

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

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**APPLICANT:** Dave King of Stuart Silk Architects on behalf of Edward Wenger and Crystal Ondo

**FILE NO:** SHR10-00001/ZON10-00003

**APPLICATION:**

1. Site Location: 551 5<sup>th</sup> Avenue West, an unopened right-of-way in which a private access easement has been constructed (5<sup>th</sup> Avenue West ROW).
2. Requests: To allow construction of a new single-family residence, the Applicants request variances to:
  - A. reduce the Kirkland Zoning Code's (KZC) required 5-foot setback from the north property line to 6 inches for 18.75 feet of the 67.94-foot total length;
  - B. reduce the KZC's required 10-foot setback from the west edge of the 5<sup>th</sup> Avenue West ROW to 2.5 feet;
  - C. reduce the KZC's required 45 degree sun angle setback to 67 degrees on the east and 73 degrees on the west; and
  - D. reduce the Shoreline Master Program's required 5-foot setbacks from the north property line and the 5<sup>th</sup> Avenue West ROW .
3. Review Process: Process IIA, Hearing Examiner conducts a public hearing and makes a final decision.
4. Summary of Key Issues: Compliance with the KZC and SMP variance criteria for reduction of the required setbacks along the north property line and the 5<sup>th</sup> Avenue West ROW, and with KZC general decisional criteria.

**SUMMARY OF RECOMMENDATION and DECISION:**

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

**PUBLIC HEARING:**

The Hearing Examiner visited the site, and held a public hearing on the application on July 1, 2010, 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 are available for public inspection in the Department of Planning and Community Development.

**COMMENT:**

Comments by the following persons, who offered sworn testimony at the hearing, are summarized in the minutes of the hearing:

From the City:  
Sean LeRoy, Project Planner

From the Applicant:  
Dave King, Architect

**CORRESPONDENCE:**

A letter, from Marie Yesland and Gary Gelow, was entered into the record. The letter expressed concern about the proposed residence having only two parking spaces.

**FINDINGS, CONCLUSIONS AND DECISION**

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

**Findings of Fact and Conclusions:**

1. The Facts and Conclusions on "Site Description," "History," and "Public Comment" (Sections II.A, .B and .C) set forth at pages 2 through 3 of Exhibit A., the Planning and Community Development Department's Advisory Report, dated June 3, 2010, (hereafter Exhibit A.), are accurate and supported by the record, and are adopted by reference as the Hearing Examiner's Findings and Conclusions.
2. The Facts and Conclusions on "Zoning Code Approval Criteria" (Section II.D), set forth at pages 3 through 6 of Exhibit A, are accurate and supported by the record, and are adopted by reference as the Hearing Examiner's Findings and Conclusions with the following exception: all references to proposed reductions in the sun angle setback are corrected to conform to the hearing testimony that the proposal is to reduce the angle from 45 degrees to 73 degrees on the west, and from 45 degrees to 67 degrees on the east.
3. The Facts and Conclusions on "Shoreline Master Program (SMP)" (Section II.E), set forth at pages 6 through 8 of Exhibit A, are accurate and supported by the record, and are adopted by reference as the Hearing Examiner's Findings and Conclusions.
4. The Facts and Conclusions on "Comprehensive Plan" and "Development Standards" set forth at page 8 of Exhibit A, are accurate and supported by the record, and are adopted by reference as the Hearing Examiner's Findings and Conclusions.
5. The Yesland/Gelow letter expressed concerns about parking impacts from the proposal. However, the applicants are replacing one single-family residence with another single-family residence. There is no increase in parking demand, and the new residence includes the two Code-required parking stalls.

**DECISION:**

Based on the foregoing findings and conclusions, the variance application is approved, subject to the condition recommended in Section I.B of the Department's June 3, 2010 Advisory Report.

Entered this 7<sup>th</sup> day of July, 2010, pursuant to authority granted by KZC 150.65.

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Sue A. Tanner  
Hearing Examiner

**EXHIBITS:**

The following exhibits were entered into the record:

- Exhibit A Department's Advisory Report with 6 attachments  
Exhibit B Letter of Marie Yesland and Gary Gelow received June 24, 2010

**PARTIES OF RECORD:**

Applicant: Dave King, Stuart Silk Architects, 2400 North 45<sup>th</sup> Street, Seattle, WA 98103  
Marie Yesland and Gary Gelow, 559 5<sup>th</sup> 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**

Appeal to City Council:

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., \_\_\_\_\_, twenty-one (21) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

Appeal to Shorelines Hearings Board:

Pursuant to RCW 90.58.180 and WAC 173-27-220 any person aggrieved by the City's final decision on the Shoreline Substantial Development Permit may seek appeal to the state Shorelines Hearings Board by filing a petition for review. All petitions for review shall be filed with the Shorelines Hearings Board within 21 days of the date the Department of Ecology receives the City's decision. Within seven days of filing any petition for review with the Shorelines Hearings Board, the petitioner shall serve copies of the petition for review on the Department of Ecology, the State Attorney General and the City of Kirkland. The petition for review must contain items required by WAC 461-08-055.

**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.