

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

APPLICANT: William Anspach

FILE NO: ZON06-00007

APPLICATION:

1. Site Location: 1230 and 1250 4th Street West
2. Request: To reduce the required 20-foot front yard setback along 13th Avenue West to a 10 foot setback in a PR 3.6 Zone
3. Review Process: Process IIA, Hearing Examiner conducts public hearing and makes final decision.
4. Summary of Key Issues: Compliance with the variance criteria for reduction of the required front yard setback along 13th Avenue West.

SUMMARY OF RECOMMENDATIONS:

Department of Planning and Development
Hearing Examiner:

Approve with conditions
Approve with conditions

PUBLIC HEARING:

The Hearing Examiner held a public hearing on the application on May 4, 2006, in the Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available at the City Clerk's office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Community Development. The record was held open through May 8, 2006, for the Department of Planning and Development to submit a copy of a prior Hearing Examiner decision. The Hearing Examiner conducted a site visit prior to the hearing on May 4.

PUBLIC COMMENT:

Comments offered at the hearing are summarized in the minutes of the hearing. The following persons offered comments:

From the City:
Tony Leavitt, Project Planner

From the Applicant:
William Anspach, Property Owner
Brian Brand, Applicant's architect

From the Community:
Patty Pease
Wendy Lane
Tom DiGiovanni
Jane Maule

CORRESPONDENCE:

Nine letters were submitted to the Department during the public comment period and are included as attachments to Exhibit A. Two comment letters were submitted at the hearing and are included in the exhibit list at the end of this Decision.

FINDINGS, CONCLUSIONS AND DECISION

Having considered the evidence in the record and inspected the site, the Hearing Examiner enters the following:

FINDINGS OF FACT:Site Description

1. The site is addressed as 1230 and 1250 4th Street West and is located in the Market Neighborhood. It consists of two parcels and is approximately 11,298 square feet (.26 acres) in size, and is zoned PR 3.6 (Professional Office Residential with one unit per 3,600 square feet of lot area). The site includes 13 significant trees and slopes down from 4th Street West, and from 13th Avenue West toward the alley at the west side of the property.
2. The site is a corner lot located a few feet west of Market Street with frontage on three rights-of way: 4th Street West; 13th Avenue West, and the alley. The required setback is 20 feet from each street and 10 feet from the alley.
3. The site is located a few feet from a unique right-of-way configuration caused by the intersection of diagonal streets (13th Avenue West and Market Street). Within the 13th Avenue West right-of-way adjacent to the site is a public sidewalk and then a wide landscaped area, located approximately 12 feet from the site's northeast property line, between the sidewalk and street. Across 13th to the northeast is a large open-space triangle that fronts on Market.
4. The site is presently developed with two single-story, single-family residences, which the Applicant proposes to demolish. The northern-most residence is set back just seven feet from the 13th Avenue West right-of-way. Both parcels have driveways accessed from 4th Avenue West.
5. Properties to the north and southeast of the site are also zoned PR 3.6. The northern property is developed with an office building, the southeastern property with a residential duplex. To the northwest, west and southwest, there is RS 7.2 zoning, and the properties are developed with single-family residences of mixed age and architectural style. The older homes are generally smaller, single-story structures, while the newer ones are larger, with at least two stories.

6. Some of the existing single-family residences along 13th Avenue West do not meet present requirements for a 20-foot setback from the right-of-way.

7. The Market Neighborhood's unique diagonal street network configuration creates unusual property shapes and setback restrictions. Staff testified that this has led the City to approve other setback variances in circumstances similar to these, including reducing setbacks due to unique right-of-way situations, and front yard setback reductions on corner lots. (*See, e.g.*, Exhibit D.)

8. Front setback regulations are intended to protect the public from vehicles using the public right-of-way and to create an urban form, with structures located a similar distance back from the adjoining right-of-way.

Proposal

9. The Applicant proposes to construct a total of three new units on two parcels. A detached single-family residence would be located nearest to the single-family residence located across the alley from the site. A two-unit townhouse would be located closest to the property southeast of the site that is developed with a residential duplex.

10. Because the existing driveways on 4th Street are located within 50 feet of intersections, the Applicant cannot use them to access the property. Instead, access will be provided via a five-foot driveway from the alley and across one parcel to the other.

11. The Applicant proposes to maintain the required 20-foot front setback from 4th Street West, and will be required to widen this street, install storm drainage, curb and gutter, a planter strip with trees, and construct a sidewalk within the right-of-way.

12. The Applicant proposes to reduce the required front setback from the site's 13th Avenue West property line, adjacent to the large landscaped area, from 20 feet to 10 feet.

Comprehensive Plan

13. The Comprehensive Plan designates the subject site for "Office/Multi-family" use.

History

14. Under KZC 25.10, allowed uses in the PR 3.6 zone are "Detached Dwelling Units," "Detached, Attached, or Stacked Dwelling Units," and "Office Uses".

15. On September 5, 2005, the City Council passed Ordinance 4006 that would have prohibited multi-family and commercial uses in the PR 3.6 zone while a study was completed in anticipation of an update to the Market Neighborhood Plan and correlative zoning. On November 15, 2006, the Council passed Ordinance 4021, amending Interim Ordinance 4006 to remove the prohibition on multi-family use in the PR 3.6 zone. On

February 21, 2006, the Council passed Ordinance 4039, renewing Ordinance 4006 as amended for an additional six months in order to “prevent the development of a potentially inappropriate use in the Study Area until a Market Neighborhood Plan Update can be completed to determine the appropriate zone designation”. Ordinance 4039 at p.2.

Public Comment

16. The public comment period on the application ran from March 16, to April 7, 2006. The Department received nine comment letters (Exhibit A, Attachments 4 through 12). Some of the letters objected the property’s being developed with three, rather than two new residential units and expressed concerns that townhouse development would change the character of the neighborhood. Some raised concerns about increased traffic in the alley if it is used to access the site. Some stated that reducing the 20-foot front setback for the site would change the character of the neighborhood and create a negative precedent. And some letters stated that the building height of 20 feet called out for the site in the Comprehensive Plan should control over the Zoning Code’s 25-foot height limit. One letter supported the variance, stating that the Applicant’s proposed development is superior to the present use and will add value to the neighborhood, add street appeal at the corner of 4th Street West and 13th Avenue West and increase density while preserving neighborhood character.

17. Some of those who sent in comments also testified at the public hearing, and/or submitted written testimony. The testimony was similar in content to the letters, but included additional elaboration.

State Environmental Policy Act

18. The application is categorically exempt from SEPA requirements and therefore, is also exempt from concurrency review.

Applicable Law

19. KZC 120 20 sets forth the following criteria for obtaining a variance from Zoning Code requirements:

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; and
2. The variance is necessary because of special circumstances regarding the size, shape, topography, or location of the subject property ... ; and
3. The variance will not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this code allows to other property in the same area and zone as the subject property.

20. The Washington Supreme Court has determined that even under the Growth Management Act, Chapter 36.70 RCW, “a comprehensive plan is a guide and not a document designed for making specific land use decisions ... If a comprehensive plan

prohibits a particular use but the zoning code permits it, the use would be permitted. *Citizens for Mount Vernon v. Mount Vernon*, 133 Wa.2d 861, 873-74, 947 P.2d 1208 (1997)(citations omitted).

21. Under Process IIA, the applicant bears the burden of convincing the Hearing Examiner that the applicant is entitled to the requested decision. KZC 150.50.

22. KZC 150.65.3 requires the Hearing Examiner to use the variance criteria in deciding this application. In addition, the Examiner may approve the application only if it is “consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan,” and “it is consistent with the public health, safety and welfare.”

CONCLUSIONS:

1. Parcel size, existing land use, terrain and vegetation are not constraining factors in the review of this variance application.
2. The zoning for the site is consistent with the Comprehensive Plan’s designation of the site for “Office/Multi-family” use. And under Interim Ordinance 4006, as amended by Ordinance 4021 and extended by Ordinance 4039, attached dwelling units remain a permitted use of the site under the Zoning Code.
3. Under state law, the Zoning Code’s height requirements for the PR 3.6 zone control over the height limit stated in the Comprehensive Plan. The Code’s 25-foot height limit would apply regardless of whether the property were developed with attached or detached units.
4. In light of the fact that the existing structure on the parcel adjacent to the 13th Avenue West right-of-way is located just seven feet from the property line, a variance that allowed the new structure to be set back 10 feet from the same property line would not change the character of the neighborhood.
5. The impact on the alley of traffic from one additional residence is not a consideration in determining whether to grant a variance from the required setback from the site’s 13th Avenue West property line.
6. The variance would have no impact on properties to the north of site across 4th Street West. The project’s removal of two driveways on 4th should improve the appearance of this side of the property.
7. The variance would allow a structure to be located 10 feet closer to the northeast property line adjacent to the 13th Avenue West right-of-way than would otherwise be allowed. However, given the location of the existing curb line and the presence of extensive open space within the right-of-way, the structure will not appear to crowd the property line or be out of character with the “existing building to street” character of the

area. Given the unique configuration of right-of-way widths and improvements in this area, a 10-foot setback here would function as well as a 20-foot setback in the typical right-of-way configuration.

8. The proposed development takes into account the property's proximity to neighboring single family residential uses by using appropriate site planning measures.

9. The proposed 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, and thus, meets the first variance criterion.

10. The buildable area on the site is constrained by its location at the intersection of three rights-of-way, and by the need to move access to the alley where it will cross one parcel to get to the other. This, together with the site's location at an intersection with a unique configuration, width, and landscaped and open space areas constitutes a special circumstance in which a front setback variance is both necessary and will have no appreciable impact on the relationship of the proposed structure to the adjacent right-of-way. The proposed variance meets the second variance criterion.

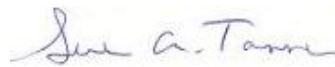
11. The proposed variance would not constitute the grant of a special privilege to the subject property. Other residential structures in the area appear from the street to be closer than 20 feet to the right-of-way, and the City has approved setback variances within the Market Neighborhood under circumstances similar to the ones in this case. Further, the configuration of the subject property and adjoining right-of-way and right-of-way improvements is unique. The proposed variance meets the third variance criterion.

12. The proposed variance is consistent with all applicable development regulations and with the public health, safety and welfare.

DECISION:

Based on the foregoing findings and conclusions, the application for a 10-foot reduction in the required 20-foot setback from the subject site's property line adjacent to the 13th Avenue West right-of-way is approved, subject to the conditions set forth in the Department's Advisory Report, Section I.B.

Entered this 11th day of May, 2006, pursuant to authority granted by KZC 150.65.



Sue A. Tanner
Hearing Examiner

EXHIBITS:

The following exhibits were entered into the record:

- Exhibit A Department's Advisory Report with the following attachments:
1. Vicinity Map
 2. Development Plans
 3. Development Standards
 4. Email from Tom DiGiovanni
 5. Letter from Patricia Ann Pease
 6. Letter from Wendy Lane
 7. Email from Susan Herman
 8. Letter from Wendy Lane
 9. Email from Patricia Ann Pease
 10. Letter from James EW Walsh
 11. Email from Brian and Silvia Lindgren
 12. Email from Jane Maule
 13. PR 3.6 Use Zone Chart
 14. Page XV.J-9 of the Market Neighborhood Comprehensive Plan
 15. Zoning Code Consistency Memo from Eric Shields dated January 23, 2006
 16. Applicant's Response to the Variance Criteria
 17. Neighboring Development Map
 18. Comprehensive Plan Map
 19. Concomitant Agreement
 20. Landscape Maintenance Agreement
 21. Interim Ordinance 4039
- Exhibit B Letter from Bob and Susan Herman
- Exhibit C Letter dated May 4, 2006, from Wendy B. Lane
- Exhibit D Hearing Examiner Decision in File No. IIA-02-50

PARTIES OF RECORD:

Applicant: William Anspach; 934 6th Street South, #200; Kirkland, WA 98033

Applicant's Architect: Susan Busch; Baylis Architects; 10801 Main Street; Bellevue, WA 98004

Applicant's Architect: Brian Brand; Baylis Architects; 10801 Main Street; Bellevue, WA 98004

Tom DiGiovanni; 331 8th Avenue West; Kirkland, WA 98033

Patricia Ann Pease; 401 13th Avenue West; Kirkland, WA 98033

Wendy Lane; 340 11th Avenue West; Kirkland, WA 98033

Susan Herman; 317 11th Avenue West; Kirkland, WA 98033

James EW Walsh; 410 13th Avenue West, Kirkland, WA 98033

Brian and Sylvia; 336 7th Avenue West; Kirkland, WA 98033

Jane Maule; 412 10th Avenue West; Kirkland, WA 98033

Department of Planning and Community Development

Department of Public Works

Department of Building and Fire Services

APPEALS AND JUDICIAL REVIEW

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

APPEALS

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed to the City Council 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 5:00 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 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.