

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

APPLICANT: Dave Buck, Chesmore/Buck Architecture

FILE NO.: SPL07-00008, SHR07-00001, ZON07-00004

SITE LOCATION: 405 Lake Street South

APPLICATION: Subdivide one lot into two lots; proposed Lot 1 is 5,800 square feet, and proposed Lot is 6,640 square feet. The applicant also seeks variances from the front yard and view corridor shoreline requirements, and from the front yard, view corridor and north property line zoning requirements. The property is zoned Waterfront District I.

REVIEW PROCESS: Pursuant to KZC Section 90.55.2, Process IIA, Hearing Examiner conducts public hearing and makes final decision.

KEY ISSUES: Key issues are: whether the requested variances meet the approval criteria. Planning and Community Development Department recommends conditional approval of the short plat, conditional approval in part of variances to the front yard and north property line shoreline and zoning requirements, and denial of the requested variance to the view corridor width.

PUBLIC HEARING:

The Hearing Examiner held a public hearing on the application on May 29, 2008, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available in the City Clerk's Office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development.

The following persons spoke at the public hearing:

From the City: Desiree Goble, Project Planner

From the Applicant: Dave Buck, Chesmore/Buck Architecture

Hearing Examiner Decision

SPL07-00008

Page 2 of 12

No one from the general public testified at the hearing.

At hearing, the applicant and the Department agreed that the record should be left open to allow for further discussion between the parties concerning the recommendations in the Advisory Report. The Department submitted a memorandum on June 5, 2008, regarding some of the issues identified at hearing, and the applicant submitted a memorandum indicating his agreement with staff's memorandum. The staff memo and applicant response were added to the record, and the record was closed.

CORRESPONDENCE:

During the comment period that ran from March 29 through April 30, 2007, three comments were received. Another comment letter was submitted on May 22, 2008. The applicant also submitted a letter at hearing.

FINDINGS AND CONCLUSIONS

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

A. Findings of Fact

Site Development and Zoning/Comprehensive Plan Designation

1. The site is located at 405 Lake Street South and the upland portion is approximately 12,440 square feet (.28 acres). The entire property is approximately 51,900 square feet. There are 12 units on the property, including a 9-unit apartment complex on the north side of the property and a triplex on the south side of the property. Other structures located on the property include a dock, storage structure, boat house, and carport located within the high waterline setback yard.
2. The zoning is Waterfront District I (WDI), with a minimum lot size of 3,600 square feet per unit.
3. The Shoreline designation is Urban Residential 1 (UR I).
4. The topography of the site drops from a high elevation of 28 feet just west of the east property line to 20 feet at the back of the bulkhead, a 13 percent grade at the most extreme point. There are seven significant tree (trees with a diameter greater than six inches) located on the property, four of which are located in the high waterline yard. There are two additional trees located in the right-of-way.

Neighborhood Development and Zoning

5. The properties to the north and east are developed with multifamily residences. The property to the north is zoned Waterfront District I (WDI) and the properties to the east are zoned Multifamily Residential 3.6 (RM 3.6). To the south is a single family residence which is zoned WDI. The property is bounded to the west by Lake Washington.

History

6. The permit history of the pier and dock at the site is described in the Staff Advisory Report at pages 4-5. The duplex, nine-unit apartment building, carport, and storage shed were constructed on the property prior to the adoption of the City's Shoreline Master Program (SMP).

Public Comments

7. The Department received three comments from members of the public during the public comment period, and another comment letter on May 22, 2008. The letters commented on the compliance with code requirements regarding height, setbacks, view corridor and pedestrian pathway requirements. At hearing, the applicant also submitted a written response to the staff advisory report (Exhibit D).

Department Review

SEPA

8. The City issued a Determination of Nonsignificance on May 25, 2007 for the proposal, and issued a SEPA Addendum to the DNS and the checklist on May 20, 2008.

Applicable criteria

9. KMC 22.20.140 provides that a short subdivision is to be approved if (a) there are adequate provisions for open spaces, drainageways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds and schools; and (b) the short plat will serve the public use and interest and is consistent with the public health, safety and welfare.

10. The application is subject to Process IIA review. Under KZC 150.65.3, a Process IIA application may be approved if:

- a. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- b. It is consistent with the public health, safety and welfare.

11. The site development standards pertaining to a detached dwelling unit in the WDI zone are set forth in KZC 30.15.010. KMC 24.05.145 sets forth the site development standards for detached dwelling units in the urban residential shoreline environment.

Hearing Examiner Decision

SPL07-00008

Page 4 of 12

12. The minimum lot size for detached dwelling units is 3,600 square feet. The proposed lots are 5,800 and 6,400 square feet.

13. KMC 22.28.050 states that lots must be of a shape so that reasonable use and development may be made of the lot. Generally, the depth of the lot should be not more than twice the width of the lot. The proposed lots are rectangular in shape; the lots are at least 70 feet wide by 70 feet deep and 70 feet wide by 92 feet deep. Once the required setbacks and view corridor are taken into consideration the buildable areas are 25 feet wide by 25 feet deep, and 25 feet wide by 47 feet deep.

14. The applicant has requested variances which will enhance the buildable area of the proposed lots. The variance requests are described in the Advisory Report at Sections II.F and II.G.

15. KMC 24.05.130.c provides that parking areas must be designed to use the minimum amount of space necessary to provide the required parking and safe and reasonable access. Whenever possible, parking should be located out of the shoreline area, and should not be located between the building or buildings on the subject property and Lake Washington.

16. The zoning code requires that a detached dwelling unit provide two parking spaces per unit. The applicant is proposing that each lot have a garage located three feet from the front property line, with doors perpendicular to the right-of-way. Each garage will provide two parking spaces. The driveway in front of each garage will provide additional guest parking. The proposed configuration will require a front setback variance.

17. KMC 24.05.135.a provides that, except as otherwise provided, all development must provide public pedestrian access from the right-of-way to and along the entire waterfront of the property. KMC 24.05.135.c provides that, except in the suburban residential shoreline environment, short plats must be designed to provide public pedestrian access as stated in subsection (a). KMC 24.05.135b.1 exempts the following from the public access requirement: construction, repair, remodeling and use of one detached dwelling unit, as well as the construction, remodeling, repair and use of bulkheads, docks and other uses, developments and activities incidental to the use of the subject property as habitation for one family.

18. The property contains 11 residential units, and the Assessor's records indicate that there may be a 12th unit. The property is currently nonconforming with respect to density. There is no public pedestrian access trail on the property.

19. The Department has reviewed the applicant's contention that requirement of dedicated public pedestrian access would constitute an unconstitutional taking in this instance, and has consulted with the City Attorney.

20. The Department has recommended that the applicant not be required to dedicate a public pedestrian access easement at the property, so long as each of the lots in the short plat is used for single family purposes. The Department also has stated that in the event either lot is put to a use other than single family residential, the City reserves the right to require dedication of a public pedestrian access easement at that time “with the understanding that applicant reserves the right to contest the imposition of any public pedestrian access easement dedication requirement.”

Right-of-way improvements

21. KMC 22.28.090 requires the applicant to comply with the requirements of Chapter 110 of the Zoning Code with respect to the dedication and improvement of adjacent rights-of-way.

22. KZC 110.10 and 110.25 require the applicant to make half street improvements in the rights-of-way abutting the subject property. The property abuts Lake Street South, which is designated as a principal arterial. KZC 110.50 provides that the Public Works Director shall determine the extent and nature of improvement requirement in principal arterials.

23. KZC 110.60.1 states that if a right-of-way abutting the subject property is not wide enough to contain the requirement improvement, the applicant shall dedicate as right-of-way a strip of land adjacent to the existing right-of-way wide enough to encompass the required half-street improvements.

24. The Public Works Director has determined that the following improvements should be made to the right-of-way adjoining Lake Street South: (a) Lake Street South right-of-way adjoining the property is currently improved with approximately eight feet of sidewalk which must be widened to ten feet; (b) dedicate right-of-way as necessary to encompass the new sidewalk; (c) remove the existing sidewalk and install a new ten-foot-wide sidewalk with low growing street trees in tree grates 30 feet on-center. The sidewalk may be narrowed to less than ten feet where necessary to save significant trees; (d) Replace any cracked curbs and gutters.

Natural Features

25. Chapter 95 KZC contains the regulations concerning the retention of trees. The applicant is required to retain all viable trees on the site following short plat approval. Tree removal is considered at the land surface modification and building permit stages of development.

26. The applicant has submitted a Tree Plan III, prepared by a certified arborist. Specific information regarding the tree density on site and the viability of each tree can be found in Attachment 3, Development Standards.

Hearing Examiner Decision

SPL07-00008

Page 6 of 12

Zoning Code Compliance.

27. The applicable site development standards are set forth in KZC 30.10 and 30.15.10. The required setbacks and view corridor widths for the proposed lots in this case are as set forth on page 9 of the Advisory Report, along with the applicant's proposed setbacks. The applicant seeks variances from the required 21.2-foot view corridor for each lot, and proposes a 17.6-foot view corridor on Lot 1, and a 17.7-foot view corridor width on Lot 2. The applicant seeks a variance from the required 35-foot north property line setback on each lot, and proposes a 17.6 setback on Lot 1 and a 17.7-foot setback on Lot 2. The applicant seeks a variance from the required 30-foot front setback for each lot, and proposes a 3-foot front setback for each lot. The Applicant's response at hearing indicates that it proposes a four-foot front setback at the garage for landscaping, and a four-foot front setback for the house above the garage.

28. KZC 120.20 sets forth the decisional criteria for variances. Each criterion must be met in order for a variance to be granted. The applicant's response to the criteria are set out in the Advisory Report at Attachment 9.

29. The Department's analysis of the proposed zoning variances is set forth in the Advisory Report. The facts set forth in Section II.F are adopted, except as otherwise provided below.

30. The floor area for the "Valente property" is as follows: the basement is 1,844 square feet; the first floor is 1,800 square feet; and the second floor is 1,516 square feet.

31. The view corridor proposed on Lot 2, when combined with the seven-foot view corridor on the south side of Lot 1, exceeds the total amount of view corridor width required for Lot 2 under the Zoning Code and the Shoreline Master Program.

32. The applicant's letter dated May 28, 2008, contains responses to the Department's analysis and recommendations from

Shoreline Master Program

33. KMC 24.06.050 sets forth the mechanism for variances from the shoreline regulations. WAC 173-27-150 establishes six criteria with which a variance request must comply in order to be granted. The applicant must demonstrate that extraordinary circumstances exist and the public interest shall suffer no substantial detrimental effect.

34. The applicant seeks variances to the view corridor and front yard setback requirements of the City's Shoreline Master Program (SMP).

35. The Department's analysis of the application for shoreline variances is set forth in the Advisory Report. The facts set forth in Section II.G are hereby adopted, except as otherwise provided below.

Comprehensive Plan

36. The subject property is located within the Moss Bay neighborhood. The site is designated as medium density residential with a density of up to 12 units per acre. The applicant proposes a density of 7 dwelling units per acre.

Development Standards

37. Other comments and requirements placed on the project are found in Attachment 3 to the Advisory Report.

Department recommendations

38. The Department's initial recommendations on this matter are set out at Section I.B of the Advisory Report. The Department subsequently modified some of the recommendations, in light of the goals and objectives of the zoning development standards and the shoreline regulations at issue in this application. The applicant reviewed the modified recommendations.

B. Conclusions

Short Plat

1. The proposed short subdivision as conditioned would meet the applicable development regulations except for those for which variance relief has been granted, and would be consistent with the Comprehensive Plan. As conditioned, the proposal makes adequate provisions for open spaces, drainageways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds and schools. The proposal would serve the public use and interest and is consistent with the public health, safety and welfare.

2. The short plat would be consistent with the Comprehensive Plan, which designates this site for residential development at a higher density than is being proposed.

Zoning Variances

3. In order to be granted, variances must meet all three criteria set out 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 site, 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.

4. The proposed variances would not be materially detrimental to the property or improvements in the area of the subject property or to the City. An adequate view corridor will still be provided, given the existing conditions and the proposed design of

Hearing Examiner Decision

SPL07-00008

Page 8 of 12

the structures on the new lots. The variance for the north property line setback, when considered in light of the required view corridors, will provide adequate separation and a sense of openness. The front yard variance, as recommended by staff, would be consistent with development in the vicinity.

5. The proposed variances would be necessary because of special circumstances regarding the size, shape and waterfront location. In order to develop two single family homes at this location, variances are required on account of the property's size and shape and its location.

6. The permit history of other development in the vicinity and zone shows that the recommended variances for view corridor, north property line and front yard setbacks would not grant a special privilege to the applicant. It is somewhat difficult to compare other development in the area with that proposed, given each building site's individual characteristics, but the grant of the variances in this case would result in development that is comparable to other development in the zone and vicinity, and would not constitute a special privilege for this applicant.

7. The proposed variances for view corridor width, north property line setback and front yard setback, as described in the staff memo of June 5, 2008, meet all three criteria and should be approved as conditioned.

Shoreline Variance

8. KMC 24.06.050 and WAC 173-27-170 establish six criteria for variances: (1) That the strict application of the bulk, dimensional or performance standards in the applicable master program precludes or significantly interferes with reasonable use of the property; (2) that the hardship is specifically related to the property and the application of the master program; (3) that the project design is compatible with other authorized and planned uses, and will not cause adverse impacts to the shoreline environment; (4) the variance will not constitute a grant of special privilege not enjoyed by other properties in the area; (5) the variance requested is the minimum necessary to afford relief; and (6) the public interest will suffer no substantial detrimental effect.

9. The strict application of the full view corridor width for both lots and the front yard setback would preclude reasonable use of the property after it is platted. The hardships involved in this case are related to the property's location and application of the shoreline regulations in addition to the development standards for the site. The project design as conditioned would be compatible with other single family homes in the area and along Lake Street South. The variances as recommended in the staff reports would be consistent with the limitations placed upon other development in the vicinity and zone, and would be the minimum necessary to afford relief. Finally, provided the recommended conditions are imposed, the public interest would suffer no substantial detrimental effect.

10. The variances from the front yard setback and view corridor shoreline requirements as recommended by staff would meet the shoreline variance criteria and should be granted.

DECISION

The application is hereby approved with the conditions set forth in Section I.B of the Advisory Report, except for the following modifications:

Recommendation 3.c is modified to read: Designate a view corridor easement over the south seven feet of lot 1 and the north 17.71 feet of lot 2 (with the understanding that lot 2 will be 70 feet wide). Designate an easement over the full view corridor width prescribed by the Zoning Code on the north side of lot 1.

Recommendation 4.a is modified to read: The full view corridor width prescribed by the zoning code will be maintained on the north side of lot 1 and a view corridor will be maintained over the north 17.71 feet of lot 2.

Recommendation 4.b is modified to read: Provide a seven foot wide view corridor on the south side of lot 1.

Recommendation 4.c is modified to read: The remaining portions of the house above the garages on lots 1 and 2 shall meet the north property line setback requirement. Decks can extend up to 5 feet into the north property line setback provided that open or see-through railings are used.

Recommendation 4.e is modified to read: The portions of the second story over the garage are set back at least 12 feet from the front property line. Decks can be located within this setback provided that open or see-through railings are used.

Recommendation 4.g is modified to read: The north property line setback is: 21.2 feet on lot 1 and 17.71 feet on lot 2 for the portion of the house that is located west of the garage; the garages on both lots shall meet the north property line setback requirement.

Entered this 9th day of June, 2008.

Anne Watanabe
Hearing Examiner

EXHIBITS

The following exhibits were offered and entered into the record:

- A. Planning and Community Development Staff Advisory Report Attachments 1 through 15.
 - 1. Vicinity Map
 - 2. Site Plan and Applicant's Drawings
 - a. Proposed Short Plat
 - b. Lake Level Plan
 - c. Street Level Plan
 - d. Upper Level Plan
 - e. Elevation Drawing Lot 1
 - f. Elevation Drawing Lot 2
 - g. Osborne Boundary Survey
 - 3. Development Standards
 - 4. Public Comments
 - a. Sandy and Glenn Peterson
 - b. Mike And Jan Peter
 - c. Mary and Marvin Mitchell
 - 5. SEPA
 - a. Addendum
 - b. Original SEPA Determination
 - c. Environmental Checklist
 - 6. WDI Use Zone Chart
 - 7. Shoreline Detached Dwelling Unit Regulations
 - 8. Arborist Report
 - 9. Applicant's Response to Zoning Code Variance Criteria
 - 10. Site pan showing the buildable area with a variance
 - 11. Valente Site Plan
 - 12. Vollstedt Site Plan
 - 13. Shulman Site Plan
 - 14. Applicant's Response to Shoreline Variance Criteria
 - 15. Moss Bay Neighborhood Plan Map
- B. Comment letter from Mary Mitchell, Arlette Cox and Cynthia Duesenberg
- C. Copy of Department's May 29, 2008 Powerpoint slides
- D. Applicant's May 28, 2008 response to the Advisory Report
- E. Staff Memo submitted to Hearing Examiner on June 5, 2008 and June 5, 2008
Applicant email response to memo

PARTIES OF RECORD

Dave Buck, Chesmore/Buck Architecture, 123 Lake Street S. #106,
Kirkland, WA 98033

Stuart McLeod, 118 Lake Street South, Suite E, Kirkland, WA 98033

Sandy and Glenn Peterson, 319 Lake Street South, Kirkland, WA 98033

Mike and Jan Peter, 213 Lake Street South, Kirkland, WA 98033

Mary and Marvin Mitchell, 311 2nd Street South #201, Kirkland, WA 98033

Arlette Cox, 311 2nd Street South, #103, Kirkland, WA 98033

Cynthia Duesenberg, 311 2nd Street South #102, Kirkland, WA 98033

SUBSEQUENT MODIFICATIONS

Modifications to approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

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.

APPEAL TO CITY COUNCIL

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed by the applicant or any person who submitted written comments or oral testimony to the Hearing Examiner on the application. A party who signed a petition may not appeal unless the 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., _____, 21 (21) calendar days following the postmarked date of distribution of the Director's decision.

APPEAL TO THE SHORELINE 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 Shoreline Hearings Board by filing a petition for review. All petitions for review shall be filed with the Shoreline 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 Shoreline 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 22.20.370 of the Subdivision Ordinance, the short plat must be recorded with King County within four (4) years following the date of approval, or the decision becomes void; provided, however, that in the event judicial review is initiated, 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 recording of the short plat.

Pursuant to RCW 90.58.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Substantial Development Permit has been granted pursuant to the Shoreline Management Act must be undertaken within two (2) years after the date of approval. The project must be completed within five (5) years and a one (1) year extension may be considered.

“Date of approval” means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.