HEARING EXAMINER
MINUTES – May 4, 2006

CALL TO ORDER:

The May 4, 2006 hearing was convened by the Hearing Examiner, Sue Tanner, at 7:00 p.m. Tony Leavitt, Craig Salzman, Nancy Cox, and Dawn Nelson represented the Department of Planning and Community Development.

PUBLIC HEARINGS

A. Applicant: Sharon Morgan, Appellant for Code Enforcement Appeal Continuation at 8241, 8249 & 8251 122nd Avenue NE, Kirkland, File No. APL06-00001.

Hearing Examiner Tanner introduced this matter as an appeal of three civil infraction notices issued to Sharon Morgan and Sharon Morgan/WRO Development, LLC, for violation of Kirkland Zoning Code 115.70.105.150 and the Tree Ordinance, Chapter 95, alleged to have occurred on above-listed property.

Ms. Tanner said she would ask Staff to answer the question regarding the allegation of violation of "junk" on the property. She noted that the civil infraction was issued on 12/21/2005 and that there was a compliance date of 12/13/2005; however, there was a new violation date in the civil infraction.

Ms. Tanner related the hearing format and procedures. Testimony began with City Staff's report.

Mr. Salzman, Code Enforcement for City of Kirkland, reviewed this issue in detail, citing all dates of complaint letter, infractions, notices, and pertinent references of the Kirkland Municipal Code. He confirmed that the compliance date was 12/13/2005. Mr. Salzman showed an aerial photo of the trees in question as well as ground photos of the illegally felled cedars and identified illegally stored vehicles including an RV, scrap building materials, junk and debris on the sites.

Mr. Salzman said that in 2004 the City issued a citation at this location for it being used as a vehicle storage lot; the Morgan's attorney, Jack Borland, requested a continuance at that time so that he could offer a settlement proposal on which he failed to follow through. Mr. Salzman had advised Mr. Borland that any proposed settlement would be subject to review and approval by the City. Mr. Morgan then proceeded to gravel the lot that created a vehicle storage lot, in prohibition of the City's Zoning Code.

Mr. Salzman cited the photographs of the subject property, the testimony of the Code Enforcement Officer regarding the storage of junk, debris, and various vehicles as well as an oversized RV, demonstrating that there is a violation occurring on subject properties. Pictures submitted into evidence demonstrate that there were more than the allowed two significant trees cut from one lot. Staff is requesting that WRO Development, LLC, and

Sharon Morgan be found liable for monetary penalties, continuing until the violations have been certified as corrected.

Mr. Salzman answered Ms. Tanner's questions, clarifying that inoperable vehicles are not necessarily junk vehicles. Also, that there were two illegally cut trees on this property. This concluded Mr. Salzman's presentation.

Ms. Tanner invited Mr. Borland to speak. As he was sworn in earlier, Ms. Tanner advised he is still under oath.

Jack Borland, attorney for the Appellant, spoke. He said Martin Morgan owns 8251 122nd Avenue NE; the other two properties are owned by Sharon Morgan. He said that WRO Development, LLC does not have an ownership interest and there is no connection to the Morgan's. Mr. Borland will provide the deed to the property owned by Martin Morgan. He has no objection to the pictures or report (but objects to the historical documents attached) submitted but he objects to Mr. Salzman's testimony. Ms. Tanner permitted Mr. Borland to call Martin Morgan to testify.

Martin Morgan, 8249 122nd Avenue NE, was sworn in by Ms. Tanner. He owns 8251 122nd Avenue NE, Kirkland. He gave his understanding of a "junk" vehicle as being something that is dismantled and in pieces in the yard. He testified that all of the vehicles on these properties are operational. He said that State Farm Insurance Company provided Mr. Morgan with a list of vehicles similar to his, and their ranges of value; this list was provided to the Hearing Examiner. Mr. Borland also submitted an Internet list of vehicles and their value, similar to those in question.

Mr. Morgan said that the City had given him a list of his junk vehicles in the late 1990's. He said that the offending vehicles were removed at that time. He presented 13 photos of the subject properties, along with his explanation of their contents. His testimony is that he has had a gravel driveway on the property for the past 20 years. He said that he had inquired about getting a permit to park the oversized RV on his property and was told by the City that the issues being appealed must be settled before a permit can be considered. He testified regarding a tent he has installed on subject property.

Mr. Morgan said he cut two trees on each property. In addition, he obtained a City permit to remove a diseased tree. He said Mrs. Morgan received a letter from David Christianson of King County Health Department regarding materials stored on the lots. Mr. Christianson walked the property and told Mr. Morgan that the Health Department had closed his case, as there was no solid waste on the site. In reply to Ms. Tanner's inquiry, Mr. Borland said he made a public information request to obtain the Health Department letter and that request is pending.

Mr. Morgan said he has made numerous requests for someone to come to his house to talk to him about things and no one has come. Mr. Morgan clarified for Mr. Salzman that he resides at 8249 122nd Avenue NE, since about Year 2000. He said that his primary

residence is 8251 122nd Avenue NE; the other space he uses as an office and sometimes sleeps there. He does not have a business license for the City of Kirkland.

Sharon Morgan, 8251 122nd Avenue NE, Kirkland, was sworn in by Ms. Tanner. She has lived there since 1988. She owns properties at 8249 and 8241 122nd Avenue NE. She said that two trees were cut each on 8251, 8249 and 8241 122nd Avenue NE and one additional tree, a diseased tree, cut under a permit from 8241 122nd Avenue NE, for a total of seven trees.

Mr. Borland said he will submit copies of deeds to show that WRO Development is not an owner on these properties and that Sharon Morgan is a separate owner of 8249 and 8241 122nd Avenue NE, and a deed showing Martin Morgan is owner of 8251 122nd Avenue NE. In addition, he will provide previous deeds for 8249 122nd Avenue NE that list Martin and Sharon Morgan as titleholders, with subsequent transfer of title to Sharon Morgan. He concurred with Mr. Salzman that junk vehicles are identified as vehicles that meet a three-pronged test out of four attributes: vehicles of a certain age, physically damaged, have junk value, and/or inoperative.

Mr. Salzman had no objection to Exhibits "F" through "R", the GIS information, the list of vehicles from State Farm, and the printout of the values, offered by the Appellant.

Mr. Salzman spoke to the Notice and Order regarding general junkyard appearance, including storage of several vehicles, appliances, debris, and oversized RV, and placing of a temporary canopy shelter in violation of setbacks; he emphasized that there was no reference to junk vehicles. Corrective action was to "remove all debris, vehicles, oversized RV, and temporary structures from all three properties." The contention is that the vehicles are stored improperly per the Zoning Code. Regarding trees cut, the only acceptable proof that they were properly removed would be a survey to show that they were removed from certain properties.

Mr. Salzman states that water records that show no one has lived at 8249 122nd Avenue NE since Year 2000. The rear property, 8251 122nd Avenue NE, has a water leak, having used 126 Units of water (1 Unit = 748 gallons of water). One unit of water was used at 8241 122nd Avenue NE. The water records will be submitted as evidence. Mr. Salzman asked the neighbor who filed the complaints, Miss Velozo, to speak.

Ms. Velozo said that she has been dealing with the vehicles for 20 years; she had them towed from an easement and Mr. Morgan had them towed back [this was about ten years ago]. There are a total of 14 vehicles on these properties. This has adversely affected her property value. She said that 8249 122nd Avenue NE is uninhabitable as it is stacked from floor to ceiling with junk and Mr. Morgan has never lived there. He is moving more junk to 8241 122nd Avenue NE. She said the motor home is illegally parked. Additional points are made in previous testimony and in her letter.

Mr. Salzman reiterated the reason for the citation: having a vehicle storage lot on a residential lot, as prohibited in the Zoning Code. He spoke regarding the possibility of an agreement being reached between the parties. Mr. Salzman asked that the Hearing Examiner find in favor of the City, imposing the requirement for Mr. Borland to remove all vehicles from the front property as it is currently unoccupied and vacant, remove the oversized RV, submit a restoration plan for the removal of one tree, and pay the penalties as requested by the City.

Mr. Borland said he appreciated the continuance in this matter that was requested due to an illness and subsequent death in the Appellant's family. He acknowledged that this has been a longstanding issue with the City. He said the vehicles in question are not junk vehicles. He summarized his clients' position and agreed that the oversized RV needs to be removed if a permit cannot be obtained to allow it being stored onsite; however, as the City will not review the possibility of issuing a permit until the matter of these proceedings is resolved, decision regarding the permit is pending. He objected to Mr. Salzman referencing a possible agreement in this matter, and said that any agreement should be considered outside of these proceedings.

Ms. Tanner stated she would not consider the comments regarding a possible agreement. She clarified Mr. Borland's comments regarding the Code allowing storing oversized vehicles onsite.

Ms. Tanner showed Mr. Borland a March 17, 2006 letter to him from Mr. Salzman; Mr. Borland said he had not seen this letter. Mr. Salzman said it was mailed; however, he will withdraw it as an exhibit. He clarified that the front lot, 8249 122nd Avenue NE, is the lot from which three trees were removed.

Ms. Tanner closed the hearing at 8:29 p.m. She left the record open and left open the possibility of whether or not she would do a site visit.

Ms. Tanner declared a short break.

B. Applicant: William Anspach, Property Owner at 1230 and 1250 4th Street West, File No. ZON06-00007.

Ms. Tanner reconvened the hearing at 8:36 p.m.

Mr. Leavitt reviewed the front yard setback variance request and showed slides of the area in question as delineated in his and Eric Shields' April 27, 2006 Advisory Report on the matter. The application request is to reduce the required 20' setback along 13th Avenue West to a 10' setback. He cited all elements of the request and applicable zoning regulations and answered questions raised by the Hearing Examiner.

Mr. Leavitt said that he received nine letters during the initial comment period. He answered issues raised:

- Objection to development of the property from two single-family residences to three residential units. Mr. Leavitt reiterated that the proposal is consistent with density requirements and the proposed uses comply with Ordinance 4039.

- Applicable maximum building heights on subject property. Mr. Leavitt stated that Kirkland Zone Code limits height in this situation to 25'; the Comprehensive Plan limits height along Market Street to 20'. He cited a letter from Planning Director Eric Shields that states the Zoning Code will prevail when there is conflict with the Comprehensive Plan; however, the Comp Plan language is not applicable to this parcel as the property is not located on Market Street.

- Concern that the alley will be used to access the site. Mr. Leavitt said that the City's Public Works Department does not restrict use of the alley. Use of other proposed access points is restricted due to landscaping and restrictions of driveways in close proximity to intersections.

Mr. Leavitt referenced the Variance Criteria set forth in the Staff Advisory Report and iterated conclusions reached by Staff, also included in the Report. He pointed out elements of his testimony on slides.

He said that a similar variance was issued for a matter at 1009 Market Street. Staff recommends approval of the application with the following conditions:

- Project is subject to all applicable Codes and Development Standards as included in Attachment 3 of the Report
- Applicant shall submit a Tree Plan and arborist report, if applicable, in compliance with Kirkland's Zoning Code Section 9535

Ms. Tanner invited comment from the applicant and swore in Mr. Anspach.

Mr. Anspach thanked Staff for their review of the site and approval of the variance request. He gave the history of his experience with this property. He clarified these points:

- on Staff's Report, Page 7 under 3. a. (4) he feels it should say, "…is not viable to build three detached dwelling units…"

- on the same page, under b. Conclusions, (1), the following change should be made: "The buildable area of the site is ~~somewhat~~ very constrained…" due to several hardships created, e.g., Public Works disallowed a proposed driveway that forces use of the alley that decreased usable building space.

Mr. Anspach said that City Council restricted him to building detached dwelling units and he has had to initiate litigation against the City to maintain his rights. He requests the Hearing Examiner confirm the facts and findings.

Ms. Tanner invited others who are testifying in favor of the Applicant.

Brian Brand, architect for Mr. Anspach's project, testified. He confirmed hardships encountered with developing this parcel. He spoke to Variance Criterion #2 that asks how the variance is necessary pertaining to several elements and pointed out special circumstances pertaining to this property:

- The unique configuration of the intersection: everything facing north is PR Zone, City right-of-way, or landscaping. The distance between subject property and the nearest structure is well over 100'. The existing buffer mitigates the need for a 20' setback.
- Location of preexisting improvements: the existing structure has about 2.5' less setback than the proposed building.
- The down zone: the PR zone is a transitional zone that happens between a busy right-of-way and a less intensive zone. That zone usually allows small commercial office buildings, stacked residential units, and attached and detached single-family units. City Council has restricted use to attached and detached single-family.
- The effect of being surrounded by three rights-of-way creates impacts. Because the City is not allowing access on 13th but is requiring a large setback, there is no benefit for access or parking on the street. Also, driveways and frontage are limited. Also, landscape requirements impose de facto large setbacks that restrict the building footprint.
- The City is encouraging the developer not to have access off of 4th Street and to have parking on the east side or off the alley. He feels requirements for the driveway and buffer restricts the buildable area of the property.
- The 25' height requirement will make the property compatible with neighboring units, but he wanted to point out that this applicant has restrictions that other builders do not have.
- The City Code has an exception for relief for single-family homes' setbacks in the front yard, but not in PR zones like this.
- He feels there are many properties that do not meet the setback requirements. He thinks it is consistent in this neighborhood to have one setback be 20' and one to be 10'.

Ms. Tanner inquired as to those who intend to testify in this matter and swore them in as a group. She asked those who were in support of the project to testify first.

Tom DiGiovanni stated that he submitted a written report before the hearing. Ms. Tanner said that she has read that report. He owns property in the area. He said that he

has no connection with Mr. Anspach and has not met him before tonight. He supports the proposed development and the variance request. He cited many affirmative benefits to the neighborhood and the City that would occur if this project were to go forward as proposed, including architectural diversity and a pedestrian-friendly area.

As there was no further testimony in support, Ms. Tanner invited those to speak who are testifying in opposition to the Applicant.

Patty Pease, 401 13th Avenue W, stated that her property is in compliance with setback requirements. She would like the neighborhood to remain as it is currently. She feels that the applicant wants to "jam" too much on the property and it is creating his hardships.

Wendy Lane, 340 11th Avenue W, opposes the project. She feels it will allow encroachment of high density in the neighborhood and that Mr. Anspach's plan is grandiose, overstepping the site's potential in size. She feels the proposed buildings do not blend in with the neighborhood. She states that her home also is in compliance with setback requirements. She would like to see the tree plan for the property. She submitted a letter from a neighbor who could not attend this meeting, along with a letter that Ms. Lane wrote.

Jane Maule, 412 Tenth Avenue West, does not feel that hardships need to be considered in this matter as the owner purchased it under the present setback requirements. She wants the essence of the corner to be maintained as is. She opposes the project as it is too grandiose.

There being no further testimony, Ms. Tanner closed testimony.

Mr. Leavitt clarified "front yard averaging," emphasizing that it applies to corner lots in the RS zone only. Also, the latest ordinance does indeed allow attached dwelling units. He also advised that the City's information regarding setbacks along 13th Avenue West is based on GIS data and is not survey quality.

Hearing no further testimony, the Hearing Examiner declared the hearing closed at 9:42 p.m. but will leave the record open until May 8, 2006 for further information from City Staff.

ADJOURNMENT:

Ms. Tanner adjourned proceedings at 9:42 p.m.

_____

Jeremy McMahan, Planning Supervisor
Department of Planning and Community Development

Recording Secretary: Marlene Eisele
City of Kirkland