

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

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**APPLICANT:** Mark Travers on behalf of John Stephanus

**FILE NOS.:** ZON06-00030, SHR07-00004, APL07-00007

**SITE LOCATION:** 4611 Lake Washington Blvd NE

**APPLICATION:** Revised Application for a variance to reduce the required north yard to 21 feet to allow an addition to provide parking for the basement story unit of an existing duplex. The addition would occur on the north side of the duplex and would measure approximately 17 feet by 21 feet. The garage addition would be one story in height, aligning with the basement floor level.

This variance application differs from the variance request that was previously submitted as part of an application for a Zoning Permit and Shoreline Substantial Development Permit. On September 6, 2007, the Hearing Examiner conducted a public hearing on the application for a zoning permit and substantial development permit for an addition to the existing duplex, along with a variance request. After reviewing the previous application, the Hearing Examiner issued a decision on September 14, 2007, which approved the zoning and substantial development permits, but denied the variance request.

The applicant appealed the denial of the variance to City Council. The City Council conducted a closed record appeal hearing on November 7, 2007. In accordance with KZC 150.125, the Council directed the Hearing Examiner to hold a rehearing on the matter, with the scope of the hearing limited to the consideration of an amended proposal by the applicant for an encroachment into the north required yard.

**REVIEW PROCESS:** Process IIA. Pursuant to KZC 150.125, the City Council has directed the Hearing Examiner to conduct a limited-scope rehearing.

**SUMMARY OF KEY ISSUES:** Compliance of revised application with applicable criteria for approval of variance.

### **PUBLIC HEARING**

The Hearing Examiner conducted a rehearing on the revised variance application at 7 p.m. on December 5, 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 following persons spoke at the public hearing:

From the City:  
Stacy Clauson, Associate Planner

From the Applicant:  
Duana Kolouskova, attorney

### **CORRESPONDENCE**

One comment letter was received on the revised application and is included in the file on this matter.

### **FINDINGS AND CONCLUSIONS**

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

#### **A. Findings:**

1. Except as otherwise set forth below, the Findings of Fact in the Hearing Examiner's decision of September 14, 2007, and in the Department's Advisory Report are adopted by reference herein.
2. The variance application has been revised from the application that was considered in the Hearing Examiner's decision dated September 14, 2007. The current proposal is to reduce the north required yard to 21 feet, in order to allow an addition that would provide parking for the basement story unit in the existing duplex. The addition would be located at the north side of the duplex and would measure approximately 17 feet by 21 feet. The garage addition would be separated from the north property line by 21 feet, and encompassed by the 16-foot wide access easement and the required 5-foot setback from the edge of the easement.
3. The proposed garage would replace existing surface parking, with no loss in the number of parking stalls provided on the site. The garage would be located below the

elevation of the access easement and retaining wall, except for a small portion at the east edge of the garage addition.

4. The owner of property to the west, Michael Deitch, submitted objections to the variance request, and photographs of the site.

**B. Conclusions:**

1. Except as otherwise set forth below, the conclusions set forth in the Advisory Report are adopted by reference herein. Conclusions 2 and 3 of the Hearing Examiner's September 14, 2007 decision are adopted by reference herein.

2. The revised proposed variance would not be materially detrimental to the property or improvements in the area, or the City. It would be unobtrusive from most vantage points, and would not affect solar access to the property to the north. The property owner to the west asserts that the variance would affect his property, but the record on this matter shows that no material detriment within the meaning of KZC 120.20 would be caused by the variance.

3. The variance is necessary because of the location and design of the existing basement parking garage, which requires a "three-point" turn in order to gain access. The variance would allow creation of one parking space that can be accessed head-on from the driveway.

4. The variance would not constitute a grant of special privilege inconsistent with the general rights allowed by the Code for other properties in the same area and zone. The proposal is for a limited garage addition constrained by the location and configuration of the existing improvements, and the request is distinguishable from other variance proposals in the vicinity. The subject variance would allow the applicant to add one enclosed parking stall, for a total of two parking stalls serving the lower residential unit, which is consistent with new residential development in the area.

5. The variance meets all the criteria of KZC 120.20 and should therefore be granted.

**DECISION**

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

Entered this 7th day of December, 2007.

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Anne Watanabe  
Hearing Examiner

### **EXHIBITS**

The following exhibits were offered and entered into the record during the rehearing of this matter:

- A. Planning and Community Development Staff Advisory Report  
Attachments 1-7
- B. Comment letter and photographs from Michael Deitch (received by the Department on December 3, 2007)

Exhibits previously admitted into the record are listed at page 8 of the September 14, 2007 decision of the Hearing Examiner (Attachment 3 to Advisory Report).

### **PARTIES OF RECORD**

Applicant, 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 114<sup>th</sup> 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, Windermere Real Estate, 13000 NE 30<sup>th</sup> 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 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.