CITY OF KIRKLAND
Planning and Community Development Department
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ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Kirkland Hearing Examiner

From: Stacy Clauson, Project Planner

Eric R. Shields, AICP, Planning Director

Date: August 28, 2007

File: STEPHANUS VARIANCE AND SUBSTANTIAL DEVELOPMENT PERMIT, FILE NO. ZON06-00030 AND SHR07-00004

Hearing Date and Place: September 6, 2007 at 7 pm (or as soon thereafter as possible)
City Hall Council Chamber
123 Fifth Avenue, Kirkland

TABLE OF CONTENTS

Section **Page**

I. INTRODUCTION 2
  A. APPLICATION 2
  B. RECOMMENDATIONS 3
II. FINDINGS OF FACT AND CONCLUSIONS 3
  A. SITE DESCRIPTION 3
  B. HISTORY 4
  C. PUBLIC COMMENT 5
  D. ZONING CODE COMPLIANCE 7
  E. SHORELINE MASTER PROGRAM 15
  F. COMPREHENSIVE PLAN 16
  G. DEVELOPMENT STANDARDS 16
III. SUBSEQUENT MODIFICATIONS 16
IV. APPEALS AND JUDICIAL REVIEW 16
  A. APPEALS 16
  B. JUDICIAL REVIEW 17
V. LAPSE OF APPROVAL 17
VI. APPENDICES 17
VII. PARTIES OF RECORD 18

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: 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 has presented two alternative designs for the garage addition for City review (both require a variance), as follows:

   a. Option A (see Attachment 2.a): This is the applicant preferred alternative. A two story stacked garage that would provide additional parking for the basement and upper story unit. 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 two stories in height, aligning with the basement and main floor levels.

   b. Option B (see Attachment 2.b): A one story garage addition that would provide additional parking for the basement and upper story unit in a tandem parking configuration. The addition would occur on the basement level of the building and would measure approximately 17 feet by 40 feet.

4. Review Process: The proposal requires the following review:

   a. Modification to an existing attached or stacked dwelling unit, requiring a Process I review;

   b. Modification to an existing attached or stacked dwelling unit within the shoreline jurisdiction, requiring a Substantial Development Permit review, using Process I;

   c. A variance for encroachment into the north required yard under the Zoning Code provisions, requiring a Process IIA review.

   Pursuant to KZC 145.10 and KMC 24.06.040(b)(1), if the use or activity that requires approval through Process I is part of a proposal that requires additional approval through Process IIA, the entire proposal is reviewed using Process IIA.

   Process IIA, Hearing Examiner conducts public hearing and makes final decision.

5. Summary of Key Issues and Conclusions: The key issue is compliance with the applicable criteria for approval of zoning variances. Staff is recommending approval of the upper floor addition, which does not require a variance. Staff is not recommending approval of the variance as submitted under Option A or B (see Section II.D.3-6), but does acknowledge that 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. As a result, staff would recommend that the applicant explore an alternate proposal that would provide a basement level addition for the lower unit only. This alternative could address the special circumstance that exists in a way that does not pose a detrimental impact to neighboring residents or the City as a whole.

B. RECOMMENDATIONS

1. Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of the SDP and zoning permit for the second story addition, subject to the conditions noted below.

2. Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend denial of the requested variance to the north required yard as presented in either option.

3. 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).

4. As part of the application for a Building Permit the applicant shall submit:

   a. Revised plans to conform to the north required yard (see Conclusion II.ED.7.b).

   b. 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).

5. 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.

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:

   a. Facts:

      (1) Size: The property contains approximately 12,635 square feet of land area with 26 feet of linear frontage along Lake Washington.

      (2) Land Use: The property contains a duplex structure and a private pier. The duplex was approved to be converted from a single family residence in 1994, under File No. IIA-94-107. As part of the conditions of approval for this zoning permit, a public access easement was established over the southerly 10 feet of the northerly 15 feet of the subject property. Installation of the public access walkway was deferred until adjoining properties redevelop into multi-family uses. Key issues considered during the review of the zoning permit included installation of the pedestrian access walkway, landscaping, and a pending enforcement for the duplex unit, which was installed without permits.

      According to the City's Landslide and Seismic Hazard Areas Map, the site is underlain with a Seismic Hazard area.

(3) Zoning: WDIII, a medium density residential zone

(4) Shoreline Designation: Urban Residential 2 (UR2)

(5) Terrain and Vegetation: 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. Vegetation consists of typical residential trees and shrubbery.

b. Conclusions: The existing development is a factor to be considered in the review of the applicant's variance request. See II.D.5 for further discussion. To address potential hazards associated with development in a seismic hazard area, prior to building permit issuance, the applicant should submit a geotechnical report, prepared by a qualified engineer or engineering geologist, meeting the requirements of KZC Section 85.15 (see Attachment 4).

2. Neighboring Development and Zoning:

a. Facts: The subject property is surrounded by the following zones and uses:

North: Properties to the north are also located within the WD III zone and UR 2 shoreline environment. The upland portion of the site is bordered by single family residences. The waterward portion of the site is bordered by private piers.

South: Properties to the south are located in the WD III zone and UR 2 shoreline environment. The upland portion of the site is bordered by two single family residences on one lot. The waterward portion of the site is bordered by a private pier.

East: Property to the east is zoned RS 12.5 and is outside shoreline jurisdiction. The site abuts the Lake Washington Blvd NE right-of-way. Property across the street is developed with single-family residential uses.

West: Lake Washington and a single family residence. The residence is accessed from Lake Washington Blvd NE by an access easement which crosses the subject property. The access easement is 16 feet in width for the majority of the length, widening to 19.5 feet on the western portion.

b. Conclusion: The surrounding development is relevant to this application and is discussed further in Sections II.D.2.c and II.D.4 below.

B. HISTORY

1. Facts: The following previous development permits have been reviewed by the City of Kirkland:

a. Building Permit No. 890756 was issued for the construction of a single-family residence on the subject property.

b. Shoreline Substantial Development Permit No. SD-90-126, an application to construct a private pier, was approved on December 12, 1991.

c. Zoning Permit IIA-SD-92-61, an application to convert a single-family residence to a duplex, was approved on February 12, 1993. A building permit was not

submitted within the lapse of approval time frame established as part of the permit and, as a result, the rights acquired through this process were terminated.

d. Zoning Permit IIA-94-107, an application to convert a single-family residence to a duplex, was approved on March 8, 1995.

e. In 2000, the City approved a business license (BUS10080) for Stockbridge Autos, Inc., a wholesale auto dealership, to operate as a home occupation at this site, under the regulations contained in KZC 115.65. The business license has since expired.

2. Conclusion: The structure has been approved for use as a duplex. At the time that the duplex was approved, there was a finding that the use, which would include required parking, would be consistent with the City's zoning regulations. 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.

C. PUBLIC COMMENT

1. The Public Comment Period for the project originally extended from January 11, 2007 to January 31, 2007. A second, corrected public comment period was held open from July 13, 2007 to August 13, 2007 to provide the full 30-day shoreline permit public comment time frame. Copies of written comments submitted are included as Attachment 5 through 7. The public comments have been submitted by or on behalf of the property owner located to the west of the site (see Attachment 5.a-d). Separate correspondence was also submitted by the two separate property owners of the lots located to the east of the site (see Attachments 6 and 7). The applicant has responded to these comment letters in Attachment 8 and 9. Issues addressed in the comments (paraphrased), together with responses from staff include:

a. The neighbor to the west has submitted a letter stating his objection to the issuance of a variance that would result in a structure that extends above the existing retaining wall located along the access easement serving his property (see Attachments 5.a-d). The neighbor has submitted comments from a realtor and architect addressing the proposal. The following issues were addressed as part of this correspondence:

(1) 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.

(2) According to the neighbor's realtor, narrowing an entrance to the property would devalue and take away from the overall setting of his property.

(3) The structure is currently used as a single family home. The upper garage presents no problem for access and the lower garage is used for parking. Vehicles are also parked on other areas of the site. Existing parking does not justify variance.

(4) Concern that the size of the lot and the small area is not conducive to more automobiles.

(5) Concern about drainage impacting his property.

(6) According to analysis by the neighbor's architect, the variance proposal is not consistent with the criteria for review established in KZC 120.20. In particular, the following issues were addressed:

(a) No special circumstances exist on the subject property to substantiate the variance request. The architect has estimated that the site contains adequate parking space for 8 vehicles.

(b) The construction of the proposed stacked garage (Option A) would be detrimental to the neighbor to the west and the community. The reduction in open space would impact the neighboring property to the west by constricting the access and impact the view to the front of the residence from the street, adversely impacting the value of his property and sense of arrival.

(c) Since the applicant does not suffer any hardship, granting of the variance would constitute a grant of special privilege.

Response: Staff is recommending denial of the stacked garage (Option A). Staff would disagree that the existing development presents no hardship, given the difficulty in accessing the basement level garage. Under either Option A or B, the addition would continue to comply with required setbacks from the edge of the access easement. A limited garage at the basement level would appear to minimize the perceived impacts cited by the neighbor. Section II.D.3-6 below contains a detailed analysis of the staff recommendation on the variance.

The building, as configured, currently contains two separate dwelling units, with independent living facilities present on the basement level. There is no indication in City records that a business is currently being operated out of the home. If a home based business were to operate out of the site, it would need to be done in a manner consistent with the regulations contained in KZC 115.65. The addition will be reviewed by the Public Works Department at the time of the building permit review. Upon initial review, the Public Works Department has noted that all roof and driveway drainage must be tight-lined to the storm drainage system (see Attachment 3).

b. The owner of the properties located directly across the Lake Washington Blvd NE to the east of the site, at 4610 and 4618 Lake Washington Blvd, have submitted their objection to the setback because it would cause diminishment of the open look for houses across the street and from the city street (see Attachment 6). The neighbor objected to any increase in height above the existing building.

c. The owners of the property at 4630 Lake Washington Blvd NE, located on the east side of Lake Washington Blvd and slightly to the north of the site, has submitted their objection to the variance request, commenting that there is no legitimate reason to add parking space and that the building appears overly massive for its site (see Attachment 7). The neighbors commented that if the garage enlargement is approved, pedestrians will be faced with a reduced view and the view from their home will also be diminished.

Response: The proposed second floor would not extend above the height of the existing structure. Staff concurs that Option A, which results in additional mass along the street elevation, would pose an impact to surrounding properties and is not recommending that this option be approved. Staff believes that with the submittal of Option B, which would not be visually prominent from the street or

properties located on the east side of the street, the applicant has appropriately responded to these concerns.

2. Conclusions: Compliance with the variance criteria are further discussed in Section II.D.4-6.

D. ZONING CODE COMPLIANCE

1. Fundamental Site Development Standards

a. Facts:

(1) The fundamental site development standards pertaining to an Attached or Stacked Dwelling Unit in the WD III zone are set forth in Zoning Code Sections 30.30 and 30.35.010 (see Attachment 10).

(2) A summary of the regulations contained in KZC Section 30.30 and 30.35.010 and the relationship of the proposal to them is contained in Attachment 11.

(3) The north required yard is equal to the greater of 15 feet of 1 ½ times the height of the primary structure above average building elevation minus 10 feet. For instance, a building height of 30 feet above average building elevation results in a north required yard of 35 feet. Based upon recently corrected average building elevation calculations, the building height above ABE is approximately 26 feet under Option A and 25 feet under Option B, resulting in a north required yard of 29 and 27.5 feet, respectively. (Note: Required yard shown on plans of 34.6 feet was based on an incorrect calculation of building height, which overestimated building height at slightly less than 30 feet above average building elevation). The proposal includes a request to construct a garage addition that would be located 21 feet from the north property line, encroaching into the north required yard.

b. Conclusions: The proposal complies with the regulations for the WD III zone, except for the north required yard. The proposed encroachment into the north required yard requires approval of a variance. See Sections II.D.3 and II.D.4-6 below for more information on the variance request.

2. Applicable Special Regulations:

a. Public Pedestrian Access

(1) Facts:

(a) Special Regulation #2 requires that the development provide public pedestrian access from the right-of-way to and along the entire waterfront of the subject property within the high waterline yard. Access to the waterfront may be waived by the City if public access along the waterfront of the subject property can be reached from adjoining property. The City shall require signs designating the public pedestrian access and public uses areas.

(b) When the residence was converted to a duplex in 1994, the Hearing Examiner required the property owner to establish a public pedestrian access easement. The access was permitted to be located in the driveway, if marked by a change in paving, a painted border or other means which would not interfere with the vehicular use. Completion of the border, if it was to be painted, was deferred until the pedestrian access walkway sign is installed. Installation of the pedestrian access walkway sign was deferred until the waterfront properties adjoining the easement area are converted to multifamily use.

(c) The pedestrian access easement has been established and recorded under Recording Number 199506290278. A concrete driveway and walkway extending to the shoreline has been installed. The residences located adjoining the easement area have not been converted to multifamily use.

(2) Conclusions: The interpretation under the prior zoning permit for the conversion of the single family residence to a duplex are still relevant to the current proposal. As a result, the installation of the public access signs should continue to be deferred until the waterfront properties adjoining the easement area are converted to multifamily use.

b. View Corridor

(1) Facts:

(a) A view corridor must be maintained across 30% of the average parcel width. The average parcel width is determined by averaging the distance from the north to the south property lines as measured along the high waterline and the front property line. The average parcel width is approximately 63 feet (100' as measured at the front property line + 26 feet measured at the high waterline = 126/2= 63). Based on this average parcel width, the view corridor would be approximately 18.9 feet.

(b) The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from Lake Washington Boulevard to and beyond Lake Washington. This corridor must be adjacent to either the north or south property

line, whichever will result in the widest view corridor given development on adjacent properties. The view corridor is adjacent to the north property line in one continuous piece and is located coincident with an existing access easement to provide the widest view corridor.

(c) The existing structures comply with required view corridor and the proposed additions would not be located within the view corridor.

(2) Conclusions: The proposal is consistent with the zoning regulations requiring a view corridor to be maintained across the property.

c. Compatibility

(1) Facts:

(a) Special Regulation #6 states that the design of the site must be compatible with the scenic nature of the waterfront. If the development will result in the isolation of a detached dwelling unit, site design, building design and landscaping must mitigate the impacts of that isolation.

(b) As defined in the Zoning Code, isolation means when a use abuts or is directly across the street from high density or higher intensity uses, on at least three sides. The site is surrounded by existing single family development, except for the lot to the south, which contains two detached dwelling units. None of the abutting residences abut or are located across the street from a higher density use on three sides.

(c) Properties adjoining the development on the north, south, and west property lines, which are single family homes, are buffered with an existing minimum 5-foot wide landscape strip.

(d) The duplex contains generous outdoor living areas and windows oriented toward Lake Washington.

(e) The site provides a view corridor across the northern portion of the site to and beyond Lake Washington.

(2) Conclusions: Given the existing view corridor, site and building design, and landscaping, the proposal is compatible with the scenic nature of the waterfront. The project, does not isolate a detached dwelling unit.

3. VARIANCE

a. Facts: 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.

(1) 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 12.

Sections II.D.4 through II.D.6 contain the staff's findings of fact and conclusions based on these three criteria.

b. Conclusions: Based on the following analysis, the application under either Option A or B, as submitted, does not meet the established criteria for a variance. As addressed below, a portion of the proposal, which would consist of additional parking on the basement level to support the lower unit only, would be consistent with the criteria for a variance. Staff would support an amended request that provided additional parking at the basement level to support the lower unit.

4. 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 requirement for a north required yard is intended to address the distance between structures, the building mass of structures in relationship to building height, and the amount of sun/shadow falling onto adjoining properties. In the WD III zone, the north required yard is determined by the greater of 15 feet or 1 ½ times the height of the primary structure above average building elevation minus 10 feet. Under these provisions, the height of the tallest portion of the building is used to determine the setback that will apply to all portions of the primary structure. Based upon recently corrected average building elevation calculations, the building height above ABE is approximately 26 feet under Option A and 25 feet under Option B, resulting in a north required yard of 29 and 27.5 feet, respectively.

(2) The height of the upper floor of the existing structure, which is the tallest portion of the structure, has imposed the required setback along the north required yard. Under either proposed option, the tallest portions of the building would continue to comply with the north required yard, and a lower story addition would encroach into the required yard. Under Option A, the top of the garage addition would align with the top of the main floor elevation, while under Option B, the top of the garage addition would align with the 1st floor elevation.

(3) 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. The basement level of the building is recessed below the elevation of Lake Washington Blvd, while the main floor level is located approximately 6 feet above the elevation of Lake Washington Blvd.

(4) 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 a result of this existing site

arrangement, under Option A, the main floor level garage addition would be exposed to view from the access easement. Under Option B, approximately 2-3 feet of the western portion of the basement level garage addition would extend above the height of the existing retaining wall.

(5) The area located between Lake Washington Blvd NE and Lake Washington, south of NE 52nd Street has been designed for medium density residential development. The current development pattern in this area is varied, containing a mixture of single family residences and multifamily complexes. Given this mixture, the following general patterns can be observed:

(a) Many of the lots are narrow (approximately 50 feet in width) and contain structures that would be less than 50 feet in width (see Attachment 13).

(b) Notable exceptions to the general pattern are found at a number of condominium sites located in this area, including the Breakwater, Yarrow Cove, Yarrow Bay, Chartwater, Breakers, and Yarrow Shores Condominiums. These structures have been designed to accommodate the north required yard, except for the Yarrow Bay overwater structure, which is setback significantly from the street.

(6) With the garage addition, the building width along the street will measure approximately 69 feet.

(7) Under either option, 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. As a result of existing nonconforming development on the property to the north, the structure separation between the addition and the existing residence to the north would also be 21 feet.

(8) The neighbor to the west, who shares the access with the subject property, has expressed concern about how the proposal would change the view and openness as he approaches his residence (see Attachment 5). The neighbors to the east have also submitted letters objecting to the proposal, based on view impacts as well increased building mass and the loss of openness between structures (see Attachment 6 and 7).

b. Conclusion:

(1) Under either option, 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) Because of its relative height and separation to the property to the north, Option A would not adversely impact the solar access of the residence to the north. Under Option A, the addition would continue to comply with the required 5-foot setback from the edge of an access easement, which mitigates some of the concerns about the access

easement as expressed by the neighbor sharing this easement. The mass of the structure as visible from the right-of-way and adjoining properties is increased under Option A. Under the proposal, the relationship of the building width to the building height as well as the relationship to the surrounding buildings and the spaces which are created between the buildings would be altered and, as a result, the building form would appear more massive as perceived from Lake Washington Blvd and the access easement. As a result, the building with Option A would be out of scale with and have a more prominent building bulk and mass along this stretch of Lake Washington Blvd than other nearby structures.

(3) Option B will not have a detrimental impact on the surrounding residences due, largely, to its limited visual presence. Due to the existing grades, 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.

5. 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 property contains approximately 12,635 square feet of land. The rectangular, buildable portion of site measures 100.28 x 104 feet, containing approximately 10,068 square feet.

(2) The existing building is located 34.5 feet from north property line. The building height above ABE is approximately 26 feet under Option A and 25 feet under Option B, resulting in a north required yard of 29 and 27.5 feet, respectively.

(3) The existing structure is located approximately 30 feet from front property line, which coincides with the front required yard. The structure is located approximately 5 feet from western property line, which coincides with the required yard.

(4) 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.

(5) Under the provisions of KZC 115.115.5.a which addresses the location of driveways and parking areas supporting duplexes, vehicles may be parked in the required front, rear, and north property line yards if parked on a driveway and/or parking area.

(6) Presently, the site contains the following areas that are available for parking:

(a) The existing building contains a basement floor garage measuring approximately 21' x 24'.

(b) The driveway leading to this garage space can be used to park vehicles in a tandem configuration behind the garage door.

(c) The existing building contains a main floor garage that measures approximately 20'11" x 20', with a garage door opening of 16 feet (as measured in the field by staff).

(d) A driveway and parking area are located in front of the residence, in the required front yard.

(7) According to the applicant, reasonable access to and use of the basement floor garage for parking is adversely impacted by the current configuration of the garage, with the following design issues:

(a) The driveway serving the garage is located parallel with the access driveway and necessitates a 3-point turn to negotiate the turn to the garage.

(b) The garage doors are located at a 90 degree angle to the driveway leading to the garage and the limited distance from the garage door to the retaining wall, combined with the difficult access to the driveway does not allow a vehicle to approach the garage head-on.

(8) According to the applicant, the main floor garage is not of sufficient size to reasonably accommodate two parked vehicles. The existing building contains a main floor garage that measures approximately 20'11" x 20', with a garage door opening of 16 feet.

(9) A standard two-car garage measures 20' x 20'. A 16' wide door is a standard two car garage door width.

b. Conclusions:

(1) The size and shape of the lot has not necessitated the need for a variance.

(2) Under the existing parking configuration, the site development does comply with the City's minimum parking standards. The site can accommodate parking for at least five vehicles in both the enclosed and surface parking areas identified on the site.

(3) 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 eliminating the 90 degree angle turn into the garage from the driveway.

(4) The applicant has not demonstrated that the design of the main level garage poses a special circumstance that necessitates an addition into a

required yard. The dimensions of the garage would be consistent with typical residential design. If the applicant desires to widen the garage for additional convenience, there appears to be additional room available within the required yard to widen the main floor garage.

6. 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).

      (2) Under the current regulations, there have been several variances approved to the north required yard (see Attachment 14). In general, past variances to this regulation were based upon a narrow lot width that significantly impacted the proposed site development.

      (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 main floor parking garage, which serves the upper unit, can accommodate two vehicles, while the basement floor, which serves the lower unit, may reasonably accommodate one vehicle.

   b. Conclusion:

      (1) Past variances to the north required yard in the WDIII zone have been limited to unique situations where the application of the standard would result in significant hardship, such as significantly constrained building width. The current proposal is not comparable to this past precedent.

      (2) Since the main floor garage could accommodate two parked vehicles for the upper unit, the proposal to provide additional enclosed parking area to support this unit would not be necessary for reasonable use of the property and therefore would grant a special privilege.

      (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.

7. GENERAL ZONING CODE CRITERIA

   a. Fact: 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: With the recommended conditions of approval, the proposed upper floor addition outside of the required yards would be consistent with the criteria

in section 150.65.3 and does not necessitate a variance. This portion of the proposal will allow continued development of the site in a manner consistent with the Comprehensive Plan, the Shoreline Master Program, the Zoning Code and surrounding properties. Adequate provisions have been made for landscaping and view corridors. Construction will be required to occur consistent with applicable codes of the City.

Staff has recommended that the variance to the north required yard not be approved as currently presented, because it does not comply with the variance criteria established in Zoning Code section 120.20 (see Section II.D.3-6). If the variance to the north required yard is not approved, the building permit shall demonstrate compliance with the north required yard provisions established in Kirkland Zoning Code.

E. SHORELINE MASTER PROGRAM

1. Attached and Stacked Dwelling Unit Regulations

   a. Facts:

      (1) The subject property is located within the jurisdiction of the City's Shoreline Master Program (KMC Chapter 24.05) and is in the Urban Residential 2 (UR 2) Shoreline Environment. The UR 2 Shoreline Environment allows attached and stacked dwelling subject to approval of a Substantial Development Permit. The regulations for attached and stacked dwelling units are contained in Attachment 15.

      (2) A summary of the regulations contained in KMC 24.05.110 and 24.05.150 and the relationship of the proposal to them is contained in Attachment 16.

   b. Conclusion: The proposal complies with the regulations for attached and stacked dwelling units in the UR 2 shoreline environment.

2. SHORELINE SUBSTANTIAL DEVELOPMENT

   a. Fact: WAC 173-27-150 establishes that a Substantial Development Permit may only be granted when the proposed development is consistent with all of the following:

      (1) The policies and procedures of the Shoreline Management Act.

      (2) The provisions of WAC Chapter 173-27.

      (3) Chapter 24.05 of the Kirkland Municipal Code.

   b. Conclusion: The proposal complies with WAC 173-27-150. It is consistent with the policies and procedures of the Shoreline Management Act because it will allow expansion of a permitted use, designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. The addition will continue to allow opportunities for the public to view the shoreline. It is consistent with the provisions of WAC 173-27 because a complete application for a Substantial Development Permit has been submitted by the proponent and appropriate notice of the application has been given. As

discussed in sections II.E.1.b it is consistent with Chapter 24.05 of the Kirkland Municipal Code.

F. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the Lakeview neighborhood. Figure L-1 on page XV.A-2 designates the subject property for medium density residential use (see Attachment 17).

2. Conclusion: The land use is consistent with the Comprehensive Plan for the subject property.

G. 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 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.

V. 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.

VI. APPENDICES

Attachments 1 through 17 are attached.

1. Vicinity Map
2. Proposal Drawings
    a. Option A
    b. Option B
3. Development Standards
4. KZC 85.15
5. Comment Letters concerning property to west
    a. December 1, 2006 letter from Michael J. Deitch
    b. December 11, 2006 letter from Karen Santa, Windermere
    c. Letter from Brian Brand, Baylis Architects
    d. August 17, 2007 letter from Michael J. Deitch
6. Comment letter from Arman Manoucheri and Fatima Esfahani
7. Comment letter from Richard and Laura Schafer
8. July 11, 2007 letter from Duana Kolouskova, representing applicant, responding to public comment letters
9. July 9, 2007 letter from Mark Travers responding to public comment letters
10. Regulations for Attached and Stacked Dwelling Units in WD III zone
11. Staff Analysis of Use Zone Chart Compliance
12. Applicant response to variance review criteria
    a. October 26, 2006 letter from Duana Kolouskova, representing applicant, assessing proposal for compliance with variance criteria
    b. August 10, 2007 letter from Duana Kolouskova, representing applicant, assessing consistency with Comprehensive Plan
13. Aerial Photograph depicting WD III zone, with Assessor Map information, including lot dimensions
14. Summary of Past Variances to north required yard
15. Regulations for Attached and Stacked Dwelling Units in UR 2 shoreline environment
16. Staff Analysis of proposal compliance with UR 2 shoreline regulations
17. Lakeview Neighborhood Land Use Map

VII. 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.