into the street after exiting the vehicle. The concrete allows him to run on the concrete horizontally from the vehicle and not into the street.

MS. RUDIS reappeared and confirmed that the concrete would allow the child a place to exit the vehicle and run.

MS. MERRIMAN reappeared and testified that the City recommends a 27 foot wide driveway at the street, then a wider landing area beyond that.

MS. RUDIS reappeared and testified that they need the additional width so the child can have a wider space that is not grass. They would like to extend the concrete all the way to the street. The child is 17 years old and they need a larger area to control him; he is a big boy.

ELISSA WADLEIGH appeared and testified that she is the president of the homeowners association. The association has tried to reach out to the City to bring the site into compliance with the City code. They want the applicants' driveway to be in compliance with the City code and originally agreed with the denial of the request for a driveway expansion. They reviewed the City's present recommendation and find it acceptable to the homeowners. The HOA has approved other requests for a 24 foot wide approach. The recommendation of a 27 foot wide approach plus the wider pad is a very good solution.

MS. RUDIS testified that she would prefer the extension horizontally to the property line.

No one spoke further in this matter and so the Examiner took the request under advisement and the hearing was concluded at 10:55 a.m.

NOTE:

A complete record of this hearing is available in the City of Yelm Community Development Department.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The proposal is categorically exempt from State Environmental Policy Act (SEPA) review, pursuant to Section 197-11-800 of the Washington Administrative Code (WAC).
3. Notice of this application was mailed to state and local agencies and property owners within 300 feet of the site on October 1, 2020, and published in the Nisqually Valley News in the legal notice section on October 8, 2020. Notice of the date and time of the public hearing before the Hearing Examiner was posted on the project site, mailed to property owners within 300 feet of the site, and mailed to the recipients of the Notice of Application on October 20, 2020. Notice of the public hearing was published in the Nisqually Valley News in the legal notice section on October 22, 2020.

4. Following notice, comments were received from a neighboring property owner in support of the driveway stating that moving parked cars off of the street has increased visibility and safety for the child. Comments received from the Mountain Sunrise Homeowners Association (HOA) object to the width of the driveway. The HOA advises that it received complaints regarding the size of the driveway, and notes that the driveway was installed without approval as required by the CCR's for the subdivision. Review of the request after the fact shows that the driveway does not meet the standards of either the HOA or the City of Yelm. The HOA requests that the driveway be reduced to 24 feet in width and located more than five feet from the property line. Comments received from a property owner within the subdivision opposes the driveway width as overly wide. Furthermore, the six vehicles parked on the driveway degrades the look and feel of a residential subdivision.
5. The applicants, Jason and Tara Rudis and Erica Isabel, have a possessory ownership interest in a pie-shaped parcel of property described as Lot 4 of the Mountain Sunrise subdivision within the City of Yelm. The parcel, located at 16519-92nd Avenue S.E., abuts 92nd Avenue for approximately 89 linear feet. The parcel measures approximately 109 feet in depth and decreases in width to 33 feet along the south or rear property line. Improvements on the parcel include an attractive, well-kept, single-family residential dwelling, concrete driveway, and fencing.
6. Living with the applicants is a 17 year old youth who is subject to a behavioral disability and is subject to the protections of the Americans with Disabilities Act (ADA). According to the applicants' uncontradicted testimony, the 17 year old youth is subject to running uncontrollably as he exits the confines of a vehicle following a trip. To provide safe exiting to prevent the youth from running into the street, the applicants constructed a 46 foot wide driveway that extends from the street to their attached garage and fence. The driveway extends across more than half of their lot's frontage on 92nd Avenue S.E.
7. Section 18.52.100(B) of the Yelm Municipal Code (YMC) provides that residential driveways may not exceed 24 feet in width. Such width provides convenient parking for two vehicles in accordance with YMC 18.54.030. The site plan submitted with the 2005 building permit application for the house and lot shows an 18 foot wide driveway, located more than three feet from the nearest driveway.
8. At some point following acquisition of the house and lot, the applicants added 28 feet of concrete paving to their existing, 18 foot wide driveway that created a total driveway width of 46 feet. The applicants constructed the additional driveway width without the benefit of a building permit or any review by the City. The new concrete crosses a ten foot wide, utility easement adjacent to the street. Said easement accommodates telephone, power, gas, cable, and possibly other

utilities. The project also eliminated a five foot wide, planter strip that included one street tree. The applicants did not contact utility companies to ascertain their requirements prior to installing the concrete driveway over the easement.

9. In their variance request and testimony, the applicants request an ADA accommodation to allow retention of the additional pavement to accommodate their child. A medical doctor has documented that the child requires a safe place off the street to exit a vehicle. The Fair Housing Act (FHA) defines "reasonable accommodation" as an exception or adjustment to a rule or policy necessary to allow a person with a disability to have an equal opportunity to use and enjoy a dwelling or other areas. The definition recognizes that treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy their home. The ADA makes it unlawful to refuse reasonable accommodations to rules and policies when necessary to afford an equal opportunity to those with disabilities.
10. However, our Washington courts have required that variances to zoning code requirements be based upon unusual circumstances associated with the parcel itself. In St. Clair v. Skagit County, 43 Wn. App. 122 (1986), our Washington Court of Appeals held:

Reasons for a variance must be reasons pertaining to the property itself which prevent full use of the property to the extent other properties in the vicinity and under the same zoning can be used...Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant....

...The circumstances of Member's desire to provide a home for an ailing relative is likewise personal and cannot support the granting of a variance....43 Wn. App. 122 @ 126, 127

In Martel v. The City of Vancouver, 35 Wn. App. 250 (1983), our Court of Appeals once again ruled:

The remaining question is whether the evidence supports the Board's findings that the exceptional features of the lot gave rise to unnecessary hardship or practical difficulties justifying a variance. This is important because the practical difficulty or unnecessary hardship that will support a variance must relate to the land itself, and not the owner-applicant...Personal hardship such as the owner's age or physical condition cannot justify a variance....35 Wn. App. 250 @ 256

11. The ADA requires a minimum parking stall width of eight feet as compared to the City's standard parking stall width of nine feet. The ADA also requires an accessible landing pad five feet in width.

12. In its Staff Report and presentation at the hearing, staff attempts to reconcile our Court of Appeals decisions and the ADA requirements. Staff acknowledges that the variance request is not based upon issues with the lot itself, but strictly upon the needs of the youth with the disability. Thus, following the ADA standards puts staff in the position of not only violating the court decisions, but also the City's variance criteria. Staff therefore recommends an alternative that it believes accommodates the disability, but at the same time recognizes the requirements of the variance criteria and the aesthetics of the subdivision. Staff recommends a concrete driveway that will accommodate three, nine foot wide, 20 foot long, parking spaces for a total width of 27 feet. Staff also recommends an additional ADA landing pad, five feet in width, for a total concrete width of 32 feet. Staff would also allow the applicants to replace the grass at the end of the concrete pad with beauty bark or some other material (plants) that could help restrain the disabled youth. Staff also notes the availability of on-street parking in front of the residence.
13. Staff's recommendation requires removal of 14 feet of concrete width and restoration of the planting strip in the area of concrete removal. Staff does not recommend digging up the concrete to install a utility sleeve.
14. The applicants disagree with staff's recommendation, believing that they need to retain the entire 46 foot width of concrete. However, the 46 foot width is almost twice as wide as allowed by the YMC and significantly wider than the minimum, ADA pad width. The Examiner finds that staff's proposal reasonably reconciles the ADA requirements with the court decisions. However, the applicants may extend the concrete pad to the street as such will allow more area to accommodate the youth, will not detrimentally impact the aesthetics of the applicants' parcel, and will not require vehicle maneuvering to access the pad.
15. Because the variance is based upon the disability of a youth that is entitled to ADA protections, it is difficult to evaluate the variance request in accordance with the criteria set forth in YMC 18.14.100(C). However, the proposed variance recommended by City staff in consideration of ADA requirements satisfies the variance criteria to the greatest extent possible. The Examiner therefore finds that the variance for the expanded driveway width as proposed by staff satisfies all such criteria and is also a reasonable nexus to accommodate the youth's disability.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The modified variance as described above satisfies all criteria set forth in YMC 18.14.100 and ADA standards. Therefore, a variance in accordance therewith should be granted subject to compliance with the following conditions:
 1. The applicants may retain a total driveway width of 32 feet from the street to the fence/house.
 2. Within six (6) months of the effective date of this decision, the applicants shall remove all concrete beyond the 32 foot width, and shall restore said area with beauty bark, grass, or plantings at the applicants' choice subject to review by the City. Furthermore, the applicants shall restore the planter strip adjacent to the road in the area of concrete removal with grass and a street tree.

DECISION:

The request for a variance to allow retention of a 46 foot wide, concrete, driveway width at a site located at 16519-92nd Avenue S.E., Yelm, is hereby denied. However, a variance to allow a 32 foot wide, concrete, driveway width is hereby granted subject to compliance with the conditions contained in the conclusions above.

ORDERED this 24th day of November, 2020.



STEPHEN K. CAUSSEAUX, JR.
Hearing Examiner

TRANSMITTED this 24th day of November, 2020, to the following:

APPLICANTS: Jason and Tara Rudis
Erica Isabel
16519 92nd Avenue S.E.
Yelm, WA 98597

OTHERS:

Danielle Beyer
16514-92nd Avenue S.E.
Yelm, WA 98597

VIS Group, Inc.
8617 Martin Way East
Lacey, WA 98516

CITY OF YELM

CASE NO.: 2020.0288.VA0001

NOTICE

All final decisions of the hearing Examiner may be appealed to the City Council at a closed record appeal hearing, initiated by a person who has standing to appeal. All appeals must be filed within 21 days from the date of the decision being appealed in accordance with Section 18.10.100 Yelm Municipal Code.