

**CITY OF KIRKLAND HEARING EXAMINER  
FINDINGS AND DECISION**

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**APPLICANT:** Pat Ottesen, HSC Real Estate representing the Park @ Forbes Creek LLC

**FILE NO.:** ZON06-00024

**SITE LOCATION:** 11110 Forbes Creek Drive

**APPLICATION:** A zoning permit application to reduce the 75-foot stream buffer for Forbes Creek, a Class A stream, by one-third of its standard width to allow a remodel and additions to an existing structure. The buffer area proposed to be modified is developed with the existing building, paved surfaces, and lawn/landscaped areas. The proposal includes enhancement of the stream buffer area.

**REVIEW PROCESS:** Process IIA, Hearing Examiner conducts public hearing and makes decision.

**SUMMARY OF KEY ISSUES:** Compliance with stream buffer reduction standards of Chapter 90.95 KZC.

**SUMMARY OF RECOMMENDATION:**

Department of Planning and Community Development: Approve with conditions

**PUBLIC HEARING:**

After reviewing the Department of Planning and Community Development Advisory Report, the Hearing Examiner held a public hearing on the application. The hearing commenced at 7 p.m., December 7, 2006, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available in the City Clerk's Office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development.

The following persons spoke at the public hearing:

From the City:  
Stacey Clauson, Project Planner

From the Applicant:  
Claude Pellarin, owner

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Ken Clark, Development Services, Inc.  
John Barker, Barker Landscape Architects

From the Community:

Michael Bishop

**CORRESPONDENCE:**

The following persons submitted written comments on this application:

Thomas Duffin

James Carlson

Peter Werle

Jacob Davis

Andy Smith

Mara Zehnder

**FINDINGS AND CONCLUSIONS**

After considering the evidence in the record and inspecting the site, the Hearing Examiner enters the following findings of fact and conclusions.

**A. Findings**

1. The Findings of Fact set forth in Section II of the Department's Advisory Report (Exhibit 1), are adopted by reference as part of the Hearing Examiner's findings.

2. As indicated in the Findings, the Park at Forbes Creek was developed under zoning regulations in effect prior to 1982, prior to the City's adoption of buffer requirements for streams. As a result, portions of the existing clubhouse, adjacent paved areas and landscaped areas are located within what is a required stream buffer area under current zoning standards.

3. The proposal includes the addition of a "porte cochere" to provide a covered walkway over an existing concrete sidewalk, and placement of a roof over an existing courtyard area.

**B. Conclusions**

1. The conclusions set forth in Section II of the Department's Advisory Report are adopted by reference as part of the Hearing Examiner's conclusions.

2. Under KZC 90.100.2, an improvement or land surface modification within a stream buffer may be approved only if the criteria listed in this section are met. The criteria in this section have been met by the proposal.

3. A number of public comments expressed opposition to reduction of the buffer, out of concern for the stream's water quality and habitat value. However, it does not appear that the comments address the facts in this case, where the buffer reduction would occur in areas that are already paved or otherwise developed. The enhancement plan would result in the removal of invasive species and the planting of native species, which will help to improve water quality and habitat values for the stream at this location. The public comments do not identify reasons for disapproving the application or otherwise modifying the Department's recommendation.

4. The proposed modification meets all applicable criteria and should be approved.

### **DECISION**

Based upon the foregoing findings of fact and conclusions, the application is approved, subject to the conditions set forth in Exhibit A, Staff Advisory Report at Section I.B.

### **EXHIBITS**

The following exhibits were offered and entered into the record:

#### **Exhibit A: Planning and Community Development Staff Advisory Report**

Attachments:

1. Vicinity Map
2. Project Drawings
  - a. Site Plan, Floor Plan and Elevation Drawings
  - b. Stream Buffer Reduction Plan – Planting Plan
  - c. Monitoring and Maintenance Plan
  - d. Written Analysis for compliance with criteria
3. Development Standards
4. Resolution 2474
5. Resolution 3310
6. Notice of Approval for I-87-20, and selected drawings showing the approved site plan.
7. May, 1988 Memorandum
8. Minor modification to the final Planned Unit Development issued January 1991
9. Public Comment Letters
  - a. October 8, 2006 e-mail from Peter Werle
  - b. October 2, 2006 letter from Fanaco Fasteners
  - c. September 19, 2006 e-mail from Thomas Duffin

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- d. September 25, 2006 e-mail from James Carlson
  - e. November 28, 2006 letter from Jacob Davis
  - f. November 29, 2006 letter from Mara Zehnder
  - g. November 29, 2006 e-mail from Andy Smith
  - h. December 5, 2006 letter from Dorothy Carr
- 10. SEPA Threshold Determination and Enclosures
  - 11. Zoning Code Section 95.45.12
  - 12. Watershed Company review of Buffer Reduction Proposal
    - a. August 21, 2006 letter
    - b. November 13, 2006 letter
  - 13. Security Value Worksheet
  - 14. Save Harmless Agreement - stream
  - 15. Sensitive Areas Covenant
  - 16. Geologically Hazardous Areas Covenant
  - 17. Comprehensive Plan, Figure J-2b on page XV.I-6

**PARTIES OF RECORD**

Applicant, Pal Ottesen, HSC Real Estate, 3101 Western Avnue, Suite 400, Seattle, WA 98121

Thomas Duffin, 11025 111<sup>th</sup> Avenue NE, Kirkland, WA 98033

James Carlson, 11008 111<sup>th</sup> Avenue NE, Kirkland, WA 98033

Peter Werle, 11508 NE 107<sup>th</sup> Place, Kirkland, WA 98033

Jacob Davis, Fanaco Fasteners, 10822 117<sup>th</sup> Place NE, Kirkland, WA 98033

Andy Smith, 22110 Locust Way, Lynnwood, WA 98036

Mara Zehnder, 10822 117<sup>th</sup> Pl. NE, Kirkland, WA 98033

Dorothy Carr, 11017 111<sup>th</sup> Avenue NE, Kirkland, WA 98033

Claude Pellarin, Park at Forbes Creek, c/o Interland, 1590 Drew Avenue #200, Davis, CA 95616

Ken Clark, Development Services, Inc., 9655 SE 36<sup>th</sup> Street, Mercer Island, WA 98040

John Barker, Barker Landscape Architects, 1514 NW 52<sup>nd</sup> Street, Seattle, WA 98107

Michael Bishop, 11405 NE 111<sup>th</sup> Pl., Kirkland, WA 98033

Department of Planning and Community Development

Department of Public Works

Department of Building and Fire Services

Entered this 13th day of December, 2006.

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Anne Watanabe  
Hearing Examiner

## **APPEALS AND JUDICIAL REVIEW**

The following is a summary of the deadlines and procedures for challenges and appeals. Any person wishing to file or respond to a challenge or appeal should contact the Planning Department for further procedural information.

### Appeal to City Council:

Under Section 150.80 of the Zoning Code, the Hearing Examiner's decision may be appealed by the applicant and any person who submitted written or oral testimony or comments to the Hearing Examiner. A party who signed a petition may not appeal unless such party also submitted independent written comments or information. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5 p.m. \_\_\_\_\_, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

### Judicial Review:

Section 150.130 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

## **LAPSE OF APPROVAL**

Under Section 150.135 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 150, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 150.130, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 150 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.