

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

In the Matter of the Notice of Civil
Violation Issued To

File Number:
ENF11-096

RICHARD AND NANCY HEBERT

By the City of Kirkland, Department of
Planning and Community Development

Introduction

The City issued a Notice of Civil Violation to Richard and Nancy Hebert for construction of a driveway with a width in excess of 20 feet in the required front yard.

The matter was heard by the undersigned Hearing Examiner on June 16, 2011, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. Richard and Nancy Hebert (Owners) were represented by Hans Hebert, and the Department of Planning and Community Development (Department) was represented by Craig Salzman, Code Enforcement Officer and Nancy Cox, Development Review Manager. Exhibit A, the Department's Memorandum and seven attachments, and Exhibit B, the Notice of Civil Violation, were entered into the record.

Having considered the evidence in the record and visited the site, the Hearing Examiner enters the following findings of fact, conclusions and decision on the Notice of Civil Violation.

Findings of Fact

1. The subject property is addressed as 12611 95th Place in Kirkland, is owned by Richard and Nancy Hebert and is improved with a detached single-family residence.
2. The residence includes an attached garage with a 16 foot wide garage door. The curb cut is 20 feet wide. *See* Exhibit A, Attachments 1-4. The asphalt driveway is approximately 23 feet wide at the garage door. It is 22 feet long from the garage door to the curb cut (west to east), with the eastern-most 10 feet being constructed on public right-of-way.
3. In 2006, the property owners received a Notice of Violation and Order to Correct (Notice and Order) in case number ENF06-027 for "Parking of vehicles in the required front yard, allowing a driveway over 20 ft. in width." Exhibit A, Attachment 7. The corrective action stated in the Notice and Order was "Remove all vehicles parked

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anywhere on the property, other than those parked on the allowed 20 foot wide driveway." Exhibit 8, Attachment 7. The Notice and Order was resolved when the City Code Enforcement Officer met with the property owner. The owner agreed to park only within a marked-off 20 foot wide paved surface, and to use the remaining paved area for walking and for storing garbage containers. Exhibit A at 2.

4. At the time of the 2006 Notice and Order, the curb cut remained at 20 feet, but the paved driveway width was approximately 24 feet over the eastern-most 10 feet (across the public right-of-way), with a graveled strip between 5 and 6 feet wide located between the paved driveway and a low wall at the north side.

5. On May 20, 2011, the City's Code Enforcement Officer received both a telephone call and an e-mail informing him that a paving crew was working on the subject property. The Code Enforcement Officer inspected the site and verified that the former graveled area adjacent to the paved driveway was being paved with asphalt, thereby extending the width of the paved driveway to 29.8 feet at the curb cut. (The curb cut was not extended.)

6. The Code Enforcement Officer issued a Notice of Civil Violation to the Owners for creating "a paved driveway surface that exceeds 20 feet in the right-of-way and the required front yard." Exhibit B. The Notice of Civil Violation states that "all paved surface beyond 20 ft. in width must be removed and returned to landscaping". Exhibit B.

7. The Owners argued that the City's exhibits show that they are still parking within the agreed-upon 20 foot wide area of the driveway. They stated that they had the five foot graveled strip paved in order to improve the appearance of the property and facilitate moving their trash receptacles to and from the street for pick-up.

8. Kirkland Zoning Code (KZC) 105.35 authorizes the City to restrict the width, number and location of driveways to improve vehicle circulation and public safety or to enhance pedestrian movement.

9. KZC 115.115.5.a.1 provides that for detached dwelling units, vehicles may be parked in the required front yard "if parked on a driveway and/or parking area," and that

a driveway and/or parking area shall not exceed 20 feet in width in any required front yard and shall be separated from other hard-surfaced areas located in the required front yard by a landscape strip at least five (5) feet in width. This landscape strip may be interrupted by a walkway or pavers providing a connection from the driveway to other hard-surfaced areas, as long as such walkway or pavers cover no more than 20 percent of the landscape strip. A driveway and/or parking area located in a required front yard shall not be closer than five (5) feet to any side property line.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Kirkland Municipal Code (KMC) 1.12.050.
2. The Code's requirements on driveway width are quite clear: a driveway located in a required front yard "shall not exceed 20 feet in width".
3. The driveway located in the front yard of the subject property exceeded 20 feet in width at the time the 2006 Notice and Order was "resolved," and an additional 5 feet were added to it in May of this year. With the exception of the western two feet (adjacent to the garage door), which are not located in the required front yard, the driveway width violates KZC 115.115.5.a.1.
4. The evidence shows that this is the Owners' second violation of the same Code section. KMC 1.12.040.E provides that the monetary penalty for a second violation is \$200 per day, and that the Examiner may double the monetary penalty if the violation is a repeat violation.
5. In determining the amount of the penalty, the Examiner is to consider whether the person "responded to staff attempts to contact the person and cooperated with efforts to correct the violation," "showed due diligence and/or substantial progress in correcting the violation," or "failed to appear at the hearing," as well as "whether the violation was a repeat violation," and "any other relevant factors". KMC 1.12.050.D.4.
6. The Owners appeared at the hearing and have been in contact with City staff. They have not shown progress in correcting the violation, but there appears to be a genuine question in the minds of the parties about what the Code requires in this case. Therefore, the standard \$200 daily penalty for the second violation will not be doubled.

Decision and Order

The Notice of Civil Violation issued to Richard and Nancy Hebert on May 24, 2011 is affirmed. In accordance with KZC 1.12.050.D.2, it is ordered that no later than 5:00 p.m. on August 1, 2011, Richard and Nancy Hebert remove all paved surfaces of the portion of the driveway that is located in the required front yard and in excess of 20 feet in width and contact the Department for certification that the violation has been corrected. If the violation is not corrected by the required date and time, the Department may abate the violation and recover the costs and incidental expenses for the abatement from Richard and Nancy Hebert, in accordance with KMC 1.12.060. Richard and Nancy Hebert shall also incur a penalty of \$200 per day for each day after August 1, 2011 that the violation remains uncorrected until correction is certified by the Department or the Department abates the violation.

Entered this 20th day of June, 2011.

Sue A. Tanner
Hearing Examiner

Concerning Further Review

KMC 1.12.050.F provides that “An appeal of the decision the hearing examiner must be filed with superior court within 21 calendar days from the date the hearing examiner’s decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred.”