



## CITY OF KIRKLAND

Planning and Community Development Department  
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### STAFF REPORT FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

**To:** Kirkland Hearing Examiner

**From:** Stacy Clauson Stacy Clauson, Project Planner

Eric R. Shields Eric R. Shields, AICP, Planning Director

**Date:** December 28, 2006

**File:** APPEAL OF DIRECTOR APPROVAL OF THE CASADY SHORT PLAT, FILE NO. SPL06-00014;  
APPEAL FILE NO. APL06-00015

**Hearing Date and Place:** January 4, 2007, 7 p.m. (or as soon thereafter as possible)  
City Hall Council Chamber  
123 Fifth Avenue, Kirkland

#### I. INTRODUCTION

- A. Appellant: Peter and Julie Lemme
- B. Action Being Appealed: Planning Director approval, with conditions, of the Casady Short Plat.
- C. Issues Raised in Appeal: The appellant asserts that (1) the City should not regulate the eastern property line bordering the Lemme lot as a side property line, and (2) the City should require the western border of Lot 3 to be a front property line and the eastern border of Lot 3 to be a rear property line (See Appellant Letter, Exhibit A).

#### II. RECOMMENDATION

Conduct the appeal hearing on January 4, 2007. Take oral comments from parties entitled to participate in the appeal as defined in KZC 145.70 (See Exhibit B). Decide to:

- A. Affirm the decision being appealed;
- B. Reverse the decision being appealed; or
- C. Modify the decision being appealed.

#### III. HEARING SCOPE AND CONSIDERATIONS

- A. KZC 145.75 (See Exhibit B) states that the scope of the appeal is limited to the specific factual findings and conclusions disputed in the letter of appeal.

- B. KZC 145.95 (See Exhibit B) states that the person filing the appeal has the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision.

#### **IV. BACKGROUND**

- A. Location: The site is located at 9216 and 9222 112th Avenue NE (See Vicinity Map, Exhibit C).
- B. Proposal: Subdivide a 32,023 square foot (.73 acre) property into three residential lots in the RS 8.5 zone. The lots would contain between 10,420 and 11,183 square feet. The site contains a Type 3 wetland on the southeast portion of the site. Access to the lots is proposed via an alley located along the south side of the property. (See Site Plan, Exhibit D).
- C. Short Plat Review: Notice of the short plat application was distributed as required by KZC 145.22, and the comment period extended from August 24, 2006 until September 11, 2006. Three comment letters were received during the comment period, all from residents who adjoin the property along either the west or north property lines. The comments included 1) Loss of backyard and neighborhood context, 2) Minimum lot size, 3) Setbacks, 4) Increase of on-street parking along 112th Avenue NE, 5) Opening of 93rd Street., 6) Consistency with Highlands Neighborhood Plan, 7) Building height and placement of fill, and 8) Impacts to a retaining wall (See Staff Report, Exhibit E).
- C. Short Plat Decision: On October 24, 2006, after consideration of the short plat proposal against the applicable review criteria and after consideration of the issues raised in the public comment letters, the Planning Director approved the short plat, subject to conditions (See Staff Report, Exhibit E).
- D. Appeal: An appeal of the City's decision on the short plat was required to be submitted by November 13, 2006, the appeal deadline established with the Notice of Decision issued on October 27, 2006. On November 13, 2006, an appeal was filed on the short plat decision by Mr. and Mrs. Lemme, an adjacent property owner to the east of the short plat site (See Exhibit A).

#### **V. ANALYSIS OF THE SPECIFIC FACTUAL FINDINGS AND CONCLUSIONS DISPUTED IN THE LETTER OF APPEAL**

A summary of the appeal issue and staff's responses to them are provided below.

**1. Appeal Issue: a) The City should not regulate the property line bordering the Lemme lot as a side property line, b) The City should require the western border of Lot 3 to be a front property line and the eastern border of Lot 3 to be a rear property line.**

Staff Response: The Lemme lot adjoins the subject property along the east property line of Lot 3. Kirkland Zoning Code (KZC) Section 5.10.720 (see Exhibit F) contains the following relevant definitions for property lines:

Property Line – Those lines enclosing a lot and those lines defining a recorded vehicular access easement. The following are categories of property lines:

1. Front property line is any property line that is adjacent to a street or vehicular access easement or tract more than 21 feet in width, except when said vehicular access easement or tract:

- a. Is located entirely on an adjacent lot or lots and does not serve the subject property; or
- b. Encompasses a hammerhead turnaround required by the Fire Department, whether or not it is located on or serves the subject property.

Neither the Burlington Northern, I-405, nor SR-520 rights-of-way shall be considered front property lines.

2. Rear property line is any property line that is farther from and essentially parallel to a front property line except on a lot which contains two or more front property lines; or any property line that is adjacent to a street, alley or vehicular access easement or tract 21 feet or less in width, except when said vehicular access easement or tract serves only one lot, or is located entirely on an adjacent lot or lots and

does not serve the subject property; or any property line that is adjacent to a vehicular access easement or tract which encompasses a hammerhead turnaround required by the Fire Department.

3. Side property line is any property line other than a front property line or a rear property line, or in Waterfront District Zones, any property line other than a north, south, front, or high waterline.

There are no property lines on Lot 3 which are located adjacent to a street or vehicular access easement more than 21 feet in width. As a result, there are no property lines that would meet the definitional requirements for a front property line.

Lot 3 adjoins a 10-foot wide alley along the south property line. As a result, under the definition noted above, the south property line would be regulated as a rear property line.

Lot 3 adjoins a proposed access easement along a portion of the west property line. This easement is 12 feet in width where it coincides with the west property line of Lot 3. Lot 3 is the only lot that does not abut 112th Avenue NE and therefore does not have vehicular access rights to this improved public right-of-way. As a result, Lot 3 is the only lot that is considered to be served by the access easement. Because the easement only serves one lot and is less than 21 feet in width, it would not meet the definitional requirements for a rear property line.

Since the north, west and east property lines do not meet the definitional requirements of a front or rear property line, these property lines would be regulated as side property lines (see Exhibit F).

KZC Section 5.10.775 contains the following relevant definitions for required yards:

.775 Required Yard – Those areas adjacent to and interior from the property lines and involving the following designations (if two required yards are coincidental, the yard with the greater dimensions shall predominate):

1. Front: That portion of a lot adjacent to and parallel with any front property lines and at a distance therefrom equal to the required front yard depth.
2. Rear: That portion of a lot adjacent to and parallel with the rear property line and at a distance therefrom equal to the required rear yard depth.
3. Side: That portion of a lot adjacent to and parallel with the side property line and at a distance therefrom equal to the required side yard depth. All yards not otherwise categorized shall be designated side yards.

KZC Section 15.10.010 establishes the bulk and dimensional requirements for detached dwelling units located in the RS 8.5 zone. Under these provisions, a rear required yard is a minimum of 10 feet and a side required yard is a minimum of 5 feet, but 2 side yards must equal at least 15 feet.

Under these provisions, the south property line would have a minimum required yard of 10 feet. All other property lines could have a minimum required yard of 5 feet, but since there are three side yards, 2 of those must equal at least 15 feet. The Zoning Code does not provide any specific requirements which would guide how the setbacks should be arranged in cases where there are 2 or more side yards; therefore, the applicant has the option of how best to allocate the required setbacks, provided that at minimum the setback is equal to 5 feet and 2 side yards equal at least 15 feet.

Exhibit F therefore depicts a possible scenario where the setbacks at the north and east property lines are 5 feet, and the setback at the western property line is 10 feet to ensure that 2 side yards equal 15 feet. There are other possible scenarios that could be pursued by the applicant in establishing the final site layout for the new residence on Lot 3.

The issue of setbacks was previously addressed in the City's original staff report in the Public Comment and Development Regulation Sections (See Staff Report, Exhibit E, page 5). The City's response that was included in the report is as follows:

*Building permits on the proposed lots will be reviewed for compliance with the RS 8.5 zoning code standards in place at the time of building permit submittal. Given the configuration of Lot 3, both the north and ~~west~~ east [correction added] property lines are side property lines, which can have a minimum 5 foot side required yard under the RS 8.5 zoning regulations (see Attachment 17). The Planning Department has no authority to require a larger setback.*

## **VI. EFFECT**

Under KZC Section 22.20.340, the decision by the Hearing Examiner is the final decision of the City. If the Hearing Examiner affirms the approval of the proposed short plat, the Hearing Examiner shall sign the short plat documents on behalf of the City.

## **VII. JUDICIAL REVIEW**

Under KZC Section 145.110, the action of the City in granting or denying an application under this chapter may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the City.

## **VIII. LAPSE OF APPROVAL**

Under KMC Section 22.20.370, the short plat must be recorded with King County within four years of the date of approval or the decision becomes void. Under KMC Section 22.20.400, the date of the final decision of the city on the appeal shall be considered the "date of approval".

## **IX. EXHIBITS**

- A. Letter of Appeal
- B. KZC 145.60-145.105, Appeals
- C. Vicinity Map
- D. Proposal Drawings
- E. Casady Short Plat Staff Report (SPL06-00014)
- F. Required Yard Exhibit for Lot 3

## **X. PARTIES OF RECORD**

Applicant, BEN CASADY, CASADY ENTERPRISES INC, PO BOX 3475, KIRKLAND WA 98083  
JULIE and PETER LEMME, 11233 NE 94TH STREET, KIRKLAND, WA 98033  
PAT and MARY ELLINGER, 11229 NE 94TH STREET, KIRKLAND, WA 98033  
LORENZO CIANCIUSI and COLLEEN PROTZMAN, 11205 NE 94TH STREET, KIRKLAND, WA 98033  
Department of Planning and Community Development  
Department of Public Works  
Department of Building and Fire Services