

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS AND RECOMMENDATION**

APPLICANT: Dennis Riebe of Riebe and Associates for City Ministries

FILE NO.: ZON06-00021

SITE LOCATION: 8807 & 8819 132nd Avenue NE

APPLICATION: Application for a Preliminary and Final Planned Unit Development (PUD) to allow construction of 13 detached dwelling units (3 units will be Affordable Housing Units) and associated onsite infrastructure on a 1.59 acres (69,451 square foot) parcel zoned RSX 7.2 (see Advisory Report, Attachment 2). The applicant will be required to install public improvements (curb, gutter, sidewalk, etc.) within the 132nd Avenue and NE 90th Street right-of-ways. Through the PUD process, the applicant is requesting the following modifications from the Kirkland Zoning Code:

Increased Density: The applicant is proposing to increase the density from the existing 6 dwelling units per acre, the maximum allowed by the use zone and the Comprehensive Plan to approximately 8 units per acre. A total 13 detached dwelling units are being proposed on the project site, with 3 of the units being designated as affordable housing units.

Multiple Detached Dwelling Units on a Single Parcel: The applicant is proposing to construct multiple detached dwelling units on a single parcel. The Kirkland Zoning Code only allows for one detached dwelling unit per parcel in the RSX 7.2 zone.

Front Yard Setback Reduction: The applicant is proposing to locate one of the residences approximately 17 feet from the NE 90th Street property line. This property line is considered a front property line that requires a 20 foot setback yard.

REVIEW PROCESS: Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision.

SUMMARY OF MAJOR ISSUES: Compliance with PUD Approval Criteria
Compliance with Applicable Development Regulations

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SUMMARY OF RECOMMENDATIONS:

Department of Planning and Community Development: Approve with conditions
Hearing Examiner: Approve with conditions

PUBLIC HEARING:

The Hearing Examiner conducted a public hearing on the application commencing at 7 p.m. on March 1, 2007, 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 are generally available from the Department of Planning and Community Development within 10 working days after the hearing.

The Department requested that the record be held open so that the Department could consult with the Public Works and Fire & Building Departments concerning (1) limiting the NE 88th Street access to emergency access only; (2) prohibiting parking on the site's frontage along NE 88th Street; and (3) prohibiting construction vehicle parking on NE 88th Street. This information was received on March 8, 2007 and was added to the record on this matter.

The following persons spoke at the public hearing:

From the City:

Tony Leavitt, Project Planner

From the Applicant:

Dennis Riebe, Riebe & Associates

From the Community:

Shelly George

Dana Brewer

Robert Brewer

Mary Kooistra

Betty Lou Crampton

John Quallsund

CORRESPONDENCE:

The following persons submitted written comments on this application:

Bill Andrews

Rosalio Briseno

Dana Brewer

Robert Brewer (several other people signed Mr. Brewer's letter; please see letter in file)

Mary Kooistra

Carol Nielson
John and Lyn Qualsund
Jan A. Rucker

FINDINGS, CONCLUSIONS AND RECOMMENDATION

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 at pages 1-15 of the Department's Advisory Report are adopted by reference herein, except as noted in Finding 2 below.
2. As noted by the Department at the hearing, the table on page 6 of the February 23, 2007 Advisory Report should be amended to reflect that the proposed PUD would have lot coverage of 38.93 percent; a floor area ratio of 31 percent; and an average height (above average building elevation) of 24.34 feet.
3. The proposed 13 units include three units of affordable housing, as defined in the Code. Such units include owner-occupied units reserved for households with annual household incomes that do not exceed 70 percent of the King County median income, or rental units reserved for households with annual household incomes that do not exceed 50 percent of the King County median income.
4. The three affordable housing units will be made available to the general public through ARCH. The remainder of the units will be used to house interns of the applicant, City Ministries, or other people associated with City Ministries' programs. City Ministries plans to have an on-site manager residing in one of the units.
5. The site plan includes access from NE 88th Street and from NE 90th Street. The Fire Department required the applicant to provide access from NE 88th Street to the site. The applicant stated at hearing that it would be willing to designate the NE 88th Street access as emergency-access only, provided the City agreed.
6. There are 148 trees on the site, including 78 trees that are considered significant under the Code (see Advisory Report, pages 13-14, and Attachment 10). The applicant has submitted a Tree Plan II. The City's Urban Forester has reviewed the applicant's tree plan and has recommended changes to the site plan to save additional trees, including "Tree 449" (see Attachment 10), which is a Type I tree. The proposed changes include shifting some of the proposed houses a few feet to avoid certain trees, or re-orienting some of the houses. The applicant has agreed to explore the recommended changes, and the Department has recommended that it be authorized to approve the identified minor plan changes.

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7. Several people submitted written comments and/or testimony on the proposed PUD. The comments included concerns about the impacts to wildlife at the site, the traffic and parking impacts (particularly on NE 88th) from residents and guests at the new units; previous negative experiences with the applicant's renters at the "Twogood property," the number of units being permitted; impacts to property values, noise, the parking of construction vehicles on NE 88th; and the adverse impacts on a neighbor of "flipping" houses 9 and 10 to save trees. Two persons sent a letter in favor of the proposal, citing the extension of sanitary sewer service to the area, pedestrian improvements (sidewalks, curbs, street trees) and increased safety because of the development.

8. The applicant indicated at hearing that it was willing to change the plans to reflect emergency-vehicle access only for the NE 88th Street access, install "no parking" signs, and adhere to a prohibition on construction parking along NE 88th Street.

9. On March 8, 2007, the Department submitted additional information concerning the applicant's revised site plan showing access to NE 88th Street as emergency-access only; adding "no parking anytime" signs along 132nd Avenue NE and NE 88th Street; and adding a "no-construction parking" note to the plans. The Fire Department has reviewed and approved the revised site plan, and the Public Works Department submitted revised Development Standards that reflect the changes to the site plan.

B. Conclusions:

1. The conclusions set forth in the Department's Advisory Report at pages 3-15 are adopted by reference herein.

2. The proposed PUD would meet the criteria set forth in KZC 125.35 for PUD approval.

3. The proposed PUD would meet the requirements of Criterion 1, i.e., meeting the requirements of Chapter 125. The review process, uses and proposed modifications to Code standards (increased density, multiple detached dwelling units on a single parcel, and front yard setback reduction) are consistent with the chapter. As discussed at pages 11-14 of the Advisory Report, all other applicable development regulations would be met.

4. Criterion 2 requires that any adverse or undesirable impacts of the proposed PUD be clearly outweighed by the PUD's benefits to residents of the City. The proposed PUD meets this criterion. It would create benefits in the form of three affordable housing units and a design that is superior to a nine-lot subdivision development. The impacts, including traffic and parking demand, bulk, height and scale, and loss of open space, as noted below, would clearly be outweighed by the proposed PUD's benefits.

5. The environmental and concurrency reviews for the proposal do not disclose substantial traffic or parking demand impacts, but neighbors are concerned about such impacts, particularly on NE 88th. The proposed PUD utilizes two communal parking areas with shared access, which would tend to have fewer impacts on traffic and pedestrian circulation than would the creation of individual driveways and curbcuts for each unit. In addition, the recommended conditions, prohibiting parking along NE 88th Street and 132nd, and limiting the NE 88th Street access to emergency vehicles, will reduce the impacts of the new development on the surrounding neighborhood.

6. The PUD's impacts in the form of bulk, height, scale, and lot coverage, are less than what could occur in a nine-lot subdivision (see pages 6-7 of Advisory Report). One house in the PUD would have a reduced setback from the NE 90th Street property line (17 feet instead of 20) but the slight reduction would have little impact on the streetscape, and would allow the retention of two significant trees.

7. Development of the vacant site would result in the loss of open space, and concerns were expressed by several residents about impacts to wildlife. While this is an understandable concern, the record does not show that the site is designated as habitat area, or that any other Codes or regulations would authorize reduction of the number of units on account of this concern. It also appears that the proposed PUD would have less impacts on wildlife and open space than would a nine-unit subdivision with development, because of the PUD's smaller lot coverage percentages, its use of pervious surfaces, and the proposed tree retention and landscape plan,

8. Some public comments complained about City Ministries' tenants at a former City Ministries house, but the potential future behavior of the Ministries' tenants is not within the scope of the criteria that apply to a PUD application. (The applicant has indicated it will provide an on-site manager, and it is hoped that this will help to prevent problems in the future.)

9. Under Criterion 3, a PUD applicant must provide a benefit listed in KZC 125.35.3. The proposed PUD meets this requirement, as it would provide several benefits: three affordable housing units, superior circulation patterns and landscaping, superior orientation of structures, and minimization of impervious surfaces. None of these benefits could be required by the City, if the parcels were simply subdivided and developed under Code standards.

10. Finally, the proposed PUD meets Criterion 4, which considers proximity to services. The three affordable housing units would have good access to public transit, parks and schools, and commercial services, and the City Ministries church is located next to the site.

11. The site plan changes recommended by the City's Urban Forester to save additional trees are minor site plan changes that may be approved by staff pursuant to KZC 125.60 and KZC 95.35.

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12. The proposed PUD is consistent with all of the applicable development regulations, and is consistent with the City's Comprehensive Plan policies and goals which encourage the creation of affordable housing and a variety of housing styles at appropriate density levels. The proposed PUD is also consistent with the public health, safety and welfare.

13. The proposed PUD, with the recommended conditions set forth below, would meet the applicable criteria of Chapters 125 and 152 KZC, and should be approved.

C. Recommendation:

Based upon the foregoing findings of fact and conclusions, the Hearing Examiner recommends approval of the application for Preliminary and Final PUD, subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3 to the Advisory Report, Development Standards (as amended by the March 8, 2007 revised Public Works Conditions for this proposal), has been provided to the applicant to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.
2. Prior to submittal of grading or building permit applications for the project, the applicant shall explore the use of pervious surface materials (for walkways, driveways, parking areas, etc.) and other Low Impact Development (LID) methods (see Advisory Report, Conclusion II.F.4).
3. Prior to issuance of any development permits the applicant shall:
 - a. Prepare and submit a document, to be approved by the City Attorney, stating that the PUD will become void and use and occupancy must cease if the development is used for any purpose other than that for which it was specifically approved. This document, which will run with the subject property, must be recorded in the King County Department of Elections and Records. Additionally, the applicant should submit a copy of the agreement with ARCH for the Affordable Housing element of the project (see Advisory Report, Conclusion II.G.2).
 - b. Explore site plan changes to save additional trees as identified by the City's Urban Forester. Staff shall be authorized to approve minor site plan

changes as identified in the City's Urban Forester's comments (see Advisory Report, Conclusion II.G.3).

EXHIBITS

The following exhibits were offered and entered into the record:

- A. Planning and Community Development Staff Advisory Report Attachments:
 - 1. Vicinity Map
 - 2. Development Plans
 - 3. Development Standards
 - 4. SEPA Determination and Enclosures
 - 5. Applicant's Response to PUD Criteria
 - 6. Morales Short Plat Vicinity Map
 - 7. RSX 7.2 Use Zone Chart
 - 8. Letter from Applicant dated September 29, 2006
 - 9. Kirkland Zoning Code Section 125.30
 - 10. Tree Plan Map and Comments
 - 11. North Rose Hill Neighborhood Land Use Map
 - 12. Comprehensive Plan Housing Goals and Policies
- B. Memorandum and enclosures dated March 8, 2007, from Tony Leavitt to Hearing Examiner
- C. Letters received at March 1, 2007 hearing: (1) Bill Andrews/Rosalio Briseno, (2) Dana Brewer, (3) Robert Brewer (and other signatories)

PARTIES OF RECORD

Bill Andrews, 8529 132nd Avenue NE, Kirkland, WA 98033
Rosalio Briseno, 8547 132nd Avenue NE, Kirkland, WA 98033
Dennis Riebe, Riebe and Associates, 2112 116th Avenue NE, Bellevue, WA 98004
Eston Catlett, The City Ministries, 9051 132nd Avenue NE, Kirkland, WA 98033
Betty Lou Crampton, 12647 NE 87th Street, Kirkland, WA 98033
Dana Brewer, 13046 NE 88th Street, Kirkland, WA 98033
Robert Brewer, 13046 NE 88th Street, Kirkland, WA 98033
Shelly George, 13021 NE 88th Street, Kirkland, WA 98033
Mary Kooistra, 13022 NE 88th Street, Kirkland, WA 98033
Carol Nielson, 12915 NE 94th Street, Kirkland, WA 98033
John and Lyn Quallsund, 13038 NE 88th Street, Kirkland, WA 98033
Jan A Rucker, 8563 132nd Avenue NE, Kirkland, WA 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

Entered this 13th day of March, 2007, per authority granted by KZC 152.70. A final decision on this application will be made by the City Council.

Anne Watanabe
Hearing Examiner

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CHALLENGES AND JUDICIAL REVIEW

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

CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

JUDICIAL REVIEW

Section 152.110 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

The applicant must submit to the City a complete building permit application approved under Chapter 125 within four (4) years after approval of the Final PUD, or the lapse provisions of Section 152.115 will apply. Furthermore, the applicant must substantially complete construction approved under Chapter 125 and complete the applicable conditions listed on the Notice of Approval within six (6) years after approval of the Final PUD, or the decision becomes void.

"Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.