

ATTACHMENT 5
ZON06-00030, SHR07-00004
APL07-00007

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BEFORE THE CITY COUNCIL OF THE CITY OF KIRKLAND

John Stephanus,

Appellant.

NO. ZON06-00030; SHR 07-00004

NOTICE OF APPEAL OF HEARING
EXAMINER FINDINGS,
CONCLUSIONS AND
RECOMMENDATION

A. Decision Appealed.

Hearing Examiner Findings, Conclusions and Recommendation regarding Stephanus request for zoning variance from north yard setback, dated September 14, 2007.

B. Project Name/File Number.

Stephanus Variance, File Nos. ZON06-00030 and SHR 07-00004.

C. Appellant's Contact Information.

Applicant / Appellant:

John Stephanus
Property Owner and Applicant
4611 Lake Washington Blvd. NE

COPY

1 Appellant's Attorney:

2 Duana Koloušková
3 Johns Monroe Mitsunaga, PLLC
4 1601 114th Avenue S.E., Suite 110
5 Bellevue, WA 98004
6 (425) 467-9966

7 **D. Appellant's Legal Interest in the Property.**

8 Mr. Stephanus is the property owner and co-applicant with his architect Mark
9 Travers.

10 **E. Summary of Grounds for Appeal and Errors of Law and Fact.**

11 1. The Hearing Examiner erroneously found that the duplex unit was installed without
12 permits and that there is a pending code enforcement action. *Hearing Examiner Findings,*
13 *Conclusions and Recommendation ("Decision"),* page 2, Finding 3.

14 Correction: Conversion of the structure to duplex was approved in 1995 based on application
15 of the prior property owner. There is no evidence or basis for finding of any actions taken
16 without permits or pending code enforcement action. To the contrary, per the staff report
17 "The structure has been approved for use as a duplex." *Staff Report,* page P5. As testified by
18 Mr. Stephanus at the open record hearing, the structure is not used and has not been
19 marketable as a duplex because of the enclosed parking problem.

20
21 2. The Hearing Examiner erroneously concluded that the facts do not show special
22 circumstances to support a variance for either Option A or Option B as currently proposed.
23 *Decision,* page 6, Conclusion 6.

24 Correction: The facts presented both in the written record and in the testimony at the

1 Hearing Examiner's open record public hearing demonstrate that special circumstances
2 support the variance under either Option A or Option B. This variance criterion was
3 discussed at the open record hearing in testimony and in the letters of support for the
4 application in the record, dated October 26, 2006, and July 11, 2007. Additional support for
5 the variance was provided on August 10, 2007.

6
7 3. The Hearing Examiner erroneously found that the main level garage is the size of a
8 standard two-car garage, that the garage door is only slightly smaller, and that the main level
9 garage is comparable to other new residential development. *Decision*, page 6, Conclusion 6.

10 Correction: Evidence in the record shows that the main floor garage is smaller than a
11 standard garage and cannot accommodate anything more than either one standard size
12 vehicle or two very small compact vehicles in close proximity as to limit access into/out of
13 the vehicles.

14
15 4. The Hearing Examiner erroneously concluded that Option B would not be consistent
16 with the special circumstances requirement for the variance because it would provide
17 additional enclosed parking for both the lower and upper units. *Decision*, page 6, Conclusion
18 7.

19 Correction: Special circumstances exist to support a variance for additional enclosed parking
20 for both the upper, and most importantly, the lower units.

21
22 5. The Hearing Examiner erroneously that a variance under either Options A or B would
23 constitute a grant of special privilege. *Decision*, pages 6-7, Conclusion 8.

24 Correction: A variance for additional enclosed parking for both the upper, and most

1 importantly, the lower units under Option A or B would not constitute a grant of special
2 privilege. This variance criterion was discussed at the open record hearing in testimony and
3 in the letters of support for the application in the record, dated October 26, 2006, and July 11,
4 2007. Additional support for the variance was provided on August 10, 2007.

5
6 6. The Hearing Examiner erroneously concluded that a variance for one additional
7 enclosed parking space would be consistent with other development and not constitute a
8 grant of special privilege. *Decision*, pages 6-7, Conclusion 8.

9 Correction: A variance under either Option A or B would be consistent with other
10 development and not constitute a grant of special privilege as discussed in the record.
11 However, even for the lower unit alone, a variance for two enclosed parking spaces is
12 fundamentally necessary based on the existing turning radius for the lower garage. Were a
13 variance granted to allow only one additional enclosed parking space at the lower level, such
14 would eliminate the existing parking space as the new enclosed area would terminate the
15 ability to access the existing parking space. *See Attachment 2B to Staff Report*, page P31,
16 (Plan Sheet A1, Garage Diagram "existing garage usable by only one car due to retaining
17 wall": showing turning radius for existing garage superimposed with proposed Option B
18 lower garage).

19
20 Pursuant to KZC 150.90, the Applicant/Appellant respectfully requests the
21 opportunity to provide written argument in support of this appeal prior to the City Council's
22 consideration of the appeal and the opportunity to provide argument in support of the
23 variance and this appeal either in person or through representative at the City Council's
24 regular hearing on the appeal.

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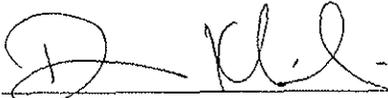
F. Relief Sought.

Based on the information in the record and the applicable law and pursuant to KZC 150.125, the Applicant/Appellant respectfully request the City Council to **reverse** the Hearing Examiner's Findings, Conclusions and Recommendation and instead determine that sufficient evidence exists to support a variance for the Option B proposal as set forth in the submitted plans.

Alternatively, the Applicant/Appellant respectfully requests the City Council to **modify** the Hearing Examiner's decision to grant a variance to accommodate enclosed parking at the lower until level for an additional two vehicle spaces, i.e. Option B reduced from a length accommodating two tandem vehicles to a length accommodating only two vehicles adjacent to each other. The Applicant/Appellant respectfully submits that a rehearing as provided for under KZC 150.125 would not be necessary for this requested modification of the Hearing Examiner decision.

DATED this 2nd day of October, 2007.

JOHNS MONROE MITSUNAGA, PLLC

By 
Duana T. Koloušková, WSBA #27532
Attorneys for Applicant/Appellant
Stephanus