

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

APPLICANT: Mark Travers on behalf of John Stephanus

FILE NO.: ZON06-00030 and SHR07-00004

SITE LOCATION: 4611 Lake Washington Blvd NE

APPLICATION: Application for Zoning Permit and Substantial Development Permit for an addition to an existing duplex. The addition would consist of a 522 square foot upper floor addition to the duplex, and an addition for garage space. The proposed garage addition requires a variance to the zoning regulations to reduce the north required yard to 21 feet (the required yard would be 29 or 27.5 feet, for applicant's proposed Options A and B, respectively.)

REVIEW PROCESS: Process IIA, Hearing Examiner conducts public hearing and makes final decision.

SUMMARY OF KEY ISSUES: Compliance with the criteria for variance approval

PUBLIC HEARING:

The Hearing Examiner conducted a public hearing on the application commencing at 7 p.m. on September 6, 2007, 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 are generally available from the Department of Planning and Community Development within 10 working days after the hearing.

The applicant submitted additional information on September 7, 2007, describing the dimensions of the garages on the site and on the property to the west. The information was made available to those who testified or submitted written comments to the Hearing Examiner. The record was re-opened to allow addition of the applicant's September 7, 2007 submittal, as well as the comment submitted by Michael Deitch in response.

The following persons spoke at the public hearing:

From the City:
Stacy Clauson, Associate Planner

From the Applicant:
Duana Kolouskova, attorney
Mark Travers, project architect
John Stephanus

From the Community:
Michael Deitch

CORRESPONDENCE

Comment letters on the application were submitted to the Department and the Hearing Examiner and are included in the file on this matter.

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. Except as set forth below, the Findings of Fact set forth in the Department's Advisory Report are adopted by reference.
2. The site is addressed as 4611 Lake Washington Blvd NE and is approximately 12,635 square feet in size. The property has 26 feet of linear frontage along Lake Washington. The buildable portion of the site measures 100.28 feet by 104 feet, and contains approximately 10,068 square feet.
3. The property is developed with a duplex structure and private pier. The duplex was approved as a conversion from a single family residence in 1994 by the City, File No. IIA-94-107. That permit was granted subject to a condition requiring the establishment of a public access easement over the southerly 10 feet of the northerly 15 feet of the subject property. The installation of the public access walkway was deferred until adjoining properties redevelop into multifamily uses. The duplex unit was apparently installed without permits, and the Advisory Report notes a pending enforcement action on this matter. The Advisory Report at pages 4-5 describes the history of other permits at the site.
4. The site is shown on the City's maps to be underlain with a Seismic Hazard area.
5. The site is zoned WD III, a medium-density residential zone. The site is designated as Urban Residential 2 (UR2) Shoreline Environment.

6. The site slopes downhill to the west with an elevation drop of approximately 16 feet across the eastern rectangular portion of the site. The basement level of the building is recessed below the level of Lake Washington Boulevard, while the main floor level is approximately six feet above the Boulevard's elevation. A retaining wall is located along the south side of the access driveway; the wall extends above the driveway by approximately three feet.

7. The properties to the north and south are located in the WD III zone and the UR 2 shoreline environment. The property immediately to the north has been developed nearly to the property line separating it from the subject site. The upland portions of the site are bordered by single family residences, and the waterward portions are bordered by private piers. The property to the east is zoned RS 12.5 and is outside shoreline jurisdiction. The site abuts the Lake Washington Boulevard NE right-of-way. Property across the street is developed with single family uses.

8. The area between Lake Washington Boulevard NE and Lake Washington, south of NE 52nd Street, has been designed for medium density development, and the current pattern in the area includes a mix of single- and multifamily structures. Many of the lots are narrow (approximately 50 feet in width). The exceptions to the general pattern are found in the several condominium sites in the area, including the Breakwater, Yarrow Cove, Yarrow Bay, Chartwater, Breakers and Yarrow Shores Condominiums. All of these structures observe the north required yard, except for the Yarrow Bay overwater structure (see Attachment 13 to the Advisory Report).

9. West of the property is a single family residence and Lake Washington. The property to the west takes access from Lake Wahington Blvd. NE by an access easement across the subject site. This easement is 16 feet wide for the majority of its length and widens to 19.5 feet on the western portion.

10. Various permits and/or approvals have been issued for this site, as described in the staff report at page 4.

11. The building as currently configured contains two separate dwelling units, with independent living facilities present on the basement level. The structure includes a main floor garage serving the upper unit, and a lower level (basement) garage serving the lower level unit. The upper garage can accommodate two small cars, but the basement garage can only accommodate a single car, given the garage's size and access. A driveway and parking area are located in front of the residence, in the required front yard. The site can accommodate parking for five vehicles in the enclosed and surface parking areas on the site.

12. The Advisory Report notes that the basement floor garage measures approximately 21 feet by 24 feet, while the main floor garage measures 20 feet 11 inches by 20 feet. Information submitted by the applicant indicates that the useable area of the garages is somewhat less than this, since the basement garage has an interior width of 19

feet by 8 inches, and the main floor garage has an interior width of 20 feet 4 inches. Each garage door is approximately 15 feet 10 inches wide.

13. The driveway leading to the basement garage can be used to park vehicles in tandem configuration behind the garage door.

14. The driveway serving the basement garage is located parallel to the access driveway; it requires a “three-point” turn in order to access the garage; the retaining wall and angled access to this garage render make it difficult or impossible to approach the garage head-on.

15. The proposal is for an addition to the existing duplex. The addition would consist of a 522-square foot upper floor addition, and an addition for garage space to provide additional covered parking for the units. The garage addition would require variance approval to reduce the required north yard to 21 feet.

16. The applicant has submitted two alternative proposals for the garage addition. Option A is the applicant’s preferred alternative. Under Option A, a two-story stacked garage would provide two additional enclosed parking spaces, one for the basement and one for the upper story unit. The addition would occur on the north side of the existing duplex and would measure approximately 17 feet by 21 feet. The garage addition would be two stories, aligning the basement and main floor levels.

17. Under Option B, a one-story garage addition measuring approximately 17 feet by 40 feet would be constructed at the basement level of the building, and would provide two additional enclosed parking spaces in a tandem parking configuration to serve the basement and upper story units

18. The existing building is located approximately 34.5 feet from the north property line. In the WD III zone, the required north yard is determined by the greater of 15 feet or one-and-half times the height of the primary structure above average building elevation (ABE) minus 10 feet. The average building elevation (ABE) would be approximately 26 feet under Option A and 25 feet under Option B. Therefore, the required yard would be 29 feet under Option A, and 27.5 feet under Option B. As noted above, the applicant seeks approval to reduce the yard to 21 feet.

19. Under either Option A or Option B, only the lower story addition would encroach into the required yard. Under Option A, the top of the garage addition would align with the top of the main floor elevation, while under Option B, the top of the garage addition would align with the first floor elevation. Under Option A, the main floor level garage addition would be exposed to view from the access easement. Under Option B, approximately two to three feet of the western portion of the basement level garage addition would extend above the height of the existing retaining wall.

20. Under either option, the proposed addition would not exceed the allowed height limit.
21. Owners of properties to the east and to the west have submitted their objections to the variance request, expressing concerns about the need for this variance, the impacts to adjacent properties, and impacts to views.
22. Several variances have been granted over the past few years for properties along Lake Washington Blvd NE, permitting encroachment into north required yards, as described in Attachment 14 to the Advisory Report. The subject properties were 50 feet in width, and the width of the lots was a factor in granting the variances.
23. A standard two-car garage measures 20 feet by 20 feet. A 16-foot wide door is the standard width for a two-car garage door.
24. The applicant purchased the property in 1996, and resides in the upper unit. Given the size of the garages and the access to them, the applicant's experience has been that only smaller cars will fit into the garage. The applicant's proposal adds two enclosed parking spaces, so that each unit would have an additional enclosed parking space.
25. The Director has recommended approval of the upper floor addition but recommends denial of the variance under both Option A and Option B for failure to meet all of the variance criteria. The Advisory Report notes that the Department would support an amended request to provide additional parking at the basement level to support the lower unit, because of the location and design of the existing basement parking garage. At hearing, the Department presented a conceptual drawing of a possible amended plan, but the applicant has not proposed revisions to its application as submitted.
26. KZC 150.50 provides that the applicant has the burden of convincing the Hearing Examiner that the applicant is entitled to the requested decision.

B. Conclusions:

1. Except as noted below, the conclusions set forth in the Advisory Report are adopted by reference.
2. With the exception of the north required yard standard, the proposed addition would meet the fundamental site development standards applicable to an Attached or Stacked Dwelling Unit in the WD III zone. In addition, the proposal would be compatible with applicable Special Regulations concerning public pedestrian access, view corridors, and compatibility with the scenic nature of the waterfront.
3. The proposal would also comply with the regulations for Attached and Stacked Dwelling Unit Regulations in the Shoreline Master Program applicable to the UR 2

Shoreline Environment. The proposal would also satisfy the criteria of WAC 173-27-150 for a Substantial Development Permit. In addition, the land use would be consistent with the Comprehensive Plan designation of medium density residential use.

4. KZC Section 120.20 contains the criteria for the grant of a variance. All of the following criteria must be met in order to grant variance relief: *“(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, or the location of a preexisting improvement on the subject property that conformed to the Zoning Code in effect when the improvement was constructed; 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 zoned as the subject property.”*

5. The application would meet the first criterion. The proposed addition would meet the allowable height limit and would not extend into the required view corridor; although the Department has concluded that Option A would be out of scale with other nearby structures, this difference was not shown to constitute a material detriment.

6. The next issue is whether the variance is necessary because of special circumstances. The special circumstances cited by the applicant include the size of the garages, the turning movements that are necessary to access the garages, topography and existing building configuration. Although it is understandable that the applicant wishes to improve the enclosed parking and access for both units at the property, the facts in this record do not show special circumstances to support the grant of a variance for either Option A or Option B as currently proposed. The main level garage is the size of a standard two-car garage, and the garage door is only slightly smaller than a standard two-car garage door width. The main level garage provides two enclosed parking spaces, which is comparable to other new residential development, in addition to the surface parking that is available at the site. No special circumstance is presented to justify encroachment into the required yard in order to provide a new enclosed parking space at the main floor level to serve the upper dwelling unit.

7. The basement garage, because of the 90-degree angle turn required from the driveway, can only accommodate a single car. This difficulty of access and existing design constitutes a special circumstance that would support variance relief to provide an additional parking space in the basement garage to serve the lower dwelling unit, which would be comparable to other development in the area. However, Option B proposes a basement level addition that would provide an additional space for both the basement and the upper story unit, so Option B would not be consistent with the requirement that special circumstances be present to justify the variance.

8. The last criterion is whether the variance would constitute a grant of special privilege. Allowing variance relief under either Option A or Option B as proposed

would constitute a grant of special privilege. The creation of the additional enclosed parking space to serve the main floor unit, under the circumstances shown here, would go beyond the rights enjoyed by other properties in the same zone or area, since the property currently enjoys two enclosed spaces to serve the main floor. Granting a variance to allow one additional enclosed parking space to serve the basement unit would be consistent with other development in the area and would not constitute a grant of special privilege.

9. Because the requested variance does not meet all three of the criteria, it cannot be granted.

Decision

The application for a zoning permit and substantial development permit for the second story addition is approved subject to the conditions set forth in the Advisory Report at Section I.B, but the variance request to the north required yard is denied.

Entered this 14th day of September, 2007.

Anne Watanabe
Hearing Examiner

EXHIBITS

The following exhibits were offered and entered into the record:

- A. Planning and Community Development Staff Advisory Report Attachments 1-17
 - 1. Vicinity Map
 - 2. Proposal drawings
 - 3. Development Standards
 - 4. KZC 85.15
 - 5. Comment letters re: property to the west (Deitch property)
 - 6. Comment letter from Arman Manoucheri and Fatima Esfahani
 - 7. Comment Letter from Richard and Laura Schafer
 - 8. July 11, 2007 letter from Duana Kolouskova, representing applicant
 - 9. July 9, 2007 letter from Mark Travers
 - 10. Regulations for Attached and Stacked Dwelling Units in WD III zone
 - 11. Staff analysis of use zone chart compliance
 - 12. Applicant response to variance review criteria (10/26/06 and 8/10/07 letters from Duana Kolouskova)
 - 13. Aerial photograph depicting WD III zone with Assessor Map information
 - 14. Summary of past variances to north required yard
 - 15. Regulations for attached and stacked dwelling units in UR 2 shoreline environment
 - 16. Staff analysis of proposal compliance with UR 2 shoreline regulations
 - 17. Lakeview neighborhood Land Use Map
- B. Comment letter from Robert Tema, dated September 3, 2007
- C. Letter dated September 7, 2007, concerning corrected garage dimensions, from Duana Kolouskova
- D. Email comment from Michael Deitch, dated 9/10/07, regarding Kolouskova 9/7/07 letter

PARTIES OF RECORD

Mark Travers 2315 E. Pike Street, Seattle, WA 98122
John Stephanus, 4611 Lake Washington Blvd NE, Kirkland, WA 98033
Duana Kolouskova, Johns Monroe Mitsunaga, 1601 114th Street Avenue SE, Suite 110, Bellevue, WA 98004
Richard and Laura Schafer, 4630 Lake Washington Blvd NE, Kirkland, WA 98033
Arman Manoucheri and Fatima Esfahani, 4610 Lake Washington Blvd NE, Kirkland, WA 98033
Michael Deitch, 4613 Lake Washington Blvd NE, Kirkland, WA 98033
Karen Santa, 13000 NE 30th Street, Bellevue, WA 98005

Brian Brand, Baylis Architects, 10801 Main Street, Bellevue, WA 98004
Robert Tema, 4561 Lake Washington Blvd NE, 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.

APPEAL TO CITY COUNCIL

Under Section 150.80 of the Zoning Code, the Hearing Examiner's decision may be appealed 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 p.m. _____, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

APPEAL TO 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 Shorelines Hearing Board. All petitions for review shall be filed with the Shoreline Hearings Board within twenty-one (21) days of the date the Department of Ecology receives the City's decision. Within seven (7) 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 twenty-one (21) calendar days of the issuance of the final land use decision by the City.

LAPSE OF APPROVAL

Pursuant to RCW 90.8.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Substantial Development Permit has been

Hearing Examiner Decision
File No. ZON06-00030 and SHR07-00004
Page 10 of 10

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.