

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

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**APPLICANTS:** Heather Skinner and Shawn Schneider

**FILE NO.:** ZON05-00033

**SITE LOCATION:** 9118 126<sup>th</sup> Avenue NE

**APPLICATION:** A request for approval of a reasonable use permit to allow construction of one single-family residence within a wetland buffer. The proposal includes demolition of the existing residence, and construction of a new residence and a detached garage structure.

**REVIEW PROCESS:** Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision.

**SUMMARY OF KEY ISSUES:** Compliance with reasonable use and zoning code decisional criteria

Shifting the improvements closer to the front property line, reducing the front yard setback

Relocating proposed garage to 14 feet from the west of the property line, and reducing garage depth from 32 to 20 feet

Eliminating proposed two-story bay window at the rear of the proposed residence

**SUMMARY OF RECOMMENDATIONS:**

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

**PUBLIC HEARING:**

After reviewing the Department of Planning and Community Development Advisory Report, the Hearing Examiner held a public hearing on the application. The hearing commenced at 9 a.m. on July 6, 2006, 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.

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The record was held open through July 27, 2006, to allow additional time to receive public comments on a proposed condition that would reduce the required 20-foot front yard setback by 9 feet.

The following persons spoke at the public hearing:

From the City:

Tony Leavitt, Project Planner

From the Applicant:

Heather Skinner, Applicant

Shawn Schneider, Applicant

Steve Winter, Adolfson and Associates

From the Community:

Jeff Trager

**CORRESPONDENCE:**

The following persons submitted written comments on this application during the post-hearing public comment period, which ran through July 27, 2006.

Heather Skinner and Shawn Schneider

Dr. Matthew L. Saxton

Jeff Trager and Kaylee Nilan

Jack Teague and Christene Teague

Judy and Daniel Klein

Kevin Nooney and Liz Ottavelli

Clarence and Sandra Stone

Kurt Fisher

Two letters were received after the close of the comment period and are not part of the record: a letter from Scott Caldwell and Kerry Ledgerwood, and an emailed copy of a letter from Jeff Trager, which appears to be a duplicate of a letter already submitted by Mr. Trager.

**FINDINGS, CONCLUSIONS AND RECOMMENDATION**

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

**A. Findings:**

1. The Findings of Fact set forth at pages 3-12 of the Department's Advisory Report (Exhibit 1), are adopted by reference as part of the Hearing Examiner's Findings, except as revised below.
2. As noted in the Advisory Report, a Type I wetland (palustrine emergent and forested) occupy the eastern two-thirds of the site, and remainder of the site is within the 100-foot buffer area. The applicants currently reside in the existing 840-square foot house on the site, which was constructed in 1919. The applicant's back yard space, which is largely within the emergent wetland area, was likely established some time ago as lawn area. At this time, the applicants use the back yard area for typical residential activities, i.e., storage shed, raised garden beds, and children's play area (see photographs in Attachment 6 of Exhibit A).
3. The applicants propose to construct a new house and a detached garage with a combined footprint of 2,435 square feet. Thus, it represents an increase of 1,595 square feet over the footprint of the existing house. The footprint of the new house would be 1,603 square feet. The detached garage would have a footprint of 832 square feet and would be located on the footprint of the current house. The total square footage of the house would be approximately 2,680 square feet; the garage would be 1,400 square feet. The applicants propose to reside in their existing house during construction of the new house, after which time they will demolish the older structure and construct the garage on the site of the old house.
4. Under the subject proposal, the applicants will essentially give up their current use of the existing back yard area of the property. They would remove the shed and raised beds, and would move the north-south section of the existing fence to demarcate the wetland buffer from the wetland area. The wetland area as well as all other portions of the wetland buffer would be placed under a Natural Greenbelt Protective Easement (NGPE) to protect the buffer and wetland areas in perpetuity. The applicants have submitted a mitigation plan to restore or enhance approximately 10,095 square feet of wetland and wetland buffer. The City's wetland consultant, The Watershed Company, has reviewed the plan and its recommendations are included in the Department's recommended conditions.
5. The Advisory Report notes that the total impact to the wetland buffer would be approximately 6,882 square feet, although it is not clear from the record how many square feet of wetland buffer are already affected by the existing improvements at the property.
6. In order to provide additional public notice and an opportunity to comment on the reduction of the front yard setback recommended by the Advisory Report, additional notice was published, and the record was held open through July 27, 2006, for submission of written comments to the Hearing Examiner.

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7. A reasonable use permit was granted to the residence located at 9206 126<sup>th</sup> Avenue NE (north of the subject property) in 1999. The approved design was for a house with a footprint of approximately 2400 square feet, and included a 20-foot front yard setback.

8. The applicants have agreed to amend their proposal to conform to most of the conditions proposed by the Department. They have agreed to use pervious surface for exterior hard surfaces, have reduced the sizes of the proposed driveway, porch area and patio, will observe a 10-foot building setback line from the structure's foundation, and have agreed to the recommended changes to the mitigation plan.

9. However, the applicants oppose the recommendation to shift the improvements to within 11 feet of the front property line. The applicants instead request to move the improvements to within 16 feet of the front property line. The applicants note that they will lose some use of their backyard area and therefore want to retain some useable front yard area. The applicants also note that the house immediately to the north (at 9206 126<sup>th</sup> Avenue NE) was granted reasonable use approval in 1999 with a 20-foot front yard setback.

10. The applicants propose to move the garage to within 16 feet of the property line, rather than 14 feet as recommended. The applicants also disagree with the Department's recommendation to reduce the proposed garage depth from 32 feet to 20 feet. The applicants instead propose reducing the garage depth to 28 feet. The applicants are concerned that a 20-foot garage is not sufficient depth, and they wish to have some storage area in the garage, since they will be removing an existing storage shed from their backyard (which is located in the wetland).

11. The applicants disagree with the proposed elimination of the two-story bay window at the rear of the proposed residence. The applicants also note that the property to the north received approval for a bay window on the east side of the property.

12. The Hearing Examiner received several written comments on the reduction of the front yard setback. All of the comment letters supported the applicants' proposal, and were opposed to imposing a condition on the proposal that would require the reduction of the front yard setback.

### **B. Conclusions:**

1. The conclusions set forth in the Department's Advisory Report at pages 4-12 are adopted by reference as part of the Hearing Examiner's recommendation, except as noted below.

2. Reasonable use requests must be evaluated against the criteria in KZC 90.140. The first criterion would be met by this application, since no other permitted type of land

use for the property would have less impact on the sensitive area and buffer than would the proposed single family use.

3. The other criteria to be considered are whether there is an on-site alternative that is feasible and reasonable, and whether the proposal would result in the minimum feasible alteration of or impairment of the wetland and wetland buffer. In considering whether this proposal meets these criteria, it is important to note the current uses already established at this property. The existing house and lawn/yard spaces are already located in the wetland buffer and the emergent wetland area, but some uses would be removed from the wetland and buffer as a result of the proposal.

4. The record provided in this case supports the conditional approval recommended by the Department. The removal of the shed and cessation of other uses currently occurring in the back yard, the reduction in size of the proposed improvements, and the smaller front yard setback, will all reduce the proposal's impacts to the wetland and buffers. However, some modifications to the conditions are appropriate in light of some of the information received at the hearing and the comments received after the hearing. The front yard setback for the house and the garage should be reduced from 23 feet to 16 feet, rather than 11 feet, in order to retain usable yard space, given the loss of the current back yard area for active use. A 16-foot setback would also maintain a slightly greater distance between the garage and the sidewalk for purposes of ensuring pedestrian safety. Reducing the depth of the garage from 32 feet to 28 feet, rather than 20 feet, is reasonable in this case. The garage will be shifted seven feet west to preserve wetland buffer area, and the applicants propose to use the garage structure for storage as well, since they are removing the shed and planted areas from their backyard.

5. The Department has also recommended elimination of the proposed bay window on the east side, as a way to reduce the size of the project. The applicants have requested the bay window as a design feature that will allow them to passively enjoy the wetland and buffer area on their property. In light of other proposed conditions that will reduce the impacts to the wetland and its buffer, it does not appear necessary to deny the proposed bay window in order to approve the application. This condition should therefore be deleted.

**C. Recommendation:**

Based upon the foregoing findings of fact and conclusions, approval of the application is recommended, along with all of the Department's recommended conditions, set forth in Exhibit A, pages 2-3, except that the following recommendations set forth at I.B should be amended as follows:

*Condition 2: In order to provide additional wetland buffer width, the improvements shall be shifted closer to the front property line and the required front yard setback shall be reduced from the required 20 feet to ~~11~~ 16 feet.*

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Condition 4:

- c. *Relocate the proposed garage to ~~14~~ 16 feet from the west property line*
- d. *Reduce the depth of detached garage structure from the proposed 32 feet to ~~20~~ 28 feet.*

Condition 4.f: is deleted.

**EXHIBITS**

The following exhibits were offered and entered into the record:

**Exhibit A: Planning and Community Development Staff Advisory Report**

Attachments:

1. Vicinity Map
2. Development Plans
3. Development Standards
4. Email from Jeff Trager
5. Email from Kurt Fisher
6. Statement of Compliance with KZC 90.140 prepared by Adolfson Associates dated December 2005
7. Revised Mitigation Plan Memo prepared by Adolfson Associates, dated May 8, 2006
8. The Watershed Company Review Letter, dated June 7, 2006
9. RSX Use Zone Chart
10. Interim Ordinance 3742
11. North Rose Hill Neighborhood Land Use Map

**Exhibit B: Applicants' memo to Kirkland Hearing Examiner dated July 6, 2006**

**Exhibit C: Applicants' Response to Advisory Report Recommendations, dated July 6, 2006**

**Exhibit D: Comments received during second comment period (see "Correspondence" section above)**

In addition to the above exhibits, the Hearing Examiner took official notice of the Hearing Examiner's Findings, Conclusions and Recommendation in a 1999 recommendation on an application for reasonable use by Jim Gartland and Carol Cobb, File IIB-98-110.

**PARTIES OF RECORD**

Heather Skinner and Shawn Schneider, 9118 126<sup>th</sup> Avenue NE, Kirkland, WA 98033

Jeff Trager and Kaylee Nilan, 9214 126<sup>th</sup> Avenue NE, Kirkland, WA 98033

Kurt and Cindy Fisher, 9206 126<sup>th</sup> Avenue NE, Kirkland, WA 98033

Clarence and Sandra Stone, 9115 126<sup>th</sup> Avenue NE, Kirkland, WA 98033

Jack Teague and Christene Teague, 9209 126<sup>th</sup> Avenue NE, Kirkland, WA 98033

Judy and Daniel Klein, 9205 126<sup>th</sup> Avenue NE, Kirkland, WA 98033

Dr. Matthew Saxton, 9125 126<sup>th</sup> Avenue NE, Kirkland, WA 98033

Kurt Fisher, no address

Kevin Nooney and Liz Ottavelli, no address

Department of Planning and Community Development

Department of Public Works

Department of Building and Fire Services

Entered this 7<sup>th</sup> day of August, 2006, per authority granted by KZC 152.70. A final decision on this application will be made by the City Council.

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Anne Watanabe  
Hearing Examiner

### **CHALLENGES AND JUDICIAL REVIEW**

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

#### **CHALLENGE**

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., \_\_\_\_\_, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

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Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

**JUDICIAL REVIEW**

Section 152.110 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 twenty-one (21) calendar days of the issuance of the final land use decision by the City.

**LAPSE OF APPROVAL**

Under Section 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, 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 152.110, 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 152 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.