



CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

ADVISORY 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: November 26, 2007

File: STEPHANUS VARIANCE AND SUBSTANTIAL DEVELOPMENT PERMIT
REHEARING TO CONSIDER AMENDED VARIANCE REQUEST
FILE NO. ZON06-00030, SHR07-00004, and APL07-00007

Hearing Date and Place: December 5, 2007 at 7 pm (or as soon thereafter as possible)
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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I. INTRODUCTION

A. APPLICATION

1. Applicant: Mark Travers on behalf of John Stephanus
2. Site Location: 4611 Lake Washington Blvd NE (see Attachment 1)
3. Request: The Hearing Examiner is holding a rehearing to consider an amended proposal for a variance to the zoning regulations. The new proposal requests approval to reduce the north required yard to 21 feet for an addition to provide parking for the basement story unit in the existing duplex (see Attachment 2). The addition would occur on the north side of the existing duplex and would measure approximately 17 feet by 21 feet. The garage addition would be one story in height, aligning with the basement floor level.
4. History. On September 6, 2007, the Hearing Examiner heard a proposal by the applicant requesting approval of a Zoning Permit and Substantial Development Permit for an addition to an existing duplex. The addition would consist of a 522 square foot upper floor addition to the duplex as well as an addition for garage space to provide additional covered parking for the units. The proposed garage addition would require a variance to the zoning regulations to reduce the north required yard to 21 feet. The applicant presented two alternative designs for the garage addition for City review (both require a variance), both of which provided additional parking for both units in the duplex. On September 14, 2007, after considering all of the information, testimony and comments submitted on the matter, the Hearing Examiner approved the application for a zoning permit and substantial development permit for the second story addition, subject to conditions. The Hearing Examiner denied the variance request to the north required yard that would have allowed the addition of garage space to provide additional covered parking for the units (see Attachment 3).

In rendering the decision to deny the requested variance, the Hearing Examiner determined that the variance proposal did not meet two of the criteria for the grant of a variance, specifically that the applicant had not demonstrated that the variance is necessary because of special circumstances and that the variance will not constitute a grant of special privilege.

The attorney for the property owner, John Stephanus, filed a timely appeal of this Hearing Examiner's denial of the variance application on October 2, 2007 (see Attachment 5).

On November 7, 2007, the City Council conducted a closed record hearing considering the appeal (File APL07-00007). The Council considered the specific findings and conclusions disputed in the letter of appeal, based on the record of the hearing before the Hearing Examiner, the letter on appeal, the Staff Report on Appeal and written and oral arguments submitted by the appellants. In response to a request by the appellant, the City Council directed the Hearing Examiner to hold a rehearing on the matter. The scope of the rehearing has been limited to consideration of an amended proposal for an encroachment into the north required yard established under the Zoning Code for a one story garage addition at the basement level to accommodate additional enclosed parking serving the lower unit in the existing duplex.

5. Summary of Key Issues and Conclusions: Staff's overview of the site description, detailed review of the public comments received, analysis of the proposal for compliance with the Shoreline Master Program and Comprehensive Plan, and analysis of the second story addition in relation to the applicable provisions of the Zoning code are contained

within the Staff Advisory Report issued for the original hearing (see Attachment 4). This advisory report is limited in scope to consideration of the amended variance proposal. One additional public comment has been received since the public hearing (see Attachment 7 and Section II.A). The key issue is compliance with the applicable criteria for approval of zoning variances.

B. RECOMMENDATIONS

1. Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of the requested variance as amended in Attachment 2 to the north required yard.
2. The Hearing Examiner's decision on the zoning permit and substantial development permit for the second story addition is not impacted by this rehearing. We recommend that the Hearing Examiner's decision to approve this aspect of the proposal remain in place, subject to the original conditions of approval, as follows:
 - a. 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 (see Conclusion II.G.2 of Attachment 4).
 - b. As part of the application for a Building Permit the applicant shall submit a geotechnical report, prepared by a qualified engineer or engineering geologist, meeting the requirements of KZC Section 85.15 (see Conclusion II.A.1.b of Attachment 4).
 - c. In order for a home occupation to operate out of this site, a City of Kirkland business license would need to be obtained and the business would need to be operated consistent with the regulations contained in KZC 115.65 (see Conclusion II.B.2 of Attachment 4).

II. FINDINGS OF FACT AND CONCLUSIONS

A. PUBLIC COMMENT

1. Staff's overview of the public comments received as part of the consideration of the original variance request are contained within the Staff Advisory Report issued for the original hearing (see Attachment 4).
2. One written public comment has been submitted in response to the Notice for the Rehearing (see Attachment 7). The public comment has been submitted by the property owner located to the west of the site, who continues to have objections to the issuance of a variance. Issues addressed in the comments (paraphrased), together with responses from staff include:
 - a. Adding another structure on the other side of the narrow driveway would give the entrance to the residence an appearance of an alley, negatively impacting the property.

- b. According to the neighbor's realtor, narrowing an entrance to the property would devalue and take away from the overall setting of his property.
- c. There is no existing hardship to justify a grant of variance.
 - (1) Access to the lower garage is difficult but not impossible.
 - (2) The garage situation was designed with compromises so that the house could be maximized in size.
- d. Existing parking issues at the property and parking spillover onto neighbor's property.
- e. Other options available to accommodate additional parking, such as converting residence to parking or renting off-site.
- f. Granting of a variance would be a grant of special privilege because the hardship is not due to topography or other site limitations.
- g. Neighbor would like same treatment to build into setback.

Response: A detailed review of the proposal's compliance with the variance criteria is contained in Section II.D below. Staff is recommending approval of the revised variance request as presented in Attachment 2. Staff would disagree about the impacts to the adjoining property cited, as the addition would only partially extend above the height of the existing retaining wall located along the access drive, as depicted on Sheet A7 of Attachment 2. Staff would disagree that the existing development presents no hardship, given the difficulty in accessing the basement level garage. Consideration of hardships can also include the location of pre-existing improvements on the subject property that conformed to the Zoning Code in effect when the improvement was constructed, which is the case in this circumstance. Staff would also disagree that the proposal would be a grant of special privilege, as the proposed request would provide parking for the basement unit that is more similar to that seen in new residential development. The existing parking issues cited by the neighbor do not appear pertinent to the variance request, as the request would replace existing surface parking with additional enclosed parking, with no reduction to the number of parking spaces proposed. Any trespass issues would be civil issues to be addressed between the two parties. Granting a variance in this case does not afford any rights to Mr. Deitch, as any variance request to the City would be reviewed on its own merits, depending upon the unique situation and requested variation to the City's regulation.

B. VARIANCE

- 1. Facts:
 - a. 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.
 - b. Zoning Code section 120.20 establishes three decisional criteria with which a variance request must comply in order to be granted. Sections II.A.2 through II.A.4 contain the staff's findings of fact and conclusions based on these three criteria.
- 2. Conclusions: Based on the following analysis, the application meets the established criteria for a variance for the reduction in the north required yard.

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) The site slopes downhill to the west across the site, with an elevation drop of approximately 16 feet across the eastern, rectangular portion of the site.
- (2) The basement level of the building is recessed below the elevation of Lake Washington Blvd. The proposed garage addition would be located below the elevation of Lake Washington Blvd (see Sheet A6 of Attachment 2).
- (3) The site contains a vehicular access easement along the north property line which serves the property owner located to the west (a single family residence) as well as provides the primary access to the site. The eastern portion of the basement level of the building is recessed below the elevation of this access easement, with the westernmost portion of the basement level partially located above the elevation of the driveway as the driveway slopes downhill to the west. To retain the grade change between the basement level and the driveway, a retaining wall has been constructed along the south side of the access driveway. The retaining wall extends above the height of the driveway by approximately 3 feet at the western extent of the retaining wall. As depicted on Sheet A7 of Attachment 2, the proposed garage would be located below the elevation of the access easement and retaining wall, except for a small portion at the east edge of the garage addition.
- (4) The proposed garage addition would be separated from the north property line by 21 feet, encompassed by the 16-foot wide access easement and the required 5-foot setback from the edge of the easement.
- (5) The proposed garage would replace existing surface parking, with no loss in the number of parking stalls provided on the site.
- (6) The owner of property to the west has submitted his objection to the variance request, expressing concerns about the impacts to his property (see Attachment 7).

b. Conclusion:

- (1) The proposed addition will not exceed the allowed height, nor will it extend into the required view corridor or other required yards. The public's interest in preserving and enhancing the visual openness from public rights-of-way to and beyond Lake Washington is therefore protected.
- (2) The addition would not be visible from most vantages and would be built into the existing slope in order to minimize any visual impacts. The addition would not impact the solar access to the property to the north. The addition would provide for additional covered parking in a manner which is not highly visible from the City right-of-way or adjoining properties.

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 development is required to provide 1.7 parking stalls for each unit. In addition, guest parking at a minimum rate of .5 stalls per unit would be required at this site, which does not have available on-street parking along Lake Washington Blvd. As a result, a total of five parking stalls are required.
- (2) The building as currently configured contains two separate dwelling units, with independent living facilities present on the basement level. The structure includes a main floor garage serving the upper unit, and a lower level (basement) garage serving the lower level unit. The upper garage can accommodate two small cars, but the basement garage can only accommodate a single car, given the garage's size and access. A driveway and parking area are located in front of the residence, in the required front yard. Surface parking is also available in the driveway leading to the basement garage. The site can accommodate parking for five vehicles in the enclosed and surface parking areas on the site.
- (3) The driveway serving the basement garage is located parallel to the access driveway; it requires a "three-point" turn in order to access the garage. The retaining wall and angled access to this garage make it difficult or impossible to approach the garage head-on.
- (4) The owner of property to the west has submitted his objection to the variance request, expressing concerns about the need for the variance (see Attachment 7).

b. Conclusions:

- (1) The location and design of the existing basement parking level poses a challenge to reasonable access and is a special circumstance that should be addressed. The challenges posed by the design of this garage space make it difficult to park one vehicle within the garage. A garage addition on the basement level would help to mitigate some of the design issues by providing for one space that can be accessed head-on from the driveway.

5. Variance Criterion 3: The variance would not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this Code allows for other properties in the same area and zone as the subject property.

a. Facts:

- (1) Historical development along the stretch of WD III zoning located south of Carillon Point appears to contain many structures which would encroach into the required north property line (see Attachment 13 of original staff report).

- (2) Under the current regulations, there have been several variances approved to the north required yard. In general, past variances were requested for new buildings and were related to limited lot width (see Attachment 14 of original staff report).
- (3) Based upon development patterns observed by staff, it is typical for new residential construction to contain up to 2 enclosed parking stalls for each dwelling unit. Based upon existing dimensions and access, it appears that the basement floor, which serves the lower unit, may reasonably accommodate one vehicle.
- (4) The applicant has submitted a memorandum (see Attachment 6) discussing the configuration of the garage space, wherein the applicant has noted that this garage addition would provide for a total of two enclosed parking spaces, both to serve the lower unit of the duplex.
- (5) The owner of property to the west has submitted his objection to the variance request, expressing concerns about a grant of special privilege (see Attachment 7).

b. Conclusion:

- (1) The current proposal is not comparable to past variances to the north required yard. The proposed variance, in contrast to past variances for new development, is for an addition to an existing structure, where the location and configuration of the preexisting improvements must be considered.
- (2) The proposed encroachment into the north required yard would not be inconsistent with the historical development in the nearby vicinity.
- (3) The provision of additional enclosed parking area to support the lower unit would provide parking that would be more similar to that seen in new residential development. The revised garage has been configured to provide for a total of two enclosed parking spaces, with maneuvering room to accommodate access to the existing garage space.

III. 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., _____, fourteen (14) 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.

IV. LAPSE OF APPROVAL

Pursuant to RCW 90.58.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Substantial Development Permit has been granted pursuant to the Shoreline Management Act must be undertaken within two (2) years after the date of approval. The project must be completed within five (5) years and a one (1) year extension may be considered.

"Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.

V. APPENDICES

Attachments 1 through 7 are attached. The Staff Advisory Report for the September 6, 2007 hearing, which was previously distributed, contains additional applicable appendices.

1. Vicinity Map
2. Proposal Drawing
3. Hearing Examiner Decision
4. Staff Advisory Report issued for September 6, 2007 Hearing
5. Letter of Appeal
6. Memo dated November 9, 2007 from Mark Travers
7. Letter from Michael J. Deitch, dated November 23, 2007

VI. PARTIES OF RECORD

Applicant, MARK TRAVERS, 2315 E PIKE STREET, SEATTLE WA 98122
JOHN STEPHANUS, 4611 LAKE WASHINGTON BOULEVARD NE, KIRKLAND WA 98033
DUANA KOLOUSKOVA, JOHNS MONROE MITSUNGAGA, 1601 114TH AVE SE, SUITE 110, BELLEVUE, WA 98004
RICHARD AND LAURA SCHAFER, 4630 LAKE WASHINGTON BLVD NE, KIRKLAND, WA 98033
ARMAN MANOUCHERI, FATIMA ESFAHANI, 4610 LAKE WASHINGTON BLVD, KIRKLAND, WA 98033
MICHAEL J DEITCH, 4613 LAKE WASHINGTON BLVD NE, KIRKLAND, WA 98033
KAREN SANTA, WINDERMERE REAL ESTATE , 13000 NE 30TH STREET, BELLEVUE, WA 98005
BRIAN BRAND, BAYLIS ARCHITECTS, 10801 MAIN STREET, BELLEVUE, WA 98004
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.