



## MEMORANDUM

**To:** Kirkland Hearing Examiner

**From:** Jon Regala, Senior Planner  
Jeremy McMahan, Planning Supervisor

**Date:** March 26, 2013

**Subject:** APPEAL OF DESIGN REVIEW BOARD DECISION  
LAKE STREET PLACE MIXED USE DEVELOPMENT  
FILE NO. DRV12-00921

### I. INTRODUCTION

- A. Appellants: Two separate appeals were filed regarding the Design Review Board's decision regarding the Lake Street Place project issued by the City of Kirkland. The appeals were filed by the following parties:
- Residents of Merrill Gardens – Ellen Glauert and Barbara Flagg (see Enclosure 1)
  - Dr. and Mrs. Brian G. Rohrback and Sandi Hart and Stan Christie (see Enclosure 2)
- B. Applicant: Rick Chesmore with Chesmore Buck Architecture representing the property owner Stuart McLeod
- C. Action Being Appealed: January 24, 2013 Design Review Board (DRB) decision approving with conditions the Design Response Conference application for the Lake Street Place project (see Enclosure 3). See Section III for additional information regarding the DRB's authority under design review.
- D. Appeal Summary: The appeal filed by Residents of Merrill Gardens – Ellen Glauert and Barbara Flagg, states that residents of Merrill Gardens did not receive public notice of the project and that traffic created by the project will impact pedestrian safety and quality of life.

The appeal filed by Dr. and Mrs. Brian G. Rohrback and Sandi Hart and Stan Christie, claims that the amount of parking provided for the project is insufficient and that the north, east, and south facades of the project are still too massive when viewed close to the building. Additional concerns were raised in the appeal letter.

See Section V for more information regarding the appeal issues and staff analysis.

### II. RULES AND CRITERIA FOR APPEAL AND DECISION

- A. Rules: Kirkland Zoning Code (KZC) Sections 142.40 and 145.60 set forth the rules for appeals of Design Review Board Decisions. In the event that a project permit does not include an open record public hearing, the Design Review Board appeal will be heard and decided upon by the Hearing Examiner using the provisions of KZC

Section 142.40.2 through 11, which include hearing notice, participation, and staff report requirements.

- B. Criteria for Submission of an Appeal: Under KZC Section 142.40.3, the appeal, in the form of a letter of appeal, must be delivered to the Planning Department within 14 calendar days following the date of the distribution of the Design Review Board decision. It must contain a clear reference to the matter being appealed and a statement of the specific elements of the Design Review Board decision disputed by the person filing the appeal.

Only those issues under the authority of the Design Review Board as established by KZC Sections 142.35.3 and 4 are subject to appeal.

- C. Participation in the Appeal: Under KZC Section 142.40.6, only the person(s) who filed the appeal, the applicant, and the chair (or designee) of the Design Review Board may participate in the appeal. These persons may participate in the appeal in either or both of the following ways:

1. By submitting written comments or testimony to the hearing body or officer prior to commencement of the hearing.
2. By appearing in person, or through a representative, at the hearing and submitting oral testimony directly to the hearing body or officer. The hearing body or officer may reasonably limit the extent of oral testimony to facilitate the orderly and timely conduct of the hearing.

- D. Hearing Scope and Considerations: KZC Section 142.40.7 states that the scope of the appeal is limited to the specific elements of the Design Review Board decision disputed in the letter of appeal and the hearing body or officer may only consider comments, testimony, and arguments on these specific elements.

- E. Decision on the Appeal: Pursuant to KZC Section 142.40.11.a, unless substantial relevant information is presented which was not considered by the Design Review Board, the decision of the Design Review Board shall be accorded substantial weight. The decision may be reversed or modified if, after considering all of the evidence in light of the design regulations, design guidelines, and Comprehensive Plan, the hearing body or officer determines that a mistake has been made. Specific allowances established by the applicable use zone charts may not be appealed unless the Design Review Board has approved exceptions to those allowances.

Under KZC Section 142.40.11.b, the hearing body shall consider all information and material within the scope of the appeal submitted by the applicant. The hearing body or officer shall adopt findings and conclusions and either:

1. Affirm the decision being appealed; or
2. Reverse the decision being appealed; or
3. Modify the decision being appealed.

*Staff Comment: The reference to consistency with the Comprehensive Plan in KZC Section 142.40.11.a (described above) applies only when such consistency is specifically authorized under KZC Section 142.35.3.c (Design Principals for Residential Development), which is not the case with this application. KZC Sections 142.35.3.a through d specifically describe the DRB's review authority as it relates to design guidelines, the Comprehensive Plan, and Master Plans (Parkplace development). Only KZC Section 142.35.3.a, which gives the DRB authority to review for consistency with the Design Guidelines for Pedestrian-Oriented Business Districts, applies to applicant's proposal. The other criteria do not apply.*

### III. **DRB AUTHORITY**

Pursuant to KZC Sections 142.35.3 and 4, the Design Review Board shall review projects for consistency with the following:

- a. Design guidelines for pedestrian-oriented business districts, as adopted in Chapter 3.30 KMC.
- b. Design Guidelines for the Rose Hill Business District (RHBD) and the Totem Lake Neighborhood (TLN) as adopted in Chapter 3.30 KMC.
- c. The Design Principles for Residential Development contained in Appendix C of the Comprehensive Plan for review of attached and stacked dwelling units located within the NE 85th Street Subarea and the Market Street Corridor.
- d. The Parkplace Master Plan and Design Guidelines for CBD 5A as adopted in Chapter 3.30 KMC.

The Design Review Board is also authorized to approve minor variations in development standards within certain Design Districts described in KZC 142.37, provided the variation complies with the criteria of KZC 142.37.

The Design guidelines for pedestrian-oriented business districts, as adopted in Chapter 3.30 KMC, can be found in Enclosure 4.

### IV. **BACKGROUND**

- A. Site Location: The subject property is comprised of three separate parcels referenced as 112 and 150 Lake Street South (see Enclosure 5).
- B. Zoning and Land Use: The subject property is zoned Central Business District 1B (CBD 1B) and contains the Hector's restaurant and the Kirkland Waterfront Market (KWM). Enclosure 6 contains the CBD 1B zoning chart.

The Hector's and KWM properties are currently developed with a variety of retail, restaurant, and office uses. The site is relatively flat with a grade change of approximately 6' over a distance of 185' east to west. The subject property sits approximately 24' to 27' below the public walkway for the Portsmouth Condominiums to the east and southeast. The following are the zoning, uses, and allowed heights of properties adjacent to the subject property (see Enclosure 7):

- North*: CBD 1B. Bank of America. A 5-story mixed-use project. Maximum height is 55'.
- East*: CBD 4. Portsmouth Condominiums. Maximum height is 55.4'.
- South*: CBD 1B. Parking lot for Chaffey Building. Maximum height is 55'.
- West*: CBD 2. Various retail/restaurant uses. Maximum height is 28'.

- C. Applicant's Proposal: The applicant is proposing to construct a new mixed-use development called Lake Street Place on the three existing parcels. One parcel would contain the Hector's expansion, another the Kirkland Waterfront Market building and new office expansion, and the third parcel (existing surface parking lot) would contain a new building with ground floor restaurant and retail space, four stories of structured parking, with the top story being utilized for office space. A total of 79,150 square feet of new building area is proposed. The parking garage would contain 252 parking stalls.
- D. Design Review Board Meetings: The Lake Street Place project had five meetings with the Design Review Board summarized as follows:
  - January 9, 2012 - Conceptual Design Conference

- October 1, 2012 – Conceptual Design Conference & Design Response Conference
- November 19, 2012 – Continuation of Design Response Conference
- December 17, 2012 – Continuation of Design Response Conference
- January 14, 2013 – Continuation of Design Response Conference

The staff memos for the above conferences can be found [online](#) by their respective meeting dates and are adopted by reference as is fully set forth herein:

[http://www.kirklandwa.gov/depart/planning/DRB\\_Meeting\\_Information.htm](http://www.kirklandwa.gov/depart/planning/DRB_Meeting_Information.htm)

The DRB issued its approval of the Lake Street Place project with conditions on January 24, 2013 (see Enclosure 3). Section II of the DRB's decision contains a summary of the Design Response Conferences held for the project as well as a summary of public comments received. Section III of the DRB's decision contains an analysis of the project based on applicable design guidelines.

Enclosure 8 contains all of the public comment received during the design review process.

## V. **APPEAL ISSUES**

On February 11, 2013, two timely appeal letters were submitted to the City in regard to the DRB's decision on the Lake Street Place project (see Enclosures 1 and 2).

### A. **Residents of Merrill Gardens (Ellen Glauert and Barbara Flagg) Appeal**

The appellant's appeal issues (see Enclosure 1) are summarized below by topic followed by staff response.

#### 1. **Public Notice**

Appellants: Residents living at Merrill Gardens were not sent public notice of the proposed Lake Street Place project.

Staff Response: *This appeal topic is a procedural item and is not related to the DRB's review authority (see Section III above).*

*However, for background, KZC Section 142.35.8 requires that public notice be distributed to property owners within 300 feet of the boundary of the subject property, publishing in the official newspaper of the City (Seattle Times), posting on the City web page, and posting of public notice signs. The City met these requirements. The Design Response Conference public noticing requirements in the KZC do not require distribution of public notice to residents and/or tenants that are not property owners.*

*The City updates property owner information obtained from the King County Assessor's office once a month. The City creates property owner mailing labels from this database. At the time the public notice labels were generated (September 2012), the Merrill Gardens property owner was listed as 'Merrill Gardens at Kirkland' located in McKinney, Texas. Public notice was mailed to that address. The current property owner is listed as MGP 45 LLC located in Toledo, Ohio.*

#### 2. **Traffic and Traffic Safety**

Appellants: Increased traffic as a result of the development will result in significant safety problems and impact the quality of life in the neighborhood.

Staff Response: *This appeal topic is not related to the DRB's review authority (see Section III above).*

*However, for background, SEPA is the state law that requires an evaluation of a development proposal for environmental impacts. The issue most frequently addressed through SEPA is traffic and traffic safety. Design Review is not a project action and thus SEPA review is not required at the time of Design Review.*

*A SEPA application has not been submitted by the applicant. SEPA review is required to occur prior to the issuance of any building permit for the project. The appellants have been added to the project SEPA distribution mailing list for future noticing regarding the SEPA comment period.*

**B. Dr. & Mrs. Brian Rohrback and Sandi Hart and Stan Christie Appeal**

The appeal letter submitted by the Rohrback's and Sandi Hart and Stan Christie contain two specific challenges to the DRB's decision and a number of concerns regarding the project (see Enclosure 2).

**1. Specific Challenges to the DRB's Decision (see Enclosure 2, page 3)**

The appellant's appeal issues are summarized below by topic followed by staff response.

**a. Parking**

Appellants: Parking provided with the project may comply with code due to grandfathering provisions however, the parking is insufficient for the scale of the proposal.

Staff Response: *This appeal topic is not related to the DRB's review authority (see Section III above). The applicant must demonstrate compliance with the parking requirements of the Kirkland Zoning Code as part of any building permit.*

**b. Building Scale**

Appellants: Due to the large size and proximity of the building to neighboring property, there is no vantage point from where the architectural modifications can be appreciated.

Staff Response: *The project had four Design Response Conferences at which mitigation of the massing of the Main Street Building (east building) relative to the Portsmouth and Merrill Garden buildings was the primary focus. The DRB identified Lake Street South and Main Street as key vantages of the project. To further understand the project's context, the DRB also requested that the applicant provide information regarding the location of existing buildings and improvements adjacent to the proposed buildings.*

*The Design Guidelines for Pedestrian Oriented Business Districts (see Enclosure 4) contains several guidelines that seek to moderate a building's scale and massing. The general guideline topics are:*

- *Window treatment*
- *Architectural elements such as decks, bay windows, arcades, and porches*
- *Vertical and horizontal building modulation*
- *Upper story setbacks (along Lake Street and Main Street)*

*Given that the CBD 1B zone does not have any required setbacks other than upper story setbacks along the street, the DRB applied the design guidelines*

as well as various building color, materials, and detailing techniques to help mitigate building massing concerns. Perspective drawings (from various viewpoints) and building elevations were submitted by the applicant at each Design Response Conference for review by the DRB.

Over the course of the four Design Response Conference meetings, the applicant made the following changes to the Main Street building as a result of the direction given by the DRB to address building massing, parking garage impacts, and to comply with upper story setback requirements for the CBD 1B zone along Main Street (KZC Section 50.10.5):

- Removed the rooftop deck parking on the Main Street Building.
- Totally enclosed the Main Street Building parking garage.
- Setback the 2 top floors at the northeast façade of the Main Street building 22' from the east property line where adjoining Main Street.
- Setback the top floor at the southeast façade of the Main Street building 10' from the east property line where adjoining the public walkway.
- Provided landscaping within the neighboring public walkway along the east property line.
- Added retail and/or commercial space at the ground floor along Main Street.

The DRB further conditioned that the project include the following:

- The north façade of the Main Street Building have separated roof forms for each bay projection.
- The northeast façade of the Main Street Building have a ground floor CMU base and horizontal panel siding above at the upper stories.
- The south façade of the Main Street Building have infill horizontal panel siding.

The above listed items can be found in the DRB approval packet dated January 24, 2013 (see Enclosure 3).

## 2. **Matters of Concern**

In addition to the two specific challenges to the DRB's decision described in the previous section, the appellant's letter lists a number of concerns regarding the project. Their concerns are summarized below followed by staff response.

### a. **Moratorium**

Appellants: A moratorium is suggested on construction at the site.

Staff Response: This topic is not related to the DRB's review authority (see Section III above). Neither the Hearing Examiner, City staff, nor the DRB has the authority to adopt a moratorium on construction on the site.

### b. **Process**

Appellants: The project was rushed through the process and that not all property owners were sent notices. In addition, public notice was not sent to residents who are not property owners.

Staff Response: This topic is a procedural item and is not related to the DRB's review authority (see Section III above).

However, for background, the City complied with the requirements for processing a Design Response Conference application pursuant to KZC Section 142.35. The DRB held five meetings to review this project over a 12

month period of time. The original Conceptual Design Conference was held in January 2012. A follow up Conceptual Design Conference and subsequent Design Response Conferences were held in October 2012 through January 2013. The design review process typically involves the continuation of the Design Response Conference to two to four meetings over the course of several months.

In addition, KZC Section 142.35.8 requires that public notice be distributed to property owners within 300 feet of the boundary of the subject property. The City met this requirement. The Design Response Conference public noticing requirements in the KZC do not require distribution of public notice to residents and/or tenants that are not property owners.

The City updates property owner information obtained from the King County Assessor's office once a month. The City creates property owner mailing labels from this database. At the time the public notice labels were generated (September 2012), the Merrill Gardens property owner was listed as 'Merrill Gardens at Kirkland' located in McKinney, Texas. Public notice was mailed to that address.

c. **Architectural Scale**

Appellants: As the project relates to architectural scale, the proposed massive office space nestled among small office/retail and residences is not a fit and the lack of safety concern for Merrill Gardens is not comfortable.

Staff Response: The DRB found the final project proposal to be consistent with applicable design guidelines for architectural scale. The staff memo to the DRB dated December 10, 2012 contained the following information regarding the project's size relative to neighboring development. The information below shows that the size of the proposed project is not out of scale with neighboring development. See also staff's response to building scale in Section V.B.1.b and traffic safety in Section V.A.2 above.

<b>DEVELOPMENT NAME</b>	<b>BUILDING AREA *</b> <i>(Does not include below grade parking area)</i>
<i>Bank of America/The 101</i>	<i>83,525 sq. ft.</i>
<i>Merrill Gardens</i>	<i>136,743 sq. ft.</i>
<i>Portsmith</i>	<i>Phase I – 79,680 sq. ft. Phase II – 124,866 sq. ft. Total – 204,546 sq. ft.</i>
<i>Heathman Hotel</i>	<i>73,064 sq. ft. (includes daylight basement)</i>
<i>Kirkland Central</i>	<i>127,099 sq. ft.</i>
<i>Lake Street Place proposal</i>	<i>New building area – 79,151 sq. ft. New above-grade garage – 83,800 sq. ft. Existing building area – 26,635 sq. ft. (KWM and Hector's) Total – 189,586 sq. ft.</i>

\* The information was obtained from the City's permitting system

d. **Landscaping within the Public Pedestrian Walkway**

Appellants: The proposed planters within the Portsmith public pedestrian walkway will reduce the access way width to the less than suggested 10' – 12' width, will not meet the "at least 50%" landscape coverage guideline, and wall treatment mitigation is only useful when viewed from a distance.

*Staff Response:* The public walkway east of the subject property was required as part of the Portsmouth development in 1996 and 1997 (two phases), based on the conditions of a prior street vacation of the former First Street South and Second Avenue South. The walkway is located within a public easement and is open to the public during daylight hours. It is not a sidewalk adjoining a street and therefore not subject to the City's standard sidewalk requirements. The public walkway was approved to have varied widths ranging from 5' to 15' as shown in the final as-built drawing (see Enclosure 9). The proposed landscape planters are acceptable to the City as long as the minimum walkway width of 5' feet is maintained. With the new planters, the applicant is proposing to maintain walkway widths ranging from 7' to 11'.

Staff is unclear as to the reference made by the appellant in regard to the 50% landscape coverage guideline. The most similar guideline is in reference to blank wall treatment and reads as follows:

*'Blank walls should be avoided near sidewalks, parks, and pedestrian areas. Where unavoidable, blank walls should be treated with landscaping, art, or other architectural treatments.'*

The DRB reviewed this guideline in detail during the design review process and determined that the design as approved/conditioned met the guideline by utilizing a combination of landscaping and architectural treatment to mitigate blank walls at the Main Street building.

e. **Building Setbacks**

*Appellants:* "Building setbacks were originally developed to promote 'pedestrian-friendly' building fronts by providing light, air, and safety". The appellants contend that the close proximity and limited setback on the east side of the Main Street building is a significant restriction to light, air, and safety.

*Staff Response:* The CBD 1B zone does not require setbacks other than upper story setbacks along Lake Street South and Main Street. The proposal complies with the upper story setback requirements along Main Street and as modified by the DRB along Lake Street South for the Kirkland Waterfront Market building addition. The eastern topmost story of the Main Street building adjoining the public pedestrian walkway was setback 10' to address building massing guidelines (horizontal modulation).

f. **Upper Story Activities**

*Appellants:* Design guidelines that address upper story activities allow residents to 'patrol' the streets and parking areas. Because the proposal is for office space and not residential, and views of the street and parking will be cut off completely for Portsmouth, Merrill Gardens, and the 101 building, safety and quality of life is compromised.

*Staff Response:* The design guideline in regard to upper story activities is below:

*'All buildings on pedestrian-oriented streets should be encouraged to have upper-story activities overlooking the street, as well as balconies and roof decks with direct access from living spaces. Planting trellises and architectural elements are encouraged in conjunction with decks and bay windows. Upper-story commercial activities are also encouraged.'*

*This guideline applies to both commercial and residential development. Lake Street South is the only pedestrian-oriented street that adjoins the Lake Street Place development. Balconies and roof decks are being provided with the Lake Street Place development along Lake Street South and Main Street. Upper-story balconies of neighboring residential properties will still maintain their visibility of the street immediately adjacent to their respective property.*

g. **Precedent**

**Appellants:** There is absolutely no precedent for constructing such a massive structure so close to residential units.

**Staff Response:** *This topic is not related to the DRB's review authority (see Section III above). The CBD 1B zone allows for a 55-foot tall building. In addition, building setbacks are not required except for upper story setbacks for portions of a building that adjoin the street.*

h. **Parking Lot and Garage**

**Appellants:** The appellants refer to design guidelines addressing parking lot location, design, and parking garages.

**Staff Response:** *The appellants refer to various design guidelines for parking lot location, design, and parking garages. However, the appeal does not have a point of contention regarding this topic. In addition, no parking lots are proposed.*

i. **Upper Story Setbacks**

**Appellants:** Upper story setbacks have not been employed for the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> floors of the Main Street building as it impacts Main Street and the pedestrian walk to the east and south.

**Staff Response:** *Upper story setbacks are provided along the portion of the Main Street building that is adjacent to the public pedestrian walkway and Main Street. The majority of the Main Street building contains an enclosed parking garage. The building is 6-stories tall (due to internal drive aisle ramping associated with the garage) but complies with the 55' maximum height limit. KZC Section 50.10.5 requires an upper story setback along the portion of the Main Street building that adjoins Main Street. The 5<sup>th</sup> and 6<sup>th</sup> floors of the project are setback 22' from the property line adjacent to Main Street. As a result, the required amount of building area within 40' of the property line complies with the City's upper story setback requirement. The DRB found that the final arrangement of the building massing is consistent with the design guidelines for upper story setbacks (see Enclosure 4, pages 27 and 28).*

*The upper story setback code requirements in KZC Section 50.10.5 do not apply to the portion of the Main Street building that is adjacent to the public pedestrian walkway on the Portsmouth property. However, the topmost story of the Main Street building, at the east property line adjacent the public pedestrian walkway, was setback 10' from the property line in response to the DRB's building massing. The DRB found this acceptable in order to mitigate building massing by providing horizontal modulation at this location.*

j. **Views**

**Appellants:** The appellants refer to design guidelines addressing view of Lake Washington.

*Staff Response:* The appeal refers to design guidelines addressing views but does not provide an argument. While private views are not regulated by the City, views across the southern portion of the Kirkland Waterfront Market will be maintained by a private view covenant (see Enclosure 10).

k. **Parking**

Appellants: The proposed parking garage does not contain enough parking stalls to serve the new project, the parking garage has low ceilings, and the parking layout is awkward.

*Staff Response:* This appeal topic is not related to the DRB's review authority (see Section III above). The applicant must demonstrate compliance with parking requirements, fire and building codes, and parking lot layouts as part of any building permit. See also the staff response to Section V.B.1.a above.

l. **Parking for Office Buildings on Lake Street**

Appellants: The two office buildings along Lake Street do not have parking.

*Staff Response:* This appeal topic is not related to the DRB's review authority (see Section III above). Parking for the three Lake Street Place buildings are being provided in the Main Street building parking garage. KZC Section 105.40 allows for the required number of parking spaces to be provided on a lot adjoining the lot containing the use which generates the parking requirement.

m. **References in the Comprehensive Plan**

Appellants: The Comprehensive Plan is directly relevant to the Lake Street Place project and the proposed project is not entirely consistent with the Comprehensive Plan.

*Staff Response:* This topic is not subject to the DRB's review authority (see Section III above). The Comprehensive Plan is not a regulatory document. Under state growth management statutes, comprehensive plans are policy documents (RCW 36.70A.030.4). Zoning regulations must be consistent with comprehensive plans. If there is an inconsistency, the regulations govern. Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 871-74, 947 P.2d 1208 (1997).

For historic context, the City Council received two appeals of DRB approvals in 2008 and subsequently determined that the CBD regulations at the time lacked clarity and predictability and placed an inappropriate level of discretion with the DRB. To remove the discretion and uncertainty related to regulatory references to the Downtown Plan policies of the Comprehensive Plan, the Council directed the creation of clear zoning regulations and supporting design guidelines that implement the policies in question. The Council's fundamental goal for these amendments was to clearly specify, in the Zoning Code, the maximum allowed heights, minimum upper story step backs, and minimum retail standards to avoid highly discretionary decisions.

The City Council held a public hearing on January 20, 2009 on the code amendments after conducting four City Council study sessions and three study sessions with the DRB. After continuing the public hearing three times, the City Council adopted new CBD regulations (Ordinance 4177) and design guidelines (Resolution 4739) on March 3, 2009. Pursuant to KZC 135.25, the City Council found that the zoning amendments were consistent with the

*Comprehensive Plan. The adopted regulations and design guidelines apply to the current Lake Street Place project.*

**VI. STAFF RECOMMENDATION**

Staff recommends that the Hearing Examiner uphold the DRB's January 24, 2013 decision approving the Lake Street Place project with conditions.

**VII. JUDICIAL REVIEW (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. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW.

**VIII. ENCLOSURES**

1. Residents of Merrill Gardens Appeal Letter
2. Rohrback and Hart and Christie Appeal Letter
3. January 24, 2013 DRB Decision
4. Design Guidelines for Pedestrian Oriented Business Districts
5. Vicinity map
6. CBD 1B Zoning Chart
7. Aerial Map
8. Public Comment
9. Portsmouth Public Walkway As-Built Drawing
10. KWM View Easement



Residents of Merrill Gardens  
201 Kirkland Avenue  
Units 324 and 326  
Kirkland, WA 98033



February 11, 2013

City of Kirkland  
Planning and Community Development Department  
123 Fifth Avenue  
Kirkland, WA 98033

**Letter of Appeal:** Permit No. DRV12-00921 Lake Street Place Design Review Board Decision

To Whom It May Concern:

We are Kirkland residents, Ellen since 1995. Barbara has lived at the Merrill Gardens retirement home since close to its inception in 2009, with Ellen moving from her Kirkland home in 2010. We appeal the decision of the Design Review Board in that their review does not adequately take into consideration the neighboring properties, particularly Merrill Gardens.

The basis for our appeal is two-fold.

First, we are upset that the Kirkland residents living within Merrill Gardens' walls were not informed of the plan for the building. No resident received notification. This is not acceptable. We are a part of this community, even if we are not homeowners any longer. If you make the case that you are only responsible for informing property owners, you did not succeed in that either. According to your records, notice to Merrill Gardens LLC was sent to a suburb of Dallas, Texas. We would like to inform you that the corporate management is in Seattle, Washington.

Our second objection relates to safety and quality of life issues, particularly in regard to traffic. Everybody seems to mention traffic, but no one seems willing to discuss its impact. We believe that the traffic problems that will result from this development will bring with them significant safety problems and severely impact the quality of life in our neighborhood. The fact that cars will be entering and exiting this proposed office building garage is just as important as any landscaping plans that the Board spent so much time discussing, and has an even greater impact on building design. We are concerned that the building will be constructed to the benefit of the developer and we, as residents, will be left with the consequences of an inadequate design.

We would like to bring up the traffic issue in more detail as we have a very personal reason for concern. Note that these comments are completely within keeping of KMC Chapter 3.30, which is the guiding policy set for the Design Review Board. We feel like we are being placed in harm's way with the traffic and congestion brought to our front door. Note that this is of significant enough concern that specific regulations, restricting building design and use, are on the books in ten states and numerous cities across the United States.

Residents of Merrill Gardens  
201 Kirkland Avenue  
Units 324 and 326  
Kirkland, WA 98033

A huge increase in traffic is inevitable if this project is allowed to proceed. In a retirement community like ours, the average age is approximately 85 and many have difficulty with hearing, vision and agility. Although not necessarily to our liking, we have slowed down and a number of us require walkers to get around both inside the building and when we venture outside. Where this becomes personal is to note that one of our fathers (Ellen's) was killed when he was 87 while crossing a street in a marked crosswalk by an inattentive driver. The potential for a serious accident due to the tripling (or more) of the traffic at our Main Street entrance is just too high with the proposed construction.

With these concerns, we observe that there are no reasonable opportunities to address traffic and have the results of that discussion incorporated into the design. The proposal is an odd configuration, not a typical street layout. Restrictions on Lake Street coupled with a stubby Main Street and an alleyway that must service all of the traffic must be considered in the design. Note that the placement of the garbage bays was deemed relevant.

In summary, we should have been notified about the design review for this building. We were integrated into the discussion too late and were belatedly made aware of this project because a Portsmouth resident has his mother here at Merrill Gardens. In addition, traffic really bothers us a lot. The design detracts from pedestrian qualities and creates a safety hazard at our front door.

Sincerely,



Ellen Glauert



Barbara Flagg

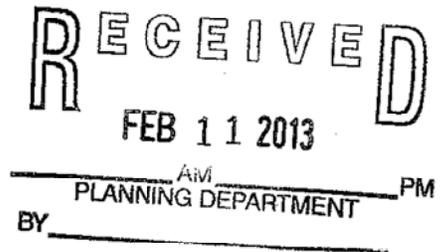
Cc: Bill Pettit, President and Chief Operating Officer, Merrill Gardens LLC  
Charles Wright, Chairman, Merrill Gardens LLC  
Hon. Joan McBride, Mayor, City of Kirkland  
Kirkland City Council

## Letter of Appeal

Permit No. DRV12-00921 Lake Street Place Design Review Board Decision

February 10, 2013

Mr. John Regala  
City of Kirkland  
Planning and Community Development Department  
123 Fifth Avenue  
Kirkland, WA 98033



Dear Mr. Regala,

We are appealing the decision of the Design Review Board that approved the plan for construction of the buildings located nominally at 123 Lake Street in the Kirkland Central Business District. The basis for this appeal is tied to the design guidelines for pedestrian-oriented business districts, as adopted in Chapter 3.30 of the Kirkland Municipal Code, adopted by the City Council and updated March 3, 2009 (R-4739).

We also suggest a moratorium on construction on this site so that a thorough review of the zoning regulations can be conducted. The reason for this action is that the zoning commission could not possibly have anticipated the coordinated construction of three separate properties; these properties are considered as one when convenient to the builder and promoted as separate entities when it allows the builder to ignore constraints that would otherwise be in place (regarding setbacks, residential requirements and overall height).

For every pass through the Design Review Board, this project was rushed through with less-than-the-required time for assembly of public comment, as the architect was late delivering the plans, but the meeting was already scheduled. These meetings should have been postponed as there was insufficient time to organize community response.

Also, in analyzing the mailing list for the official project notice to homeowners in the area, fewer than 50% of the affected owners were sent notices and none of the signers of this letter of appeal received notifications. In one case, that of Merrill Gardens management, it was sent to entirely the wrong state. There is a fundamental flaw in the procedure that excludes residents who rent apartments or houses in the area. They are as much Kirkland residents as is a property owner and they should have a say in their neighborhood. We live in the 21<sup>st</sup> Century, not the 17<sup>th</sup>.

The points of our concern about the project are listed below and reference the "Design Guidelines".

- "‘Architectural scale’ requirements direct large buildings to fit more comfortably with neighboring developments." *This is an office building and a large garage structure. Massive office space nestled among small office/retail and residences is not a fit, and the lack of safety concern for Merrill Gardens is not comfortable.*

- A damned if you do, damned if you don't moment is found in the incorporation of additional landscape planters along the East side and South side public access walkways. Landscaping, assuming the plants will live in such a restricted-light environment, will in part mitigate the huge wall, but they will further restrict the width of the accessway to far less than the suggested 10' to 12' width. Note that these planters do nothing for the Portsmouth residents. Also note that, at best, the landscape coverage will be 10-20% of the garage wall rather than the "at least 50%" guideline. In addition, the wall treatment mitigation (vertical and horizontal elements) is only useful when viewed from a distance – and the wall is not able to be viewed from a distance as it is planned to be built so close to existing buildings.
- "Building setbacks were originally developed to promote 'pedestrian-friendly' building fronts by providing light, air and safety." *The close proximity and limited setback on the East side of the Main Street building is a significant restriction to light, air and safety.*
- Guidelines state that upper stories allow residents to "patrol" the streets and parking areas. *Because the proposed structure is a large office space and not residential, and views of the street and parking will be cut off completely for Portsmouth, Merrill Gardens and the 101 building, safety and quality of life is compromised.*
- There is absolutely no precedent for constructing such a massive structure so close to residential units. Nowhere in Kirkland, or in any other city in Washington for that matter, is there a case for such an egregiously tiny distance between two buildings where local residents are impacted.
- In discussion of parking lot location and design, "clear internal vehicular and pedestrian circulation is required" and "The guidelines for parking garages are intended to make them fit into the scale and character of pedestrian-oriented districts". Further, "The intrusive qualities of parking garages must be mitigated". The suggestion of the Guidelines for Downtown Kirkland: "near residential areas, or near the waterfront [garages] can fit less obtrusively into the landscape when terraced".
- Other than a setback on the 6<sup>th</sup> floor, upper story setbacks have not been employed for the 3<sup>rd</sup>, 4<sup>th</sup> or 5<sup>th</sup> floors of the Main Street building as it impacts Main Street and the pedestrian walkway to the East and South. That *IS* the front of the building: another reminder where the developer has manipulated a portion of the building code to support this project as if it were a single building (hence a Lake Street front), but not when it is to their disadvantage (in that to do so would require a reduction in height).
- When remarking on views of the water, the Design Guidelines state, "Views of Lake Washington give Kirkland its sense of place within the regional context... A water view is a recurring reminder of the direction, function, and origin of Kirkland." The plan goes on to state that current views should be protected or, at the very least, view corridors should be created to allow a glimpse of the water beyond. "New development should respect the existing view corridors." The public walkway east of the Main Street building is just such an existing view corridor.
- Interesting, although massive, the parking garage does not even come close to servicing the needs of the proposed structure, forcing a large number of cars to vie for street parking. It has low ceilings, which are impediments to emergency vehicles, should one be needed. In addition, the dead-end, single lane appendages featuring compact car spaces are exceedingly awkward and will create a mess, particularly during the morning

commute times. These features were never discussed in the DRB meetings. The purpose appears to be cramming in yet one more story, creating obligatory parking spaces into a space where it really does not fit.

- Realize that there is zero parking for the two office buildings fronting on Lake Street. How is that possible? If there is a contract with the Main Street Building for parking, has anyone seen it? You must realize that this is a single building space and treat it as such. If the buildings can be sold separately, each building should be required to truly stand on its own.

### **Specific Challenges to the January 24, 2013 Summary of Decision**

1. (I. B. 4.) How can the project be approved if the parking calculations have not been submitted? *The parking may fit code due to the grandfathering of the existing buildings, but it is insufficient for the scale of this proposal. No approval should be given without a thorough review of the largest structure on the property.*
2. (II. A. 2. and 3.) The DRB expressed concern about the over-scaled appearance of the North, East and South facades. *The mitigation was to put more variability in the façade. The problem is that, with the building so large and so close, there is no vantage point where the architectural modifications can be appreciated. The conclusion stated by the DRB that the building material variation on the eastern border was sufficient based on views from afar, an impossible perspective; it is still too massive close up.*

### **References in the Comprehensive Plan**

The Comprehensive Plan is directly relevant to the matter of the McLeod development. We note the Vision Statement for Moss Bay states that we need to recognize Kirkland's unique identity, enhance the open space network and emphasize diversity and quality within a hometown setting of human scale and to "respect and enhance the existing features, patterns and opportunities". We hold that a project of this size fronting on Lake Street is counter to this vision and goes against a number of the specific statements contained in the Comprehensive Plan. As the Zoning and the DRB responsibilities are ultimately driven by the Comprehensive Plan, these comments are relevant. Quoting specifically from the Plan:

- The small blocks also preclude consolidation of properties which might allow larger developments with less pedestrian scale. Vacations may be considered when they will not result in increased building mass and there is a substantial public benefit. Examples of public benefit might include superior pedestrian or vehicular linkages, or superior public open space. *On the East and North sides of the proposed set of buildings, the pedestrian, vehicular and open space is severely compromised.*
- In the section on Urban Design, the Plan clearly states guidelines for a mix of two to four stories in height as appropriate. Further, the Plan continues: "an additional story in height may be appropriate in 1B to encourage residential use of the upper floors and to strengthen the retail fabric in the Core Area. This additional story may be considered by the Design Review Board for projects where at least three of the upper stories are residential. *Merrill Gardens I and II adhere to this guideline as mostly residential, this development does not.*
- The Community Character Element highlights a series of framework goals.

- FG-8 Maintain and enhance Kirkland's strong physical, visual, and perceptual linkages to Lake Washington. *This goal is seriously compromised, particularly to the East of this proposed project.*
- FG-12 Ensure public safety. *There are huge safety concerns, not only with the increased interplay between pedestrians and cars,, but also concerns for fire department access to the Northeast residential units of Portsmouth and the south-facing units in Merrill Gardens II.*
- FG-16 Promote active citizen involvement and outreach education in development decisions and planning for Kirkland's future. *The time allowed for points made by citizens in the community comment portion of both the DRB meetings and the City Council is often insufficient to present ideas to either group. This seems more like window dressing, rather than an active, involving discussion.*
- FG-17 Establish development regulations that are fair and predictable. *When we feel that our voices are heard, but the points we wish to have discussed are ignored, predictable is accurate, but fair is not.*
- The Community Character portion of the Comprehensive Plan emphasizes livability.
  - Use of the term "livability" suggests that residents are the most important. *Residents surround the proposed development, none will reside within.*
  - Policy CC-4.5 Public views can be easily lost or impaired and it is almost impossible to create new ones. Preservation, therefore, is critical. *A public walkway extends along the East and South borders of this property; its view will be obliterated.*
- The concept of citizen participation is not being followed. If citizens participate early, conflicts will be reduced and the decisions will be more responsive.
  - Policy GP-2.2 promotes a multi-media approach with mailings, neighborhood meetings, and discussion groups. *Mailings have been done ineffectively with fewer than 50% of all the affected residents being informed of the building proposal. Fewer than 50% of the residents of Portsmouth were sent mailings and 0% of any of the apartment residents were contacted. In addition, Merrill Gardens LLC, the owner of the two apartment buildings next to the site was sent a notice, but to a location in the Dallas, Texas area – note the company is based in Seattle. No discussion groups were held.*
  - Policy GP-2.4 emphasizes the importance of the public comment concerning issues of "access, safety, environmental concerns, neighborhood character, and economic impacts". *These items cannot be ignored in a design review.*

### **References in the Online Survey of Kirkland Residents (August 2007)**

The residents of Kirkland in general are vocal about their support for small scale:

- Limit the growth of multiple story buildings.
- Focus on low profile buildings that allow more visible sky to pedestrians.
- Preserve the small town feel of the city.
- Improve the parking and keep it out of sight.
- Try for less commuter traffic. "We add several minutes each year onto the Kirkland Crawl".
- Increase, don't decrease, views of the waterfront.
- Keep Kirkland a welcome relief from Seattle and Bellevue.

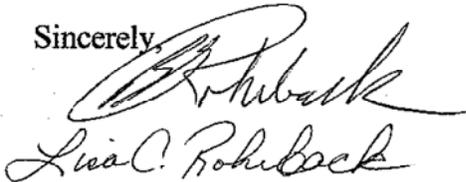
In Potala Village, the City agreed with residents who complained that the proposed building was out of character. It was simply too high a density of a building on Lake Street. Similarly, the McLeod development is trying to crowd way too much into a small space, vastly expanding the office space in the area and cramming it into a single location.

Zoning regulations did not anticipate the plan for this property. There have been three designs for the 123 Lake Street property (or properties, whenever it suits the developer) of which we are aware. An acceptable two-story design was proposed in late 2009, but has given way to a cleverly constructed design that skirts all logic. It appears that the developer has cleverly manipulated the property to close off all avenues of community compromise.

Safety is significantly compromised for a number of reasons stated above. There is also the problem of traffic flow in front of Merrill Gardens. The size of the office spaces under construction will add a large number of car traffic, all whizzing by Merrill Gardens. There have been some close calls as is; it is hard to imagine the impact of hundreds of ingresses and egresses in a focused time period mornings and evenings. Congestion on Lake Street and, even more so, Kirkland Avenue, added to the restriction entering Main Street, the lack of a left turn lane and an alleyway that services a bank drive through and hundreds of residents, is a recipe for disaster. We have heard several times that this is not within the purview of the DRB, but form necessarily follows function and the function of the garage will be to accept a large number of vehicles in a short span of time. This clearly plays back to the design and the overall massing of the project and ties to the Design Guidelines for the city. We need to see hard data on base traffic conditions, site traffic generation and distribution and projected impact on Lake Street and Kirkland Avenue.

Thank you for your attention to our points.

Sincerely,



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