



CITY OF KIRKLAND

City Attorney's Office

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MEMORANDUM

To: David Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: May 14, 2008

Subject: Bank of America Appeal/Findings and Conclusion

RECOMMENDATION

That the City Council review the proposed Findings, Conclusions, and Decision along with the attached Resolution, and consider whether these accurately reflect the Council's decision on the appeal of the Design Review Board decision granting design review approval to the Bank of America/Merrill Gardens mixed use project at 101 Kirkland Avenue. If changes are desired, they may be made at the meeting of May 20, 2008.

In addition, Molly Lawrence, attorney for SRM Development, has submitted the attached letter requesting that the Council defer final action on the project. This letter is presented to the Council with the recommendation that the Council also consider how to respond to SRM's request at the May 20th meeting.

BACKGROUND DISCUSSION

On April 15 and May 6 the City Council heard the open record appeal of the Design Review Board decision granting design review approval to the Bank of America project. At the conclusion of the hearing on May 6, 2008, the City Council passed a motion to reverse the Design Review Board and directed staff to return to the next regular City Council meeting with a resolution setting forth findings and conclusions that: 1) the development does not contain superior retail that warrants the additional height, bulk, and mass of the project; and 2) the project does not present/meet the requirements of a two-story building along Lake Street South.

Staff has attempted to faithfully capture the rationale for the Council's decision based upon its review of the Council's deliberations. The proposed Conclusions as to Superior Retail Use, Sections 4.1 – 4.4, focus on the Council's concern that the auto-orientation of a drive-through banking facility is not consistent with a "superior retail space." The proposed Conclusions as to Height on Lake Street South, Sections 5.1 – 5.8, are drawn from Council discussion which indicated that the portion of the building fronting on Lake Street South needed to present as a two-story building, but that the entire building did not. There may be findings or conclusions that Council wishes to add or proposed findings and conclusions which the Council wishes to change or remove.

Once a resolution has been passed adopting findings and conclusions, the Findings, Conclusions, and Decision will be mailed to the appellant and applicant.

Please not hesitate to contact me if you have any questions.



May 13, 2008

Kirkland City Council
123 First Avenue
Kirkland, WA 98033

Re: Request for Consideration of Alternatives and Further Design Direction
CiViK Appeal of DRB Decision DRC 07-00006

Dear Council Members:

At the conclusion of your last meeting on May 6, 2008, a majority of the Council members directed City staff to return at your May 20, 2008, meeting with findings and conclusions reversing the Kirkland Design Review Board's approval of SRM Development's Merrill Gardens/BOA project (the "Project"). We are writing to request that the Council defer final action on the Project. The Kirkland Zoning Code clearly provides the Council authority to modify the DRB's decision regarding the Project. KZC 142.40(11)(b)(3). We request that pursuant to that authority, the Council consider alternative designs before rendering a final decision.

As you know, SRM Development has already spent more than six months in the design review process with the City. In addition, it is our understanding that following the Council's direction to staff on May 6, 2008, four of the seven DRB members resigned from the DRB. Consequently, we are not in a position to go back to the DRB for additional review at this point. Furthermore, the Council's May 6, 2008, direction to City staff makes clear that the Council has independent views from that of the DRB regarding the appropriate building design along Lake Street. It would be both inefficient and unfair not to allow SRM Development to present alternative design options for your consideration prior to rendering a final decision in this matter.

Since the Council's May 6, 2008, meeting, SRM Development has been working diligently with its architect to develop an alternative design that more closely meets the Council's intent. In reviewing the recording of the Council's deliberation, however, we have been unable to discern a final clear direction from a majority of the Council regarding what is required to satisfy the Council's interpretation of the Lake Street height restriction. We will plan to bring new designs to the May 20, 2008, meeting that we hope will meet the intent of the majority of the Council regarding the Lake Street height restriction. We anticipate, however, that further direction from Council will be necessary before we can develop a final design that a majority concludes meets the Lake Street height restriction.

Thank you in advance for your consideration. As Mr. Loos explained during the May 6, 2008, hearing, SRM Development is committed to the City of Kirkland. Please provide SRM Development the opportunity to propose a modified design that more closely meets the Council's direction before rendering a final decision regarding this matter. We will be present at the May 20, 2008, hearing to respond to any questions, to present one or more alternative designs, and to receive additional direction from the Council.

Very truly yours,



Molly A. Lawrence

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cc: Andy Loos, SRM Development
Richard Aramburu, Counsel for CiViK
Robin Jenkinson

RESOLUTION R-4707

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING FINDINGS AND CONCLUSIONS AND REVERSING THE DECISION OF THE DESIGN REVIEW BOARD GRANTING DESIGN REVIEW APPROVAL TO THE BANK OF AMERICA/MERRILL GARDENS MIXED USE PROJECT AT 101 KIRKLAND AVENUE. (FILE NO.: DRC 07-0006; APPEAL CASE NO.: APL08-0001)

WHEREAS, the applicant, SRM Development LLC, applied for design review approval of the Bank of America/Merrill Gardens five-story mixed use project ("Bank of America project") located at 101 Kirkland Avenue; and

WHEREAS, on December 17, 2007, the Kirkland Design Review Board issued its decision granting design review approval to the Bank of America project; and

WHEREAS, the appellant, Citizens for a Vibrant Kirkland, a Washington non-profit corporation, timely filed an appeal of the Design Review Board's decision; and

WHEREAS, on April 15 and May 6, 2008, the Kirkland City Council heard the appeal in an open record proceeding; and

WHEREAS, at the conclusion of the hearing on May 6, 2008, the City Council voted to reverse the Design Review Board's decision granting design review approval to the Bank of America project; and

WHEREAS, Kirkland Zoning Code 142.40.11.b requires that the City Council adopt findings and conclusions.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. In support of the decision reversing the Design Review Board's decision granting design review approval to the Bank of America project, the City Council hereby adopts the Findings, Conclusions, and Decision attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. The City shall distribute the Council's decision by mail to the appellant and the applicant.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2008.

Signed in authentication thereof this ____ day of _____, 2008.

MAYOR

Attest:

City Clerk

EXHIBIT A

BEFORE THE KIRKLAND CITY COUNCIL

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| APPEAL OF THE DESIGN REVIEW) BOARD DECISION ON THE BANK) OF AMERICA/MERRILL GARDENS) MIXED USE PROJECT AT 101) KIRKLAND AVENUE) FILE NO.: DRC07-00006) <hr style="border: 1px solid black;"/> | APPEAL CASE NO.: APL08-00001 CITY COUNCIL’S FINDINGS CONCLUSIONS, AND DECISION ON THE APPEAL |
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I. PROCEDURAL FINDINGS

1.1 The Applicant, SRM Development, LLC (“Applicant”) applied for design review approval of the Bank of America/Merrill Gardens five-story mixed use project (“Bank of America project”) at 101 Kirkland Avenue.

1.2 On December 17, 2007, the Kirkland Design Review Board issued its decision granting design review approval to the Bank of America project. *Design Review Board Decision*.

1.3 Citizens for a Vibrant Kirkland (CiViK) (“Appellant”), a Washington non-profit corporation, timely filed an appeal of the Design Review Board’s Decision: *Letter from J. Richard Aramburu dated January 31, 2008*.

1.4 On April 15 and May 6, 2008, the Kirkland City Council heard the appeal in an open record proceeding. *April 15 and May 6, 2008, Proceedings*.

1.5 Appellant was represented by J. Richard Aramburu of Aramburu and Eustis, LLP at the City Council’s open record proceeding. Applicant was represented by Molly Lawrence of GordonDerr.

1.6 The Council Members made appearance of fairness disclosures at the outset of the proceedings and no objections were raised by the parties to the participation of any member. Mayor James Lauinger presided over the appeal proceedings. *April 15 and May 6, 2008, Proceedings*.

1.7 The City Council heard testimony from the Department of Planning and Community Development (“Planning”) staff, the Chair of the Design Review Board, testimony and oral argument from members of the Appellant and representatives of the Applicant, and asked questions of the witnesses. The Council had before it the following documents: (a) the decision of the Design Review Board with attachments including Planning staff memoranda, applicant submittals and public comment letters to the Design

Review Board; (b) the Planning staff report to the City Council with attachments; and (c) the written submissions by the parties, including briefing and exhibits. After hearing the presentations and oral arguments of the parties, the City Council deliberated and reached a decision on the appeal. By a vote of four-to-three, the City Council reversed the Design Review Board's decision granting design review approval to the Bank of America project. *April 15 and May 6, 2008, Proceedings.*

1.8 Any Conclusion set forth below that is deemed a Finding of Fact is hereby adopted as such.

II. STANDARD OF REVIEW

2.1 The Kirkland City Council has jurisdiction over the appeal pursuant to Kirkland Zoning Code (KZC) 142.40.1.a. The appeal was timely filed. Under KZC 142.40.11.a, “[u]nless substantial relevant information is presented which was not considered by the Design Review Board,” the City Council is required to accord the decision of the Design Review Board “substantial weight.”

2.2 The decision of the Design Review Board “may be reversed or modified if, after considering all of the evidence in light of the design regulations, design guidelines, and Comprehensive Plan” the City Council “determines that a mistake has been made.” *KZC 142.40.11.a.*

III. FINDINGS REGARDING APPEAL

3.1 The Central Business District (CBD) 1 zone permits two to five stories for attached or stacked dwelling units. *CBD 1 Use Zone Chart; KZC 50.12.030; KZC 50.12.080.*

3.2 Buildings exceeding two stories in CBD 1 must demonstrate compliance with the design regulations of Chapter 92 KZC and all provisions contained in the Downtown Plan. *KZC 50.10.*

3.3 The Downtown Plan provides guidance concerning the allowed building height in the eight height and design districts within Downtown Kirkland. *Downtown Plan, pages XV.D-9 to XV.D-15.*

3.4 The Downtown Plan provides that the maximum building height in Design District 1 should be between two and five stories with no minimum setback from property lines and requires that stories above the second story should be set back. *Downtown Plan, pages XV.D-10.*

3.5 With respect to building heights along Lake Street South, the Downtown Plan, XV.D-10, provides, in pertinent part:

Buildings should be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2.

3.6 The scale of development in Design District 2 is buildings of two to three stories or lower. *Downtown Plan, page XV.D-12, Design District 2.*

3.7 The Downtown Plan, page XV.D-10, provides a fifth story may be considered by the Design Review Board for a building within Design District 1B where:

at least three of the upper stories are residential, the total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor retail, stories above the second story are set back significantly from the street and the building form is stepped back at the third, fourth, and fifth stories to mitigate the additional building mass, and the project provides superior retail space at the street level . . .

3.8 The requirements for the design of retail space are established in the Zoning Code regulations for CBD 1, Design Regulations of KZC Chapter 92, and the Design Guidelines for Pedestrian Oriented District Standards.

3.9 The Bank of America project is located within the CBD 1 Zone of the Zoning Code and Design District 1B of the Downtown Plan. *Downtown Plan, page XV.D-10, Figure C-5.*

3.10 The Bank of America proposal is for a five story building. *Design Review Board Decision, III.A., DRB Conclusions, page 8.*

3.11 Along Lake Street South stories above the second story are proposed to be set back between 14'13" and 34'18" feet from the street. *Exhibit 201, Final Setbacks Levels 3-4.*

3.12 The bank would occupy the northwest corner of the site and a drive through banking facility would be located within the building, so that automobiles enter on the alley and leave the building on Kirkland Avenue. *Design Review Board Decision, Summary of Decision, page 1.*

3.13 The four proposed retail spaces range in size from approximately 880 square feet for a café to approximately 5,720 square feet for the bank, making the bank the largest retail tenant in the building. *Design Review board Decision, III.A, Retail Size, page 2.*

3.14 Banking and related financial institutions are an allowed use in the CBD 1 zone, but a drive-through bank is allowed in this location only because a drive-through bank presently exists on the site. *KZC 50.12.025.*

3.15 The bank space has very clearly and specifically been designed for a bank tenant.

3.16 The bank is proposed for the portion of the building at the corner of Kirkland Avenue and Lake Street South, one of the most prominent corners in the CBD.

3.17 The Design Review Board is authorized to determine compliance of buildings in CBD 1 with these provisions, subject to appeal to the City Council. *Downtown Plan, XV.D-10; KZC 50.12.030; KZC 50.12.080; KZC 50.12.100; KZC 142.40.*

3.18 In issuing its decision on the Bank of America project, the Design Review Board determined that the term “superior retail space” applies to the physical characteristics of the retail space and not the use. *Design Review Board Decision, III.A., Superior Retail, page 8.*

3.19 The Design Review Board concluded that the Bank of America project provided superior retail space at the street level. *Design Review Board Decision, III.A., DRB Conclusions, page 8.*

3.20 KCZ 50.12.080, Special Regulation I requires that retail uses occupying the street level floor of a building fronting on Lake Street South have a minimum depth of 30 feet.

3.21 The Design Review Board further concluded that the stories above the second story of the Bank of America project are set back significantly from the street, the building form is stepped back at the third, fourth, and fifth stories to mitigate building mass, and approved the fifth story. *Design Review Board, III, DRB Conclusions, page 8.*

IV. CONCLUSIONS AS TO SUPERIOR RETAIL SPACE

4.1 After according substantial weight to the decision of the Design Review Board, the Council is left with the definite and firm conviction that the Board committed a mistake with regard to its conclusion that the proposed drive-through bank provides superior retail space at street level, and the Board’s decision on this issue is clearly erroneous.

4.2 In order for the Design Review Board to consider a fifth story, all of the six criteria set forth in the Downtown Plan must be met.

4.3 The Design Review Board correctly noted that banks are listed in the Use Zone Chart as permitted uses in the CBD 1. However, drive-through facilities for banks

are permitted only if they have existed since before January 1, 2004. A drive-through facility, moreover, is not consistent with superior retail space in the CBD 1, as explained in the Downtown Plan, page XV.D-6:

The desired pedestrian character and vitality of the core area requires the relatively intensive use of land and continuous compact retail frontage. Therefore, automobile drive-through facilities should be prohibited. Similarly, office uses should not be allowed to locate on the ground level. These uses generally lack visual interest, generate little foot traffic, and diminish prime ground floor opportunities for the retail uses that are crucial to the ambiance and economic success of the core area.

The attractiveness of the core area for pedestrian activity should be maintained and enhanced. . . .

4.4 While a drive-through facility in the proposed new building is permitted because it is a use that has existed since before January 1, 2004, a drive-through facility is not consistent with a superior retail space in the CBD 1, and the proposed building does not warrant the additional height, bulk and mass of a fifth story.

V. CONCLUSIONS AS TO HEIGHT ON LAKE STREET SOUTH

5.1 After according substantial weight to the decision of the Design Review Board, the Council is left with the definite and firm conviction that the Board committed a mistake with regard to its interpretation and application of the provisions of the Downtown Plan regarding height along Lake Street South, and the Board's decision is clearly erroneous in this regard.

5.2 The Downtown Plan states that "buildings *should* be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2." The term "should" is directive and not mandatory, but the Board failed to give meaning and effect to the fact that the Downtown Plan uses different and stronger language in describing height along Lake Street than it does when describing height in other locations. For example, the next sentence of the Plan, which refers to buildings on other streets in Design District 2, says that the height of these buildings should only be limited "along street frontages".

5.3 The Downtown Plan thus says that "buildings" that are "along" Lake Street South should be limited to two stories, and by using the word "should" the Plan requires an applicant who wishes to include a third or fourth floor to demonstrate that exceptional circumstances justify such additional height. No such demonstration has been made in the record before the Council.

5.4 The Downtown Plan does not, however, require that an entire building located along Lake Street South be limited to two stories, regardless of the depth of the building, because the purpose of this limitation is to “reflect the scale of development in Design District 2.” Under the Downtown Plan, it is intended that buildings abutting Lake Street South should create the impression, from a pedestrian’s perspective, of being a maximum of two stories in height.

5.5 The reference in the Downtown Plan to breaking “large buildings into the appearance of multiple smaller buildings” also demonstrates that a limitation on the number of stories along the street does not have to apply to the entire building. *Downtown Plan, page XV.D-10.*

5.6 Upper stories must be sufficiently set back from Lake Street South to minimize their visibility from the west side of Lake Street South. In general, for each story above the second story, the setback should be twice the height of the story that is being set back. Thusly, a pedestrian on the east side of Lake Street South will perceive a two-story scale of buildings in Design District 2. Similarly, a pedestrian on the west side of Lake Street South would perceive a two-story scale of buildings on the east side of Lake Street South within Design District 1B.

5.7 Two-story portions of buildings should be treated as distinct building elements to reflect the scale of Design District 2 consistent with the Downtown Plan reference to breaking “large buildings into the appearance of multiple smaller buildings.”

5.8 The Bank of America project does not present as or meet the requirements of a two-story building along Lake Street South because the third floor, and the fourth floor in particular, are not set back from Lake Street South far enough to comply with the Downtown Plan.

VI. DECISION

For the reasons set forth in the foregoing Findings and Conclusions, the decision of the Design Review Board is hereby REVERSED.

Decision adopted by the Kirkland City Council _____, 2008.

MAYOR