



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

To: Kirkland Hearing Examiner

From:  Eric R. Shields, AICP, Planning Director

 Allison Zike, Project Planner

Date: March 6, 2017

File: APPEAL OF CHOI HEIGHT VARIANCE, 10230 111TH AVENUE NE
FILE NO. VAR16-00891

Hearing Date and Place: Thursday, March 16, 2017, 9:00 a.m.
City Hall Council Chamber
123 Fifth Avenue, Kirkland

I. INTRODUCTION

1. Appellant: Seung II (Sam) Choi (**hereinafter referred to as "Choi"**), project applicant, residing at 10230 111th Avenue NE
2. Actions Being Appealed: The Planning Director's decision modifying **the applicant's** height variance application to retain a roof structure which is 4.35 feet above the maximum 25-foot height limit. **The Planner Director's approval was issued with a condition requiring the height of the existing structure be reduced by 2.52 feet; to an elevation of 321.52 (the estimated elevation of the original residence) feet; 1.83 feet above the maximum 25-foot height limit (see Enclosure 1).**
3. Summary of Issues Under Appeal: The appellant has contested the condition of approval to reduce the height of the existing structure to an elevation of 321.52 feet on the following bases: (i) there was an error in the issued plan set; (ii) the non-conforming height was not an issue until after construction of the roof was complete; (iii) **the height calculations informing the Director's decision were not correct**; (iv) the view obstruction to neighbors is minimal; and (v) **the City's decision was unfair** (see Enclosure 2).

II. RULES FOR THE APPEAL HEARING AND DECISION

Pursuant to Chapter 145 of the Zoning Code, the Hearing Examiner must consider the appeal in an open record appeal hearing. The scope of the appeal is limited to the specific elements **of the Planning Director's decision disputed in the letter of appeal, and the** Hearing Examiner may only consider comments, testimony and arguments on these specific elements.

The appellant, applicant, and any person who submitted written comments or information to the Planning Director on the application during the comment period established in the Notice of Application may participate in the appeal hearing; except that a party who signed a petition may not participate in the appeal unless such party also submitted independent written comments or information. The applicant may submit a written response to an appeal filed by

an appellant. Further, the Hearing Examiner, in their discretion, may ask questions of the appellant, applicant, parties of record or staff regarding facts in the record, and may request oral argument on legal issues. The Hearing Examiner may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

The person filing the appeal has the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision.

After considering all arguments within the scope of the appeal submitted in writing and given as oral testimony at the hearing by persons entitled to participate in the appeal, the Hearing Examiner shall take one of the following actions:

- Affirm the decision being appealed;
- Reverse the decision being appealed; or,
- Modify the decision being appealed.

The decision by the Hearing Examiner is the final decision of the City.

III. BACKGROUND AND SITE DESCRIPTION

1. Site Location: 10230 111th Avenue NE
2. Zoning and Land Use: The subject property is zoned RS 8.5, Low Density Residential, and is currently developed with one (1) single-family residence.
3. Original Proposal: As part of the final inspection process for the constructed residence, it was determined that the home exceeded the height limit by 4.35 feet. The applicant, Choi, submitted an application requesting a height variance to retain the structure as constructed.
4. Planning Director Decision: On January 3, 2017, the Planning Director issued a modified decision of approval with conditions, requiring that the applicant reduce the height of the existing structure by 2.52 feet; 1.83 feet above the maximum 25-foot height limit, instead of allowing the existing structure to remain 4.35 feet above the height limit as requested by the applicant. The height reduction for the new construction would match the height of the previous residence prior to fire damage. **The Planning Director's decision was based on staff's analysis** of the three decisional criteria established for variances in Kirkland Zoning Code (KZC) Section 120.20.
5. Appeal Submitted: On January 19, 2017 the Planning and Building Department received **a timely appeal of the Director's decision from Choi, applicant.**

IV. STAFF ANALYSIS

KZC Section 145.80 requires that staff prepare an analysis of the specific factual findings and conclusions disputed in the letter of appeal. The appellant contests the condition of approval requiring the height of the existing structure to be reduced to an elevation of 321.52 feet (height of the original residence). A summary of **the appellant's** supporting arguments are listed below by topic (following the same order in the appeal letter) and followed by an analysis by Planning Division staff. **The full text of the appellant's appeal letter is included in this packet as Enclosure 2.**

- A. Reasons for Construction: The building permit application was necessary because of fire damage to the original structure and the new house design was intended to maintain a similar design as existed previously.

Staff Response: While Staff considered the constructed height of the original structure when analyzing the variance application, the reason for the building permit application

(fire damage) and the design of the original structure **were not factors in staff's analysis** of the variance criteria in KZC Section 120.20.

- B. **City of Kirkland's Permit Approval Process:** The applicant provided multiple revisions during the City's initial review process prior to issuance of the building permit. The applicant assumed the plan should not cause any detrimental issues to the neighbors, or constitute a grant of special privilege to the applicant if the building permit was approved. The building permit was issued by the City but should have been rejected at the approval stage if it was not in compliance with city codes.

Staff Response: The Average Building Elevation (ABE), is the baseline elevation for measuring height. The height limit for the subject property is 25 feet above ABE. The Building Height Table is the document utilized by the City to communicate height information with the building permit and includes the maximum height allowed and requirement for any required height surveys. As part of the final inspection process, it was later determined that the ABE was drawn **approximately 5' higher than is should** have been on the building elevation sheets by the **applicant's architect**. The height information appeared to comply with height requirements at the time of City review since the ABE elevation and maximum height elevation provided on the building elevation sheet (see Enclosure 1, pg. 32 in Attachment 7) and Building Height Table (see Enclosure 1, pg. 41 in Attachment 8) matched and had the correct elevation information. Staff provided a thorough discussion of the history on this topic in Section II.B of the **Director's Decision** on the variance application (see Enclosure 1, pg. 3).

While several revisions were required during the building permit review, the approved plan set and Building Height Table issued with the permit stated an ABE of 293.76 feet and maximum allowed height at an elevation of 318.76 feet. This maximum height elevation remained constant through construction until after the updated and corrected survey increased the ABE to 294.69 feet and maximum height elevation to 319.69 feet (see Enclosure 1, pg. 49 in Attachment 10).

- C. **Error in the Plan which was Approved:** The City-approved plan set issued with the building permit contained an error, and construction was started based on this plan set.

Staff Response: See the staff response above in Subsection B, above, as it relates directly to the **appellant's comment** on this topic.

- D. **Potential Re-design of the Structure:** If the Planning Department had rejected the original plan because of the error in the plan set, the applicant would have considered implementing a flat style roof to reduce the height of the structure to comply.

Staff Response: **As discussed in Section II.B.1.c of the Director's decision**, it was not until after construction that the City discovered the approved plan set incorrectly showed the ABE point. The method through which the appellant may have corrected the plan set at that point in building permit review was not considered within the scope of the variance application since it was not applicable to the variance criteria, nor is it relevant to the allowed height of the structure.

- E. **Inspection Stages:** There were multiple inspection phases approved during construction without mention of a potential height issue. The height survey was not requested until the final inspection stage, and this is when height became an issue. There is an opportunity for the City to revisit the inspection process to avoid such circumstances in the future.

Staff Response: City Building inspectors perform multiple inspections for various aspects of single-family construction. The building permit was issued with a condition for a ridge height survey to be performed by a licensed land surveyor. This survey cannot be performed until the roof is constructed, and the survey must be submitted prior to the

Planning Division's final inspection. The timing of the height inspection was consistent with the City's inspection process for all single-family construction.

- F. Unintentional Outcome: The appellant states that the City agreed the over-height outcome was unintentional and was planning to approve the variance on April 12, 2016.

*Staff Response: The applicant/appellant's intentionality regarding the over-height construction was not relevant to the variance criteria and was not considered with the City's variance application review. The appellant has included a screen shot of correspondence within the appeal letter (see Enclosure 2, point #6), which they suggest shows the City was planning to approve the variance in April 2016. Staff wishes to clarify that the correspondence was intended to communicate that the applicant had provided the minimum materials necessary at that time for a complete variance application, and did not, in fact, indicate **staff's recommendation for a Director's decision.***

- G. Continuous Effort to Collaborate with the City: From March 2016 to present, the appellant has been collaborating with the City and providing requested data in the hopes of getting the variance approved.

Staff Response: Staff can confirm that the applicant/appellant has provided additional information at several points throughout the variance process, and has met the deadlines for submittals issued by the City.

- H. The Structure Matches the Approved Plans: There was an error on the approved plan not found prior to permit issuance, and the contractor began construction based on the approved plan set. The structure matches the approved plans, aside from the 2 inches of additional height caused by floor joists. This proves the structure was not built higher than allowed by the City with any type of intention.

Staff Response: Section II.B.1.c(12) of the Director's Decision (see Enclosure 1, pg. 5) includes a discussion of the field measurements performed by the City's Building Inspector. These field measurements confirmed the floor to ceiling heights on the lower, main, and upper levels did match the plan set. However, the measurements of the two floor joists (one between the lower and main floor; one between the main and upper floor) were each 2 inches taller than shown in the approved plan set, for a total of 4 inches. The Building Inspector did not measure the height from the ceiling of the upper level to the ridge peak, therefore, this measurement did not confirm whether or not this portion of the structure met the approved plan set. To date, the applicant/appellant has not submitted any field measurements for this portion of the structure.

- I. Old Structure: The old structure has a total height of 31.3 feet; this was built on the **existing foundation; and the original construction's ridge elevation is 321.52 feet.** From existing foundation ABE calculation, we know that ABE is 293.76 feet and since 25 feet is the maximum allowed height from ABE, the roof peak could not be higher than 318.76 feet. The old structure was built 2.76 feet higher than allowed. The 2.76 feet of additional height that existed prior to fire damage is higher than the 2.52 under **discussion in the Planning Director's condition of approval.**

Staff Response: The appellant suggests that the original structure was constructed taller than the allowed height based on using the ABE calculation of 293.76 in the first approved plan set for the current construction. This is not accurate. In fact, the City does not have any record of the ABE for the original 1986 construction. We do know, however, that the ABE for original construction would not be the same ABE for current construction due to differences in calculation methodology associated with topography. Although, we could estimate that the ABE for the 1986 construction was 296.52 assuming that the residence was built to the height limit of 25 feet (321.52 ridge height – 25 height limit = 296.52). But this information is not helpful to Choi, as discussed in Section II.B.1.b of the Director's Decision (see Enclosure 1, pg. 3) which indicates that

the City changed the way in which the ABE is calculated in between the date of original construction and current construction.

As further discussed in Section II.B.1.a and Section II.B.1.c(2) of the Director's Decision, the topography of the site was altered (cut into slope) to construct the original residence; which allowed staff to deduce that the ABE and resulting maximum elevation height for the roof ridge of the original construction was higher than the ABE and maximum elevation height allowed for the current construction.

The variance application included information prepared by a Professional Engineer that utilized photos to scale out the height of the original home (see Enclosure 1, Attachment 11, pages 51 to 82). **The City accepted the Engineer's estimate that the originally constructed roof ridge was 31.3 feet above the finished garage floor elevation (290.22'); the garage floor elevation was utilized for current construction and remained at the same elevation.**

As detailed in the Director's Decision (see Enclosure 1), the City used the surveyed height of the finished garage floor elevation, plus the applicant's estimated structure height of 31.3 feet above the finished garage floor, to extrapolate that the roof ridge of the original construction was at an elevation of 321.52 feet. A duplicate of the table provided in Section II.B.1.c(17) of the Director's Decision is provided below; which summarizes the height information for: the original 1986 construction; the issued approved plan set; and, the as-built, surveyed field measurements.

	Original Construction	Approved Plan Set	New Construction (after corrected ABE calculation)
Calculated ABE	Unknown	293.76* (see Attachment 6)	294.69* (see Attachment 10)
Finished Floor Elevation (lower floor)	290.22* (see Attachment 6)	290.22* (see Attachment 6)	290.22* (see Attachment 6)
Maximum Allowed Height (ABE + 25')	Unknown	318.76	319.69
Ridge Height Elevation	321.52**	323.99* (see Attachment 9)	324.04* (see Attachment 10)
Building Height (distance from FFE to Ridge Height)	31.3** (see Attachment 12, pg. 28)	33.77*	33.82*
Over-height	0	5.23*	4.35*
Change in Ridge Height Elevation from Original to New Construction:			2.52**
*Surveyed Point, or calculation based on surveyed point(s)			
**Engineer scaled estimate			

- J. Height Discrepancy: The surveyed height of the structure does not match the structure height calculated using the building inspector field measured heights and the assumed

truss heights. The appellant calculates that the ridge height of the constructed house is at an elevation of 323.05 feet instead of elevation 324.04 as surveyed.

Staff Response: Staff has relied upon the survey conducted by a licensed land surveyor to calculate the height of the structure. As detailed in **Section II.B.1.c of the Director's Decision** (see Enclosure 1), the surveyed height of the structure is at an elevation of 324.04 feet. The finished garage floor elevation was surveyed at elevation of 290.22, resulting in the structure height (distance from finished garage floor elevation to ridge height) being 33.82 feet (405.84 inches). The surveyor did not survey individual floors. The total structure height shown in the issued plan set was 32.83 feet (394 inches). Therefore, the structure height based on a survey by a licensed land surveyor is 0.99 feet taller than was approved in the issued plan set.

The appellant states that the issued plan set shows the structure height as 32.83 feet. **The City Building Inspector's measurements** (see Enclosure 1, Attachment 7, Sheet A5) show the building height from the finished garage floor elevation to the ceiling of the upper floor was measured at a total of 27.83 feet (334 inches). The appellant uses this number and points out that based on this measurement, the structure height from the ceiling of the upper level to the roof ridge should only be 60 inches ($32.83 - 27.83 = 5'$ or 60 inches), and that this was the truss height included in the engineering report provided with the building permit application.

However, if this field measurement total from finished garage floor elevation to the upper level ceiling (27.83 feet) is subtracted from the total structure height (33.82 feet, based on surveys), it can be deduced that the height from the ceiling of the upper floor to the ridge height is actually 5.99 feet (71.88 inches). This is 0.99 feet (11.88 inches) taller than the 60 inches that was shown/approved in the issued plan set.

Staff maintains that the surveyed ridge height of 324.04 feet is indisputable. This leads staff to conclude that the structure was not built to plan from the upper level ceiling to the roof ridge, resulting in an additional 0.99 feet (11.88 inches) of height. This, combined with the 0.33 feet (4 inches) of non-approved height in the as-built floor joists discussed above in Subsection H totals to 1.32 feet (15.84 inches), and contributed to the structure being taller than the maximum allowed height.

- K. Public Comments: There was no proof provided by neighbors that Lake Washington was visible from their homes prior to construction, though they have presented several legitimate concerns.

Staff Response: **Section II.D.2 of the Director's Decision** (see Enclosure 1, pg. 8) includes a discussion of the staff analysis pertaining to views from neighboring properties. As stated by the appellant in the appeal letter, staff has not observed views of Lake Washington from neighboring properties, and can neither confirm nor deny that the height of the subject structure that exceeds the maximum allowed height has blocked any previous views of Lake Washington. However, as concluded in **Section II.D.2.b of the Director's Decision** (see Enclosure 1, pg.9), **the additional height does block territorial views from neighboring properties.** The appellant has not provided information that would show that territorial views are not being impacted.

- L. The View Obstruction is Minimal: The new structure is 1.53 feet higher than the old structure, and does not pose a major concern.

Staff Response: Staff maintains that the current construction is 2.52 feet taller than the **original construction height as detailed in Section II.B of the Director's Decision** (see Enclosure 1) and further discussed in Subsections H, I, and J above.

- M. Why the City's Decision was Unfair: **The City's calculation that the new house is 2.52 feet higher than the old house is inaccurate, and the difference is closer to 1.53 feet.** The revision to lower the house requires several steps and is complicated.

Staff Response: Staff maintains that the current construction is 2.52 feet taller than the original construction height as detailed in Section II.B of the Director's Decision (see Enclosure 1), and further discussed in Subsections H, I, and J above.

- N. Cost: To date, over \$15,000 has been invested in this process, and countless hours of research time. The revision implications are expected to result in tens of thousands of dollars and any additional investment will be financially difficult.

Staff Response: Neither the time, investment, nor cost of the required revisions as conditioned in the Director's decision, were required to be considered by staff within the scope of the variance criteria.

V. STAFF RECOMMENDATION

Per KZC 145.95, the person filing the appeal has the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision. **The Planning Director's decision was based on staff's analysis of the three variance criteria** (KZC 120.20) listed below:

- 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.
- 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.
- 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.

The appellant submitted 14 comments disputing the findings of fact and conclusions as presented in the Director's Decision in Enclosure 1. **The appellant's comments primarily revolve around mistakes made in the permit review process, errors in height calculations, and increasing project costs as bases for the appeal. Many of these comments are addressed in the 'History' section of the original staff report and provide background for the variance analysis. These comments, except those regarding view issues, do not directly address any errors in staff's analysis of the three variance criteria. In addition, comments regarding measurement errors by staff were determined to be incorrect. Staff's analysis of these comments has not found sufficient evidence to change the issued findings of fact and conclusions, and as such, Staff recommends that the Hearing Examiner uphold the Planning Director's decision for approval with conditions for the Choi Height Variance.**

VI. ENCLOSURES

1. VAR16-00891 Director's Decision, Staff Report, and Attachments
2. Appeal Letter



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**ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

To: Eric R. Shields, AICP, Planning Director
From: Allison Zike, Project Planner
Date: January 3, 2017
File: CHOI HEIGHT VARIANCE, FILE NO. VAR16-00891

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I. **INTRODUCTION**

A. **APPLICATION**

1. **Applicant:** Seung Il (Sam) Choi
2. **Site Location:** 10230 111th Avenue NE (see Attachment 1)
3. **Request:** The applicant has requested a height variance to retain a roof structure which is 4.35 feet above the maximum 25-foot height limit for a recently constructed residence.
4. **Review Process:** Process I Variance, Planning Director decision
5. **Summary of Key Issues and Conclusions:** Compliance with the variance criteria in KZC 120.20 (see Sections II.D.2 through II.D.4).

B. **RECOMMENDATIONS**

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

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 2, 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 2, the condition of approval shall be followed (see Conclusion II.D.5.b).
2. The applicant shall submit plans for review by the City as a post-issuance revision to the original building permit application (file no. BSF14-00742) which reduces the height of the existing structure to elevation 321.52 feet, matching the ridge height of the original structure (see Conclusions II.D.2.b, 3.b, and 4.b).

II. **FINDINGS OF FACT AND CONCLUSIONS**

A. **SITE DESCRIPTION**

1. Site Development and Zoning:
 - a. **Facts:**
 - (1) **Size:** The subject property contains 12,150 Square Feet (0.279 Acres).
 - (2) **Land Use:** The site is currently developed with a single-family dwelling unit.
 - (3) **Zoning:** RS 8.5, Low Density Residential
 - (a) The RS 8.5 zone limits the height of structures to 25 feet above average building elevation
 - (b) The recently constructed residence exceeds the maximum height limit by 4.35 feet.
 - (4) **Terrain and Vegetation:** The property slopes up approximately 20 feet over the course of 150 feet from west to east. The site

slopes fairly consistently with the exception of more level areas including the existing parking area and the existing vegetated area extending approximately 30 feet behind the structure. See Attachment 3 for an approximate topographic mapping of the site.

- b. **Conclusions:** Since the new construction exceeds the maximum allowed height limit for the RS 8.5 zone by 4.35 feet, approval of this variance application is needed in order to allow the structure to remain. A comparison of the original and new construction and an analysis of the variance criteria are discussed further in Sections II.B and II.D.
2. **Neighboring Development and Zoning:**
 - a. **Facts:** The surrounding properties to the north, south, east, and west are zoned RS 8.5 and developed with single-family dwelling units.
 - b. **Conclusion:** The neighboring development and zoning are not constraining factors in the review of the variance application.

B. HISTORY

1. Facts:

a. Original Residence

- (1) The building permit (File No. 850418, see Attachment 4) for the originally constructed home was submitted on August 17, 1985 and finalized on July 29, 1986. The maximum height allowed for the home at the time of original construction was 25 feet above Average Building Elevation (ABE) as calculated from the original predevelopment grade. Because the City finalized the building permit, it is assumed the original home complied with the maximum building height.
- (2) The topography of the site was altered (cut into the slope) to construct the original home with a lower level daylighting on the west side (front façade of home and garage), a main level, and an upper level. Only the main and upper levels are above grade on the east elevation (see Attachment 5).

- b. **Change to Height Regulations** - On January 15, 2008, the City Council adopted ordinance O-4121 which required that *existing* predevelopment grades be used in determining the average building elevation. Using the *original* predevelopment grade (grade prior to any development that had occurred on the subject property) was no longer allowed. The change was reflected in KZC 115.59 – Height Regulations – Calculating Average Building Elevation (ABE).

c. Current Residence

- (1) The City received a building permit application (File No. BSF14-00742) on February 13, 2014 for the subject property. The applicant stated the scope of work was: "Reconstruction from fire damage and 1,000 SF addition."
- (2) The submitted plan showed that the existing foundation would be retained, and additional areas of foundation would be constructed to support the addition. The Planning Department required a topographic survey for the subject property

(Attachment 6). The applicant was allowed to survey only the spot elevations required to calculate the Average Building Elevation (ABE), rather than complete a topographic survey for the whole property because construction was utilizing the existing foundation. The calculated ABE was 293.76 feet. This ABE is lower than the ABE for original construction because it was calculated based on lower elevation points as a result of 'cuts' made to the subject property with the construction of the original residence. This methodology is consistent with KZC 115.59.

- (3) The submitted survey also surveyed the finished lower floor elevation (FFE) at the garage floor, which was the top of foundation utilized for new construction. The FFE at the garage floor was surveyed at 290.22 feet (see Attachment 6) and remained constant through construction.
- (4) The City issued the approved building permit on June 3, 2014. The approved plan set showed the construction would comply with the maximum height at elevation 318.76 feet, 25 feet above the calculated ABE (Attachment 7, Sheet A4). The building permit was issued with an approved Building Height Table (Attachment 8) that showed the calculated ABE and maximum elevation allowed for the new construction. The Building Height Table specified that a Building Height Field Verification by a Licensed Surveyor would be required.
- (5) On December 29, 2015, after construction of the home was substantially completed, the City received a Building Height Verification by a Professional Land Surveyor that showed the ridge height was at an elevation of 323.99 feet (Attachment 9), 5.23 feet over the allowed ridge height elevation of 318.76 feet.
- (6) Review of the issued permit documents showed that the original ABE calculation submitted by the applicant (Attachment 6) was incorrect, as the wall segment lengths to calculate ABE did not include the proposed addition, only the original building footprint.
- (7) Upon finding the ABE calculation error, the City required the applicant to obtain an updated topographic survey to gather the correct wall segment lengths and corresponding elevation points. Because the home was built primarily on the existing foundation, and based on pre- and post-construction site visits, the finished grade was proximal to the pre-construction grade and the applicant was allowed to use post-construction ground elevation to calculate ABE with the correct wall segment lengths.
- (8) The City accepted an updated survey and ABE calculation prepared by a Professional Land Surveyor and dated February 23, 2016 (Attachment 10). The survey information resulted in an updated ABE calculation of 294.69 feet and maximum building elevation of 319.69'. An updated surveyed ridge height of 324.042 feet was also provided. The survey shows that the ridge height exceeded the maximum allowed height by 4.35 feet.

- (9) Additional research revealed another error related to building height in the approved plan set issued with the building permit. The approved building elevation drawings on Sheet A4 show the proposed ridge height as measured from the originally calculated ABE of 293.76 feet (see Attachment 7). The proposed structure was shown at exactly 25 feet above this ABE. However, the ABE was depicted incorrectly on the building facade relative to the finished floor garage elevation of 290.22' (see Attachment 6). In other words, the ABE was shown approximately 5' higher on the building elevation drawings than it should have been. While the depiction of the ABE was incorrect on the building elevation drawings relative to the finished floor garage elevation, the labeled elevation numbers were consistent with the calculated ABE and maximum height allowed. The City did not find this error prior to issuance of the building permit.
- (10) On March 2, 2016, the City sent an email to the homeowners to inform them that either the ridge elevation would need to be lowered to an elevation of 319.69' to comply with the 25-foot height limit, or a variance would need to be granted to allow the Planning Division to approve their final inspection.
- (11) The applicant submitted a variance application on April 20, 2016.
- (12) In July 2016, a City Building Inspector visited the site to measure the as-built floor to ceiling heights of the structure. Field measurements showed that the floor to ceiling heights matched the approved plans, but the floor joists between the lower and main floors, and between the main and upper floors were each 2 inches taller than was shown in the approved plan set. The approved measurements and field measurements are shown in Attachment 7, Sheet A5.

The applicant's engineer did not perform any formal measurements during their site visit to the subject property as it relates to the height of the existing residence (see Attachment 11, page 27). As a result, the applicant's engineer's conclusions regarding the height of the existing home would not take into account the height discrepancies found by the City Building Inspector.
- (13) The applicant has submitted information prepared by a Professional Engineer that utilizes photos to scale out the height of the original home (see Attachment 11). Based on this approach, the applicant's engineer estimates the originally constructed roof ridge was 31.3 feet above the finished garage floor elevation. Given that the finished garage floor elevation (see Attachment 6) was surveyed at an elevation of 290.22, the estimated original construction ridge elevation was 321.52 feet.
- (14) The existing constructed ridge height is 2.52 feet higher than the estimated ridge height of the original home (see Attachment 11, pages 27-32 and Table below).
- (15) The applicant has prepared an exhibit that shows a comparison of the original construction massing to the current massing of the east façade of the house, which is the façade most impactful to neighbors' views (see Attachment 11, page 21).

- (16) City staff updated the applicant's construction massing exhibit in Attachment 11, page 21 to clearly show the building massing relationship between the original and existing construction. Attachment 12 contains the updated illustration which is also described below:
- (a) **Area A:** The portion of new construction that matches the extent of original construction completed in 1986. This area exceeds the maximum allowed building height by 1.83 feet (based on current ABE calculation methodology).
 - (b) **Area B:** The portion of new construction that is wider than the original construction mass, but does not exceed the height of the original structure. This area exceeds the maximum allowed building height by 1.83 feet (based on current ABE calculation methodology) but matches the ridge height of original construction, estimated at 321.52'. This area is 2.52 feet below the new construction ridge height.
 - (c) **Area C:** The portion of new construction that exceeds the maximum allowed building height by 4.35 feet (based on current ABE calculation methodology) and the original construction height by 2.52 feet.
- (17) The table below summarizes the height information for: the original 1986 construction (note building height is estimated); the issued approved plan set; and, the as-built, surveyed field measurements.

	Original Construction	Approved Plan Set	New Construction (after corrected ABE calculation)
Calculated ABE	Unknown	293.76'* (see Attachment 6)	294.69'* (see Attachment 10)
Finished Floor Elevation (lower floor)	290.22'* (see Attachment 6)	290.22'* (see Attachment 6)	290.22'* (see Attachment 6)
Maximum Allowed Height (ABE + 25')	Unknown	318.76'	319.69'
Ridge Height Elevation	321.52'***	323.99'* (see Attachment 9)	324.04'* (see Attachment 10)
Building Height (distance from FFE to Ridge Height)	31.3'*** (see Attachment 11, pg. 28)	33.77'*	33.82'*
Over-height	0'	5.23'	4.35'*
Change in Ridge Height Elevation from Original to New Construction:			2.52'***

* Surveyed Point, or calculation based on surveyed point(s)

** Engineer scaled estimate (see Attachment 11)

2. Conclusion: A number of factors contributed to the house being constructed taller than what code would allow:

a. The inaccurate depiction of the ABE on the building elevation drawings relative to the finished garage floor elevation (see Attachment 7, Sheet A4).

b. Use of floor joists taller than shown in the approved plan set.

After adjusting the ABE calculation to comply with KZC 115.59, the ABE should be set at elevation 294.69'. This would put the maximum allowed ridge height (25 feet above ABE) at elevation 319.69'. Given that the surveyed ridge height is at elevation 324.04 per the accepted survey (see Attachment 10)', the structure still exceeds the maximum allowed height by 4.35 feet. Since the applicant submitted a variance application to retain the existing structure, compliance with the variance criteria is required. See Section II.D below for an analysis of the variance criteria.

C. PUBLIC COMMENT

The public comment period for this application ran from May 26, 2016 to June 13, 2016. Three public comment emails/letters were received (see Attachment 13) from neighbors to the east of the subject property. All the comments received opposed the variance. Neighbors stated that the new construction appeared taller than the original house, and obstructed their views to the west, towards Lake Washington. Additionally, there was concern expressed that a variance granted after construction was completed would remove incentive for people to comply with the Zoning Code in the future.

All variance requests are reviewed on a case-by-case basis and are subject to the variance criteria in Chapter 120 of the Kirkland Zoning Code. Those criteria are analyzed in Section II.D below. The public comments received were reviewed in conjunction with staff analysis of the variance criteria.

D. APPROVAL CRITERIA

1. Variance

a. Facts:

(1) Zoning Code Chapter 120 sets forth the mechanism whereby a provision of the Code may be varied on a case-by-case basis if the application of the provision would result in an unusual and unreasonable hardship.

(2) Zoning Code section 120.20 establishes three decisional criteria with which a variance request must comply in order to be granted. The applicant's response to these criteria can be found in Attachment 11. Sections II.D.2 through II.D.4 contain the staff's findings of fact and conclusions based on these three criteria.

b. Conclusion: Based on the analysis in Sections II.D.2 through II.D.4 below, the application meets the established criteria for a variance as conditioned.

2. 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 accepted, calculated ABE and surveyed ridge height show that the constructed ridge height of the structure is 4.35 feet above the maximum allowed building height.
 - (2) In response to Variance Criteria 1, the applicant has provided the following information:
 - (a) Photos from the subject property showing that the height of the constructed home is such that it is far above the ridge height of the neighbor to the north (10302 111th Avenue NE) (see Attachment 11, pages 11-12).
 - (b) Photos of the subject property taken from the adjacent house to the south (10226 111th Avenue NE) showing that the ridge height of the subject home is far above the upper level porch (see Attachment 11, pages 12-13).
 - (c) No public comment was received from the neighbors to the north or south of the subject property.
 - (d) The applicant suggests that because the constructed house is much taller than the ridge height or upper floors of the neighboring properties to the north and south, the additional 4.35 feet over the maximum allowed height does not block views any more than the mass of the house under the maximum height.
 - (3) Neighbors to the east of the site submitted public comment stating that the additional building height has impacted their views to the west, and that Lake Washington was visible prior to the existing roof being framed. Photos provided within the submitted public comment letters show the areas of the home over the maximum allowed height that are view-blocking (see Attachment 13, page 11-12, and 14).
 - (4) City staff visited the neighboring properties on June 24, 2016 and took photos of the subject property to analyze the impact of the subject property on the properties to the east (see Attachment 14). Additionally, staff visited the property directly east of the subject property on November 29, 2016 and took more photos (see Attachment 15). On both site visits, staff observed territorial views to the west, but did not observe Lake Washington views. The height and mass of the new construction over the allowed 25-foot maximum could be impactful to territorial views from the east, however, the City cannot confirm that the additional height blocks views of Lake Washington.
 - (5) The new massing that matches the originally constructed ridge height (Area A and B referenced above in Section II.B.1.c.16 and Attachment 12) is not a substantial change from the originally constructed home.

- b. Conclusion: Granting a variance to allow portions of the current residence located in Areas A and B to remain will not be detrimental to the property or improvements in the area of the subject property or to the City, in part or as a whole.

The height of the new construction that exceeds the height of the original construction by approximately 2.52 feet (see Attachment 12, Area C) does not meet this variance criterion because the additional height detrimentally blocks additional views to the west from properties to the east of the subject property.

3. 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 original home was finalized by the City in 1986. It is presumed that it was conforming to the zoning code in effect at the time of construction.
- (2) The effective height limit when the new construction was permitted (File No. BSF14-00742, Attachment 7) was 25 feet above the ABE. Although the maximum height limit for the residence has not changed since the original home construction, the methodology in determining ABE has. The lower topography resulting from 'cuts' in the grade with the original home construction is now required to be used in establishing ABE for the new residence. Previously, ABE was calculated based on pre-development grade, and the on-site grade was at a higher elevation overall.
- (3) The submitted building permit was to remodel the home after it sustained fire damage and to add a 1,000 square foot addition on a portion of the site that had a higher ground elevation than the existing footprint, which raised the calculated ABE. The entirety of the existing foundation was used for the new construction. The new construction was similar to the original construction in that it included a lower, main, and upper level.
- (4) In order to comply with the 25-foot height maximum above the currently calculated ABE, the new construction would have had to reduce the height of the original home by 1.83 feet.

- b. Conclusion: A variance to match the originally constructed ridge height (Area A and B in Attachment 12) is reasonable because of the change in topography and location of preexisting improvements on the subject property that conformed to the Zoning Code in effect when the original improvement was constructed.

The height of the new construction that exceeds the height of the original construction by approximately 2.52 feet (Area C in Attachment 12) is not 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. The originally constructed improvements show that a structure can be reasonably constructed with a ridge elevation of 321.52 feet.

Therefore, in order for this criterion to be met, the roof form should be reduced to elevation 321.52 feet.

4. 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) Staff did not find evidence to suggest that any of the existing neighboring homes exceed the maximum allowed height of 25 feet in the RS 8.5 zone.
- (2) The subject building permit (File No. BSF14-00742) was issued to remodel the existing home, originally constructed and finished in 1986, after it sustained fire damage in August 2013. The new construction included an addition that expanded the existing footprint 16 feet east and 8 feet north of the existing footprint (see Attachment 7, Sheet 1).
- (3) The ridge height of the originally constructed home is estimated at an elevation of 321.52 feet, discussed in Section II.B.1 above (see Attachment 11).
- (4) The addition to the home was not built on a part of the property that is topographically lower than the existing building.
- (5) The new construction proposed the same amount of floors (lower, main, and upper) as original construction, used the entirety of the existing foundation, and was reasonably assumed to match the ridge height of the addition with the existing ridge height.
- (6) The City was not aware that the ridge height exceeded the maximum allowed height until after exterior construction of the house was completed and height survey was provided. The City did not become aware of the issuance of incorrect plans until after the excess height issue was discovered.
- (7) Because a reasonably sized house could have been constructed within the constraints of the existing ridge height, the City would not have considered a pre-construction variance application for an additional 2.52 feet of height over the existing height.

- b. Conclusion: The variance to match the originally constructed ridge height (Area A and B in Attachment 12) does not constitute a grant of special privilege to the subject property because it does not exceed the originally approved height, and the originally approved height was conforming to the Zoning Code in effect at the time of approval. Staff's recommendation to approve a variance for 1.83 feet above the calculated maximum height for the zone based on the current ABE is consistent with the City's approach in approving building permits for additions to existing buildings that are built on a part of the property that is topographically higher than the existing building but does not exceed the existing ridge height.

The excess height of the structure in Area C of Attachment 12 is inconsistent with the surrounding properties' building height and zoning standards. Approving a variance for the height of the new construction

that exceeds the height of the original construction by approximately 2.52 feet would be a grant of special privilege to the subject property because it is inconsistent with the general rights that the Code would allow for other properties in the same area and zone.

5. GENERAL ZONING CODE CRITERIA

- a. Fact: Zoning Code section 145.45.2 states that a Process I application may be approved if:
 - (1) It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
 - (2) It is consistent with the public health, safety, and welfare.
- b. Conclusion: The proposal complies with the criteria in section 145.45 with the conditions recommended for the variance in Sections II.D.2 to 4). The increase in allowed ridge height to an elevation of 321.52 feet should be consistent with applicable development regulations (see Section II.E) and the Comprehensive Plan. In addition, the increase in height to a ridge height elevation of 321.52 feet is consistent with the public health, safety, and welfare because it matches the previously approved improvement under remodel, and is not significantly more detrimental to surrounding properties than the originally approved construction.

E. DEVELOPMENT STANDARDS

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

III. SUBSEQUENT MODIFICATIONS

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

IV. APPEALS AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for appeals. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

A. APPEALS

1. Appeal to the Hearing Examiner:
Section 145.60 of the Zoning Code allows the Planning Director's decision to be appealed by the applicant or any person who submitted written comments or information to the Planning Director. 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 Director's decision.

B. JUDICIAL REVIEW

1. Section 145.110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The

petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.

V. LAPSE OF APPROVAL

Under KZC 145.115:

The applicant must begin construction or submit to the City a complete building permit application for the development activity, use of land or other actions approved under this chapter within five (5) years after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 145.110, the running of the five (5) years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions.

The applicant must substantially complete construction for the development activity, use of land, or other actions approved under this chapter and complete the applicable conditions listed on the notice of decision within nine (9) years after the final approval on the matter, or the decision becomes void.

VI. APPENDICES

Attachments 1 through 15 are attached.

1. Vicinity Map
2. Development Standards
3. Topographic Exhibit
4. Original Building Permit
5. Original Structure Photo
6. Submitted ABE Survey
7. Approved Plan Set
8. Approved Building Height Table
9. December 2015 Ridge Height Survey
10. Updated-Final ABE Survey
11. Applicant Response to Criteria
12. Old-New Massing Exhibit
13. Public Comments
14. June 2016 Photos
15. November 2016 Photos

VII. PARTIES OF RECORD

Applicant
Parties of Record
Planning and Building Department
Department of Public Works

Review by Planning Director:

I concur I do not concur

Comments: _____

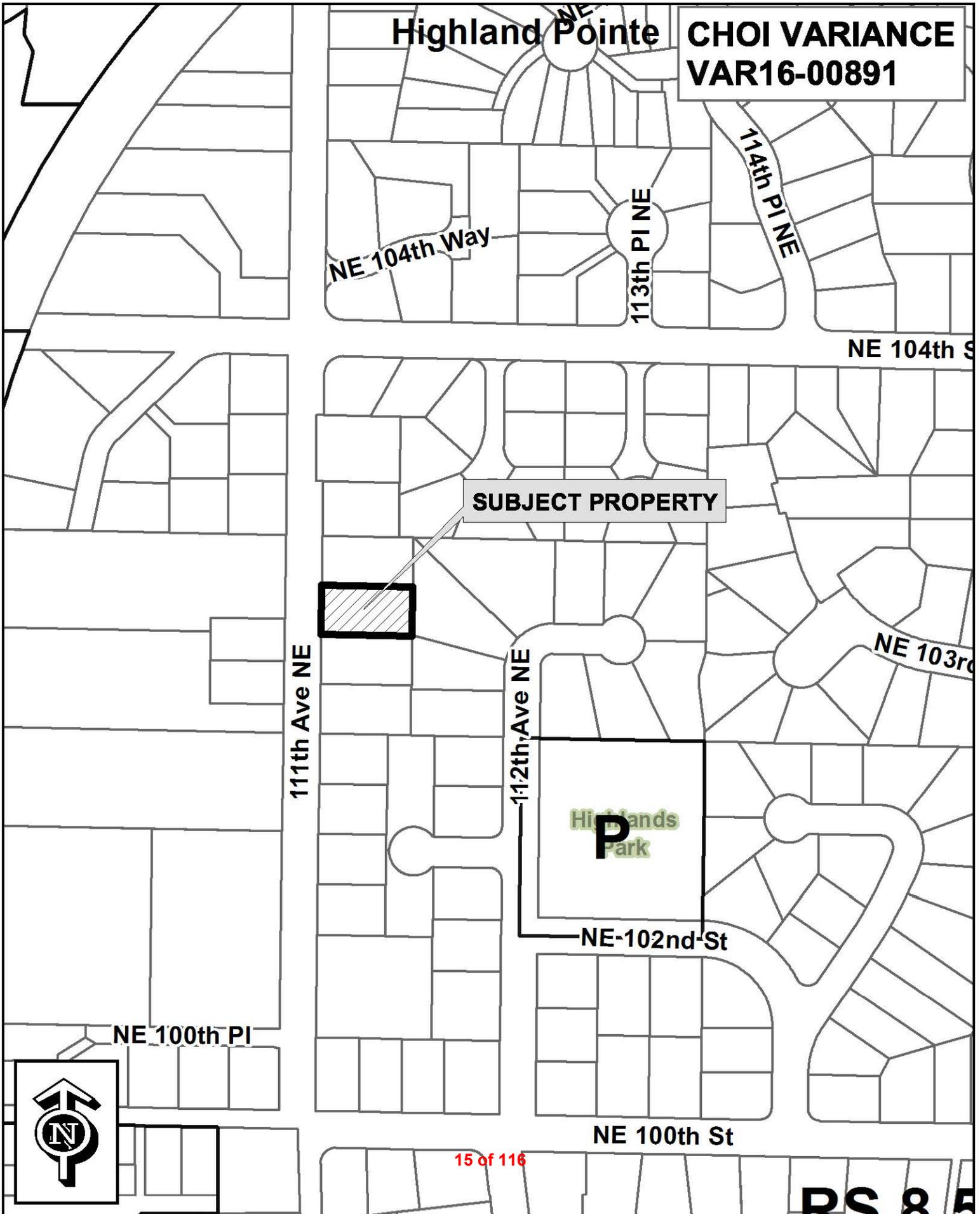


January 3, 2017

Eric R. Shields

Date

**ENCLOSURE 1
DIRECTOR'S DECISION**



**CHOI VARIANCE
VAR16-00891**

SUBJECT PROPERTY

**ENCLOSURE 1
DIRECTOR'S DECISION**



CITY OF KIRKLAND
Planning and Building Department
123 5th Avenue, Kirkland, WA 98033
425.587.3600 ~ www.kirklandwa.gov

DEVELOPMENT STANDARDS LIST

File: VAR16-00891

ZONING CODE STANDARDS

95.51.2.a Required Landscaping. All required landscaping shall be maintained throughout the life of the development. The applicant shall submit an agreement to the city to be recorded with King County which will perpetually maintain required landscaping. Prior to issuance of a certificate of occupancy, the proponent shall provide a final as-built landscape plan and an agreement to maintain and replace all landscaping that is required by the City.

95.50 Tree Installation Standards. All supplemental trees to be planted shall conform to the Kirkland Plant List. All installation standards shall conform to Kirkland Zoning Code Section 95.45.

95.52 Prohibited Vegetation. Plants listed as prohibited in the Kirkland Plant List shall not be planted in the City.

105.20 Required Parking. 2 parking spaces are required for this use.

105.47 Required Parking Pad. Except for garages accessed from an alley, garages serving detached dwelling units in low density zones shall provide a minimum 20-foot by 20-foot parking pad between the garage and the access easement, tract, or right-of-way providing access to the garage.

105.60.2 Parking Area Driveways. Driveways which are not driving aisles within a parking area shall be a minimum width of 20 feet.

115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment before 7:00 am. or after 8:00 pm Monday through Friday, or before 9:00 am or after 6:00 pm Saturday. No development activity or use of heavy equipment may occur on Sundays or on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. The applicant will be required to comply with these regulations and any violation of this section will result in enforcement action, unless written permission is obtained from the Planning official.

115.40 Fence Location. Fences over 6 feet in height may not be located in a required setback yard. A detached dwelling unit abutting a neighborhood access or collector street may not have a fence over 3.5 feet in height within the required front yard. No fence may be placed within a high waterline setback yard or within any portion of a north or south property line yard, which is coincident with the high waterline setback yard.

A detached dwelling unit may not have a fence over 3.5 feet in height within 3 feet of the property line abutting a principal or minor arterial except where the abutting arterial contains an improved landscape strip between the street and sidewalk. The area between the fence and property line shall be planted with vegetation and maintained by the property owner.

115.42 Floor Area Ratio (F.A.R.) Limits. Floor area for detached dwelling units is limited to a maximum floor area ratio in low density residential zones. See Use Zone charts for the maximum percentages allowed. This regulation does not apply within the disapproval jurisdiction of the Houghton Community Council.

115.43 Garage Requirements for Detached Dwelling Units in Low Density Zones. Detached dwelling units served by an open public alley, or an easement or tract serving as an

alley, shall enter all garages from that alley. Whenever practicable, garage doors shall not be placed on the front façade of the house. Side-entry garages shall minimize blank walls. For garages with garage doors on the front façade, increased setbacks apply, and the garage width shall not exceed 50% of the total width of the front façade. These regulations do not apply within the disapproval jurisdiction of the Houghton Community Council. Section 115.43 lists other exceptions to these requirements.

115.45 Garbage and Recycling Placement and Screening. For uses other than detached dwelling units, duplexes, moorage facilities, parks, and construction sites, all garbage receptacles and dumpsters must be setback from property lines, located outside landscape buffers, and screened from view from the street, adjacent properties and pedestrian walkways or parks by a solid sight-obscuring enclosure.

115.75.2 Fill Material. All materials used as fill must be non-dissolving and non-decomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.

115.90 Calculating Lot Coverage. The total area of all structures and pavement and any other impervious surface on the subject property is limited to a maximum percentage of total lot area. See the Use Zone charts for maximum lot coverage percentages allowed. Section 115.90 lists exceptions to total lot coverage calculations. See Section 115.90 for a more detailed explanation of these exceptions.

115.95 Noise Standards. The City of Kirkland adopts by reference the Maximum Environmental Noise Levels established pursuant to the Noise Control Act of 1974, RCW 70.107. See Chapter 173-60 WAC. Any noise, which injures, endangers the comfort, repose, health or safety of persons, or in any way renders persons insecure in life, or in the use of property is a violation of this Code.

115.115 Required Setback Yards. This section establishes what structures, improvements and activities may be within required setback yards as established for each use in each zone.

115.115.3.g Rockeries and Retaining Walls. Rockeries and retaining walls are limited to a maximum height of four feet in a required yard unless certain modification criteria in this section are met. The combined height of fences and retaining walls within five feet of each other in a required yard is limited to a maximum height of 6 feet, unless certain modification criteria in this section are met.

115.115.3.n Covered Entry Porches. In residential zones, covered entry porches on dwelling units may be located within 13 feet of the front property line if certain criteria in this section are met. This incentive is not effective within the disapproval jurisdiction of the Houghton Community Council.

115.115.3.p HVAC and Similar Equipment: These may be placed no closer than five feet of a side or rear property line, and shall not be located within a required front yard; provided, that HVAC equipment may be located in a storage shed approved pursuant to subsection (3)(m) of this section or a garage approved pursuant to subsection (3)(o)(2) of this section. All HVAC equipment shall be baffled, shielded, enclosed, or placed on the property in a manner that will ensure compliance with the noise provisions of KZC 115.95.

115.115.5.a Driveway Width and Setbacks. For a detached dwelling unit, a driveway and/or parking area shall not exceed 20 feet in width in any required front yard, and shall be separated from other hard surfaced areas located in the front yard by a 5-foot wide landscape strip. Driveways shall not be closer than 5 feet to any side property line unless certain standards are met.

Prior to occupancy:

90.145 Bonds. The City may require a bond and/or a perpetual landscape maintenance agreement to ensure compliance with any aspect of the Drainage Basins chapter or any decision or determination made under this chapter. A @ is required for @. (see Attachment @).

95.51.2.a Required Landscaping. All required landscaping shall be maintained throughout the life of the development. The applicant shall submit an agreement to the city to be recorded with King County which will perpetually maintain required landscaping. Prior to issuance of a certificate of occupancy, the proponent shall provide a final as-built landscape plan and an agreement to maintain and replace all landscaping that is required by the City

95.51.2.b Tree Maintenance. For detached dwelling units, the applicant shall submit a 5-year tree maintenance agreement to the Planning and Building Department to maintain all pre-existing trees designated for preservation and any supplemental trees required to be planted.

110.60.5 Landscape Maintenance Agreement. The owner of the subject property shall sign a landscape maintenance agreement, in a form acceptable to the City Attorney, to run with the subject property to maintain landscaping within the landscape strip and landscape island portions of the right-of-way (see Attachment @). It is a violation to pave or cover the landscape strip with impervious material or to park motor vehicles on this strip.

110.60.6 Mailboxes. Mailboxes shall be installed in the development in a location approved by the Postal Service and the Planning Official. The applicant shall, to the maximum extent possible, group mailboxes for units or uses in the development.

110.75 Bonds. The City may require or permit a bond to ensure compliance with any of the requirements of the Required Public Improvements chapter. A @ shall be submitted for @.

**ENCLOSURE 1
DIRECTOR'S DECISION**