

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

In the Matter of the Notice of Civil  
Violation Issued To

File Number:  
**ENF11-206/  
COM11-00230**

**BRIAN AND LEANN WHITE**

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

**Introduction**

The City issued a Notice of Civil Violation to Brian and Leann White for violation of the Zoning Code's rear yard requirements. The matter was heard by the undersigned Hearing Examiner on December 15, 2011, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. Brian and Leann White represented themselves, and the Department of Planning and Community Development (Department) was represented by Craig Salzman, Code Enforcement Officer, and Nancy Cox, Development Review Manager. Several exhibits were entered into the record: Exhibit A, the Department's Memorandum; Exhibit B, the Notice of Civil Violation; Exhibit C, the Whites' packet of information and photographs concerning the Notice of Civil Violation and in support of a request for a zoning modification; Exhibit D, a packet of information and photographs from the Complainant concerning the zoning violation and the potential request for modification; and Exhibit E, a December 14, 2011 e-mail from the Complainant submitting additional information for the record.

Following presentation of evidence by the Appellants and Department, the hearing was continued indefinitely, at their request, to allow them to further explore whether the Whites should go through the appropriate process for seeking a zoning modification. On January 10, 2012, the Department notified the Examiner that the Whites would not be seeking a modification and had corrected the Zoning Code violation, and that the Department was closing its enforcement file on the matter. On January 11, 2012, the Department filed a supplemental staff report asking that the Examiner close the hearing record and issue a decision based upon the fact that the Appellants had corrected the Zoning Code violation. The hearing and record closed on that date,

For purposes of this decision, all section numbers refer to the Kirkland Municipal Code (KMC) or Kirkland Zoning Code (KZC) unless otherwise indicated. Having considered the evidence in the record, 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 8028 126th Avenue NE in Kirkland and is zoned RSX 7.2 for residential use. The property is owned by Brian and Leann White.
2. On August 22, 2011, the City's Code Enforcement Officer received a complaint from a neighbor concerning a canopy structure located in the five-foot side yard on the subject property.
3. The Code Enforcement Officer investigated the complaint and determined that the portable canopy structure was located within the south side yard on the property. The Whites removed the canopy from the side yard, and the Department closed its file on the complaint.
4. The Complainant contacted the Department and noted that the canopy structure was now located within the required rear yard of the White's property.
5. The Code Enforcement Officer reopened the case, discussed the matter with the Whites and sent them a Notice of Civil Violation for placing "a canopy structure that exceeds 18 inches in height within the rear required yard." Exhibit B. The Notice of Civil Violation indicates that it is for a "First violation".
6. At hearing, the Department stated that if the Examiner found that the canopy structure was located within the required rear yard, the owner should be responsible for penalties until compliance was certified by the Department. However, the Department's supplemental memorandum states that the Examiner should issue a decision based on the facts that the canopy has been removed from all required yards and the Department has closed the enforcement case because there is no longer a violation.

### **Conclusions**

1. The Hearing Examiner has jurisdiction over this appeal pursuant to KMC 1.12.050.
2. At the time the Notice of Civil Violation was issued, and at the time of the hearing on the Notice, the White's property was in violation of the Zoning Code's yard requirements. Therefore, although no further corrective action is required, the Notice of Civil Violation should be affirmed.
3. KMC 1.12.050.D.4 provides that in determining the monetary penalty assessment the Examiner is to consider "Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation," "Whether the person failed to appear at the hearing," "Whether the violation was a repeat violation," "Whether the person showed due diligence and/or substantial progress in correcting the violation," "Whether a genuine code interpretation issue exists," and "any other relevant factors".

4. The Whites responded to the Department's attempts to contact them and cooperated with the Department in correcting the initial violation. When contacted about the rear yard violation, the Whites again promptly responded to the Department. As noted, this is not a repeat violation, and the Whites appeared at hearing. They showed due diligence in correcting the violation; the delay in compliance resulted from their discussions with the Department concerning the possibility of a modification for the canopy structure. Therefore, pursuant to KMC 1.12.050.D, no monetary penalty should be imposed.

### **Decision**

The Notice of Civil Violation issued to Brian and Leann White on October 14, 2011 is affirmed. No monetary penalties are imposed.

Entered this 12<sup>th</sup> day of January, 2012.

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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.”