

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

In the Matter of the Appeal of

File No. ZON11-00031

**JAMES McELWEE,
DON PRINCE and
WRAY FEATHERSTONE**

from a variance decision issued by the
Director of the Planning and Community
Development Department

Introduction

The Director of the Department of Planning and Community Development issued a decision approving a variance application for property owned by Robert Bonjorni. The Appellants, James McElwee, Don Prince and Wray Featherstone, appealed the Director's decision.

The appeal hearing was held on April 19, 2012, before the Hearing Examiner (Examiner). The Appellants were represented by James McElwee; the Applicant did not appear; and the Director was represented by Sean LeRoy, Project Planner. The Examiner inspected the site prior to the hearing.

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

Findings of Fact

1. The subject property is addressed as 6117 135th Avenue NE in Kirkland. It is zoned RSX 35, a low density residential zoning designation. The lot is 24,708 square feet in size and unimproved except for a long, graded driveway from 135th Avenue NE.
2. The property includes steep slopes and does not have a 10,000 square foot contiguous area of slope less than 26%. Sewer is not available, and as part of a development permit, the applicant will be required to install a septic system.
3. The property constitutes a legal building lot, having been established in 1963 under the jurisdiction of King County. A lot line alteration involving the property and an adjoining parcel was approved by King County in 2006. The property was annexed to the City of Kirkland in 2009.

4. The applicant sought a variance to eliminate the 10,000 permeable square foot requirement of the RSX 35 zone found in Special Regulation 5 of KZC 17.10 .010, which reads as follows:

Residential lots in the RSX zone and in the Bridle Trails neighborhood, north and northeast of Bridle Trails State Park must contain a minimum area of 10,000 permeable square feet which complies with Special Regulation 6 for large domestic animals in KZC 115.20(4)(chart).

5. Special Regulation 6 in KZC 115.20 states that for large domestic animals, the permeable area must be capable of accommodating two horses; not be located on a steep slope (over 15% grade); be easily converted to a paddock area and barn; have a minimum width of 40 feet, with the majority of the area having a width of 80 feet; be configured in a contiguous and usable manner (in a shape as close to square or rectangle as possible) to accommodate feed, storage, and manure; be pervious and exclusive of any structures or improvements; and not be located over a septic tank, drain field, or reserve drain field. The Planning Official may approve minor deviations from required dimensions and/or shape under certain circumstances.

6. An application for a variance must meet the following criteria, as found in KZC 120.20:

1. The variance will not be materially detrimental to the property or improvements in the area of the subject property or to the City, in part, or as a whole;
2. The variance is necessary because of special circumstances regarding the size, shape, topography, or location of the subject property, or the location of preexisting improvements on the subject property that conformed to the Zoning Code in effect when the improvement was constructed; and
3. The variance would not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this Code allows for other properties in the same area and zone as the subject property.

7. That Director determined that the application met the variance criteria. The Director found that due to the property's shape, topography, relatively small size, existing driveway and drainage improvements, and the need for a septic drain field separate from the paddock, it could not accommodate the minimum Code requirement of 10,000 square feet of permeable area for a paddock. The Director noted that while the Code establishes regulations to preserve the equestrian character of the area, nothing requires equestrian use of the property, and that the constrained nature of this particular property makes it not well suited for equestrian use. The Director concluded that under these circumstances, allowing the property to be developed for single-family residential use without the 10,000 square foot permeable area would not detrimentally impact the City or property or improvements in the area. Exhibit C.

8. The Director also determined that the application met the requirements of KZC 145.45.2, in that it was consistent with all applicable development regulations (other than the one from which a variance was sought) and the Comprehensive Plan, and was consistent with the public health, safety and welfare because it would ensure that a paddock area/large animals would not be located over the future septic system. Exhibit C.

Conclusions

1. KZC 120.10.1 provides that a variance application in an RSX zone is a Process 1 application governed by Chapter 145 KZC. The Hearing Examiner has jurisdiction to hear an appeal of a variance decision pursuant to KZC 145.60.4. The Appellants have "the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision." KZC 145.95.

2. The Appellants' claim that the Director's decision approving the variance application "incorrectly states as fact that the County requested the Lot Line Adjustment which created the relevant non-conforming lot." Exhibit B at 1. But the reason for the subject property's nonconformity to current lot size requirements is immaterial to the Director's decision on the variance application. Regardless of how the lot became undersized, it is a legal building lot, a fact the Appellants do not dispute. Exhibit B at 2.

3. The Appellants also claim that the Director failed to examine "alternative sites and sizes to protect the public interest". Exhibit B at 1. However, it is clear from the record that the Director did consider alternatives. Exhibit C, attachments 2, 12 and 13; Exhibit E. Exhibit E shows that even if the paddock area were placed at the top of the slope, it would still be located on slopes over 15% in grade and thus, would not meet Code requirements.

4. The Appellants suggest that the footprint of a proposed residence on the site could be reduced in size in proportion to the amount the lot was reduced by the King County Lot Line Adjustment, thereby allowing additional space for the paddock area on the site. Exhibit B at 2. The Appellants cited nothing in the Code that would impose such a requirement on a nonconforming legal building lot.

5. The Appellants argued at hearing that the Director should have consulted the Equine Advisory Board on whether and how the subject property could be configured to meet the Code's paddock requirement. This argument was not raised in the Appellants' letter of appeal and therefore cannot be considered.

6. The Appellants have not demonstrated that the Planning Director's decision approving the variance was incorrect, and it should be affirmed.

Decision

The Director's decision approving the variance in ZON11-00031 is affirmed.

Entered this 15th day of May, 2012.

Sue A. Tanner
Hearing Examiner

Exhibits

The following exhibits were entered into the record:

- Exhibit A Department's Advisory Report with five attachments
- Exhibit B Letter of Appeal
- Exhibit C Department's Findings, Conclusions and Recommendations with 13 Attachments
- Exhibit D Email message dated March 15, 2012 from Bob Bonjorni to Sean LeRoy
- Exhibit E Email message dated April 4, 2012 to Sean LeRoy from Bob Bonjorni

PARTIES OF RECORD:

Appellants: James McElwee, Don Prince, and Wray Featherstone
Applicant: Robert Bonjorni
Department of Planning and Community Development
Department of Public Works

Concerning Further Review

KZC 145.110 reads as follows: "The action of the City in granting or denying an application under this chapter may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the City. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW."