



CITY OF REDMOND
APPEAL APPLICATION FORM

(Staff Use Only)

File No: _____
Date Received: _____

This appeal application form is for appeals of Technical Committee and Hearing Examiner decisions only.

Do not use this form if you are appealing a decision on a:

- Shoreline Permit
- Shoreline Variance
- Shoreline Conditional Use Permit
- Hearing Examiner decision on a SEPA appeal
- City Council approval or denial

Appeal Applications may be delivered to the Office of the City Clerk-Finance/Hearing Examiner by email, mail, personal delivery or by fax before 5:00 P.M on the last day of the appeal period.

City of Redmond Office of the City Clerk-Finance/Hearing Examiner Contact Information:

Mailing Address:
Office of the City Clerk/
Hearing Examiner
P.O. Box 97010, 3NFN
Redmond, WA 98073

Personal Delivery:
City Hall, 2nd Floor
Customer Service Center
C/O City Clerk's Office
15670 NE 85th Street
Redmond, WA 98073

Phone: 425-556-2191
Fax: 425-556-2198
Email: cdxanthos@redmond.gov
Web: <http://www.redmond.gov>

Appeals of City Council decisions may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW Section 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

Section A. General Information

Name of Appellant: Milestone Northwest LLC and Greenbank Development LLC

Address: 227 Bellevue Way NE # 183 Email: greg@milestonenw.com

City: Bellevue State: WA Zip: 98004 Email: See above

Phone: (home) (206) 817-4192 (work) (206) 817-4192 (cell) (206) 817-4192

What is your relationship to the project?

- Interested Citizen Project Applicant Government Agency



CITY OF REDMOND
APPEAL APPLICATION FORM

(Staff Use Only)

File No: _____

Date Received: _____

Name of project that is being appealed: Grass Lawn - Technical Committee decision attached as Exhibit 1

File number of project that is being appealed: LAND-2015-02377 / LDC File No.: 15-153

Date of decision on project you are appealing: March 31, 2016

Expiration date of appeal period: April 14, 2016

Please choose the applicable appeal:

Appeal to the Hearing Examiner of a Technical Committee Decision

Appeal to City Council of a Hearing Examiner decision on an appeal

Appeal to City Council of a Hearing Examiner decision on an application

Pursuant to the Redmond Zoning Code, only certain individuals have standing to appeal a decision on application or appeal. Below, please provide a statement describing your standing to appeal. (Please review the back page to determine if you have standing to appeal.)

See Exhibit 2

Section B. Basis for Appeal

If you are appealing a Technical Committee Decision, please fill out items 1, 2, and 3 **only**. If you are appealing a Hearing Examiner's decision on an application, or a Hearing Examiner's decision on an appeal, you only need to fill out item 4 below. Attach additional sheets if necessary.

1. Please state the facts demonstrating how you are adversely affected by the decision (attach additional sheets as necessary):

See Exhibit 2



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2. Please provide a concise statement identifying each alleged error and how the decision has failed to meet the applicable decision criteria (attach additional sheets as necessary):

See Exhibits 2-3

3. Please state the specific relief requested (attach additional sheets as necessary):

See Exhibits 2-3

4. Please provide a written statement of the findings of fact or conclusions (as outlined in the Hearing Examiner's decision) which are being appealed (attach additional sheets as necessary):

See Exhibits 2-3



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Standing to Appeal

TECHNICAL COMMITTEE DECISIONS

For appeals of a Technical Committee Decision on a Type I or II permit, the project applicant or any person who submitted written comments (party of record) prior to the date the decision was issued may appeal the decision. The written appeal must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00pm on the 14th calendar day following the date of the decision by the Department.

HEARING EXAMINER DECISION ON APPEALS OF TECHNICAL COMMITTEE DECISIONS

For appeals of a Hearing Examiner Decision on an Appeal of a Technical Committee Decision, the project applicant, any person who participated in the public hearing as provided in RZC 21.76.060, or the City may appeal.

HEARING EXAMINER DECISIONS

For appeals of a Hearing Examiner Decision, the project applicant, any person who participated in the public hearing as provided for in RZC 21.76.060, or the City may appeal.

EXHIBIT 1

Technical Committee decision dated March 31, 2016

From: Benjamin Sticka <bsticka@redmond.gov>

Date: March 31, 2016 at 4:25:37 PM PDT

To: "greg@milestonenw.com" <greg@milestonenw.com>, Matthew Merritt <mmerritt@ldccorp.com>

Cc: Steve Fischer <SFISCHER@REDMOND.GOV>

Subject: Grasslawn reconsideration of Technical Committee's decision

Greg,

Thank you for your request for reconsideration of the Technical Committee's decision on March 2, 2016, which denied your request to allow four (4) percent tree retention where 35 percent is the minimum required. The Director, Robert Odle has reviewed your request, including the submitted materials dated March 16, 2016. Based upon the information provided, the Director has denied your request for reconsideration of the Technical Committee's decision. The Director's decision is based upon the following information:

- The minimum density for the subject site is 4 dwelling units, which affords the opportunity for a better project design, which would accommodate additional trees.
- Redmond Zoning Code RZC 21.72.060(A)(1) – Tree Protection Standards – In all new development a minimum of 35 percent of all significant trees shall be retained.
- A different housing product on two of the lots would accommodate additional trees being saved.
- A reconfiguration of the roadway and/or lots would accommodate additional trees being saved.

However, the Director has indicated that he may re-consider a new request at a later date, once all site design issues are finalized. The outstanding design issues include, but are not limited to the following; stormwater, sewer and utilities. Please contact me with any additional questions you might have, related to this decision or any additional information related to the Grass Lawn short plat. Thank you.

Ben Sticka

Planner

City of Redmond – Planning & Community Development

15670 NE 85th St, Redmond, WA 98052 MS:2SPL

P: 425.556.2470 F: 425.556.2400

EXHIBIT 2

Supplement to Appeal Application Form

Pursuant to the Redmond Zoning Code, only certain individuals have standing to appeal a decision on application or appeal. Below, please provide a statement describing your standing to appeal. (Please review the back page to determine if you have standing to appeal.)

As the applicants for a Tree Retention Exception dated February 25, 2016, Milestone Northwest LLC and Greenbank Development LLC (“Appellants”) have standing to appeal because they are adversely affected by the Technical Committee’s decision to deny the Tree Retention Exception for the reasons explained in Section B.1 below. The instructions that accompany the City’s appeal form explicitly recognize that, “[f]or appeals of a Technical Committee Decision on a Type I or II permit, the project applicant . . . may appeal the decision” (emphasis added).

Section B. Basis for Appeal

If you are appealing a Technical Committee Decision, please fill out items 1, 2, and 3 only. If you are appealing a Hearing Examiner’s decision on an application, or a Hearing Examiner’s decision on an appeal, you only need to fill out item 4 below. Attach additional sheets if necessary.

1. Please state the facts demonstrating how you are adversely affected by the decision (attach additional sheets as necessary):

The Appellants are adversely affected by the Technical Committee’s decision to deny the Tree Retention Exception because the decision results in an improperly strict interpretation and application of the City’s Tree Retention Ordinance to the Appellants’ proposed plat. Unless the Technical Committee’s decision is reversed, the Appellants will be unreasonably burdened by an automatic set-aside of 35% of the development site. As explained below, this result is unsupported by the City’s Tree Retention Ordinance and is illegal under Washington law.

2. Please provide a concise statement identifying each alleged error and how the decision has failed to meet the applicable decision criteria (attach additional sheets as necessary):

On March 16, 2016, Appellants timely filed a Request for Reconsideration of the Technical Committee’s decision. The Appellants’ Request for Reconsideration, which is attached as Exhibit 3 to the Appellants’ Appeal Application Form and incorporated herein by this reference, sets forth in detail the errors in the Technical Committee’s decision and how the decision failed to meet the applicable decision criteria.

3. Please state the specific relief requested (attach additional sheets as necessary):

The Appellants respectfully request that the Examiner reverse the Technical Committee's decision and order the Committee to issue a new decision approving the Appellants' Tree Retention Exception request, as it was modified in the Appellants' Request for Reconsideration.

4. Please provide a written statement of the findings of fact or conclusions (as outlined in the Hearing Examiner's decision) which are being appealed (attach additional sheets as necessary):

As noted in the instructions above, this question is not applicable because no Hearing Examiner decision is being appealed.



719 Second Avenue, Suite 1150
Seattle, WA 98104-1728
206-623-9372
vnf.com

March 16, 2016

VIA U.S. MAIL AND E-MAIL

Paulette Norman, P.E.
Engineering Manager
Dept. of Planning & Community Development
City of Redmond
15670 NE 85th Street
Redmond WA 98052
pmnorman@redmond.gov

Benjamin Sticka
Planner
Dept. of Planning & Community Development
City of Redmond
15670 NE 85th St.
Redmond, WA 98052
bsticka@redmond.gov

Re: Request for Reconsideration
Grass Lawn – Tree Retention Exception
Redmond File No.: LAND-2015-02377
LDC File No.: 15-153

Dear Ms. Norman and Mr. Sticka:

We represent Milestone Northwest LLC and Greenbank Development LLC, the Applicants for the above-referenced request for a Tree Retention Exception dated February 25, 2016 (the "Exception Request").

We are writing to respectfully request reconsideration of the Technical Committee's decision dated March 2, 2016, denying the Exception Request. Copies of the original exception application and the Committee's decision denying the application are attached.¹ For the reasons explained below, the Committee should reconsider their original decision and grant the Exception Request.

1. Introduction.

In the e-mailed decision denying our exception request, the Technical Committee described the requested exception as follows: "to allow four (4) percent tree retention where 35 percent is the minimum required for the Grass Lawn Short Plat." In our original application, we stated that, while ten significant trees will in fact be retained and will not be harmed according to the certified arborist's report submitted with our application, only one tree could be "counted" as having been "retained" under the City's standards. This statement was based on City staff's interpretation of the requirement in RZC 21.72.060.A.1, which provides that "a minimum of 35 percent of all significant trees shall be retained." Under the City's interpretation, that requirement is not satisfied unless all of the other requirements in RZC 21.72.060.B and RZC

¹ See Attachments 1-2.

21.72.060.C are also met. This interpretation incorrectly conflates the 35% retention requirement in RZC 21.72.060.A.1 with the other tree protection requirements in RZC 21.72.060.C, such as the requirement in RZC 21.72.060.C.1 to locate the construction limit for a structure, utility, or roadway no closer than five feet outside of the drip line of a protected tree. Those are separate requirements that must be evaluated separately.

After closer examination of the Tree Protection Ordinance, we now believe that 36% (10 out of 28) of the trees should be treated as being “retained” under RZC 21.72.060.A.1. The RZC does not define the term “retained,” but that term is commonly understood to mean the opposite of “removal,” which is defined in RZC 21.78 as follows:

Removal of a tree(s) or vegetation, through either direct or indirect actions, including but not limited to clearing, cutting, causing irreversible damage to roots or trunks; poisoning; destroying the structural integrity; and/or any filling, excavation, grading, or trenching in the drip line area of a tree which has the potential to cause irreversible damage to the tree, or relocation of an existing tree to a new planting location.

Here, the arborist’s report and the additional documentation provided with this request confirm that none of the ten significant trees proposed for retention will be removed, either directly or indirectly, because no “irreversible damage” will be done to those trees. Thus, none of those trees will be “removed,” 36% of the trees will be “retained,” and the 35% requirement in RZC 21.72.060.A.1 has been exceeded by 1%.

Despite our best efforts to avoid impacts to trees, however, site constraints and other factors prevent strict compliance with all of the “drip line” requirement in RZC 21.72.060.C.1 (to locate the construction limit for a structure, utility, or roadway no closer than five feet outside of the drip line of a protected tree). Thus, the focus of our exception request is the “drip line” requirement in RZC 21.72.060.C.1, not the 35% retention requirement in RZC 21.72.060.A.1.

Moreover, even if the City’s interpretation of the 35% retention requirement were correct, after further evaluation, we now believe that a total of seven trees would meet the standards in RZC 21.72.060.C and should therefore be “counted” as having been retained under the City’s interpretation. In addition to the one “retained” tree (Tree T-17) described in our original application, we have identified the following six trees that should also be counted as “retained” (even under the City’s interpretation) for the reasons discussed below: trees T-13, T-23, T-25, T-27, T-34, and T-105.

- Trees T-13, T-23, T-25, T-27, T-34, and T-105: RZC 21.72.060.C.4 provides that “[t]he Administrator may allow construction limits or an alteration of grades within five feet of the drip line of a protected tree, provided that the applicant submits an evaluation by a certified arborist which demonstrates that the proposed construction will not reduce the long-term viability of the tree.” Here, while limited disturbance will occur *within 5 feet of the drip line* of trees T-13 and T-34 (and *within the drip line itself* of trees T-23, T-25, T-28, and T-104), the Applicant’s certified arborist has confirmed that the proposed

construction will not reduce the long-term viability of those trees, or any other trees proposed for retention. Thus, these trees should be counted as retained under RZC 21.72.060.C.4.

- Trees T-23, T-25, T-27, and T-104: RZC 21.72.060 .C.3 provides that “[s]idewalks and utilities may be located within the drip line of a protected tree, provided that construction methods and materials used will result in minimal disruption of the tree’s roots, and that additional measures for tree protection are proposed and approved which will ensure the long-term viability of the tree.” The City has indicated a preference for a sidewalk in the northwest corner of the site, in the vicinity of trees T-23, T-25, T-28, and T-104. Accordingly, the Applicant now proposes to construct a sidewalk in that area, using appropriate construction methods and materials and additional measures recommended by our client’s arborist, which would bring these four listed trees under the provisions of RZC 21.72.060 .C.3 and allow those trees to be counted as retained as well.

Thus, even under the City’s interpretation, the Committee should consider a total of 7 trees as “retained” under the City’s standards (with Administrative approval), which would bring the percentage of “retained” trees on site to 25% rather than 4% as stated in the Committee’s decision denying our request. In considering this percentage, it bears emphasis that the Applicant’s arborist has confirmed that all ten trees proposed for retention (36%) will in fact be “saved” and will continue making a positive long-term contribution to the landscape, even though only 25% will be “retained” according to the City’s interpretation of the retention requirement.

These facts alone would justify approval of our reconsideration request. Nevertheless, we provide additional detail below regarding the reasons supporting reconsideration. Section 2 below provides specific comments regarding how each of the exception criteria in RZC 21.72.090.B have been met. Section 3 provides responses to the reasons offered by the Technical Committee for its decision denying our exception request.

2. The Exception Criteria in RZC 21.71.090.B Have Been Met.

RZC 21.72.090.B provides the following criteria for approval of an exception:

Exception Criteria. An exception shall not be granted unless criteria B.1, B.2, B.3, and B.4 of this subsection are satisfied:

1. The exception is necessary because:
 - a. There are special circumstances related to the size, shape, topography, location, or surroundings of the subject property; or
 - b. Strict compliance with the provisions of this code may jeopardize reasonable use of property; or

- c. Proposed vegetation removal, replacement, and any mitigating measures proposed are consistent with the purpose and intent of the regulations; or
 - d. The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity; or
 - e. The strict compliance with the provisions of this code would be in conflict with the increased density of urban centers and result in development that would be inconsistent with the adopted vision for the neighborhood.
2. If an exception is granted below the required minimum retention standard of 35 percent, tree replacement shall be at a minimum of three trees for each significant tree removed. Tree replacement ratios may be modified for master plans within urban centers to allow for 1:1 replacement when accompanied by a three-tier vegetative replacement plan.
 3. Native Growth Protection Area (NGPA). Trees within an established Native Growth Protection Area shall not be removed, except when removal has its specified purpose:
 - a. To remedy a hazardous tree;
 - b. To establish a nonmotorized trail as part of a private environmental interpretation program or City of Redmond trail system;
 - c. To relocate or consolidate existing trails for the purpose of controlling human impacts to vegetation;
 - d. To stabilize slopes;
 - e. To add or restore native plants;
 - f. To control and replace nonnative vegetation;
 - g. To restore degraded watercourses or wetlands; or
 - h. To implement a City of Redmond long-term restoration or management plan.
 4. Proposed tree removal, replacement, and any mitigation proposed are consistent with the purpose and intent of this section.

RZC 21.72.090.B (emphasis added). Notably, if the criteria in B.2, B.3, and B.4 are met, only one of the specific standards in B.1 must be met (as confirmed by the repeated use of the word “or” in the listing of those standards).

As explained below, in this case, several of the standards in B.1 have been satisfied, and all of the criteria in B.2, B.3, and B.4 have been met.

a. Several of the standards in B.1 have been satisfied.

- i. *There are special circumstances related to the size, shape, topography, location, or surroundings of the subject property (B.1.a).*

Several factors related to the size, shape, topography, location, and surroundings of the subject property, when compared to the characteristics of more typical properties in the City, make it impossible to achieve strict compliance with all standards in the Tree Protection Ordinance without sacrificing fundamental project goals, such as the creation of six lots (base density) rather than a smaller number of lots. Special circumstances supporting an exception include the following:

- A large percentage of existing significant trees on site are located along the westerly property line. Under any reasonable access solution (considering both the subject property and access to/for the property to the west), ten significant, viable trees along the westerly property line must be removed. The natural and most effective extension of the right-of-way, alternatives shifting the right-of-way into the subject site, will result in the removal of more than 1/3 of the viable trees onsite, which limits the pool of available trees to save to those located primarily within the northerly 1/3 of the property. Because many of those trees have larger driplines or are located in close proximity to necessary vault, or utility installation locations, strict compliance with the City's standards would severely restrict the developable area of the property.
- The Applicant's engineering team confirmed that, if the roadway and lots were re-configured as suggested by the Technical Committee, with functional access provided to westerly future development and sufficient offset/setback area to achieve strict compliance with the City's tree retention and other setback requirements, only four lots and the necessary detention facility could be constructed on the site. This is because the site has insufficient width to accommodate buildable lots if the roadway is shifted into the site to attempt to avoid "impacts" to trees located along the westerly property line.
- The stormwater vault must be located at the north end of the property, limiting options for avoidance of trees in that area.
- The available offsite easement for storm and sewer restrict the installation depth of the storm pipe, which in turn restricts the installation depth of the onsite vault, increasing the degree of grading and lot pad fill required to build on this site, and further limiting vault location.

- Due to the shape of the property and existing/required access location, Lots 1-4 are abnormally deep, but there is still insufficient depth in them to develop additional lots or stormwater use in the available space.

Thus, the criterion in B.1.a has been met because special circumstances surrounding the site prevent strict compliance with all of the tree protection standards. In addition, as explained below, if the City refuses to give appropriate consideration to site-specific conditions in applying the Tree Preservation Ordinance to this property, the City will run afoul of constitutional and statutory principles limiting the City's authority to impose conditions that have a "nexus" and "rough proportionality" to the site-specific impacts a particular project.

- ii. *Strict compliance with the provisions of this code may jeopardize reasonable use of property (B.1.b).*

Strict compliance with the Tree Protection Standards in 21.72.060 would jeopardize reasonable use of the property. The Applicant's proposal, which is fully consistent with the zoned density for the site, represents a "reasonable use" of the property. The rationale offered by the Committee for its decision denying our exception request makes it clear that strict application of the Tree Protection Standards would prohibit that reasonable use.

The Committee's e-mail denying our exception request incorrectly suggests that the Tree Protection Standards require the Applicant to reduce density in an effort to meet those standards, which would mean that "reasonable use" is not jeopardized unless compliance with the Tree Protection Standards forces a reduction in density – not only below the base density of 5 du/acre, but also below the minimum density of 4 du/acre. Such a definition of "reasonable use" flies in the face of the policies of the Growth Management Act (GMA) and the City's Comprehensive Plan that are intended to encourage greater density in urban areas, not the bare minimum of densities. The Tree Protection Standards suggest that applicants may be asked to alter the "design" of a project in an effort to comply, but nothing in the Tree Protection Standards suggest that applicants must reduce a project's density. Such an approach would conflict not only with the GMA but also with the Regulatory Reform Act, which confirms that local governments may not revisit fundamental land use planning choices made in adopted comprehensive plans and development regulations, including decisions regarding allowable density, during the project review process. *See* RCW 36.70B.030(1)-(3).

As for the project's design, we have already complied with the requirement to design the site in a manner that will protect trees, and we have done so to the maximum extent possible given the site constraints discussed above and the input we have received from City staff regarding the location of the roadway. For example, the City's Pre-Application comments refer to a shared driveway with the property adjacent to the west, which restricts our alignment to parallel to the property line. The Tree Protection Ordinance does not require applicants to make practically or economically unreasonable design choices in order to achieve strict compliance with its standards, particularly when those choices would conflict with direction from other City staff.

Indeed, the City's approach to "reasonable use," as reflected in the Committee's e-mail, turns the appropriate legal framework on its head. The Committee incorrectly suggests that an applicant has the burden of showing that strict compliance with the 35% retention requirement poses an unreasonable burden. On the contrary, constitutional and statutory principles of "nexus" and "rough proportionality" put the burden on the City to show that development restrictions are reasonably related and proportionate to the impact of a particular development.² As the courts have explained:

Our supreme court has repeatedly held that [RCW 82.02.020] requires "that development conditions must be tied to a specific, identified impact of a development on a community." The plain language of the statute does not permit conditions that are reasonably necessary for *all* development, or *any potential* development. Rather, the statute specifically requires that a condition be "reasonably necessary as a direct result of *the proposed* development."³

This is particularly true for development regulations involving pre-defined percentages of a property's area that must be set aside, regardless of the impact of a proposed development. Such regulations have been consistently invalidated by Washington courts.⁴ In one case, the court struck down an ordinance requiring a 30 percent "open space" set aside where a city made no individualized determination that the 30 percent requirement was necessary to mitigate an impact of the development; the condition was disproportionate to the impact caused by the subdivision; and the City had not established a need for additional open space within the city limits as a result of the proposed development.⁵ In another case, the court struck down an ordinance that limited the amount of space to be cleared on each lot according to the size of the lot where the amount of land to be reserved had no relation to the impacts of the proposed development.⁶

Here, if the City interprets and applies its Tree Preservation Ordinance as requiring an applicant to prove the unreasonableness of measures such as reducing densities or eliminating lots to achieve strict compliance with a pre-defined 35% set-aside, which is strictly applied regardless of the particular site conditions and project impacts, the City's actions will be similarly unlawful. Indeed, an interpretation of the 35% retention requirement that would strictly require a large "no-touch" area around 35% of a site's trees, without considering site-specific conditions and impacts, would result in precisely the same type of automatic "open space" set-aside that the courts have invalidated.

² *Nollan v. California Coastal Com'n*, 483 U.S. 825, 107 S.Ct. 3141 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391, n. 8, 114 S.Ct. 2309 (1994); RCW 82.02.020.

³ *Citizens' Alliance for Prop. Rights v. Sims*, 145 Wn. App. 649, 665, 187 P.3d 786, 794 (2008), rev. denied, 165 Wn.2d 1030, 203 P.3d 378 (2009) (emphasis in original) (internal citations omitted).

⁴ *Isla Verde International Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002); *Citizens' Alliance*, 145 Wn. App. at 656.

⁵ *Isla Verde*, 146 Wn.2d at 755.

⁶ *Citizens' Alliance*, 145 Wn. App. at 668.

- iii. Proposed vegetation removal, replacement, and any mitigating measures proposed are consistent with the purpose and intent of the regulations (B.1.c).*

The purposes of the Tree Protection Ordinance include the following:

1. Avoid the removal of stands of trees and significant trees in order to maintain the quality of Redmond's urban environment;
2. Protect stands of trees and significant trees to the maximum extent possible in the design of new buildings, roadways, and utilities;
3. Mitigate the environmental and aesthetic consequences of tree removal in land development through on-site and off-site tree replacement to achieve a goal of no net loss of trees throughout the City of Redmond;
4. Provide measures to protect trees that may be impacted during construction;
5. Maintain and protect the public health, safety, and general welfare; and
6. Preserve the aesthetic, ecological, and economic benefits of forests and tree-covered areas in Redmond . . .

RZC 21.72.010.A.

As discussed in the report prepared by our client's certified arborist and further explained in the attached letter from the arborist,⁷ our proposed "removal, replacement, and mitigating measures" are consistent with these purposes. First, as explained above, we have avoided the removal of significant trees consistent with the City's 35% retention requirement. The arborist has confirmed that there will be no "irreversible damage" to any of the trees proposed for retention. Second, even though we are complying with the 35% retention requirement, we are providing 3-to-1 mitigation for trees for which strict compliance with the "drip line" requirements of RZC 21.72.010.C cannot be met. In addition, we are proposing numerous tree protection measures outlined in the arborist's report (Section 8) in addition to those required under the RZC. As a result, we have met all of the purposes of the Tree Protection Ordinance. Indeed, as the arborist explained in the attached letter, "[b]y the establishment of native tree species within the open-space tract on the north perimeter of the site, future tree canopy coverage will likely exceed what currently exists on the site" (emphasis added). Thus, the proposed "vegetation removal, replacement, and any mitigating measures" will be fully consistent with the purpose and intent of the regulations because, when considered collectively, they will provide a net benefit to the quality of Redmond's urban environment and make a positive contribution toward Redmond's "no net loss" goal.

- iv. The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity (B.1.d).*

As discussed in the report prepared by our client's certified arborist and further explained in the attached letter from the arborist, a decision to grant the requested exception will not be detrimental to the public welfare or injurious to other property in the vicinity. The arborist's

⁷ See Attachment 3.

submittals describe how the project's design is not likely to promote a decline in tree health or compromise the structural stability of any of the ten trees proposed for retention (to be saved) because sufficient space has been reserved to maintain trees in a viable condition, even though strict compliance with the tree protection requirements in RZC 21.72.060.C cannot be achieved for three of those trees. Because there will be no adverse impacts to those trees and the Applicant will provide 3-to-1 mitigation for those three trees as if they were being removed, there will be no adverse impact to the public welfare or other property in the vicinity. On the contrary, when compared to strict compliance with the tree protection standards without the proposed planting of 15 additional trees, a decision to grant an exception will provide a long-term net benefit to the public welfare by providing a larger and more stable tree canopy.

b. All of the criteria in B.2, B.3, and B.4 have been met.

- i. *B.2 is met by the Applicant's proposal to replace three trees for each significant tree removed for which full compliance with the tree protection requirements in RZC 21.72.060.C cannot be achieved.*

Criterion B.2 provides as follows:

If an exception is granted below the required minimum retention standard of 35 percent, tree replacement shall be at a minimum of three trees for each significant tree removed. Tree replacement ratios may be modified for master plans within urban centers to allow for 1:1 replacement when accompanied by a three-tier vegetative replacement plan.

This criterion has been met. First, as explained above, the Applicant has achieved compliance with the 35% minimum retention standard. Second, even accepting the City's misinterpretation of that standard, the applicant has provided 3-to-1 tree replacement for each tree for which full compliance with the tree protection requirements in RZC 21.72.060.C cannot be achieved.

- ii. *B.3 is met because it does not apply.*

Criterion B.3 limits removal of trees within an established Native Growth Protection Area. As explained in our original application, this criterion does not apply because there are no existing Native Growth Protection Areas on the site.

- iii. *B.4 is met for the reasons explained above.*

Criterion B.4 provides that "[p]roposed tree removal, replacement, and any mitigation proposed are consistent with the purpose and intent of this section." This criterion is met for the reasons explained above in Section 1.a.iii.

3. The Reasons Cited by the Committee Do Not Support its Denial of the Exception Request.

The Technical Committee's decision stated that it denied the request based upon the following reasons:

- The minimum density for the subject site is four dwelling units, which affords the opportunity for a better project design, which would accommodate additional trees.
- Redmond Zoning Code RZC 21.72.060(A)(1) – Tree Protection Standards – In all new development a minimum of 35 percent of all significant trees shall be retained.⁸
- A different housing product on two of the lots would accommodate additional trees being saved.
- A reconfiguration of the roadway and/or lots would accommodate additional trees being saved.

These are not valid reasons to deny the requested exception. As explained above, the Tree Protection Standards do not require an applicant to reduce density, eliminate lots, or radically re-design project layouts that have already been designed based on input from other City staff. Instead, they require applicants to make reasonable efforts to avoid adverse impacts to significant trees and to mitigate any unavoidable adverse impacts. We have easily met that requirement by investing substantial time and expense to ensure that ten trees are actually retained by avoiding direct or indirect "removal"; to ensure that five trees are "retained" under the City's interpretation by achieving strict compliance with all protection requirements; to ensure that all trees proposed for retention will in fact be saved even though some development activity will occur within the drip line of some trees; and to ensure that 3-to-1 mitigation is nevertheless provided for those trees as though they were being removed.

Moreover, the four bullet points cited in the Committee's decision do not establish that none of the exception criteria in RZC 21.72.090.B.1 have been met. As explained above, the materials submitted in support of our exception request show that several of those criteria have been met, and the Committee's bullet points are wholly irrelevant to some of the criteria. For example, those bullet points do not address the "special circumstances" surrounding the subject property; do not address the consistency of the proposed removal, replacement, and mitigation with the "purpose and intent" of the regulations; and do not address the question of whether granting the exception will be detrimental to the public welfare or injurious to other property in the vicinity. As discussed above, the record submitted to the Committee shows that all of these exception criteria have been met, and even one criterion would be sufficient to support granting an exception.

⁸ The general standard in RZC 21.72.060(A)(1) requiring retention of 35 percent of significant trees, by itself, is not a reason that could justify denying an exception request. We are requesting an exception to that standard. If the standard were a valid reason to deny granting an exception, the exception process would be meaningless.

Ms. Paulette Norman, P.E.
Mr. Benjamin Sticka

- 11 -

March 16, 2016

For these reasons, we respectfully request that the Technical Committee reconsider its decision denying our exception request and issue a new decision granting the request, as it has been clarified in this submittal.

Thank you for your consideration of this request. Please feel free to contact us if you would like to discuss this matter further.

Sincerely,

VAN NESS FELDMAN LLP

A handwritten signature in blue ink, appearing to read "D. M. Greene", written in a cursive style.

Duncan M. Greene

Enclosures



Commercial
Infrastructure
Residential

February 25, 2016

Ben Sticka
City of Redmond
Dept. of Planning & Community Development
15670 NE 85th St.
Redmond, WA 98052

Subject: Grass Lawn - Tree Retention Exception
Redmond File No.: LAND-2015-02377
LDC File No.: 15-153

Dear Mr. Sticka,

Proposed Exception

Pursuant to your review of the previously submitted materials for the Grass Lawn project we are providing you with this request for an exception to retain less than 35% of existing significant trees as required by section 21.72.060 of the Redmond Zoning Code (RZC). Per RZC section 21.72.090.B an exception is allowed if criteria are met within subsections B.1, B.2, B.3, and B.4.

Per the definitions outlined in 21.72.060, 28 existing significant trees requires the retention of 10 trees to meet 35%. Though 10 trees will be retained onsite, only 1 of those trees can be "counted" as retained. Please accept this letter as a formal exception request to count 1 tree (4%) as retained, and provide mitigation for the other 9 trees which will remain, but cannot "count" as retained.

Exception Criteria

B.1 - The exception is necessary because:

- a. There are special circumstances related to the size, shape, topography, location, or surroundings of the subject property; or*
- b. Strict compliance with the provisions of this code may jeopardize reasonable use of property; or*
- c. Proposed vegetation removal, replacement, and any mitigating measures proposed are consistent with the purpose and intent of the regulations; or*
- d. The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity; or*
- e. The strict compliance with the provisions of this code would be in conflict with the increased density of urban centers and result in development that would be inconsistent with the adopted vision of the neighborhood.*

It is the intent of the developer to retain as many healthy significant trees as possible, while still reasonably developing the site to meet planning and density requirements. Of the 28 existing significant trees onsite, 16 of those trees (57%) are located along the western property line - where the 141st Ct. NE road extension and utility access road are located per City of Redmond requirements. Another 7 trees (25%) are located such that homes could not be built on lots 3, 4, and 6 and site grading could not be completed to adequately construct a buildable development meeting density requirements. Section 21.72.060 identifies that any grading, roadways or structures located within 5 feet of a

tree drip line will disqualify the subject tree from being applied toward retention requirements (the City identifies these trees as “impacted”). The site has been laid out to retain up to 10 trees, however, 9 of these trees are considered impacted and cannot be counted toward retention requirements. Existing tree locations combined with site development requirements create a situation where strict retention per the code is infeasible.

B.2 - If an exception is granted below the required minimum retention standard or 35 percent, tree replacement shall be at a minimum of three trees for each significant tree removed. Tree replacement ratios may be modified for master plans with urban centers to allow for 1:1 replacement when accompanied by a three-tier vegetative replacement plan.

The proposed development will retain 1 tree per the RZC definition and attempt to retain another 9 trees, identified as impacted. Since 10 trees are required to be retained by code, the remaining 9 trees will be replaced at a 3:1 ratio.

B.3 - *Native Growth Protection Area (NGPA). Trees within an established NGPA shall not be removed.*

There are no existing Native Growth Protection Areas on the site; therefore this criteria is not applicable.

B.4 - *Proposed tree removal, replacement, and any mitigation proposed are consistent with the purpose and intent of this section.*

The proposed tree removal in conjunction with the replacement trees are in compliance with RZC 21.72 as demonstrated in the Arborists Report, the Tree Preservation Plan and the Landscape Plan.

Project History and Functional Equivalence

The Grass Lawn site has seen multiple re-design scenarios to attempt maximum tree retention. The current layout will potentially yield compliance with the 35% retention if all “impacted” trees survive construction. The arborist report provides “limits of disturbance” for the surveyed trees, identifying a limit within the drip line where development can occur without causing “long-term decline or compromise structural stability” of the trees. The current grading/construction plans attempt to minimize work within the limits of disturbance to give the trees a higher probability of survival. Additionally, all impacted trees will be replaced at a 3:1 ratio in the event that these trees do not survive construction. Ultimately, there will be a mix of old and new trees on the site that will maintain the quality of Redmond’s urban environment and meet the intent of RZC 21.72.

The proposed exception will not affect safety, public health, function, fire protection, transit needs, or maintainability and we foresee no adverse impact to the proposed development or surrounding neighborhood. Additionally, the proposed deviation will provide substantially equivalent environmental protection as would be provided if the standard requirements were met in their entirety. Given the standards have been applied to the greatest extent feasible with this development; we respectfully request consideration for this exception.

Thank you for your consideration in this request. Please contact me if you have any questions or comments regarding this issue.

Sincerely,

Matthew Merritt, P.E.
Project Manager, LDC.

Attachment 2 – Decision Denying Exception Request

From: Benjamin Sticka [<mailto:bsticka@redmond.gov>]
Sent: Wednesday, March 2, 2016 4:33 PM
To: Matthew Merritt <mmerritt@ldccorp.com>; Arms, Greg <greg@milestonenw.com>
Subject: March 2, 2016 - Technical Committee Decision for Grass Lawn

Matthew/Greg,

Good afternoon. The Technical Committee met today to consider your requested exception to allow four (4) percent tree retention where 35 percent is the minimum required for the Grass Lawn Short Plat. The Technical Committee denied the request based upon the following:

- The minimum density for the subject site is 4 dwelling units, which affords the opportunity for a better project design, which would accommodate additional trees.
- Redmond Zoning Code RZC 21.72.060(A)(1) – Tree Protection Standards – In all new development a minimum of 35 percent of all significant trees shall be retained.
- A different housing product on two of the lots would accommodate additional trees being saved.
- A reconfiguration of the roadway and/or lots would accommodate additional trees being saved.

If you would like to appeal the Technical Committee's decision you have 10 days to do so. You would be required to request in writing, a reconsideration of the Technical Committee's decision. Please let me know how you would like to proceed. Thank you.

Ben Sticka

Planner

City of Redmond – Planning & Community Development

15670 NE 85th St, Redmond, WA 98052 MS:2SPL

P: 425.556.2470 F: 425.556.2400



11415 NE 128th St Suite 110 Kirkland WA 98034 • (425)820-3420 • FAX (425)820-3437
 www.americanforestmanagement.com

March 11, 2016

Mr. Matthew Merritt,
 LDC, Inc.
 14201 NE 200th St, Ste 100
 Woodinville, WA 98072

RE: Grass Lawn Project – Tree Protection

Dear Mr. Merritt:

Per your request, we are providing supporting information regarding the proposed tree retention/protection plan for the Grass Lawn Project in Redmond.

Although many of the retained trees will be impacted to some degree (disturbance within 5' of the drip-line), we are confident that the proposed plan will not adversely affect the long-term viability of the trees proposed for retention. We have carefully reviewed the proposed impacts and the trees being impacted. The species, ages and conditions of subject trees are conducive to successful preservation. The amount of space set aside for retained trees and distance from trees to proposed utilities, grade alterations and building foundations appears adequate for successful preservation based on our past similar experiences with tree protection on development sites. It is our intent to work closely with the developer to ensure proper tree protection measures are carried out, specifically when work is to occur within the drip-lines of retained property trees and/or neighboring trees. Best management practices will be utilized to ensure impacts are kept to the minimal degree possible.

Based on the exception criteria listed in RZC 21.72.090(B) (1), we believe that an exception is feasible in this case. The following criteria are referenced directly from the RZC followed by an explanation of how the project/development meet those criteria:

RZC 21.72.090(B)(1)

c. Proposed vegetation removal, replacement, and any mitigating measures proposed are consistent with the purpose and intent of the regulations:

The intent of tree protection codes is to maintain an adequate percentage of tree canopy coverage within new developments. We believe the plan is consistent with this intention and that the trees proposed for retention can be successfully preserved. By the establishment of native tree species within the open-space tract on the north perimeter of the site, future tree canopy coverage will likely exceed what currently exists on the site.

For a Forester Every Day is Earth Day



March 11, 2016

Page 2

The proposed project plans are consistent with the intent of the regulations to retain 36% of the existing significant trees on site, meeting the letter of the code requirement of retaining 35%. Even though several will be impacted to some degree, all are expected to remain viable for the long-term. In addition, retained trees will be mitigated for as if there were to be removed. Between the retention of existing trees and tree replacement mitigation associated with the development, tree canopy coverage will be increased over time which is consistent with City tree codes.

d. The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity:

The degree of anticipated impacts is not expected to compromise long-term tree health or stability. The proposal will not be detrimental to the public or adjacent properties. Neighboring trees will be protected during development to ensure necessary impacts are kept as minimal as possible. The removal of approved trees from the property will not adversely affect neighboring trees or trees to be retained.

Ultimately between the successful retention of 36% of the significant trees on site and tree replacement mitigation, the proposal is consistent with tree protection codes. No detrimental impacts are expected long-term for trees proposed for retention.

Please let us know if you have any questions or require any additional information.

Sincerely,



Bob Layton
ISA Certified Arborist #PN-2714A
ISA Tree Risk Assessment Qualified (TRAQ)