



CITY OF KIRKLAND

Planning and Community Development Department
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**ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

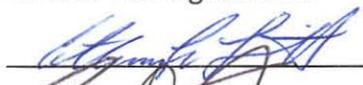
To: Kirkland Hearing Examiner
From:  Tony Leavitt, Associate Planner
 Eric R. Shields, AICP, Planning Director
Date: June 28, 2007
File: CHRISTIAN SHORELINE AND ZONING VARIANCE, SHR07-00002
Hearing Date and Place: July 5, 2007, 9:00 a.m.
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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I. INTRODUCTION

A. APPLICATION

1. Applicant: Matt Mengert of Thielsen Architects representing Dale and Lisa Christian, Property Owners
2. Site Location: 437 5th Avenue West (see Attachment 1)
3. Request: Variance from both the Kirkland Zoning Code and Shoreline Master Program to allow construction of a detached garage and accessory dwelling unit (ADU) structure. The proposed variances include:
 - Reduction of the required front yard setback, per the Kirkland Zoning Code and the Shoreline Master Program, from 20 feet to 5 feet along the unopened 5th Street West right-of-way.
 - Reduction of the required rear yard setback, per the Kirkland Zoning Code, from 10 feet to 1.25 feet along the unopened 5th Avenue West access easement.
 - Reduction of the required side yard setback, per the Shoreline Master Program, from 5 feet to 1.25 feet along the unopened 5th Avenue West access easement.
4. Review Process: Process IIA, Hearing Examiner conducts public hearing and makes final decision.
5. Summary of Key Issues:
 - Compliance with Kirkland Zoning Code Approval Criteria (See Section II.E)
 - Compliance with Shoreline Master Program Approval Criteria (See Section II.F)

B. RECOMMENDATIONS

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of this application subject to the following condition:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:

a. Facts:

- (1) Size: 12,848 square feet. Approximately 58 feet wide by 221 feet deep.
- (2) Land Use: The site is currently developed with a single family residence on the west side of the 5th Avenue West access easement and a parking area east of the access easement.
- (3) Zoning: Waterfront District (WD) II (a low density residential zone).
- (4) Shoreline Designation: Suburban Residential (SR) Shoreline Environment
- (5) Terrain: On the east side of 5th Avenue West, the site slopes steeply up to Waverly Way. The subject property is located within a Seismic Hazard Area and High Landslide Hazard Area per City's Sensitive Areas Map.
- (6) Vegetation: The proposed structure will be located in a cleared area and will not impact any significant vegetation.

b. Conclusions: The size and terrain of the subject property has some impact in the review of the applicant's variance request. See Sections II.E and II.F for further discussion.

2. Neighboring Development and Zoning:

a. Facts: The subject property is located within an area zoned for and developed with single family residences. To the west of the subject property is Lake Washington and to the north is the unopened 5th Street West right-of-way.

b. Conclusion: The neighboring development and zoning are not factors in the review of this application.

B. HISTORY

In 2001, the applicant applied for a variance from both the Kirkland Zoning Code and Shoreline Master Program to reduce the required 20 foot front yard setback from an unopened portion 5th Street West right-of-way to 5 feet for the construction of a new single family residence. The Kirkland Hearing Examiner approved the variance request on March 11, 2002.

C. PUBLIC COMMENT

The initial public comment period ran from May 3rd until June 4th, 2006. The Planning Department received no comments during this initial comment period.

D. STATE ENVIRONMENTAL POLICY ACT (SEPA)

1. Facts: A Determination of Nonsignificance (DNS) was issued on May 12, 2006. The Environmental Checklist, Determination, and additional environmental information are included as Attachments 4.
2. Conclusion: The applicant and the City have satisfied the requirements of SEPA.

E. ZONING CODE APPROVAL CRITERIA

1. Development Regulations

a. Facts:

- (1) The site is located in the Waterfront District (WD) II zone.
- (2) Detached dwelling unit (single family) uses, along with associated detached accessory structures, are allowed uses within this zone.
- (3) The applicable required setbacks for the proposed structure are 20 feet from a front property line and 10 feet from a rear property line.
- (4) The required front setback from the unopened 5th Street West right-of-way would be reduced from 20 feet to 5 feet.
- (5) The required rear setback from the 5th Avenue West access easement would be reduced from 10 feet to 1.25 feet.

- b. Conclusion: Approval of a zoning variance is necessary to construct the detached accessory structure as proposed.

2. Variance Approval Criteria

a. Facts:

- (1) Zoning Code Chapter 120 sets forth the mechanism whereby a provision of the Code may be varied on a case-by-case basis if the application of the provision would result in an unusual and unreasonable hardship.
- (2) Zoning Code section 120.20 establishes three decisional criteria with which a variance request must comply in order to be granted. The applicant's response to these criteria can be found in Attachment 5, pages 10 thru 13. Sections II.E.2 through II.E.4 contain the staff's findings of fact and conclusions based on these three criteria.

- b. Conclusion: Based on the following analysis, the application meets the established criteria for a variance.

3. Variance Criterion 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.

a. Facts:

- (1) It is highly unlikely, given the steepness of the Waverly Slope to the east, that the 5th Street West right-of-way will ever be opened to vehicular traffic. The right-of-way could potentially be used for future public uses like pedestrian access to Lake Washington.
- (2) According to information submitted by the applicant (see Attachment 5, page 8), there are existing structures along the 5th Avenue West that encroach into the required rear setback from the access easement. A review of city records shows that these structures were approved through the City's variance review process.
- (3) The proposed structure will be primarily visible from the private access easement and visual impacts to the north and south of the structure will be minimal. Additionally, no comments or complaints regarding the proposed structure have been received to date.
- (4) The proposed structure will be approximately 26 feet below the Waverly Way right-of-way, located to the east of the subject property, and not visible from Waverly Way.

b. Conclusions:

- (1) The variance will not be materially detrimental to the property or improvements in the area of the subject property as the reduced setbacks will not impact the perceived openness of the street and easement corridors.
- (2) The variance will not be materially detrimental to the City, in part or as whole, as the setback reductions will have no impact on the potential improvements within the 5th Street right-of-way.

4. Variance Criterion 2: The variance is necessary because of special circumstances regarding the size, shape, topography, or location of the subject property, or the location of preexisting improvements on the subject property that conformed to the Zoning Code in effect when the improvement was constructed.

a. Facts:

- (1) The subject property is adjacent to the unopened 5th Street West right-of-way and has the 5th Avenue West access easement running across the property.
- (2) The subject property is encumbered by the 10 foot required setback from the 5th Avenue West access easement, the 20 foot required setback from the unopened 5th Street West right-of-way, a 20 foot wide sewer easement near Lake Washington, and a 33 foot high water line setback from Lake Washington.
- (3) Kirkland Zoning Code Section 115.08 requires that the height (roof peak elevation) of an accessory structure may not exceed 15 feet above the

existing height (roof peak elevation) of the primary residence or 25 feet above average building elevation, whichever is less.

- (4) The eastern portion of the subject property has a very steep slope of approximately 96%, thus development is limited to the base of the slope. The property owners recently completed installation of a shoring wall to accommodate an existing parking area. The wall is located at the base of the slope and is approximately 36 feet high at its highest point. The proposed structure would be contained within this parking area.
- b. Conclusion: The variance is necessary because of special circumstances regarding the topography and location of the subject property. Additionally the required setbacks limit the buildable area on the subject property.
5. Variance Criterion 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 zone as the subject property.
- a. Facts:
- (1) The proposed detached garage and accessory dwelling unit (ADU) structure has a total gross floor area of approximately 1,726 square feet. The ADU will take up approximately 692 square feet of the gross floor area. The rest of the gross floor area will be used to accommodate 4 parking stalls.
 - (2) According to the applicant, accessory dwelling units along 5th Avenue West range in size from 320 to 1193 square feet with 2 to 5 parking stalls (see Attachment 5, page 9). Staff has reviewed city files and confirms the applicant's information.
 - (3) The WD II zoning district allows lots with two required front yards to reduce one of the front yards to the average of the yards on adjoining properties. In this case, the 5th Street West setback cannot be reduced due to the fact that there are no adjoining properties.
 - (4) The applicant has provided information to show that all six properties that are corner lots, along unopened street ends, in the WD II zone encroach into the required front setback yard (see Attachment 5, page 7).
 - (5) According to applicant, based on a review of City's zoning permit files, similar variances have been granted by the City in the past to allow encroachments into the required setback from the 5th Avenue West access easement (see Attachment 5, page 8). Staff has reviewed city files and confirms the applicant's information.

b. Conclusions:

- (1) The proposed structure is similar in size to other accessory structures along 5th Avenue West.
- (2) The proposed variances are similar in nature to previously approved variances and would result in comparable setbacks.
- (3) As a result, the granting of this variance would not constitute a special privilege to the subject property.

6. General Zoning Permit Approval Criteria

a. Facts: Zoning Code section 150.65.3 states that a Process IIA application may be approved if:

- (1) It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- (2) It is consistent with the public health, safety, and welfare.

b. Conclusion: The proposal complies with the criteria in section 150.65.3. It is consistent with all applicable development regulations (see Sections II.E) and, to the extent that there is no applicable development regulation, the Comprehensive Plan (see Sections II.G). In addition, it is consistent with the public health, safety, and welfare because the proposed development provides an accessory dwelling unit in a manner that is consistent with applicable goals of the Comprehensive Plan.

F. SHORELINE MASTER PROGRAM (SMP) APPROVAL CRITERIA

1. Development Regulations

a. Fact:

- (1) The site is located in the Suburban Residential (SR) Shoreline Environment.
- (2) Detached dwelling unit (single family) uses, along with associated detached accessory structures, are allowed uses within this shoreline environment.
- (3) The applicable required setbacks for the proposed structure are 20 feet from a front property line and 5 feet from a side property line.
- (4) The required front setback from the unopened 5th Street West right-of-way would be reduced from 20 feet to 5 feet.
- (5) The required side setback from the 5th Avenue West access easement would be reduced from 5 feet to 1.25 feet.

b. Conclusion: Approval of a shoreline variance is necessary to construct the detached accessory structure as proposed.

2. Shoreline Variance Approval Criteria

a. Facts:

- (1) Municipal Code Section 24.06.050 sets forth the mechanism whereby a provision of the Code may be varied on a case-by-case basis if the application of the provision would impose unnecessary hardship on the applicant or thwart the policies set forth in RCW 90.58.020.
- (2) WAC 173-27-170 establishes six criteria with which a variance request must comply in order to be granted. The applicant's response to these criteria can be found in Attachment 5, pages 13 thru 15. Sections II.F.3 through II.F.8 contain the staff's findings of fact and conclusions based on these criteria.

b. Conclusion: Based on the following analysis, the application meets the established criteria for a variance per WAC 173-27-170

3. Shoreline Variance Criteria 1: That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property.

a. Facts: The building area on the subject property for the proposed structure is constrained by the 5th Avenue West access easement and the steep hillside on the eastern half of the property. Without a variance, the building area would be further restricted by the application of required setbacks from the unopened 5th Street West right-of-way and 5th Avenue West access easement.

b. Conclusions: The strict application of the dimensional standards set forth in the Shoreline Master Program would significantly interfere with the development of a detached garage and accessory dwelling unit (ADU) structure.

4. Shoreline Variance Criteria 2: That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

a. Facts:

- (1) As previously mentioned in Section II.E.4, the subject property is constrained by unusual conditions related to the property including the steep hillside, the 5th Avenue West access easement, and the proximity to an unopened right-of-way.
- (2) The subject property is relatively narrow (58 feet) in comparison to its width (221 feet).
- (3) The master program does not allow for reduction of a required front setback from an unopened right-of-way other than through a variance approval process.

b. Conclusions: The hardship for which the variance is requested is specifically related to the property, and is the result of unique conditions such as irregular lot shape, natural features, and the application of the master program, and not from deed restrictions or the applicant's own actions.

5. Shoreline Variance Criteria 3: That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment.

a. Facts:

- (1) The subject property is an area already developed with, and planned for, single family residences and detached accessory structures.
- (2) The detached garage and ADU structure design is compatible in size with existing detached structures (see discussion in Section II.E.4).
- (3) No adverse impacts to the shoreline environment are expected. The proposed structure will be located landward of the existing residence.

b. Conclusions: The design of the project is compatible, in terms of size and scale, with other authorized uses and planned uses within the area. No adverse impacts to the shoreline environment are expected due to the separation from the shoreline and Lake Washington.

6. Shoreline Variance Criteria 4: That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

a. Facts:

- (1) The proposed detached garage and accessory dwelling unit (ADU) structure has a total gross floor area of approximately 1,726 square feet. The ADU will take up approximately 692 square feet of the gross floor area. The rest of the gross floor area will be used to accommodate 4 parking stalls.
- (2) According to the applicant, existing detached accessory dwelling units along 5th Avenue West range in size from 320 to 1193 square feet with 2 to 5 parking stalls (see Attachment 5, page 9). Staff has reviewed city files and confirms the applicant's information.
- (3) The applicant has provided information to show that all six properties that are corner lots, along unopened street ends, in the SR shoreline environment encroach into the required front setback yard (see Attachment 5, page 7).
- (4) According to applicant, based on a review of City's zoning permit files, similar variances have been granted by the City in the past to allow encroachments into the required 5 foot setback from the 5th Avenue West access easement (see Attachment 5, page 8). Staff has reviewed city files and confirms the applicant's information.

b. Conclusions: The variance will not constitute a grant of special privilege due to the fact that the proposed variance is similar to other variances approved by the City in the past. Additionally, the proposed structure is similar in size to existing detached structures along 5th Avenue West.

7. Shoreline Variance Criteria 5: That the variance requested is the minimum necessary to afford relief.
- a. Facts:
- (1) As previously mentioned, the subject property is constrained by unusual conditions related to the property including the steep hillside, the 5th Avenue West access easement, and the proximity to an unopened right-of-way. The required setbacks from the easement and the unopened right-of-way are additional encumbrances.
 - (2) The detached garage and ADU structure design is compatible in size with existing detached structures along 5th Avenue West.
 - (3) The applicant states that the proposed structure is the minimum necessary to accommodate the proposed ADU, garage, and parking area (see Attachment 5, page 14).
- b. Conclusions: The variance is the minimum necessary to afford relief from setback requirements and allow a structure that is similar in size to other detached structures along 5th Avenue West.
8. Shoreline Variance Criteria 6: That the public interest will suffer no substantial detrimental effect.
- a. Facts:
- (1) No substantial detrimental effects have been identified.
 - (2) The potential future use of 5th Street right-of-way for pedestrian access to Lake Washington would not be impacted by this proposal.
- b. Conclusions: The public interest will suffer no substantial detrimental effect as a result of approving the variance for the proposed structure.

G. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the Market neighborhood. The Market Neighborhood Land Use Map designates the subject property for low density residential use at 1 to 3 units per acre (see Attachment 6)
2. Conclusion: The proposal is consistent with the Comprehensive Plan for the Market Neighborhood.

H. DEVELOPMENT STANDARDS

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards, Attachment 3.
2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

III. SUBSEQUENT MODIFICATIONS

Modifications to the approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

IV. 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.

A. APPEALS

1. Appeal to City Council:

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to 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 5:00 p.m., _____, twenty-one (21) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

2. 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 Shoreline Hearings Board by filing a petition for review. All petitions for review shall be filed with the Shoreline Hearings Board within 21 days of the date the Department of Ecology receives the City's decision. Within seven 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.

B. 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 21 calendar days of the issuance of the final land use decision by the City.

V. LAPSE OF APPROVAL

Under Section 150.135 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 150, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 150.130, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 150 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.

VI. APPENDICES

Attachments 1 through 7 are attached.

1. Vicinity Map
2. Development Plans
3. Development Standards
4. SEPA Determination, Memo, and Enclosures
5. Applicant's Variance Statement
6. Market Neighborhood Land Use Map
7. Natural Greenbelt Protective Easement Agreement

VII. PARTIES OF RECORD

Applicant: Matt Mengert, Thielsen Architects, 720 Market Street, Suite C, Kirkland, WA 98033
Property Owners: Dale and Lisa Christian, 437 5th Avenue West, Kirkland, WA 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

A written decision will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.