



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

MEMORANDUM

To: Kurt Triplett, City Manager

From: Tony Leavitt, Senior Planner
Adam Weinstein, Planning and Building Director

Date: June 2, 2020

Subject: Market Street Dental Clinic (1009 Market Street) Variance Appeal, File No. VAR18-00070

RECOMMENDATION

Consider the appeal of the Hearing Examiner's approval of a variance for the Market Street Dental Clinic located at 1009 Market Street and take one of the following actions:

1. Direct Staff to return to the July 7, 2020 Council meeting with a final resolution to:
 - Affirm the decision of the Hearing Examiner;
 - Reverse the decision of the Hearing Examiner; or
 - Modify the decision of the Hearing Examiner.
2. In the alternative, direct that the application be considered at a rehearing before the Hearing Examiner and specify the issues to be considered at the rehearing.

In lieu of a decision on July 7, the City Council may, by a vote of at least five members, suspend the rule to vote on the matter at the next meeting and instead vote on the appeal at the June 16, 2020 meeting. A resolution affirming the decision of the Hearing Examiner is enclosed. Staff recommends that City Council affirm the decision of the Hearing Examiner.

Rules for City Council Consideration

The City Council must consider the appeal based on the decision of the Hearing Examiner. The appeal will be a closed record appeal, meaning that the scope of the appeal is limited to the specific factual findings and conclusions disputed in the letter of appeal, and City Council may only consider arguments on these factual findings and conclusions. The appeal will be considered only on the record developed in the hearing before the Hearing Examiner and no new evidence may be presented.

Only those persons entitled to appeal the decision under Kirkland Zoning Code (KZC) 150.80(1) who file an appeal under KZC 150.80(2) may participate in the appeal. The applicant may also submit a written response to an appeal filed by an appellant, regardless of whether the applicant filed an appeal.

The person filing the appeal has the responsibility of convincing the City Council that the Hearing Examiner made an incorrect decision because of erroneous findings of fact or conclusions.

The City Council may continue their consideration if, for any reason, they are unable to receive all of the comments on the appeal or if City Council determines that they need more information within the scope of the appeal. If, during City Council's consideration, the time and place of the next consideration of the matter is announced, no further notice of that consideration need be given.

BACKGROUND DISCUSSION

Project Proposal

At 1009 Market Street, the applicant is proposing to construct an approximately 5,000-square-foot dental office building with two floors of parking below (see Enclosure 1). The subject property is triangular and is bordered on all three sides by a City street, each of which requires a 20-foot front yard setback (pursuant to KZC 51.10.030). The proposal includes a variance request to allow the reduction of the three required front yard setbacks. The 3rd Street West setback would be reduced to 7.5 feet, the 10th Avenue West setback would be reduced to 15 feet, and the Market Street setback would be reduced to 0 feet.

Public Hearing

The Hearing Examiner held a public hearing for the variance application on January 30, 2020. City Staff, the applicant, and multiple neighbors testified during the hearing. Neighbors brought up concerns about impacts to traffic, vehicular sight distance, neighborhood character, and parking. All of the neighbors that testified requested that the variance be denied. In order for the City to properly address sight distance issues, the Hearing Examiner held the record open until February 13 to allow for a staff response and additional public comments. The Hearing Minutes are included as Enclosure 2. An audio recording of the hearing can be accessed here:

[http://www.kirklandwa.gov/depart/planning/Boards and Commissions/Hearing Examiner Meeting Information/hem.htm](http://www.kirklandwa.gov/depart/planning/Boards_and_Commissions/Hearing_Examiner_Meeting_Information/hem.htm)

Variance Criteria

KZC Section 120.20 states that a variance can be granted only if:

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; and

2. The variance is necessary because of special circumstances regarding the size, shape, topography, or location of the subject property, or the location of a preexisting improvement on the subject property that conformed to the Zoning Code in effect when the improvement was constructed; and

3. The variance will not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this code allows to other property in the same area and zone as the subject property.

Hearing Examiner Decision

On February 21, 2020, the Hearing Examiner approved the application subject to the conditions outlined in the report (see Enclosure 3). The Hearing Examiner concluded the following:

- With the required landscaping, buffering, Design Review, and improved pedestrian circulation, there is no material detriment to the property or area improvements, or to the City more generally.
- The variance is necessary due to the site's unique triangular shape, constrained size, and the code treatment of such a site, which requires not one, but three front yard setbacks.
- Granting a variance would not result in a grant of special privilege.

Appeal of Hearing Examiner's Decision

On March 11, 2020, Nicole MacKenzie, Kenneth MacKenzie, Mark Fosdale, Lisa James, Melissa Thirloway, Barbara Loomis, and Paul Quincoses (all Parties of Record) filed a timely appeal of the Hearing Examiner's Approval Decision (see Enclosure 4).

The appellants make the following claims in their appeal:

- The City Transportation Engineer's analysis did not adequately account for the angle of the intersection, and was not consistent with the City's written Policy R-13.
- A viable commercial use may be feasible without a zero-foot setback along Market Street, and that any evidence presented to support the staff conclusion that it would be difficult to develop the site without reduced setbacks was insufficient.
- Eliminating the Market Street setback would be out of character with the area.
- The project is not consistent with the Market Street Corridor Plan.
- There is material detriment to the property or area improvements, or to the City more generally, that all three variances are not necessary and the design for this commercial building utilizes a minimum deviation from the code.

Additional Written Arguments

KZC Section 150.90.1 allows the applicant and appellants to submit written arguments to the City Council prior to the commencement of the City Council's consideration of the appeal. On June 3, Nicole and Kenneth MacKenzie (Appellant) and Craig Chaney (Applicant) submitted written arguments for the City Council's consideration. The letters are included as Enclosure 5 (Appellant Letter) and Enclosure 6 (Applicant Letter).

Staff Analysis of Appeal

KZC 150.100 requires that staff prepare an analysis of the specific factual findings and conclusions disputed in the letter of appeal. Staff provides the appeal items as presented in the appeal letter (Enclosure 4) and an analysis of those items below.

Appellant's Challenge to Finding of Fact 1.6 [Transportation Analysis]

Appellant Claim: "The Hearing Examiner finds that the City's Transportation Engineer's supplemental sight line analysis accounted for "the angle of the Market Street/10th Avenue West intersection" and that the "measurements were made consistent with how Public Works measures sight distance for other projects." The Hearing Examiner quotes from the City Transportation Engineer's analysis and states "that analysis credibly details how the project sight lines were reviewed consistent with City Public Works traffic policy."

We [appellants] dispute that the City Transportation Engineer's analysis accounted for the angle of the intersection or was properly applied or was consistent with the City's written Policy R-13."

Staff Analysis: During the Public Hearing, the appellants brought up vehicular sight distance around the project as a safety concern. In response to the issues brought up during the hearing, Thang Nguyen (Transportation Engineer) provided a response and additional analysis (see Enclosure 3, Exhibit K). The Hearing Examiner reviewed the response memo and concluded the project does not have an impact on sight distance.

Mr. Nguyen has reviewed the appellants' claims and provides the following analysis:

Appellants contend the City should have used the sight distance adjustment provided for in the City code for "skewed intersections." But an adjustment of the sight distance triangle length for a skewed intersection only applies to an intersection that does not have a stop sign control and where the travel path is increased by more than 12 feet due to the skewed angle of the intersection. In regard to the Market Street and 10th Avenue West intersection, the travel path is increased by less than 2 feet due to the skewed angle of the intersection and 10th Avenue West has a stop sign control at Market street. As a result, the adjustment for a skewed intersection does not apply to this intersection and Staff's analysis of the sight distance is consistent with the City's intersection sight distance policy.

Appellant's Challenge to Finding of Fact 1.9 [Feasibility of Development]

Appellant Claim: "The Hearing Examiner quotes the Staff Report, which made the claim that the small triangular lot and the height restrictions "makes the development of a viable commercial property within the standard setbacks unfeasible" and that "the owner has determined that they require 5000 sf office space for development of this site to be viable." The Hearing Examiner finds that "variances are a necessity for a viable commercial use," citing the Applicant's statement regarding Variance Criteria which claimed that without the zero foot setback on Market Street, "the lot remains unbuildable due to the inequitable cost per square foot, as has been demonstrated by the past several failed attempts at developing the subject property."

We [appellants] dispute that a viable commercial use is not feasible without a zero foot setback on Market Street. We further dispute that any evidence was presented to support a finding that the past prior approved developments failed."

Staff Analysis: The Hearing Examiner concluded that the front setbacks along the three adjacent rights-of-way make the development of a viable commercial property unfeasible and that the variances are necessary. While the word "feasible" is not included in the City's variance requirements, we believe this relates to the second criterion for approving a variance, which states that the variance is "necessary because of special circumstances regarding the size, shape, topography, or location of the subject property[.]" Here, this unusual property suffers from unusual restrictions due to its size, shape and location – all of which result in it being required to have front yard setbacks on all three of its triangular sides.

The applicant testified during the hearing that a 5,000 square foot building is needed on the site to make the project viable as a commercial dental building. To accommodate this size of structure on the site, front yard setback variances are required along all three property lines. The project has been designed to minimize impacts on neighboring residential properties by orienting the building towards Market Street and maintaining a 15-foot setback along 10th Avenue West and a 7.5-foot setback along 3rd Street West with landscape buffers.

The applicant testified and provided a written statement (see Enclosure 3, Exhibit A, Attachment 9) that the past project proposals for the property contained insufficient building space. The lack of building space did not justify the cost of development and prevented the completion of several past development attempts. A variance was approved for the site back in 2003 and the property has been owned by 3 different property owners in the past 17 years. The fact that the site has not been developed during that time supports a finding that previously approved developments were unable to move forward because of limitations imposed by the development regulations that applied to the site.

Appellant's Challenge to Finding of Fact 1.12 [Impacts on Character]

The Hearing Examiner found that eliminating the Market Street setback would not be out of character with the area. Again, the evidence does not support such a finding. As the only property on Market Street outside of the Historic Downtown district between

5th Ave. W and 7th Ave. W with a zero foot setback, it would necessarily be out of character with the surrounding areas.

Staff Analysis: The Hearing Examiner found that eliminating the Market Street setback would not be out character with this area, which is intended for pedestrian oriented commercial uses. As part of the Staff Advisory Report, Staff noted that the City's Design Guidelines for Pedestrian-Oriented Business Districts apply to the Market Street Corridor. The guidelines require that all building fronts along sidewalks have pedestrian-friendly features including transparent or decorative windows, public entrances, and treatment of blank walls. The applicant's current design is a result of working with Staff to address design regulations applicable to the project. The current design includes pedestrian oriented spaces, blank wall treatments, and parking garage screening treatments. Staff will conduct a full Administrative Design Review (ADR) as part of the Building Permit application, which would ensure a high-quality design. The applicant has not applied for or received ADR approval at this time because the applicant wishes to establish the potential building envelop through the variance process first.

As noted in the record by the applicant (as part of Enclosure 3, Exhibit A, Attachment 9) and by Staff in the Staff Advisory Report (Enclosure 3, Exhibit A and Exhibit C), the building is similar in size to two neighboring office projects and the zero foot setback from Market Street is consistent with several buildings south of the subject property along Market Street (around 8th Avenue) that have zero foot setbacks. These buildings, due to their high-quality design, are compatible with the greater Market Neighborhood even with no setbacks from Market Street. In walkable, commercial-oriented neighborhoods, small or no setbacks are desirable to promote street-level interest and a sense of enclosure.

The subject property is surrounded on all three sides by rights-of-way and none of the adjacent residential properties share a common property line with the property. This results in 60 feet of separation between the subject property and the low density uses located to the northwest and southwest. East of the subject property is Market Street, an 80-foot wide right-of-way. As a result, the unique triangular shaped site will continue to provide significant openness around the perimeter with the significant public rights-of-way on all three sides in addition to the setbacks that will be maintained along the northwest and southwest property lines. Therefore, the variances would not compromise the character of the Market neighborhood.

Appellant's Challenge to Finding of Fact 1.14 [Appropriate Design]

Appellant Claim: "The Hearing Examiner observed that the property is within a mixed commercial/residential corridor as described in the Market Street Corridor Plan. She found that the project "has been reviewed for traffic impacts and is designed consistent with Plan policies which support addressing sight distance and pedestrian safety, to ensure efficient and safe traffic flow" and the project is "consistent with the Plan and responds appropriately to the site and surrounding community."

"We [appellants] dispute that the evidence supports these findings."

Staff Analysis: In their appeal letter, the appellants do not provide specific examples or evidence supporting their claim, making it difficult for Staff to provide a specific analysis. However, as part of the Staff Advisory Report, Staff concluded that the Market Street Corridor goals and policies in the City's Comprehensive Plan emphasize the importance of minimizing impacts from higher intensity development adjacent to single family development (Enclosure 3, Exhibit A). The Hearing Examiner explicitly found that the Comprehensive Plan (i.e., the Market Street Corridor Plan) supports a mix of higher intensity uses while minimizing impacts on adjacent residential neighborhoods. The project is oriented towards Market Street to minimize impacts on neighboring residential properties and will be reviewed to comply with applicable design requirements. The proposed landscape buffers and subsequent Administrative Design Review will additionally help mitigate building design impacts from the office use on the adjacent single family uses.

Public Works concluded that the project complies with all traffic, sight distance and pedestrian safety requirements and the Hearing Examiner agreed. As noted previously, Public Works Staff provided a memo that summarized the City's review of these issues.

Appellant's Challenge to Conclusion of Law 2.1 [Detriment to Surroundings]

Appellant Claim: "The Hearing Examiner concludes "there is no material detriment to the property or area improvements, or to the City more generally." We [appellants] dispute this conclusion.

The Hearing Examiner further concludes "the variance is necessary due to the site's unique triangular shape, constrained size, and the code treatment of such a site, which requires not one, but three front yard setbacks." (Emphasis added.) We [appellants] dispute the conclusion that the Applicant sought a single variance (implied in the statement "the variance") and the conclusion that all three variances are necessary.

Additionally, the Hearing Examiner concludes "the design for this commercial building is the minimum necessary, given the landscape buffer, setback, and parking requirements imposed." We [appellants] dispute this conclusion."

Staff Analysis: The Hearing Examiner concludes the following in Conclusion of Law, section 2.1 to support the finding that the variance would not have adverse effects on the surroundings of the project site:

- *With the required landscaping, buffering, Design Review, and improved pedestrian circulation, there is no material detriment to the property or area improvements, or to the City more generally. While the Market Street setback is eliminated, the commercial building is oriented toward Market Street, will provide a better transition than the current vacant lot, and the building has been designed to facilitate pedestrian activity. The landscaped buffers on the other two sides address use change and provide for compatibility between the uses.*
- *The variance is necessary due to the site's unique triangular shape, constrained size, and the code treatment of such a site, which requires not one, but three*

front yard setbacks. This is due to the three rights-of-way on all sides, resulting in 20-foot setbacks on all sides. On a more standard site, side yards would be closer to five feet. As one of only three similarly situated sites within the City, one of which is a park, these do constitute special and unique circumstances.

- *Granting a variance would not result in a grant of special privilege. As the Department documented, two neighboring sites which are less constrained, and developed for office use, have greater development intensities and cover a higher percentage of the lot. With gross floor area for office use limited to 5,000 square feet, this is a minimally sized office building. As detailed in the findings, the design for this commercial building is the minimum necessary, given the landscape buffer, setback, and parking requirements imposed.*

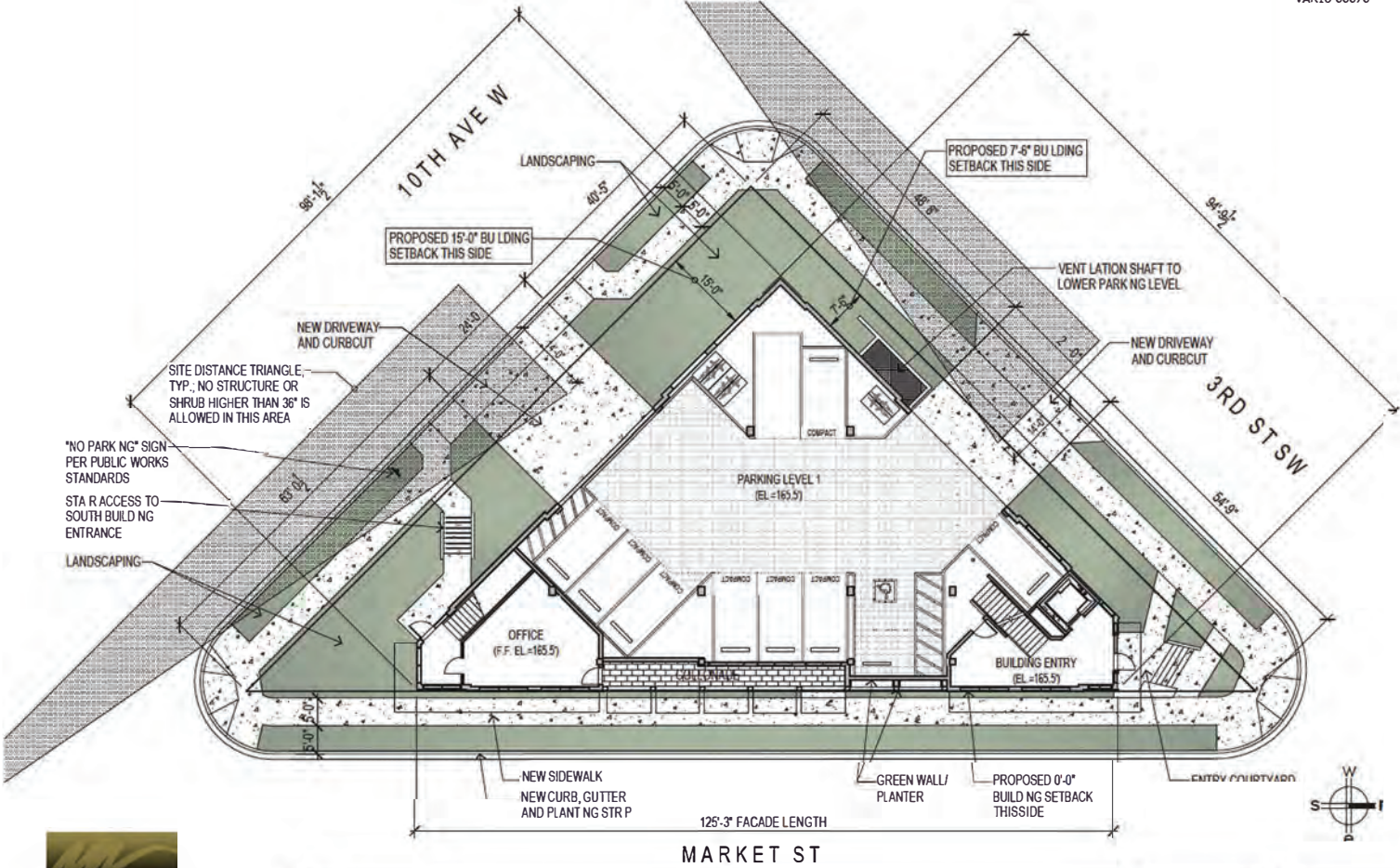
The appeal letter disputes the Hearing Examiner's conclusion that the project is not materially detrimental. But the appeal letter fails to provide any specific impact(s) that will be materially detrimental to the surrounding neighborhood or City. After review of the extensive record including Staff's response to public comments and concerns, the Hearing Examiner concluded that there was no evidence to support a conclusion that the project would be materially detrimental to neighbors or the City.

The Hearing Examiner is very clear in her decision that the zoning permit application is for three setback variances (see Findings of Fact Section 1.1). As noted in her conclusion, she is responding to the specific variance criteria as established in KZC Section 120.20.

As stated previously, the applicant testified that the design was the minimum necessary to make the project viable. The appellants provide insufficient evidence to counter this argument and do not propose any modification that would make the project smaller and still viable. While the appellants express displeasure with this project, they do not provide sufficient testimony or evidence to support their claims that it does not meet the City's variance criteria and all other applicable aspects of the City's codes.

ENCLOSURES

1. Development Plans
2. Hearing Minutes from January 30, 2020
3. Hearing Examiner Decision and Exhibits
4. Appeal Letter
5. Written Arguments from Nicole and Kenneth MacKenzie, Appellant
6. Written Arguments from Craig Chaney, Applicant





Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance



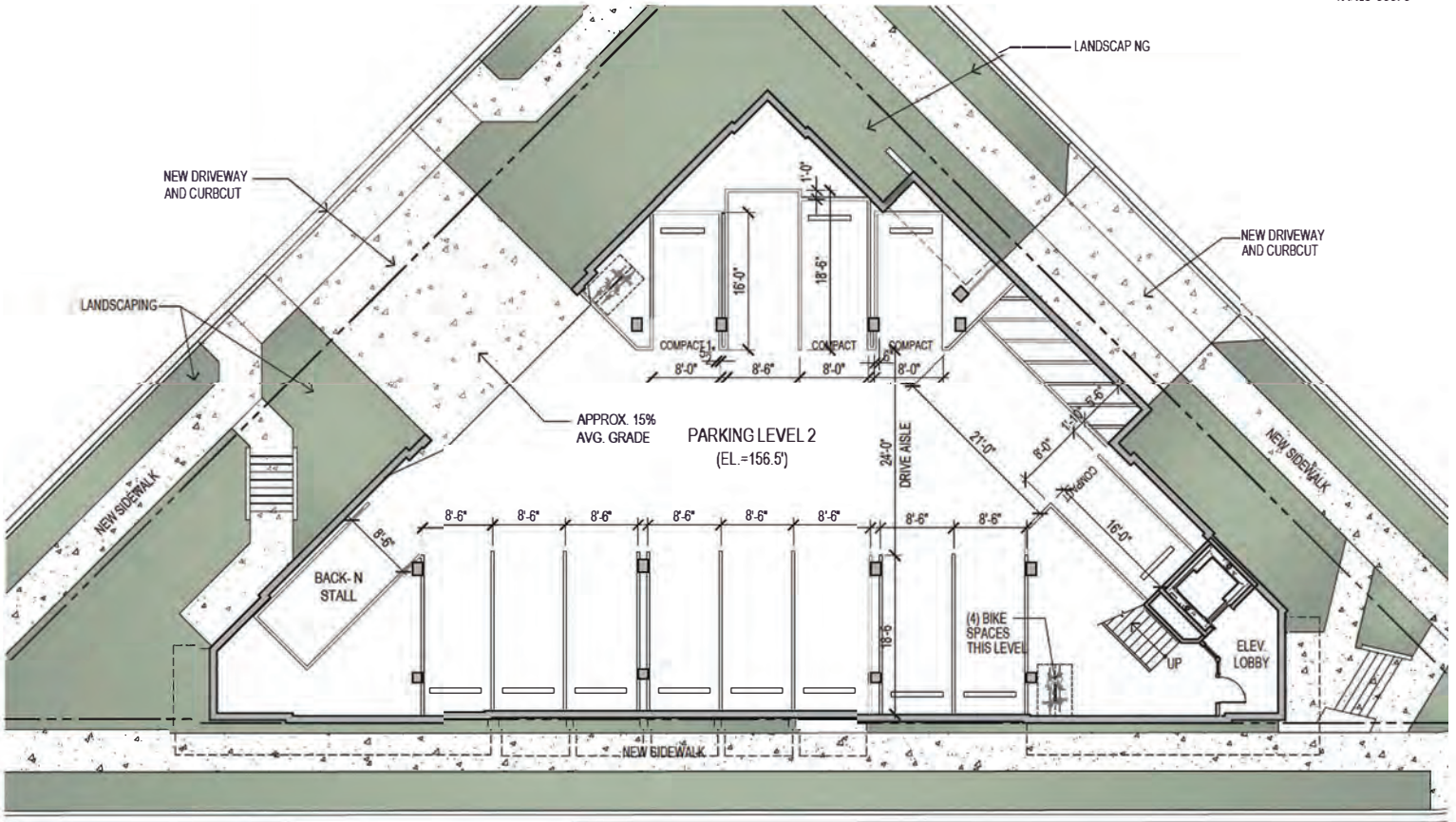
MERRICK LENTZ ARCHITECT
 ARCHITECTURE - PLANNING
 12815 NE 128th PLACE, KIRKLAND, WA 98034

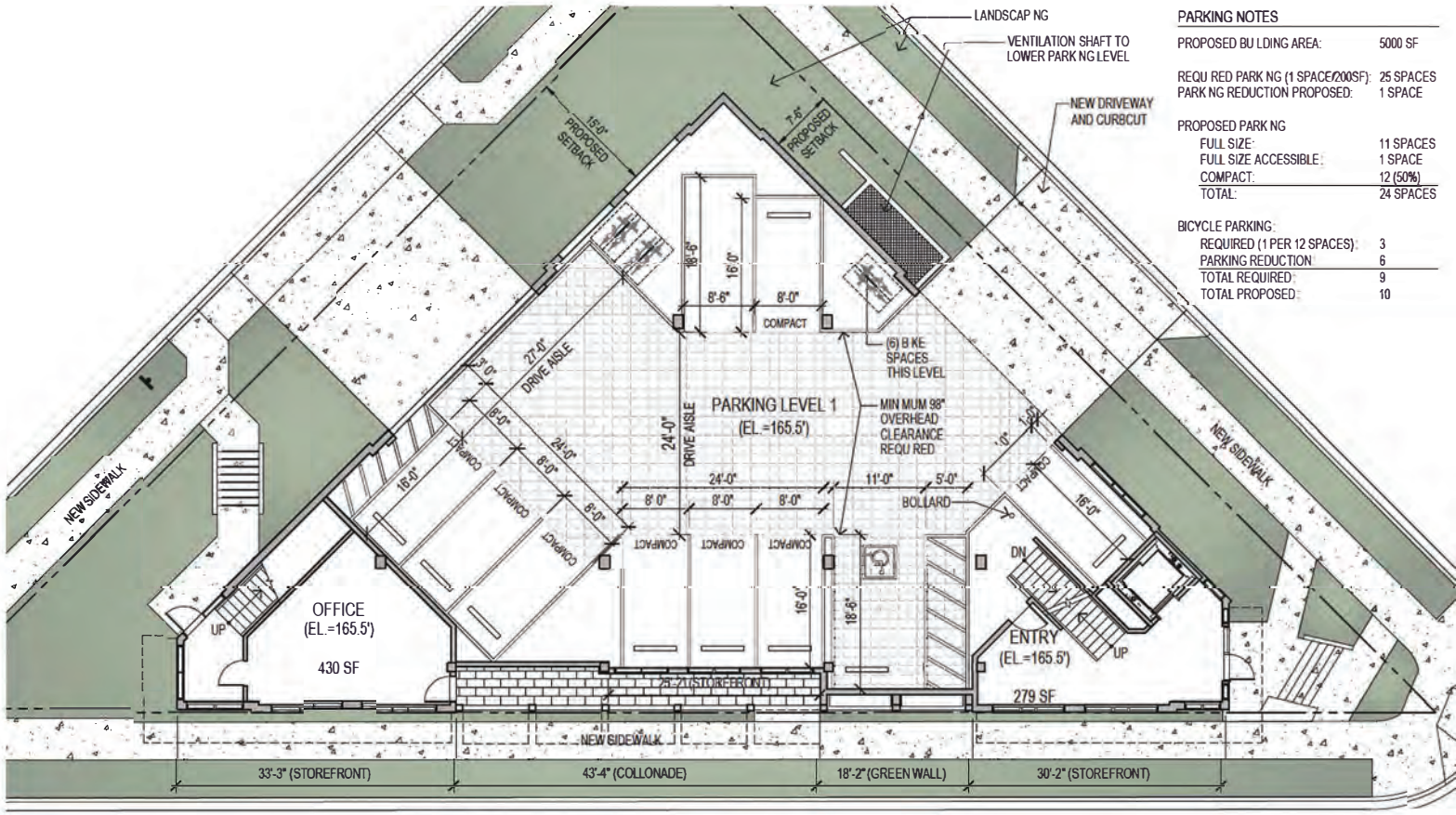
Project Name: **Market Street Dental Clinic Variance - Rev 2.1**

Describe: **Site Plan - Sight Distance Diagram**

Date: 12/2/19
 Scale: 1/16" = 1'-0"

Drawing Number: **VAR1.2**





PARKING NOTES

| | |
|-----------------------------------|------------------|
| PROPOSED BUILDING AREA: | 5000 SF |
| REQUIRED PARKING (1 SPACE/200SF): | 25 SPACES |
| PARKING REDUCTION PROPOSED: | 1 SPACE |
| PROPOSED PARKING | |
| FULL SIZE: | 11 SPACES |
| FULL SIZE ACCESSIBLE: | 1 SPACE |
| COMPACT: | 12 (50%) |
| TOTAL: | 24 SPACES |
| BICYCLE PARKING: | |
| REQUIRED (1 PER 12 SPACES): | 3 |
| PARKING REDUCTION: | 6 |
| TOTAL REQUIRED: | 9 |
| TOTAL PROPOSED: | 10 |

MERRICK LENTZ ARCHITECT
 ARCHITECTURE - PLANNING
 12815 NE 126th Place · Kirkland, WA · 98034

Project Name: **Market Street Dental Clinic Variance - Rev 2.1**

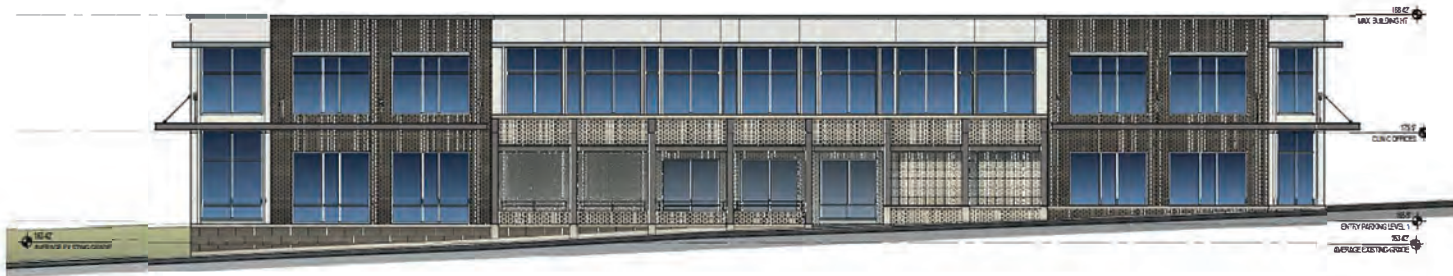
Description: **Plan - Entry/Parking Level 1**

Date: **12/2/19**
 Scale: **3/32" = 1'-0"**

Drawing Number: **VAR2.2**



VAR18-00070



Market Street Elevation



Third Street Elevation

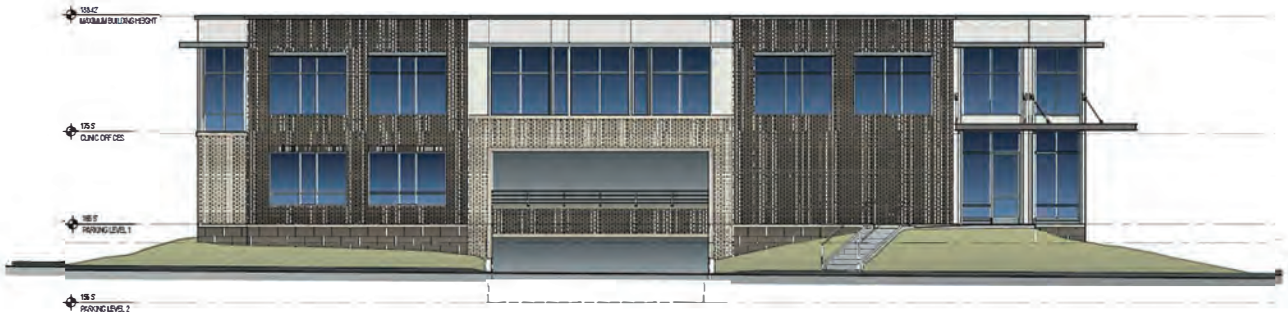

MERRICK LENTZ ARCHITECT
ARCHITECTURE - PLANNING
12815 NE 126th Place · Kirkland, WA · 98034

Project Name:
Market Street Dental Clinic Variance - Rev 2.1

Description:
Schematic Building Elevation

Date: **12/2/19**
Scale: **3/32" = 1'-0"**

Drawing Number:
VAR3.1



Tenth Avenue Elevation

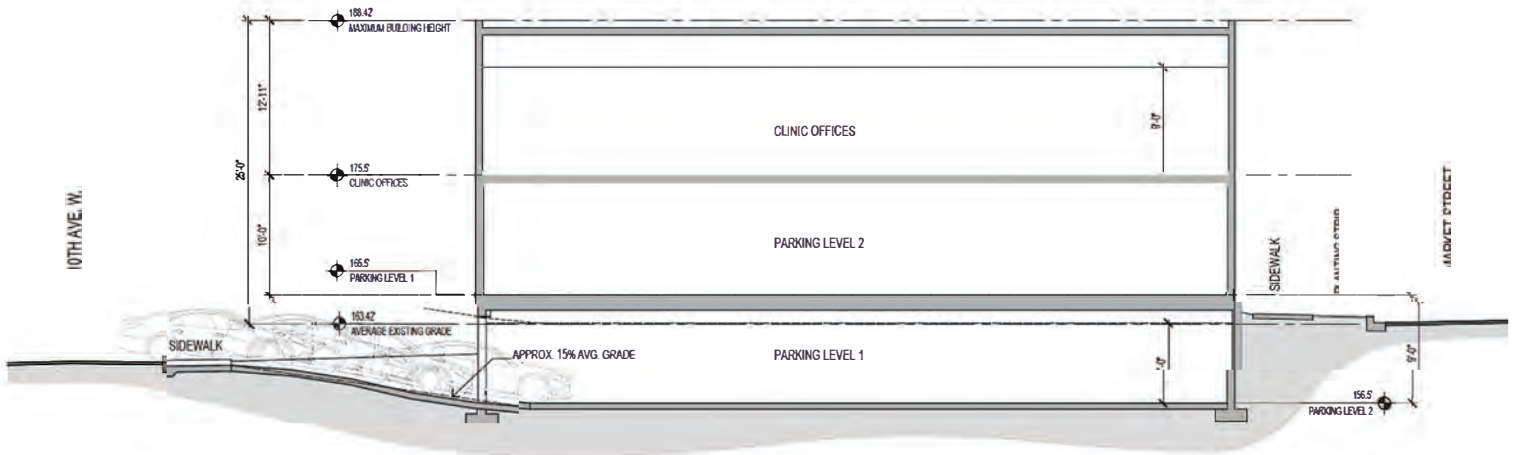


Project Name:
Market Street Dental Clinic Variance - Rev 2.1

Description:
Schematic Building Elevation

Date: 12/2/19
Scale: 3/32" = 1'-0"

Drawing Number:
VAR3.2



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Project Name:
Market Street Dental Clinic Variance - Rev 2.1

Description:
Schematic Building Section

Date: **12/2/19**
 Scale: **1/8" = 1'-0"**

Drawing Number:
VAR4.1



VAR18-00070




MERRICK LENTZ ARCHITECT
ARCHITECTURE - PLANNING
12815 NE 126th Place, Kirkland, WA - 98034

Project Name:
Market Street Dental Clinic Variance - Rev 2.1

Description:
Renderings

Date: 12/2/19
Scale: 3/32" = 1'-0"

Drawing Number:
VAR5.2



MERRICK LENTZ ARCHITECT
ARCHITECTURE - PLANNING
12815 NE 126th Place, Kirkland, WA - 98034

Project Name:

Market Street Dental Clinic Variance - Rev 2.1

Description:

Renderings

Date:

12/2/19

Scale:

3/32" = 1'-0"

Drawing Number:

VAR5.3



KIRKLAND HEARING EXAMINER
January 30, 2020

1. CALL TO ORDER (7:00 PM)

Members Present: Susan Drummond - Pro Tem Hearing Examiner.

Members Absent: None.

Staff Present: Jon Regala - Planning Supervisor, Tony Leavitt - Senior Planner, and Jeannie Dines - Recording Secretary.

2. PUBLIC HEARINGS (7:00 PM)

A. 1009 Market Street Variance

Hearing Examiner Pro Tem Susan Drummond opened the hearing at 7:00 PM. She provided the file number, VAR18-00070 and address, 1009 Market Street. She entered the Staff Report with Attachments 1-9 as Exhibit A.

She referred to a request on January 20 from Richard Aramburu, who represents Nicole and Kenneth MacKenzie, to delay the hearing and her response that hearing dates are established by staff due to noticing requirements.

Ms. Drummond advised that Mr. Aramburu and she are opposing counsel in another jurisdiction on a long term planning matter that likely will not be in litigation for a couple years. That did not affect her ability to hear this matter.

Ms. Drummond described the hearing procedures and established presentation times. There were no other procedural questions.

Ms. Drummond swore in Senior Planner Tony Leavitt. Mr. Leavitt submitted public comments received since drafting of the staff report and a copy of his PowerPoint presentation which Ms. Drummond entered as Exhibits B and C respectively.

Mr. Leavitt reviewed the proposal; proposed site plan; history of the site; public comment regarding driveway and intersection sight distance, traffic and parking impacts on neighboring streets, and building impacts on neighboring residential uses; environmental (SEPA) and traffic concurrency reviews; and zoning requirements.

Mr. Leavitt reviewed the variance request; variance criterion 1, 2, 3 and staff conclusions;

Process IIA permit criteria and staff conclusions. Staff recommends approval of the setback variance with conditions:

- Compliance with zoning permit plans
- Recording of landscape buffer agreement
- Parking restriction along 10th Ave W
- Landscape restriction in sight distance triangles

Applicant

Ms. Drummond swore in Craig Chaney, Merritt Lenz Architect. Mr. Chaney reviewed the proposed project, site conditions, site setbacks and proposed setbacks, proposed site plan, parking plan, elevations, building section, building exterior study, Market Street frontage, site access and circulation, Market Street sight distance, and variance criteria.

Mr. Cheney responded to Ms. Drummond's questions. She requested the name and address of the property owner. Mr. Cheney provided his PowerPoint which Ms. Drummond entered as Exhibit D.

Public Comment

Ms. Drummond swore in each speaker before they provided testimony.

1. Barb Loomis, Kirkland, strongly objected to the request for three variances. She submitted written comment that Ms. Drummond entered as Exhibit E.
2. Ms. Loomis read a letter from Mark Fosdal, Kirkland (included in Exhibit B), objecting to the proposed project.
3. Nicole MacKenzie, Kirkland, objected to this proposal and described several concerns with the project. She requested the variances be denied. Ms. Drummond entered Ms. McKenzie's PowerPoint as Exhibit F.
4. Ken MacKenzie, Kirkland, provided a printout from the King County Assessor's website with a timeline of the property purchases and the building permits which Ms. Drummond entered as Exhibit G. Mr. MacKenzie described his objections to the proposed project.
5. Lisa James, Kirkland, was opposed to the requested variances.
6. Melissa Thirloway, Kirkland, echoed the comments opposing the variances. She submitted written comments which were entered as Exhibit H.
7. Kathryn Grindeland, Kirkland, was opposed to the variances.
8. Jeff Thirloway, Kirkland, was opposed to the variances.
9. Paul Quincoses, Kirkland, was opposed to granting the variances.

Mr. MacKenzie requested the section of the Comp Plan that addresses the Market Street Corridor be included in the record. Ms. Drummond entered it as Exhibit I.

Ms. Loomis recommended the City purchase the property and create a pocket park.

Mr. Chaney responded to the public comments and Ms. Drummond's questions.

Mr. Leavitt addressed the public comments. He recommended the record remain open for two weeks to allow the traffic engineer to address issues raised regarding sight distances and the traffic barriers on 3rd Street.

Ms. Drummond swore in Planning Supervisor Jon Regala. Mr. Regala responded to public comment.

Ms. Drummond advised the record will remain open until 5:00 PM on February 13, 2020. She will issue a decision within eight calendar days from the close of record.

3. ADJOURNMENT (8:31 PM)

**CITY OF KIRKLAND HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Market Street Dental Clinic Variance
VAR 18-00070**

February 21, 2020

1. FINDINGS OF FACT

1.1 Proposal. The project is a 25-foot tall building with one floor of medical/office space and two parking levels, one below ground. The building is proposed on a graveled, vacant lot. Originally developed with a single family home, the house was demolished, and the site has been vacant for years.

The site is unusual. The lot is an 8,120 square foot triangle, with City streets on all three sides. When setbacks are applied, 22% of the site, or about 1,749 square feet, is left.¹ This is due to the adjacent City streets. All are treated as front yards, requiring 20-foot setbacks from all lot lines. This contrasts with the typical lot, with a single front yard setback, and two side yard setbacks.² Due to the lot's irregular shape, constrained size, and limited buildable area, the Applicant requested a zero-lot line along Market Street and setback reductions from 20 feet to 7.5 feet on 3rd St. W., and to 15 feet on 10th Ave. W.

1.2 Applicant and Location.

Applicant: Craig Chaney, Merrick Lentz Architect
12815 NE 126th Place, Kirkland, WA
Site Address: 1009 Market Street, Kirkland, WA

1.3 Hearing. A hearing was held on January 30.³ The City of Kirkland Planning and Building Department summarized the proposal. The Department summary was followed by an Applicant presentation and public comment. Public comment is summarized below. The record was kept open through February 13, at Department request, and to allow for additional citizen input.

1.4 Exhibits. The Examiner admitted these exhibits without objection:

- Exhibit A: Staff Report, with Attachments 1-9
- Exhibit B: Public Comments (Mr. Aramburu, Mr. Fosdal, Mr. and Ms. Harris, Ms. Hunt, Mr. Nickerson)

¹ The Planning Department calculated 1,753; the Applicant, 1,749. Exhibits C, D. Either way, the percentage left is 22%.

² Here, five foot minimums, but totaling 15 feet together.

³ Before the hearing, a neighbor, through counsel, requested hearing rescheduling based on counsel availability. The Examiner explained that while she may continue a hearing once convened, or keep the record open, the Department schedules hearing dates on permit matters. Exhibit B (Correspondence from counsel for Mr. and Ms. MacKenzie, January 20, 2020); Examiner's e-mail response on January 22 and 23, 2020.

- Exhibit C: Power Point, Planning Department
- Exhibit D: Power Point, Applicant
- Exhibit E: Comment, Ms. Loomis (January 30, 2020)
- Exhibit F: Power Point, Mr. and Ms. MacKenzie
- Exhibit G: King County Dept. of Assessments, Data
- Exhibit H: Comment, Mr. and Ms. Thirloway (January 30, 2020)
- Exhibit I: Comprehensive Plan, Market Street Corridor Section
- Exhibit J: Comment, Mr. and Ms. Thirloway (February 4, 2020)
- Exhibit K: Department Traffic Engineer Analysis (February 13, 2020)
- Exhibit L: Comment, Mr. and Ms. MacKenzie, Enc. 1-7 (February 11, 2020)
- Exhibit M: Comment, Ms. Loomis (February 13, 2020)

1.5 Hearing Testimony, Summary.

1.5.1 Citizen Comment.

Ms. Loomis strongly objected. She stated the proposal is for an oversized office building on a small lot, which would change the neighborhood character. She expressed concern about view corridor loss, and project inconsistency with other buildings, excepting the historic buildings with zero lot lines, all but one built in 1891. The proposal is dangerous for pedestrians, bikers, and cars. The left hand turn to go north on Market is impossible, except at very low volume times (early Sunday morning). She was concerned parking will be on street. This is based on her discussions and experience with a similar use, the Dibble building. Project design, mass, and scale is not consistent with the residential neighborhood. A Process IIA application must be consistent with development regulations and Comprehensive Plan (if there are not applicable development regulations), and with the public health, safety and welfare. The project is not. It may meet the goal of infill office development, but the project does not minimize impacts on adjacent neighbors, so should be denied.

Ms. Loomis then read a letter from Mr. Fosdal, at 1010 3rd Street W., at his request, as he could not be present. He had been approached by a couple gentleman and recalls signing a paper on January 3, 2017.⁴ After settling in and getting to the know the area, he now has reservations about the project. His experience with the Dibble building illustrates the parking issues. While his signature is notarized, he does not remember a notary being present.

Ms. MacKenzie supports parcel development, as long as it is consistent with the zoning code. This project is not, and presents materially detrimental impacts. She provided a power point presentation, which her presentation followed. She noted that the question of zero lot lines along Market Street was the subject of a public survey. The majority of those responding opposed the approach. The Market Street vision is consistent with the survey results. It provides for a leafy, comfortable, spacious mixed-use setting. Also, there are traffic safety issues with the proposal. This is a particular concern with rush hour traffic, and on days with reduced vision (due to light and weather), which exacerbate problems with judging distance and seeing bicyclists. Errors she identified included:

⁴ This was the consent to the requested variance. Exhibit A (Staff Report), p. 204 of packet.

- Errors in the sight line analysis, which measured sight lines from the wrong location, and inconsistent with City Policy R-13.
- Given the 5% grade, there should have been an adjustment to the sight lines, per R-13. That did not happen.
- There is a concern with the awning and landscaping encroaching into the required sight line.
- This is a “skewed” intersection (meaning one not at 90 degrees), yet no adjustment or allowance was made for that.
- There was an incomplete analysis of the 3rd Street driveway situation. The 35 MPH speed limit/45 degree turn causes danger to a car waiting to turn into the driveway.

She addressed project history from 2003 and previous variances granted. A Market Street front yard variance was not requested, just variances for the other two street setbacks. She then referenced a 2007 proposal.⁵ She stated that this prior permitting demonstrates a project could occur without a Market Street variance. Also, the recently developed Dibble building is set back, which better fits with the area vision.

Mr. MacKenzie provided information from the King County Assessor’s Office website on the property (Exhibit G). He emphasized that this is not a “commercial” area. The Market Street Corridor encourages a mix of uses, including residential. Within the Corridor, there are existing and planned uses which include multi-family, and some townhouse. The property was originally residential and is perfectly suitable for same, or mixed use. The property owner would have known about the setback constraints when the property was bought.

Ms. James stated she is against the variances as presented. She feels it would be detrimental to properties in the area. She has seen many negative impacts from the Dibble building due to its size. Parking is a key detrimental impact. She sees people parking on streets who are not local residents. Parking spaces are small in the Dibble building, so many customers park on the street. She noticed in this plan there are a lot of compact spaces, which would create a similar issue here. There is a significant road safety hazard on 3rd Street. There is a traffic barrier on 3rd to prohibit left turns. Yet, she sees people driving on the wrong side of the road onto the alley to access the Dibble parking lot. With that use, more delivery trucks come to the area; this will happen with this building. The other issue is noise. The larger a building, the louder an HVAC system. This has been a huge issue with the Dibble building. Also, 24-7 lighting comes from the building, creating light pollution. She would much rather see a single family home, like there once was, on this site.

Ms. Thirloway noted the many construction trucks which have used the vacant project sight as staging over the last 15 years. She expressed her respect for the earlier comments, which she supports. She does not have a lot to add, but has particular concern about 10th Avenue West, which will no longer be residential in nature. Parking along one side of the street will be gone. A spot on her side of the street is not available due to a fire hydrant, so with the project, space will be even more limited. She recalled that with the 2003 variance, there was a setback on 10th

⁵ Department staff later clarified that this was the same project, but at the building permit stage.

Avenue West, which specified that certain trees/bushes were required. She saw nothing in this presentation on that.⁶

Ms. Grindeland faces a similar situation to Mr. Fosdal. She relocated to the Market Neighborhood in August of 2016, and in 2017 was approached by property owners about consenting to the setback variance. She did not appreciate the impacts at the time. She is a single parent with young children, so is concerned about safety. With non-residents parking in the neighborhood, there is not sufficient space. She definitely oppose the variance.

Mr. Thirloway, a 40-year resident, has seen adverse change since the house came down. He has seen the variance go through twice. Construction crews prepared the site, and then stopped. Dirt was removed, and then put back due to sidewalk buckling. There have been three major protracted construction projects. There have been people at 6:30 AM with diesel engines idling and huge trucks parked on side streets. He is concerned about a “25 foot monolith” right in front of his home. The site has not been properly managed.

Mr. Quincoses has lived in the neighborhood for 14 years and has witnessed all these construction problems on the vacant lot. He is very concerned about the traffic patterns. There will be more employees and customers, and as seen with other buildings, then tend not to park in the parking garage. He would like to see adequate planning for how people really behave. He is also concerned about significant visual impacts, lighting impacts, and noise (as an example, the Dibble HVAC load has significant noise issues). His concerns are similar to other neighbors, and he hopes they will be addressed.

Mr. MacKenzie requested that the Kirkland Comprehensive Plan section addressing the Market Street Corridor be added to the record. It was added as Exhibit I.

Ms. Loomis had one follow up comment. She feels the City owes the neighborhood after putting an industrial use on the property for 2 ½ years, with all the trucks and the noise. She feels the City should buy the property and turn it into a pocket park.

1.5.2 Applicant Response to Citizen Comment. Mr. Chaney addressed the comments, many of which relate to traffic impacts and parking. He stated the proponent wants to be a good neighbor and is sensitive to community needs. The Dibble building was referred to a lot. That building is more than twice as large as the project. And, parking requirements for that space are about 40% lower. This project has to have almost twice as much. The Dibble building was required to have one space per 350 square feet. This project must have one space per 200 square feet. So, it provides significantly more parking per square foot. In the record and Staff Report there are reports from the traffic engineer and Applicant's traffic study determining the access points do not pose a significant conflict or safety concern. The left turn from 10th Avenue is not an easy turn, but the building is located so that it will not exacerbate the situation. Mr. Chaney detailed the various distances, and concluded that the building should not encroach into the sight triangle. Also, the analysis, including the diagram submitted by the transportation engineer, should be consistent with the City's R-13 Policy referenced in comment.

⁶ The Planning Department provided supplemental information on these requirements, consistent with the earlier Staff Report analysis.

1.5.3 Planning Department Clarifications. Mr. Leavitt provided background on the earlier permitting processes. The Hearing Examiner approved a variance in 2003, with building permit applications submitted in 2007. Typically, a zoning permit has a five year period of validity, and the 2007 permitting processes were implementing the earlier variance approval. Then, that building permit expired.

As for landscape buffers, what is being proposed is the same as what was outlined in 2003. Typically, the 15 foot buffer requires trees planted 20 feet on center and landscaping to fill that in. While not shown in plans, code compliant landscaping is required as a part of the building permit review.

During Ms. MacKenzie's presentation, she raised questions on how site distance was measured. As the City traffic engineer was not present, Mr. Leavitt asked for the opportunity for the engineer to review the material submitted and provide a memo. He requested that the record be kept open for two weeks to allow for that review.

Mr. Regala, the City of Kirkland Planning Supervisor, addressed the Dibble project. He stated that on noise, HVAC must meet certain decibel levels, so if there are concerns, citizens should feel free to submit an online complaint and the City can investigate and determine if baffling or other measures are needed. Lighting is the same because the City has adopted code requirements limiting lighting and glare. Regarding this project, these impacts will be reviewed during the building permit stage for code consistency.

1.6 Supplemental Sight Line Analysis. To address public comment on sight lines, the City's Transportation Engineer prepared supplemental analysis, which addressed project entry and exit (Exhibit K). The analysis accounted for Market Street grade (5%), the angle of the Market Street/10th Avenue West intersection (found to not affect sight distance looking north on Market Street), and the building awning (found to not obstruct sight distance as the sight distance triangle is outside the property line). The measurements were made consistent with how Public Works measures sight distance for other projects. The analysis concluded the variance will:

[H]ave no impact on the sight distance for vehicles entering Market Street from 10th Avenue West and that the proposed project driveways on 3rd Street West and 10th Avenue West have adequate site distance. ... The proposed building will have no impacts on existing sight distance conditions and will not create safety issues for vehicles accessing the site and driving on adjacent streets⁷

The analysis concluded that the measured sight distance on the Market Street/10th Avenue West intersection is over 500 feet, which exceeds the 275 foot minimum.⁸ The required stopping sight distance for a driver turning onto 3rd Street West from Market Street was also found to be exceeded, and to provide greater protection than the earlier (2002/2003) project. The measurements taken were illustrated through several figures, with the approach being consistent

⁷ Exhibit K (Supplemental Transportation Engineer Analysis), Cover Memo, p. 1.

⁸ Exhibit K (Supplemental Transportation Engineer Analysis), p. 3 ("Realistically, there is approximately another eight feet from the point of measurement for a driver to move forward to increase the sight distance without encroaching into the travel lane.").

with Public Works' standard practices. That analysis credibly details how the project sight lines were reviewed consistent with City Public Works traffic policy. The Department's analysis was prepared by a traffic engineer, with expertise in applying the City's adopted policies, including Policy R-13, which was attached to the engineer's memo. Technical analysis was also submitted from Mr. and Ms. MacKenzie, prepared by a transportation planning consultant.

The planning consultant took a different view. His position was that the site distance at 10th Ave. W./Market Street should be 412 feet, based on the need for turning traffic to cross two lanes (through lane and center left-turn lane) and should be measured 14 feet back from the traveled way. He added:

With no setback on Market Street, the proposed building comes right up to and may even interfere with the driver's line of sight. A more definitive determination requires more precise drawings than have been provided to date.⁹

These more precise plans will be submitted at the building permit stage. At that point, the Department will have the opportunity to compare its analysis against those plans, including confirming building plan consistency with Policy R-13. This should be added as a condition, to confirm this process will occur. The consultant also raised concerns about the "skewed intersection" and potential obstacles from the parking and landscaping.

While the city's "Design Guidelines for Pedestrian Oriented Business Districts" indicates that street trees should be considered for the west side of Market Street, the street slope and the planting strip's location within the sight triangle suggest that street trees would not be appropriate on this frontage since they could restrict sight-distance. These two factors compound the difficulty of all drivers obtaining a clear line of sight from the intersection's skewed angle. It would be prudent to prohibit parking along the project's frontage and to limit the height of landscaping to no more than 36" above grade.¹⁰

As was noted in hearing testimony from the Applicant's architect, Mr. Chaney, street tree location could change during final building permit review. However, language should be added to the above noted condition to ensure these considerations are accounted for in that review. And, while there are already parking restrictions in place, if anything additional is appropriate, added restrictions could be imposed at that juncture.

With respect to the 3rd St. W. driveway, the consultant recommended, "right-in/right-out only traffic flow," be considered as a condition. The stated rationale is that the driveway falls short of the 75-foot spacing from the adjacent intersection at Market Street. He added:

While analysis has shown sight-distance to be adequate at this driveway, the case of multiple arriving vehicles does not appear to have been tested. This problem

⁹ Exhibit L (Comment, Mr. and Ms. MacKenzie), Enc. 1, p. 1.

¹⁰ Exhibit L (Comment, Mr. and Ms. MacKenzie), Enc. 1, p. 2.

could be avoided by restricting the driveway's movements so that vehicles would not be pausing on 3rd Street after turning off of Market Street.¹¹

As the City's engineering analysis found adequate site-distance, this should not be imposed as a required condition. However, during building permit review, the Planning and Building Department should consider this concern, and may elect to impose such a requirement, or to reserve the option of imposing same, at a later date, if necessary. This should be clarified in the condition addressing these sight distance concerns. The new condition is probably not necessary, given the credibility of the City traffic engineer's analysis. However, the building permit submittals will have added detail, and it is reasonable to ensure that the City's analysis, as well as the identified concerns, are considered against those building plans.

1.7 SEPA. The project is exempt from SEPA and traffic concurrency reviews.¹²

1.8 Zoning: Site and Surrounding Area. The vacant, relatively flat lot is within the Market Neighborhood, and zoned Market Street Corridor, MSC 1, which provides for commercial use, and allows dental and medical offices outright. As a multi-story project, Administrative Design Review is required. Surrounding zoning and uses are:

- North: MSC 1 and RS 7.2 (multi-story office building and single family homes)
- West: RS 7.2 (single family homes)
- South: RS 7.2 (single family homes)
- East: MSC (office and multi-family)

1.9 Impact of Setback Requirements and Relationship with Market Street. If the 20-foot setbacks were applied on all three sides, that would leave a 1,749 square foot triangle, with the remaining 6,371 square feet unbuildable due to the setbacks.

This very small pad – with acute angles at 2 of the 3 corners – and the 25' height limit makes the development of a viable commercial property within the standard setbacks unfeasible. Further, the code places strong restrictions on parking in required yards, so the provision of parking in support of a commercial building further impacts the building limits. The owner has determined that they require 5000 sf of office space for development on this site to be viable, and has proposed modified buffers that provide just enough buildable area for that requirement. Even with the proposed setback adjustments limited to provide this buildable area the project will still require two floors of under-building parking to meet the City's parking requirements for the 5000 sf clinic.¹³

Given these restraints, variances are a necessity for a viable commercial use. The project has been designed to provide a transitions from Market Street to the residential area, while also allowing for reasonable use.

¹¹ Exhibit L (Comment, Mr. and Ms. MacKenzie), Enc. 1, p. 2.

¹² KMC 24.02.065; KMC 25.08.010; Exhibit C (Department Power Point), p. 7; Testimony, Mr. Leavitt.

¹³ Exhibit A (Staff Report), Attachment 6, p. 189 (Applicant Response to Public Comment, prepared by Mr. Chaney, the project architect).

Without this 0 foot setback on Market Street, the lot remains unbuildable due to the inequitable cost per square foot, as has been demonstrated by the past several failed attempts at developing the subject property. In its undeveloped state, the lot currently provides no buffer to neighboring residences from the noise and automobile headlights caused by traffic along Market Street. The requested variances, including the 0 foot request at Market St, would improve the residential buffer and protection from these elements, enhancing the transition from the commercial activity of Market Street to adjoining residential homes. ... As Policy MS-6.3 states, "commercial development which is oriented toward Market Street will have less impact on the adjacent low-density residential areas in the surrounding neighborhoods." A 0 foot setback on Market Street allows for an equitable development while limiting the setback variance needed along 10th Ave W that is adjacent to low density residential areas and where the neighbors prefer to keep the 15 foot landscape buffer.¹⁴

1.10 Landscape Buffer. A 15-foot wide landscape buffer is required along 10th Ave. W. and 3rd St. W., but not along Market Street, due to its principal arterial designation.¹⁵ The project includes the 15-foot buffer on 10th Ave. W, and a 7.5 foot buffer along 3rd St. W. This reduction is allowed administratively in various circumstances, including where there is neighboring property owner consent.¹⁶ With the setbacks/buffers, the structure would be 67.5 feet from properties along 3rd St. W, with the structures on those properties set back 18 and 13 feet. As authorized by code, the Department concluded that the landscape buffer along 3rd Street West is consistent with KZC Section 95.46.1 because the adjoining owners agreed in writing to the modification in and the "distance of development from the neighboring property decreases or eliminates the need for buffering."¹⁷

1.11 Written Public Comment. The initial public comment period ran for about a month in May/June of 2018. The Department addressed comments, which focused on three primary concerns, driveway and intersection sight distance; traffic and parking impacts; and, impacts on neighboring residential uses.

1.11.1 Site Distance and Driveway Access. The City's Transportation Engineer required a driveway variance to allow two access driveways (from 10th Ave. W. and 3rd St. W.) and to allow the driveways to be less than 75 feet from the adjacent intersections. Public Works approved the two driveways with conditions, including an on-street parking restriction on a portion of 10th Ave. W., and a limitation on structure and landscaping height to preserve sight angles. Public Works determined that as conditioned, the approach was consistent with Public Works Pre-Approved Plan Policy R-13, addressing sight distance for driveways and intersections.

¹⁴ Exhibit A (Staff Report), Attachment 9 (Application), p. 1 of Application, p. 209 of packet.

¹⁵ KZC 95.42 (Landscape Category C required in MSC 1 zone); Exhibit A (Staff Report), p. 6 of packet.

¹⁶ KZC 95.46.1; Exhibit A (Staff Report), p. 7 and Attachment 8.

¹⁷ Exhibit A (Staff Report), p. 7 of packet.

The Applicant also addressed public comments, including those on sight distance on Market Street to the north from the 10th Avenue stop sign. The Applicant noted a construction fence had been erected on the property. The fence was installed around the perimeter on the sidewalk's back side, and within Kirkland right-of-way, and is not consistent with where the building will be. The property line is 4'6" behind the back of the sidewalk along Market Street. The building's south end will be about 38' north of the back side of the sidewalk at the south intersection. The Applicant prepared a site distance analysis diagram based on Policy R-13 - Intersection Site Distance. The analysis showed "that the sight distance from the stopping area at 10th Avenue for Market Street traffic coming from the north not only exceeds the City's required minimum distance for a 35 mph street but exceeds the desired minimum distance as well, by several hundred feet."¹⁸

1.11.2 Traffic. The use is estimated to generate 19 trips during the PM peak hour. With two levels of parking served by separate driveways, each would generate less than ten trips during the PM peak hour when adjacent street traffic volume is highest. PM peak hour counts on 10th Ave. W. and 3rd St. W., are less than 30 trips for each street. The City's Transportation Engineer determined the traffic flow impact would not be significant.

1.11.3 Parking. The project will provide one stall per 200 square feet of gross floor area, with one space substituted for bike facilities, as allowed by code. 5,000 gross square (clinic level is 4,291 SF) would require 25 parking stalls. With secured bicycle storage, a 5% or 1.25 stall reduction is allowed.¹⁹ With 24 stalls, preliminary plans show compliance. Parking adequacy will be confirmed during building permit review.

1.11.4 Neighboring Residences. Along 3rd Street W., the setback would be reduced to 7.5 feet, with the adjacent neighbors previously agreeing to the approach. The setback on 10th Ave. W. would be 15 feet, with a landscape buffer of the same dimensions. While treated as a front yard, if viewed as a side yard, the setbacks would be closer to five-feet. The buffer areas will be landscaped, with trees planted at one per 20 linear feet, with deciduous trees of 2.5" caliper, and/or eight-foot coniferous trees installed. Shrubs are planted to attain 60% coverage within two years, and coupled with living ground cover, meeting code requirements.²⁰

The structure must also meet the City's Design Guidelines for Pedestrian-Oriented Business Districts. The Guidelines require that all building fronts along sidewalks have pedestrian-friendly features including transparent or decorative windows, public entrances, and treatment of blank walls. The design includes pedestrian oriented spaces, blank wall treatments, and parking garage screening treatments. Administrative Design Review will occur as part of the building permit application. Also, the triangular shaped site will continue to provide openness around the perimeter, given the public rights-of-way on all sides.

While subject to Design Review, the project architect, Mr. Chaney, further described the architectural features expected to ensure the building is compatible with the surrounding area and

¹⁸ Exhibit A (Staff Report), Applicant's Response to Public Comments, p. 190 of packet.

¹⁹ KZC 105.34.

²⁰ KZC 51.10 (Landscape Category C required in MSC-1 zone); KZC 95.42 (landscaping requirements).

supports pedestrian activity. This includes using building materials such as brick and steel, which would be modulated to add interest. This would be coupled with a green wall or landscape trellis wall, and stucco/glass, to activate the building front. Similar facades would be carried around the building. Steel awnings would be placed along the façade. The windows behind would have reduced visual transmittance, to reduce sight lines into the garage, but would not be reduced so much as to become a mirror. These measures would bring the scale of the building down and orient it toward the pedestrian.

1.12 Comparison with Other Projects. The site is one of three triangular shaped parcels with rights-of-way on all three sides within the City. The other two are developed with an office and a park (1715 Market and near 1300 Block of Market). The office is a legal nonconforming structure with a staircase and awning extending into the front yard setback, though on a much larger parcel with greater buildable area.

The office project is similar in size to two neighboring office projects developed on more standard lots. Neither project required a code variance, though with one, during design review, the front yard setbacks were reduced by four to six feet.²¹

| Project | Gross Floor Area | Property Size | Prop. Size Percent |
|--------------------|------------------|---------------|--------------------|
| Project | 5,000 | 8,120 | 61.58 |
| 1029 Market Office | 11,931 | 15,001 | 79.54 |
| 312 11th Avenue | 5,687 | 8,880 | 64.04 |

The Department mapped other buildings along Market Street, to illustrate the structures to the south directly fronting it.²² Eliminating the Market Street setback would not be out of character with this area, which is intended for pedestrian oriented commercial uses. Overall, the project would improve transitioning between the Market Street Corridor and residential areas.

1.13 Development Background. In 2003, a variance was granted for an office building which would have reduced setbacks to five feet and ten feet, with the Market Street setback maintained at 20-feet. The variances would have allowed a 4,200 square foot office building, but with only 14 parking stalls.²³ Building permits were applied for, but the project was never built.²⁴ Following these events, in 2017, the property owner secured consent from two neighboring residents, both on 3rd Street West, at 925 and 1010. The consent stated:

As neighbors to the undeveloped lot at 1009 Market Street, we would like to voice our approval of the proposed new building for Kirkland Family Dentistry. We have reviewed the architectural renderings and understand the proposed landscape barriers / setback variances to be 7.5ft at 3rd St W, 7.5ft at 10th Ave W, and 0ft at Market Street.

²¹ Exhibit A (Staff Report), pp. 10-11 of packet.

²² Exhibit C (Power Point, Department), p. 14.

²³ See earlier Decision at Exhibit A (Staff Report), Attachment 4, pp. 1 and 4 of Decision, pp. 37 and 40 of packet.

²⁴ Testimony, Mr. Leavitt.

We have growing concern over the noise and automobile headlight pollution in our neighborhood, and accordingly we support a 0ft setback at Market Street to provide a buffer from these problems

Due to the triangular shape of the lot and proposal of a parking structure that will inhibit the need for street parking, we encourage the aforementioned setback variances that are necessary to obtain the proper square footage for an equitable, owner-occupied dental office site.²⁵

1.14 Comprehensive Plan. The Plan supports a mix of higher intensity uses along the Market Street Corridor while minimizing impacts on adjacent residential neighborhoods.²⁶

The Market Street Corridor is an attractive, economically healthy area that accommodates neighborhood-oriented businesses, office uses and multifamily housing. The commercial uses provide convenient shopping and services for residents of both the Market and Norkirk Neighborhoods. The corridor is bounded by single-family residential neighborhoods to the north, east and west and a vibrant Central Business District to the south. Design of new development along the corridor incorporates landscaped buffers, site design and architectural treatments that complement and protect the adjacent residential neighborhoods.²⁷

The site is within this mixed commercial/residential corridor area. The site is designated for office-multifamily uses. Commercial development is encouraged to orient towards Market Street to reduce impacts on adjacent low-density residential areas. The project includes this orientation, and is coupled with Design Review, modulation, landscaping, sidewalk improvements, and other mitigation. It has been reviewed for traffic impacts, and is designed consistent with Plan policies which support addressing sight distance and pedestrian safety, to ensure efficient and safe traffic flow. With the Public Works review, and forthcoming Design Review, the project is consistent with the Plan and responds appropriately to the site and surrounding community.

1.15 Conditions/Staff Report. The Applicant did not object to the Staff Report's propose conditions, which should be included to ensure project consistency with code requirements, the Applicant's submittals, and these findings. Except as modified, that Staff Report is incorporated. As addressed above, a condition addressing the line of sight concerns should be added (Condition 5).

2. CONCLUSIONS OF LAW

2.1 The Hearing Examiner is authorized to review the requested variance.²⁸ The Applicant has the burden of proof.²⁹ To grant a variance, these criteria must be met.

²⁵ Exhibit A (Staff Report), pp. 202-207.

²⁶ Exhibit A (Staff Report), pp. 11-12; Plan Goal MS-2 and Policy MS-6.3.

²⁷ Exhibit I (Comprehensive Plan, Market Street Corridor), p. 1.

²⁸ KZC 120.10.

²⁹ KZC 150.45.

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; and
2. The variance is necessary because of special circumstances regarding the size, shape, topography, or location of the subject property, or the location of a preexisting improvement on the subject property that conformed to the Zoning Code in effect when the improvement was constructed; and
3. The variance will not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this code allows to other property in the same area and zone as the subject property.³⁰

With the required landscaping, buffering, Design Review, and improved pedestrian circulation, there is no material detriment to the property or area improvements, or to the City more generally. While the Market Street setback is eliminated, the commercial building is oriented toward Market Street, will provide a better transition than the current vacant lot, and the building has been designed to facilitate pedestrian activity. The landscaped buffers on the other two sides address use change and provide for compatibility between the uses.

The variance is necessary due to the site's unique triangular shape, constrained size, and the code treatment of such a site, which requires not one, but three front yard setbacks. This is due to the three right-of-ways on all sides, resulting in 20-foot setbacks on all sides. On a more standard site, side yards would be closer to five feet. As one of only three similarly situated sites within the City, one of which is a park, these do constitute special and unique circumstances.

Granting a variance would not result in a grant of special privilege. As the Department documented, two neighboring sites which are less constrained, and developed for office use, have greater development intensities and cover a higher percentage of the lot. With gross floor area for office use limited to 5,000 square feet, this is a minimally sized office building. As detailed in the findings, the design for this commercial building is the minimum necessary, given the landscape buffer, setback, and parking requirements imposed.

2.2 General Zoning Criteria. Given the review process being used, the City Code also requires that these criteria be met:

- a. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- b. It is consistent with the public health, safety and welfare.³¹

³⁰ KZC 120.20.

³¹ KZC 150.65.3.

City regulations, which fully regulate the proposal, are complied with. Even if applicable, as the findings articulate, the approval is consistent with the Comprehensive Plan, including the Market Street Corridor section; and, redevelopment of the site is consistent with the public health, safety, and welfare.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested variance, subject to these 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. Exhibit A, Staff Report, Attachment 3, Development Standards, was provided 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.

2. As part of the application for a building permit, the applicant shall submit the construction plans demonstrating compliance with the approved zoning permit plans (*see* Exhibit A, Staff Report, Conclusion II.F.5).

3. Prior to issuance of the building permit, the applicant shall submit a signed agreement for the modification of the required landscape buffer as provided by the City (*see* Exhibit A, Staff Report, II.E.4).

4. Public Works Staff has reviewed the request for a driveway variance and approved the project driveways with the following conditions (*see* Exhibit A, Staff Report, Conclusion II.E.5):

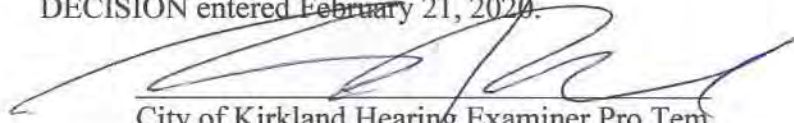
a. Paint the curb east of the project driveway red to restrict on-street parking east of the project driveway on 10th Avenue West.

b. All landscaping and structures within the sight triangles for both driveways must be no higher than three feet measured from the grade of the driveway located 14 feet back from the back of the sidewalk.

5. The Planning and Building Department shall review its traffic engineering sight line analysis against building permit plans, once submitted. As part of this review, the placement of street trees, vegetation height, and any need for parking restrictions along project frontage shall be considered. With respect to the project's 3rd Street W. driveway, the Planning and Building Department will consider whether a further restriction, such as a "right-in/right-out only traffic flow" is needed or appropriate, or whether the authority to impose such as condition should be reserved. *See* technical analysis in Exhibits K and L.

Unless timely appealed, this Decision is final.³²

DECISION entered February 21, 2020.



City of Kirkland Hearing Examiner Pro Tem
Susan Elizabeth Drummond

³² See KZC 150.80, which allows for appeal to the City Council, if a written appeal is properly made per code requirements within 14 days. The Staff Report (Exhibit A), at p. 12 of the packet, also notes these procedures.

Hearing Examiner Decision

Exhibit A, Staff Advisory Report and Attachments

<https://www.kirklandwa.gov/Assets/Planning/Planning+PDFs/Hearing+Examiner/1009+Market+Street+Variance+HE+Packet+01302020+--+VAR18-00070.pdf>

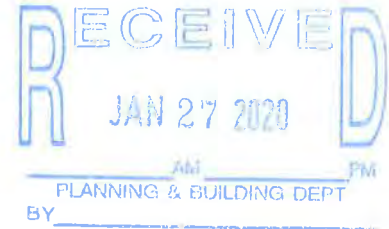
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www.aramburu-eustis.com

January 20, 2020

City of Kirkland Hearing Examiner
Planning & Building Department
123 5th Avenue
Kirkland WA 98033



Re: Market Street Dental Clinic Variance, File Number VAR18-00070
Hearing Scheduled for January 30, 2020

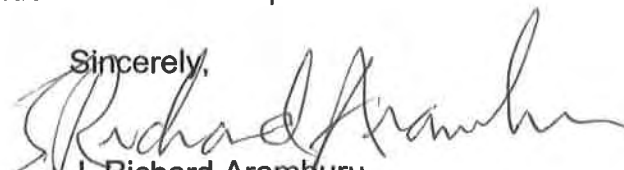
Dear Hearing Examiner:

This office has been contacted by Nicole and Kenneth MacKenzie, who reside at 236 7th Avenue West in Kirkland, regarding the above referenced variance request. The MacKenzies reside near the subject property and provided a detailed comment on this application on June 12, 2018, shortly after receiving the Notice of Application.

On January 16, 2020, the MacKenzies received a notice that the hearing on the variance request is scheduled for January 30, 2020; they have contacted me to represent them at this hearing. However, during the week of January 27, 2020 I will be relocating my office which will require a substantial effort, not allowing sufficient time for me to prepare for this hearing. Indeed, the short notice also severely limits preparation time for the MacKenzies, especially with an intervening holiday (Martin Luther King Day). Accordingly, my clients request the hearing on File No. VAR18-00070 be continued a brief time to allow adequate time to prepare for the hearing. Setting the hearing for February 20, 2010, a delay of only 21 days, would allow sufficient preparation time. This matter has been pending for more than a year and a half and allowing a brief continuance to allow an impacted community member to participate in the hearing does not appear to create substantial prejudice to the applicant.

Thank you in advance for your consideration of this request.

Sincerely,



J. Richard Aramburu

JRA:cc

cc: Nicole & Kenneth MacKenzie
Kurt Triplett, City Manager, ktriplett@kirklandwa.gov
Dawn Nelson, Planning Manager, dnelson@kirklandwa.gov
Susan Drummond, susan@susandrummond.com

Tony Leavitt

From: Mark Fosdal <mark.fosdal@gmail.com>
Sent: Thursday, January 30, 2020 1:56 PM
To: Tony Leavitt
Subject: Case Number VAR18-00070

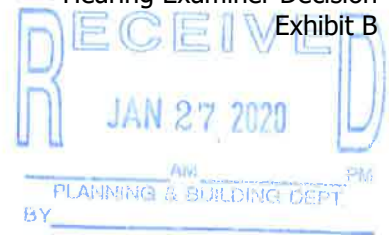
Tony,

In regards to the notice of hearing on Jan 30th to Case Number VAR18-00070, I would like to verbalize my concerns about this project. After I recently moved to the residence of 1010 3rd St W in Kirkland, I was approach by a couple gentlemen that explained the project and recall signing a paper on Jan 3rd, 2017. After settling in and getting to know the area, I have reservations about the building project in the lot across my street regarding the new expansion of the building as well as the lack of parking this will provide for both its customers and the employees. The access cars on our streets (with the Dibble Engineering buliding recently finished) and the the street parking has was not a factored in when I had the initial discussion on Jan 3rd. I would ask this project not move forward with the present plans in place.

I will be away tonight on a business trip so I cannot attend the meeting but can certainly stop by for a more formal discussion if needed. Thank you again for your time and effort with this project.

Regards,

Mark Fosdal



January 21, 2020

Kirkland Hearing Examiner
123 5th Avenue
Kirkland, WA 98033

Subject: Case Number VAR18-00070, 1009 Market Street

We live at 526 10th Avenue West, Kirkland. My wife and I access Market Street at the intersection of 10th Avenue West and Market Street daily. With extremely heavy traffic starting as early as 6 AM and extending well past 6 PM, entering Market Street requires patience, luck and drivers willing to "let you in to traffic".

In 2019, The City of Kirkland allowed the property at 1009 Market Street to be used as a construction staging area for an extended period. During this time, construction vehicles parked on Market Street, blocking views of Market traffic, looking to the north. The City also allowed the contractor to install eight-foot-high construction fencing at the edges of the property, further blocking vision of on-coming vehicles. Even in ideal circumstances, drivers have an extremely short period to identify traffic flow and speeds and then merge in to the traffic from 10th Avenue West on to Market Street. This gave us a clear idea of what it would be like to have a zero set-back on Market Street.

We are adamantly against reducing the set back on Market Street from 20 feet to 0 feet. By allowing this, the City of Kirkland will be creating a driving hazard and a dangerous condition to all drivers exiting 10th Avenue West on to Market. The City is under no obligation to maximize the property owner/builders building footprint to allow for greater square footage.

As the Kirkland Hearing Examiner, we request that you require the original 20-foot set-back as per the original zoning.

Sincerely,

A handwritten signature in black ink that reads "Patrick & Shannon Harris". The signature is written in a cursive, flowing style.

Patrick and Shannon Harris

526 10th Avenue West

Kirkland, WA 98033

PGHarris58@aol.com

425-822-2478

Tony Leavitt

From: Liz Hunt <liz@starwhite.net>
Sent: Wednesday, January 29, 2020 12:30 PM
To: Adam Weinstein; Tony Leavitt
Cc: Liz Hunt
Subject: VAR18-00070 - MARKET STREET DENTAL CLINIC VARIANCE

To: Tony Leavitt, Senior Planner
To: Adam Weinstein, Director of Planning and Building
To: Kirkland Hearing Examiner

<NOTE: PLEASE FORWARD TO THE HEARING EXAMINER; I AM UNABLE TO FIND AN EMAIL ADDRESS FOR THAT ROLE.>

I have a question concerning the variance for the property at 1009 Market St:

Will the owner of the property compensate the City (and the neighborhood?) for the increase in value to the property if the requested setback reductions are allowed?

Thank you.

Liz Hunt
Resident
1704 8th St W
Kirkland, WA 98033

Tony Leavitt

From: Mark Nickerson <markni@outlook.com>
Sent: Wednesday, January 29, 2020 3:58 PM
To: Tony Leavitt
Subject: RE: January 30, 2020 Hearing Examiner Meeting

Mr. Leavitt:

Including parking studies, neighborhood comments, etc. from 2002 is not relevant, that's 17-18 years ago. The Hearing Examiner has to wade through 165 pages before she gets current commentary from the neighborhood. Your information packet is definitely misleading.

Please forward this e-mail to the Hearing Examiner.

Thank you,
Mark

From: [Tony Leavitt](#)
Sent: Wednesday, January 29, 2020 3:46 PM
To: [Mark Nickerson](#)
Subject: RE: January 30, 2020 Hearing Examiner Meeting

Mark,
The staff report includes information from the 2002 for reference (pages 37-165). The project did not require a traffic review since the project is exempt from SEPA.

The Hearing Examiner will base her decision on the decisional criteria after reviewing the packet and comments presented at tomorrow's meeting.

Tony Leavitt, Senior Planner

City of Kirkland Planning and Building Department
123 5th Avenue; Kirkland, WA 98033
Phone: 425.587.3253
Fax: 425.587.3232

tlevitt@kirklandwa.gov

Work Hours:

M-F: 7am to 3:30pm

“Kirkland Maps” makes property information searches fast and easy.

GIS mapping system now available to public at <http://maps.kirklandwa.gov>

From: Mark Nickerson <markni@outlook.com>
Sent: Friday, January 24, 2020 8:52 AM
To: Tony Leavitt <TLeavitt@kirklandwa.gov>
Cc: Shailene Dahl <SDahl@kirklandwa.gov>
Subject: FW: January 30, 2020 Hearing Examiner Meeting

Thank you. I think my e-mail of 2/7/2019 proposes a good compromise. I'm concerned that no one is watching out for the best interests of the entire neighborhood.

Thank you,
Mark

From: [Tony Leavitt](#)
Sent: Friday, January 24, 2020 7:29 AM
To: [Mark Nickerson](#)
Cc: [Shailene Dahl](#)
Subject: RE: January 30, 2020 Hearing Examiner Meeting

Mr. Nickerson,
Your initial comments are included (see Pages 169 thru 171 of the packet). I did just find an email that you sent on 2/7/19 that I will enter into the record and forward to the Hearing Examiner for her review before the hearing. You can also submit additional comments up until the close of the hearing or testify at the hearing. Thanks.

Tony Leavitt, Senior Planner

City of Kirkland Planning and Building Department
123 5th Avenue; Kirkland, WA 98033
Phone: 425.587.3253
Fax: 425.587.3232

tleavitt@kirklandwa.gov

Work Hours:

M-F: 7am to 3:30pm

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From: Mark Nickerson <markni@outlook.com>
Sent: Thursday, January 23, 2020 6:01 PM
To: Shailene Dahl <SDahl@kirklandwa.gov>
Cc: Tony Leavitt <TLeavitt@kirklandwa.gov>
Subject: Re: January 30, 2020 Hearing Examiner Meeting

I submitted several e-mails objecting to the variances. I don't see that my objections have been registered and noted in your report. I think you need to amend your report and postpone the hearing making sure your report is inclusive.

Thank you,
Mark E. Nickerson
307 10th Ave West, Kirkland

From: Shailene Dahl <SDahl@kirklandwa.gov>
Sent: Thursday, January 23, 2020 2:21:17 PM
Cc: Tony Leavitt <TLeavitt@kirklandwa.gov>
Subject: January 30, 2020 Hearing Examiner Meeting

Attached for your information are the agenda and meeting packet for the January 30, 2020 Hearing Examiner Meeting regarding the 1009 Market Street Variance, File Number VAR18-00070.

If you have any questions, please contact **Senior Planner, Tony Leavitt at 425-587-3253 or tleavitt@kirklandwa.gov**.

Thank you,

Shailene Dahl 
Office Specialist
Planning & Building Department
City of Kirkland
425-587-3238

NOTICE: This e-mail account is part of the public domain. Any correspondence and attachments, including personal information, sent to and from the City of Kirkland are subject to the Washington State Public Records Act, Chapter 42.56 RCW, and may be subject to disclosure to a third party requestor, regardless of any claim of confidentiality or privilege asserted by an external party.

Tony Leavitt

From: Mark Nickerson <markni@outlook.com>
Sent: Thursday, February 07, 2019 8:12 AM
To: Tony Leavitt
Subject: RE: Market Street Variance

Dear Mr. Leavitt:

I didn't receive the report that you mentioned in your e-mail of January 25th and I unfortunately, I won't be able to attend tonight's hearing. Please accept this e-mail has my position to be read into the record at tonight's hearing.

Adverse impact on values of surrounding residences: I purchased my home relying on the zoning restrictions and setback requirements of the City of Kirkland. In turn, the purchaser of 1009 Market Street was fully aware of those restrictions and requirements at the time of his purchase. For the City to now grant substantial variances to setback requirements such that a massive office building could be built is wrong. The City would be prioritizing the value of the 1009 Market Street over the surrounding residences. The City needs to act in the interest of the entire neighborhood.

I understand that in September 2002, the City granted limited setback variances to the then owner of the property such that a 4,200 SQF office building could be built. I think that is a good compromise and the City should not grant the current application for variances on all three sides such that a 5,400 SQF office building could be built.

Increased traffic: There is substantial traffic and speeding at the intersection of 3rd West Street and 10th Avenue West. I have called this issue to attention of the City a number of times. Granting the application for a large building means more traffic. Once again, this is not in the best interest of the entire community.

Illegal uses of the property: The current owner of the property has been cited for zoning infractions on his property. Most recently, in October 2018, he used his property as a waste transfer station. (The Code Enforcement group of the City can provide you with the details.) For me, this sets the tone for any representation of the owner or his architect that he concerned about the neighborhood. He is merely trying to maximize the value of this property. The City acting for the entire neighborhood should just tell him "No" to his application.

Please let me know if you have any questions.

Thank you,
Mark E. Nickerson
307 10th Avenue West

Market Street Dental Clinic Variance
Permit No VAR18-0070
1009 Market Street

I want to express my opposition to the proposed setback variances for the above property. I live on 10th AVE West and am concerned that the proposed setbacks will reduce sightlines critical for cars entering safely onto Market St. Additionally, I am concerned that the proposed parking for a building that size would not be adequate and the overflow cars would park on our street, which is already congested.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Roberts". The signature is written in black ink and is positioned above the typed name and contact information.

Sandy Roberts
315 10th AVE W
Kirkland WA 98033
Roberts.family@frontier.com

Market Street Dental Clinic Variance

Public Hearing
January 30, 2020
File No. VAR18-00070



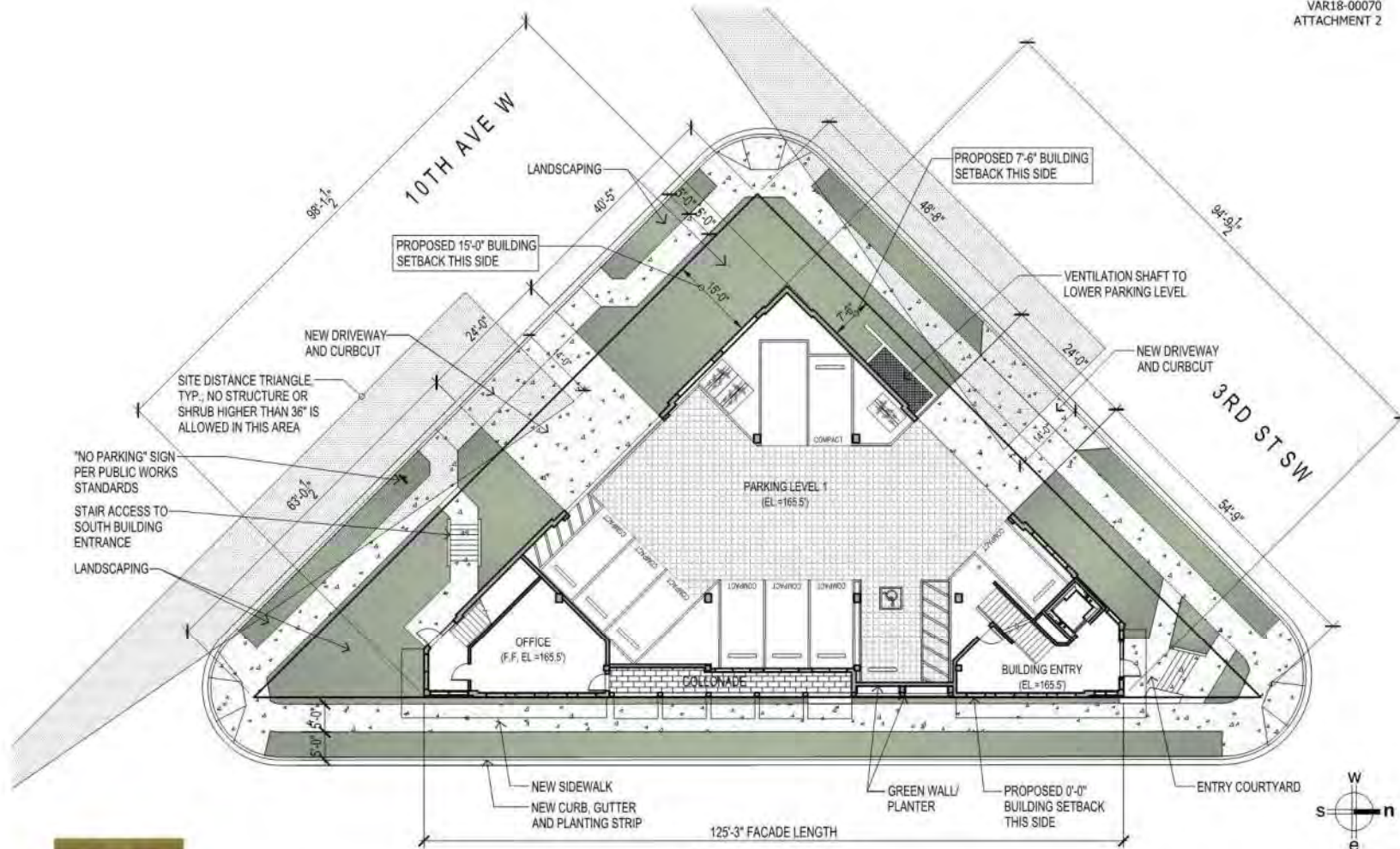
Proposal

- Variance to allow the reduction of the three required front yard setbacks.
 - 3rd Street West setback reduced from 20 feet to 7.5 feet
 - 10th Avenue West setback reduced from 20 feet to 15 feet
 - Market Street setback reduced from 20 feet to 0 feet
- Proposed office structure would be 5,000 square feet plus two levels of parking below.
- Parking garage entrances from 3rd and 10th needed to access each parking level.
- Landscape Buffer Reduction along 3rd Street West



Proposed Site Plan

VAR18-00070
ATTACHMENT 2



MERRICK LENTZ ARCHITECT
ARCHITECTURE PLANNING
12815 NE 126th Place · Kirkland, WA · 98034

Project Name:
Market Street Dental Clinic Variance - Rev 2.1

Description:
Schematic Site Plan

Date: 12/2/19
Scale: 1/16" = 1'-0"

Drawing Number:
VAR1.1



History of Site

- Variance Approved in 2003
 - Reduced 3rd Street West setback to 5 feet
 - Reduced 10th Avenue West setback to 10 feet
 - No reduction of Market Street Setback but had a below grade parking garage extending to the property line
- Lapse of Approval Expired before Construction
- Included as Attachment 4 for reference



Public Comments

- Driveway and Intersection Sight Distance Issues



Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance



Public Comments

- Traffic and Parking Impacts on Neighboring Streets
 - The City’s Transportation Engineer Review concluded that the additional trips created by the project would not significantly impact the traffic flow on neighboring streets.
 - The project will need to provide onsite parking as required by the Zoning Code.
- Building Impacts on Neighboring Residential Uses
 - Siting of the building closer to Market Street, required landscape buffers, and adjacent rights-of-way help to reduce impacts on neighboring residential uses.
 - Design Regulations, reviewed with ADR, will help to reduce bulk and scale of the building



Environmental (SEPA) and Traffic Concurrency Reviews

- KMC Section 24.02.065 exempts the following projects from SEPA review:
 - The construction of an office building with twelve thousand or fewer square feet of gross floor area, and with associated parking facilities designed for forty or fewer automobiles.
- KMC Section 25.08.010 exempts any project that Section 24.02.065 exempts from Traffic Concurrency.
- As a result of these exemptions, a traffic report was not required for the project.



Zoning Requirements

- Building Height
 - Project limited to 25 feet in height
- Parking
 - 1 stall per 200 square feet for Office Use or 25 stalls
 - Per KZC Section 105.34, 1 stall reduction for Onsite Covered and Secured Bicycle Storage
 - 24 stalls being provided onsite
 - Staff will confirm compliance with Building Permit



Zoning Requirements

- Driveway Modification
 - Needed to approve two driveways to serve the site and for distance from intersection (less than 75 feet)
 - Multiple driveways needed to accommodate two parking levels
 - Administrative Approval by Public Works Department
- Administrative Design Review
 - Review will be done prior to or as part of the Building Permit Review
 - Final Design of the Building could change as a result of this review



Variance Request

- 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.
- Zoning Code section 120.20 establishes three decisional criteria with which a variance request must comply in order to be granted.
- Applicant addresses the criteria in Attachment 6 and 9 of the Staff Report



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.
- Potential Impacts
 - Loss of perceived openness of the street corridors
 - Impacts to Market Street pedestrian experience
 - Traffic impacts on neighboring streets



Variance Criterion 1

- Staff Conclusions:
 - Reduction of the 3rd Street West setback is offset by adjacent right-of-way. Additionally neighbors along this street have agreed to a landscape buffer modification.
 - Reduction of 10th Avenue West setback is offset by 15 foot landscape buffer and right-of-way separation.
 - Reduction of the Market Street setback results in a “pedestrian friendly” building front as required by design guidelines for the neighborhood.
 - Pedestrian friendly building fronts include transparent or decorative windows, public entrances, murals, display windows, seating, and treatment of blank walls.



Variance Criterion 1

- Staff Conclusions:
 - The City’s Transportation Engineer Review concluded that the additional trips created by the project would not significantly impact the traffic flow on neighboring streets.
 - The proposed building, with a footprint of approximately 5000 sf and limited in height to under 25 feet, is consistent in scale with other office buildings in the immediate area.
 - While a majority of the buildings in the area have the standard street setback, on the west side of Market Street zero setback buildings are located one long block to the south.





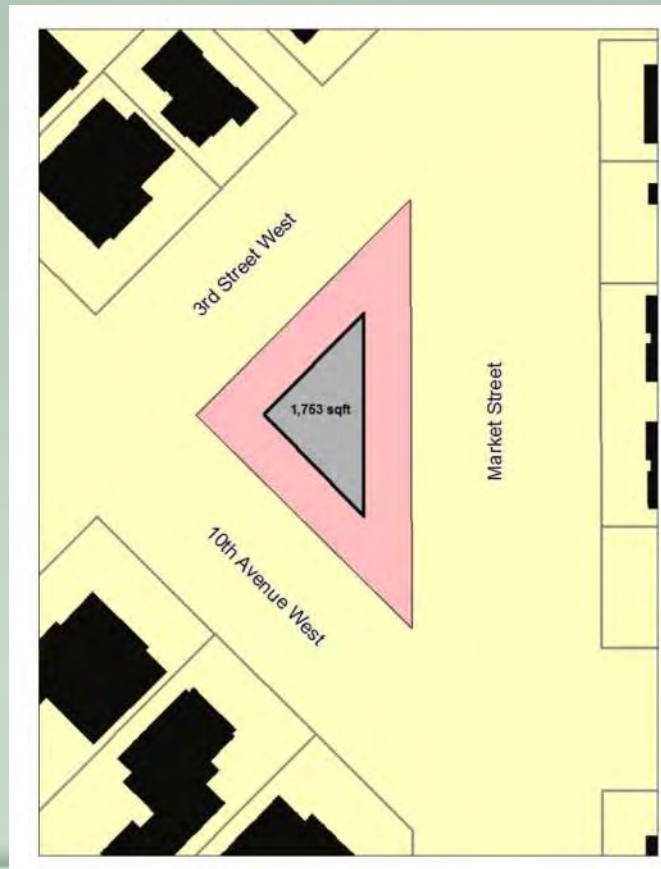
Variance Criterion 2

- 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.
- Staff Conclusions:
 - Required setbacks result in the subject property having a total area of approximately 1,753 square feet or 21.6% of the total lot area, referred to as “buildable area”, that is not located within a required setback yard.



Variance Criterion 2

- Staff Conclusions:
 - A variance is necessary due to special circumstances due to location, size, and shape of the subject property.



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.
- Staff Conclusions:
 - The subject property is highly unique for the City of Kirkland. It is one of three triangular shaped parcels with rights-of-way on all three sides that are within the City of Kirkland.



Variance Criterion 3

- Staff Conclusions:
 - The proposed office building would be similar in size to two neighboring office projects at 1029 Market Street and 312 11th Avenue West

| Project | Gross Floor Area | Property Size | GSF/ Prop. Size % |
|------------------------|------------------|---------------|-------------------|
| 1009 Market Office | 5,000 | 8,120 | 61.58 |
| 1029 Market Office | 11,931 | 15,001 | 79.54 |
| 312 11th Avenue Office | 5,687 | 8,880 | 64.04 |



Process IIA Permit Criteria

- Zoning Code section 150.65.3 states that a Process IIA application may be approved if:
 - It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
 - It is consistent with the public health, safety, and welfare.



Process IIA Permit Criteria

- Staff Conclusions:
 - Consistent with Development Regulations and Comprehensive Plan
 - The proposed development will create infill office development while meeting the goals of the Comprehensive Plan for the Market Neighborhood.
 - The project will not significantly impact the traffic flow on neighboring streets.



Staff Recommendation

- Approval of Setback Variance with Conditions
- Conditions Outlined in Staff Report
 - Compliance with Zoning Permit Plans
 - Recording of Landscape Buffer Agreement
 - Parking Restriction along 10th Avenue West
 - Landscape restriction in sight distance triangles



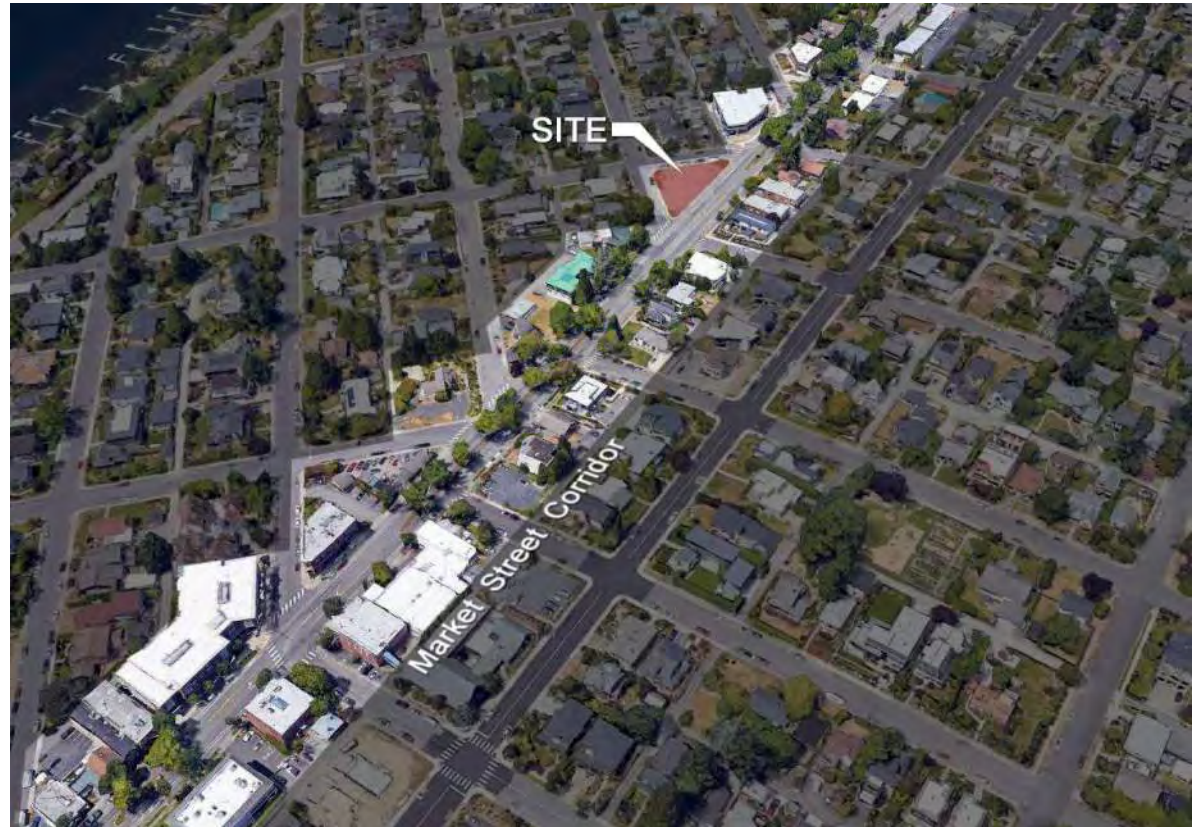
Market Street Clinic

Address:
1009 Market Street

Zoning:
MSC1 (Market Street Corridor)

Site Area:
8120 sf (0.186 ac)

Proposed Use:
A new 5000 sf dental clinic with 24 parking spaces on two levels, on a vacant lot.





Site Context

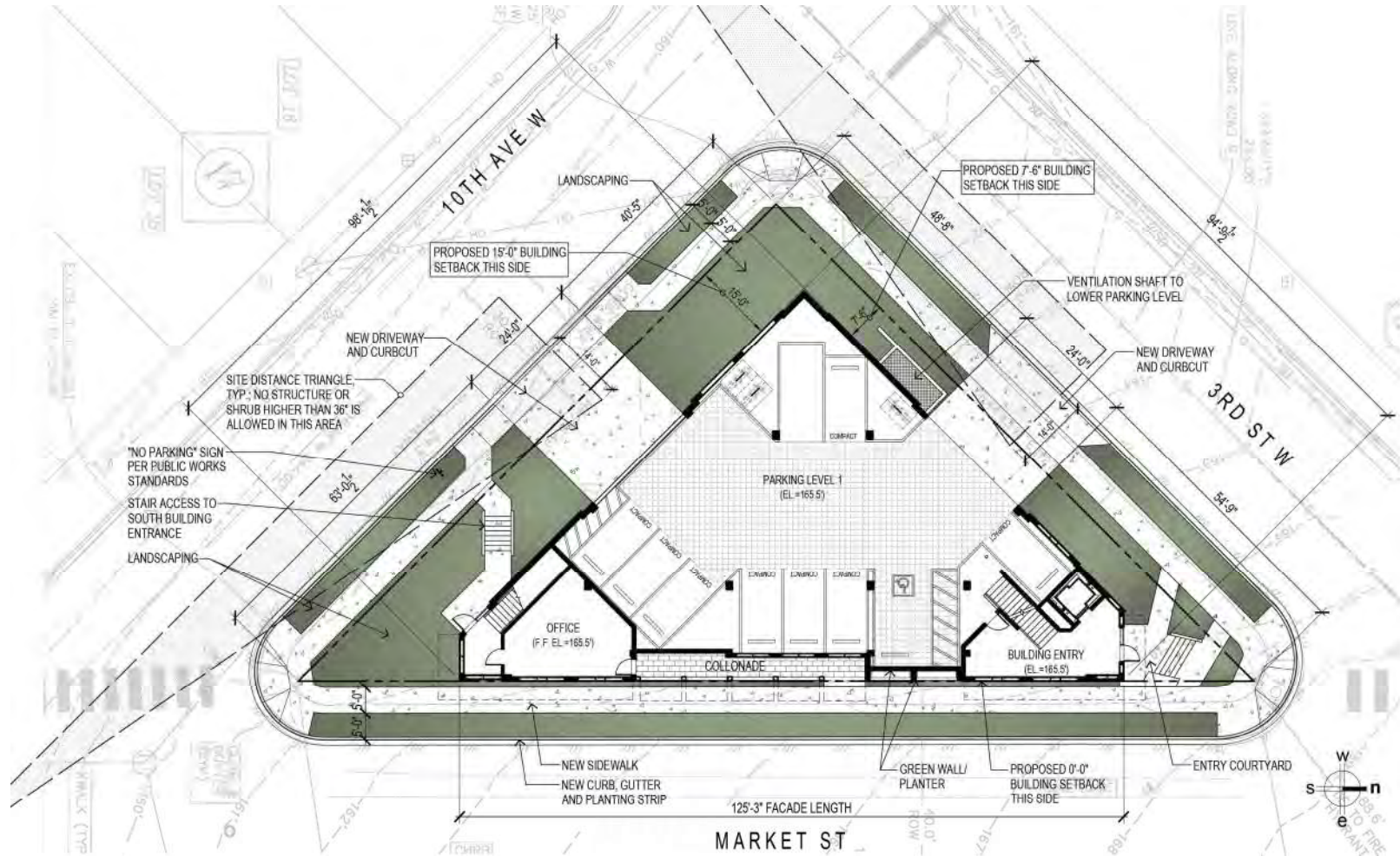
Market Street Clinic



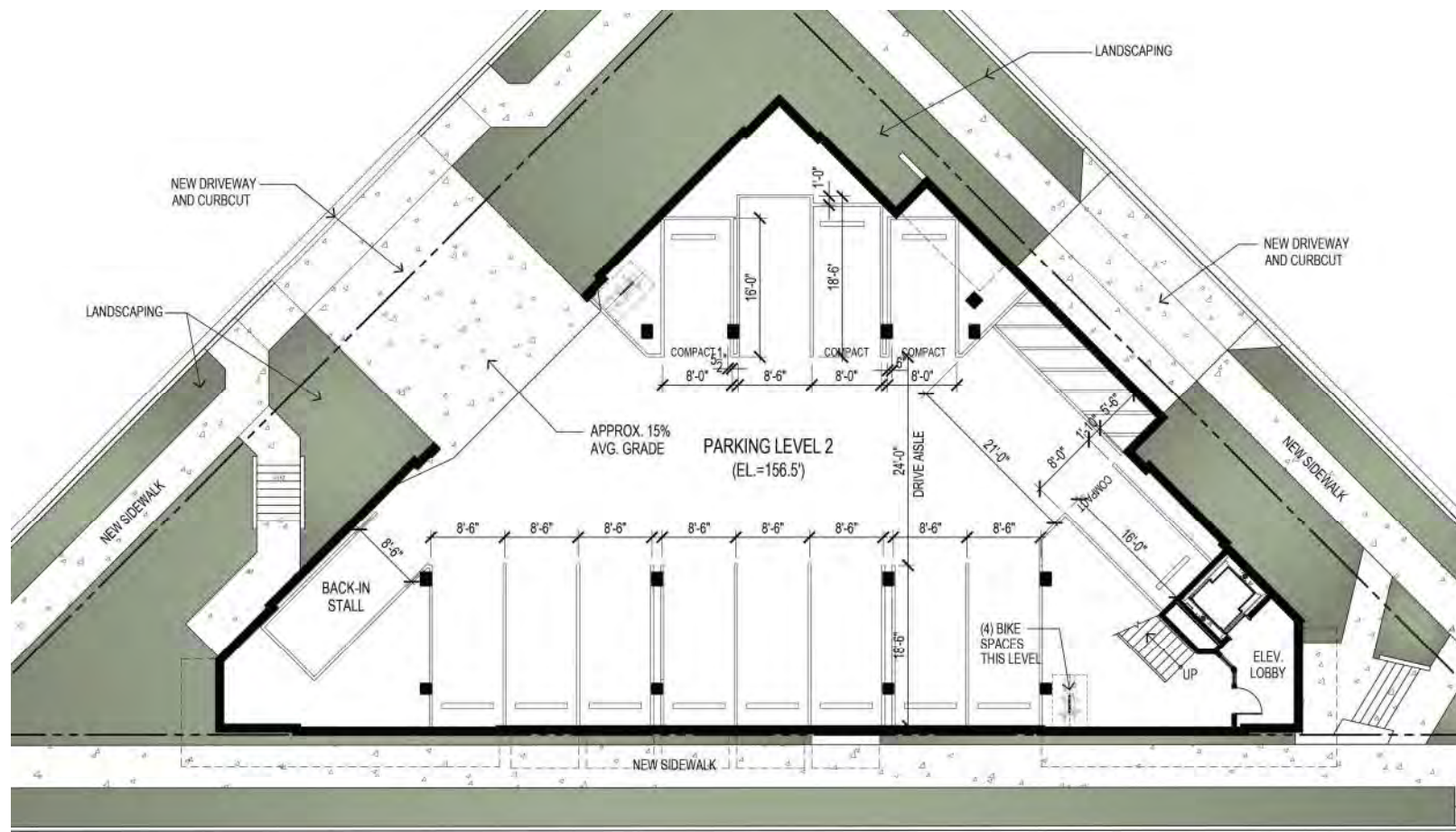
Site Setbacks



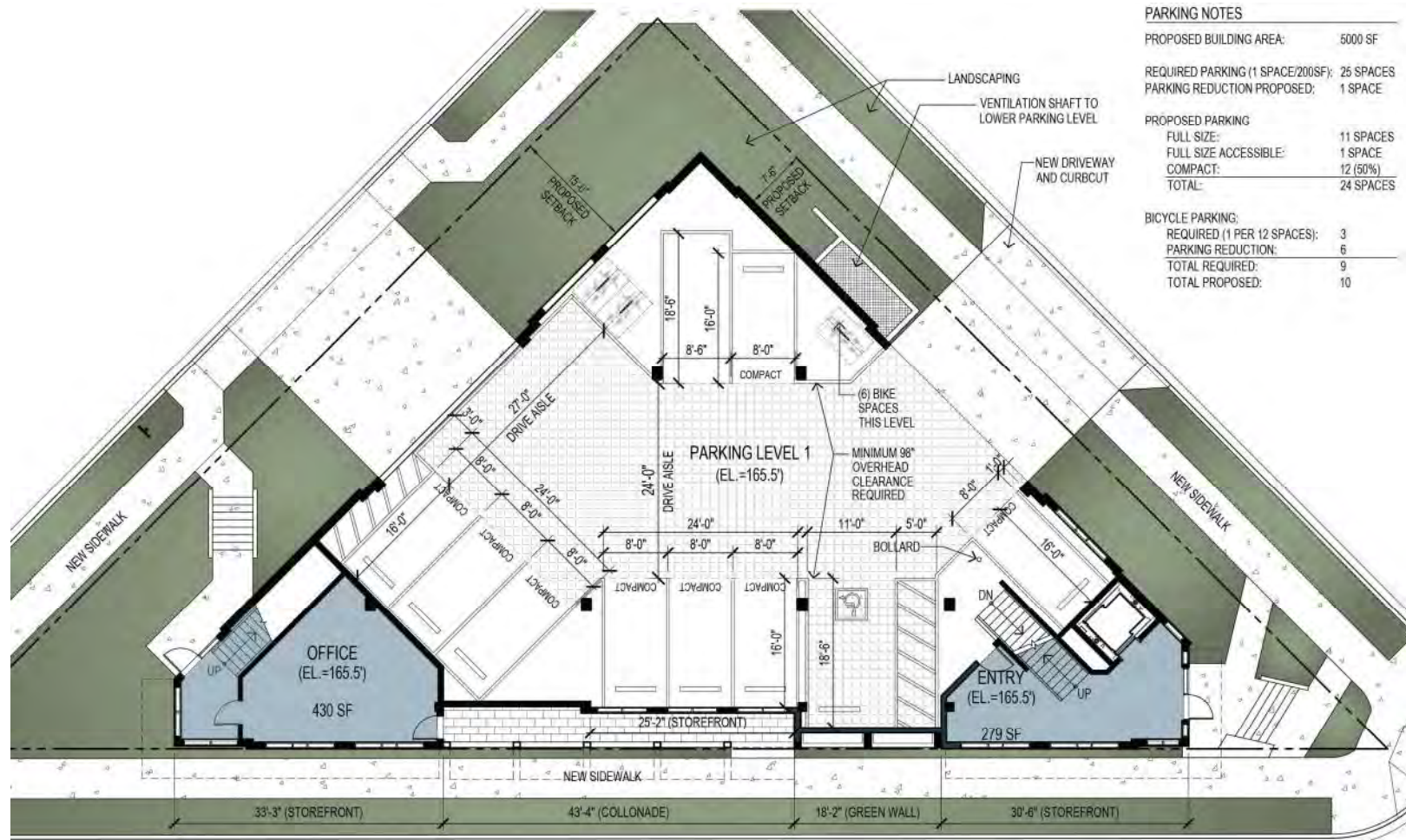
Proposed Setbacks



Proposed Site Plan



Proposed Lower Parking Plan



PARKING NOTES

| | |
|-----------------------------------|-----------|
| PROPOSED BUILDING AREA: | 5000 SF |
| REQUIRED PARKING (1 SPACE/200SF): | 25 SPACES |
| PARKING REDUCTION PROPOSED: | 1 SPACE |
| PROPOSED PARKING | |
| FULL SIZE: | 11 SPACES |
| FULL SIZE ACCESSIBLE: | 1 SPACE |
| COMPACT: | 12 (50%) |
| TOTAL: | 24 SPACES |
| BICYCLE PARKING: | |
| REQUIRED (1 PER 12 SPACES): | 3 |
| PARKING REDUCTION: | 6 |
| TOTAL REQUIRED: | 9 |
| TOTAL PROPOSED: | 10 |

Proposed Main Level Plan



Proposed Upper Level Plan



Market Street Elevation



Perspective - Market Street Looking South

Proposed Elevations

Market Street Clinic



Third Street Elevation



Tenth Avenue Elevation

Proposed Elevations

Market Street Clinic



Proposed Building Section

Market Street Clinic



Market
Street

3rd
Street
W

Aerial View



Market Street

View from Market Street

Building Exterior Study

Market Street Clinic



Aerial View from West



View from South

Building Exterior Study

Market Street Clinic



Market Street Frontage Plan



Market Street Frontage Elevation

Proposed Market Street Frontage

Market Street Clinic



Site Access and Circulation



Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance

Market Street Sight Distance

Market Street Clinic

Variance Criteria

Per Kirkland Zoning Code Section 120.20 the City may grant a variance only if it finds that:

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; and
2. The variance is necessary because of special circumstances regarding the size, shape, topography, or location of the subject property, or the location of a preexisting improvement on the subject property that conformed to the Zoning Code in effect when the improvement was constructed; and
3. The variance will not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this code allows to other property in the same area and zone as the subject property.

Barbara Loomis
304 8th Ave. W.
Kirkland, WA 98033

January 30, 2020

City of Kirkland
Tony Leavitt, Senior Planner
Planning and Building Department
Kirkland, WA 98033

Re: Market Street Dental Clinic Variance
Case Number: VAR18-00070

Dear Mr. Leavitt,

I strongly object to the application for three variances for the property at 1009 Market Street. To put an oversized office building on that small triangular lot will forever change the character of our residential neighborhood and is also a public safety issue because of the sightlines that will be blocked.

The applied for variances are inconsistent with the rest of the residential neighborhood. One of the Kirkland's principles is to provide view corridors of Lake Washington and Seattle. A 20 foot setback on 3rd Street West maintains that corridor and is consistent with the neighborhood setbacks.

The 20 foot setback on Market Street is consistent with the rest of Market Street except where the historic buildings are. Those buildings were built in 1891 (except one) and were supposed to be the center of the town with no setbacks. And, not all the traffic we now have. A zero setback on Market Street is dangerous for pedestrians, bikers, and cars. If cars and trucks are parked on Market Street it's very hard to see the traffic coming down the hill – and, forget about making a left turn to go North on Market or to go straight across.

The Dibble building has already created a parking problem in our residential neighborhood. We don't need another building that would compound the issue further.

I went to Dr. Green's dental office about 1.5 years ago. I asked staff how many people worked there – twenty plus something. I also asked where they all parked – the reply was on the street. Even with 24 parking places in this proposed project there are clients who must park. Personally – I don't care to park in garages – especially underground

ones. (I've quit going to the QFC because of that!) That leaves parking in the street. A couple days ago I went to Green's current office building. I spoke with a gentleman who lives in the neighborhood. He says parking is a problem – that they always park on the street. I went there again today. There were some empty places in the garage and there were also about 13 cars parked on the street. It really isn't fair or right to take up all the street parking in a residential neighborhood because of an office use that shouldn't even be there.

The Comprehensive Plan states in Policy MS-6.3 that commercial development which is oriented toward Market Street will have less impact on the adjacent low-density residential areas in the surrounding neighborhoods. I contend that is not true in this case. Granted the front door is on Market Street but the two driveways to the parking garages are both on residential streets. And, the design, mass and scale of the building impacts the neighborhood and is inconsistent with a residential neighborhood.

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.

I Conclude that the proposal is NOT CONSISTENT with the Comprehensive Plan nor is it consistent with the public health, safety, and welfare because of the potential danger to pedestrians, bikers, and cars. It may meet the goal of the infill office development but it CERTAINLY DOES NOT meet the goals of the Comp Plan to minimize impacts on the adjacent residential Market neighborhood. Therefore this project should be denied for all setback variances.

Thank you,
Barbara Loomis

Market Street Dental Clinic Hearing

Nicole and Ken MacKenzie

January 30, 2020

We Support Development of this Parcel

- Within the thoughtfully-enacted and time-tested MSC-1 zoning code
- Consistent with the surrounding residential neighborhood

The Variance Would be Materially Detrimental to the City and Surrounding Area

The City's Spring 2019 Neighborhood Survey

- Conducted in preparation for an update cycle for three City Neighborhood Plans
 - Market
 - Market Street Corridor
 - Highlands
 - Norkirk
- Asked about locating buildings closer to the curb along Market Street
 - 72% (210 of 290 responses) objected to buildings closer to the Market Street sidewalk
 - 14% responded that it's OK to build closer to the sidewalk
 - 14% responded that they weren't concerned

The Variance Would be Materially Detrimental to the City and Surrounding Area

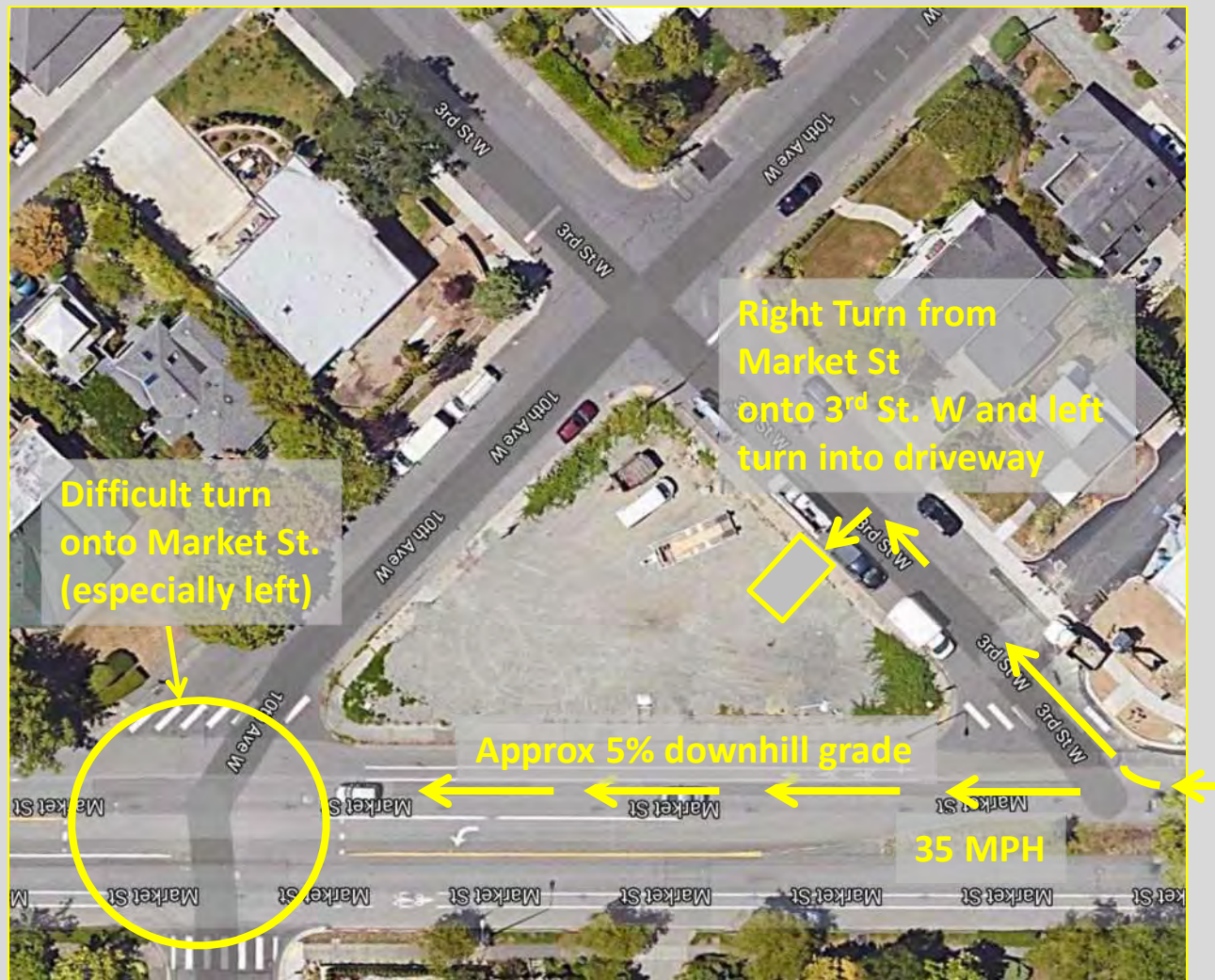
The Market Street Corridor Neighborhood Plan

- Update is now available in draft form and scheduled for Planning Commission review in April
- Developed jointly by citizens and City staff
- Favors mixed Commercial/Residential land use
- Clarifies that Market Street is not an urban area (except the 7th Ave historic district)
- Re-emphasizes neighborhood blend and building spacing that is consistent with surrounding low density residential neighborhoods
 - A zero front yard setback on Market Street is inappropriate
 - The Market Street Corridor vision is leafy, comfortable, spacious, and mixed use.

The Variance Would be Materially Detrimental to the City and Surrounding Area

1. The intersection of Market Street and 10th Ave S is made unsafe if the variance for a zero setback on Market Street is granted
2. The driveway onto 3rd Street W is unsafe

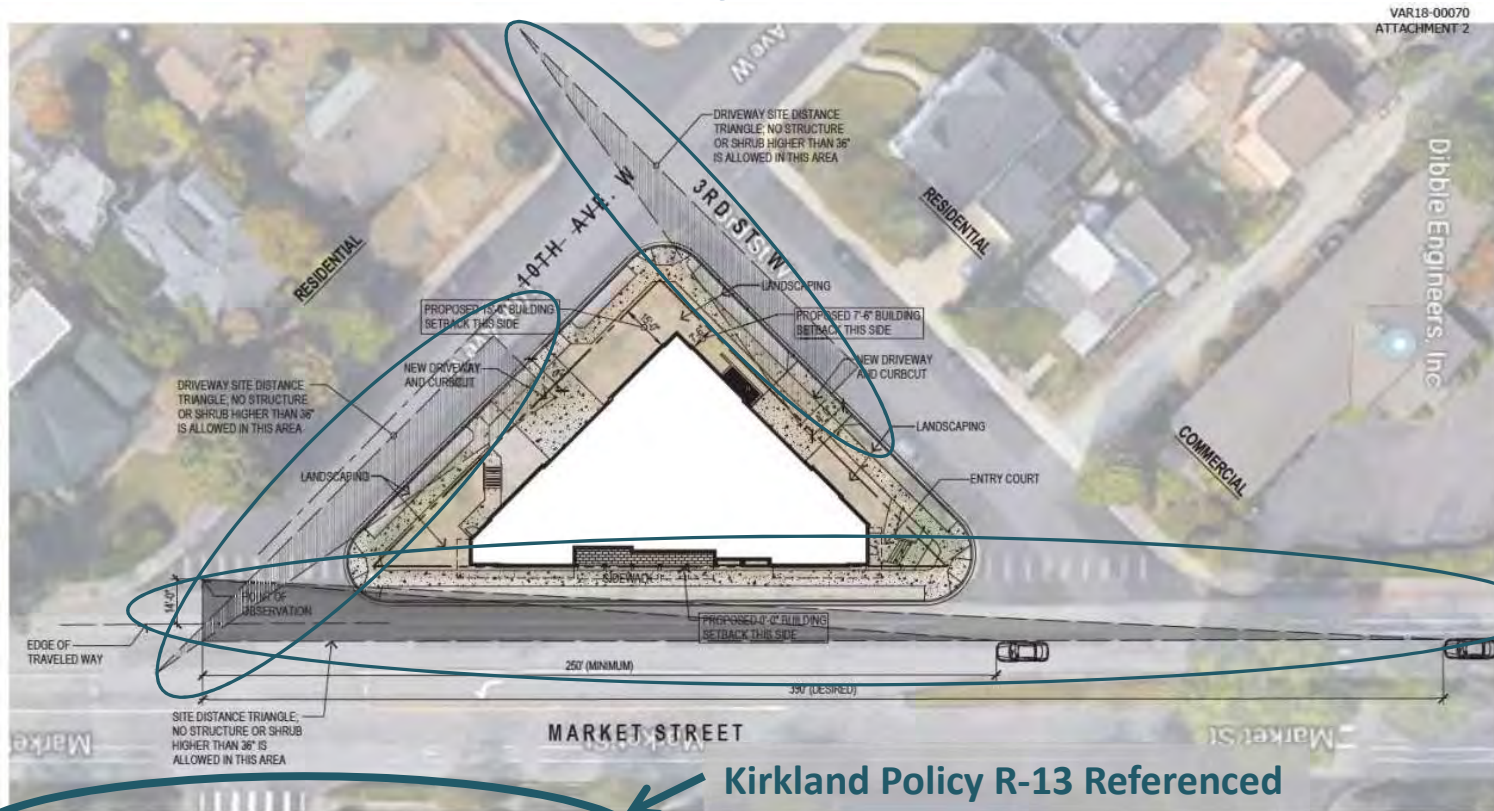
Intersection Challenges



Intersection Challenges

1. Steady Market Street rush hour traffic with rare gaps suitable for crossing or turning
2. Dense: 35 MPH slowing to 25 MPH a few blocks downhill
 - Compression of space between cars
 - Makes judging speed truly difficult
 - On dark or rainy days, just see headlights
 - Bike riders nearly invisible in front of the auto headlight parade
- Cited as a safety problem in multiple public comment letters

Applicant Submitted Sight Distance Triangles Purportedly Pursuant to City Policy R-13



Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance



Policy R-13 Defines “Edge of Major Road’s Traveled Way”

Type B – Stop Controlled Intersections

Type B intersections are those at which the minor street approaches are controlled by stop signs. Sight distance triangle to the left is the shaded area bounded by segments A-B, B-C2 and A-C2; whereas sight distance triangle to the right is the shaded area bounded by the A-B, B-C1 and A-C1 segments as shown in Figure 2 below. Point A, or decision point, is located in the center of the minor street approach lane, 14 ft. from the edge of the major road’s traveled way. **The traveled way is the portion of the road intended for the movement of vehicles and bicycles, exclusive of shoulders and turning lanes.** Point B is located on the center of the through lane on the major street (or in the center of the major street approach if more than one lane exists), a specific distance left and right from Points C1 and C2. The distance C1-B (same as C2 –B) is the required sight distance, which can be found in Table 2 on page 2.

Although it is not typical to do so, if a parking lane exists on the major street, it may be excluded from the traveled way in special cases. Usually these are cases where volumes and speeds are low and therefore the overall safety risk at the intersection is considered low.

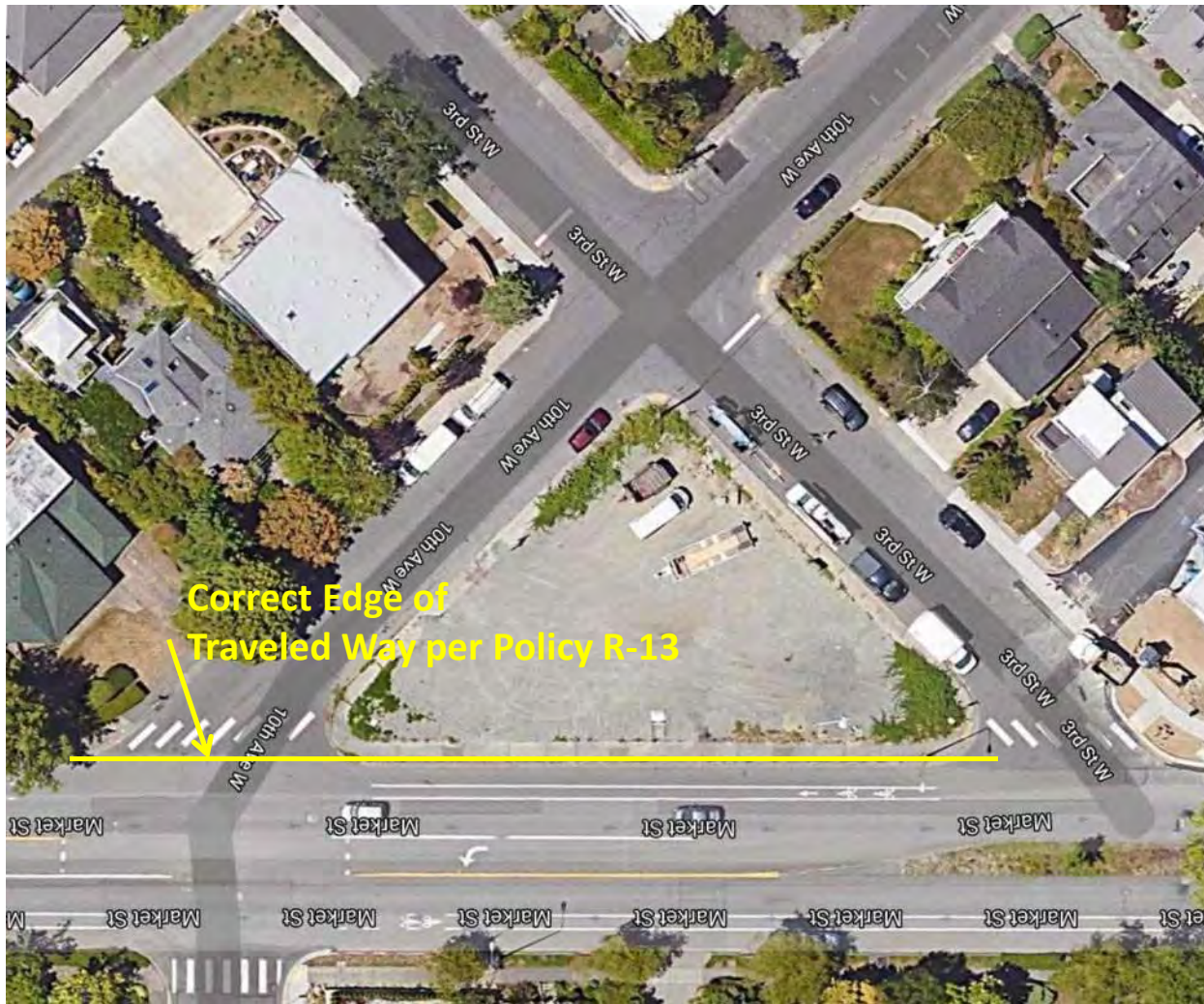
Incorrect "Edge of Travelled Way"



Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance



Correct “Edge of Travelled Way”



Policy R-13 Defines “Decision Point”

Type B – Stop Controlled Intersections

Type B intersections are those at which the minor street approaches are controlled by stop signs. Sight distance triangle to the left is the shaded area bounded by segments A-B, B-C2 and A-C2; whereas sight distance triangle to the right is the shaded area bounded by the A-B, B-C1 and A-C1 segments as shown in Figure 2 below. Point A, or **decision point**, is located in the center of the minor street approach lane, 14 ft. from the edge of the major road’s traveled way. **The traveled way is the portion of the road intended for the movement of vehicles and bicycles, exclusive of shoulders and turning lanes.** Point B is located on the center of the through lane on the major street (or in the center of the major street approach if more than one lane exists), a specific distance left and right from Points C1 and C2. The distance C1-B (same as C2 –B) is the required sight distance, which can be found in Table 2 on page 2.

Although it is not typical to do so, if a parking lane exists on the major street, it may be excluded from the traveled way in special cases. Usually these are cases where volumes and speeds are low and therefore the overall safety risk at the intersection is considered low.

Incorrect "Decision Point"

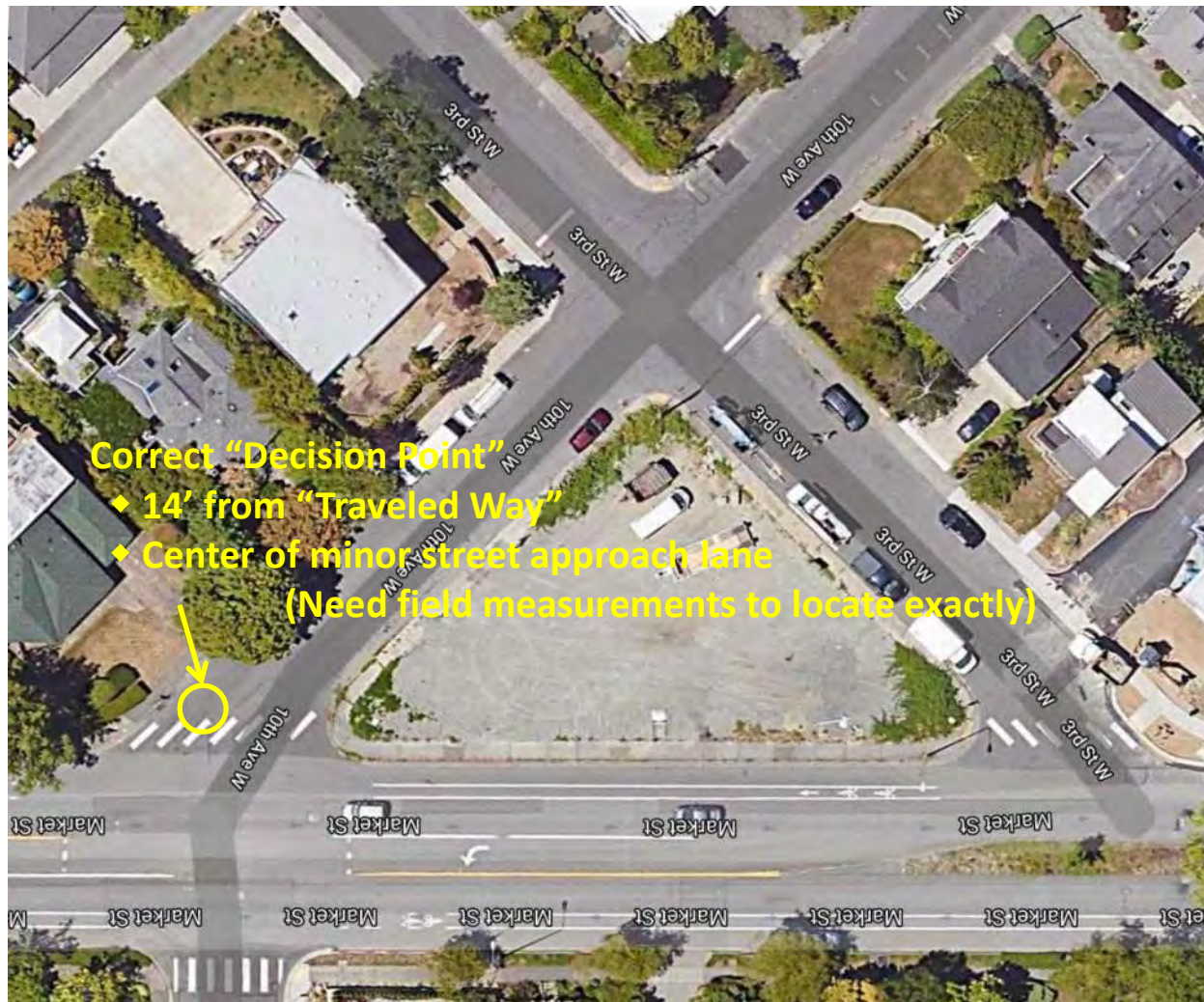


Incorrect
– does not conform to R-13

Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance



Correct "Decision Point"



Policy R-13 Defines “Sight Distance Triangle”

Critical Footnote

TABLE 2: Sight Distance Triangle Guidelines

| Type of Intersection or Driveways | Distance from Edge of Traveled Way (ft) | Major Street (Street Entered Upon) | | | |
|---|---|------------------------------------|-------------------|-------------------------------|------------------------|
| | | Average Daily Traffic | Speed Limit (MPH) | Sight Distance Value (ft) (a) | |
| | | | | Recommended (Desirable) | Minimum (Required) (d) |
| A – Uncontrolled (See Figure 1) | 115 (b) | <1000 | 25 | 115 | 115 |
| B - Stop Control on Minor Street (See Figure 2) | 14 | Any | 25 | 280 | 150 |
| | | | 30 | 335 | 200 |
| | | | 35 | 390 | 250 |
| C - Yield Sign On Minor Street | | | | | |
| C-1: Four-Legged Intersection (See Figure 3.a) | 130 (c) | <1000 | 25 | 295 | 295 |
| | | | 30 | 355 | 355 |
| | | | 35 | 415 | 415 |
| C-2: T- Intersection (See Figure 3.b) | 80 (c) | <1000 | 25 | 295 | 295 |
| | | | 30 | 355 | 355 |
| | | | 35 | 415 | 415 |
| D – Signalized Intersection (See Figure 2) | 14 | Any | 25 | 240 | 150 |
| | | | 30 | 290 | 200 |
| | | | 35 | 335 | 250 |
| E1 – E4 Driveways (See Figure 2) | | | | | |

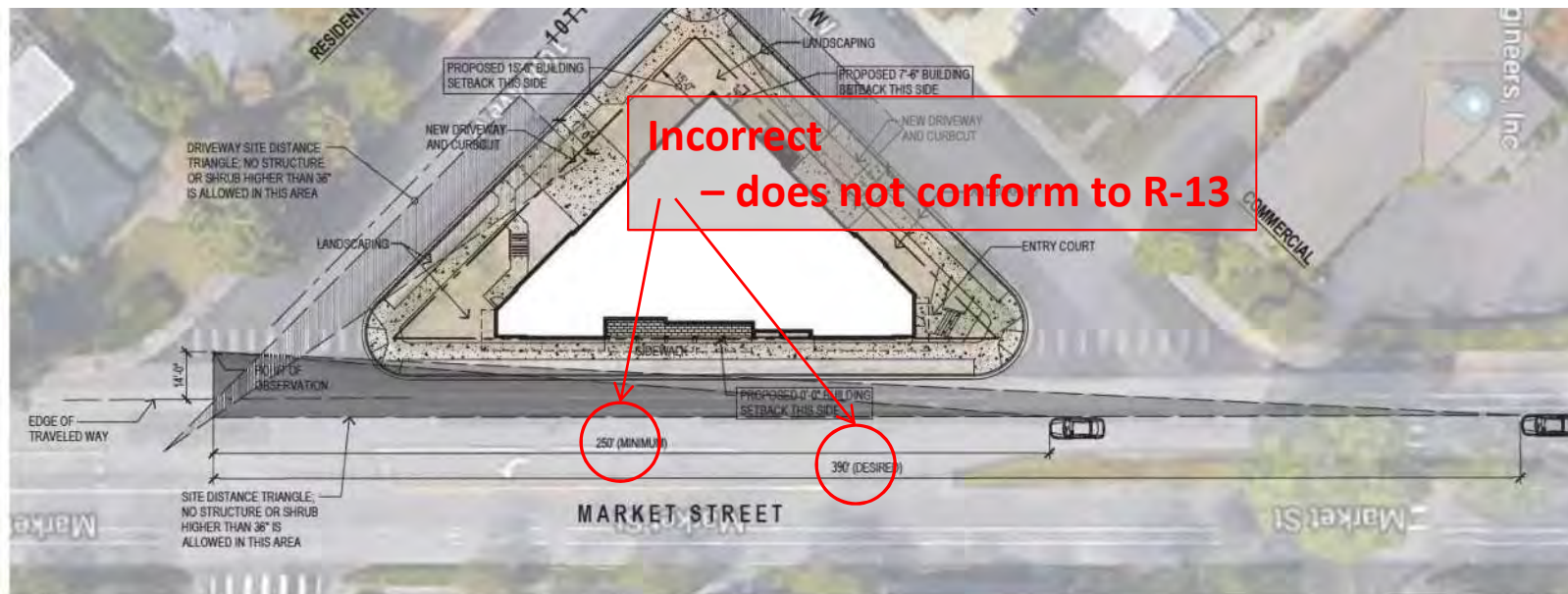
Policy R-13 Footnotes to Table 2

Footnotes:

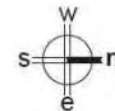
- (a) These values should be adjusted for grades with slopes of a magnitude of grade greater than 3%, number of lanes greater than two, for skewed intersections or for design vehicles other than passenger cars, using the intersection sight distance procedures in Chapter 9 of a Policy on Geometric Design, AASHTO, 4th Edition
- (b) Distance back from center of intersection.
- (c) Distance back from point C1 or C2 for types C-1 and C-2 intersections.
- (d) Minimum (Required) only permitted if Recommended (Desired) is not possible (see page 3 for further explanation).
- (e) Distance from back of the sidewalk.
- (f) Distance parallel to the sidewalk from the center of the driveway.

Incorrect “Sight Distance Triangle”

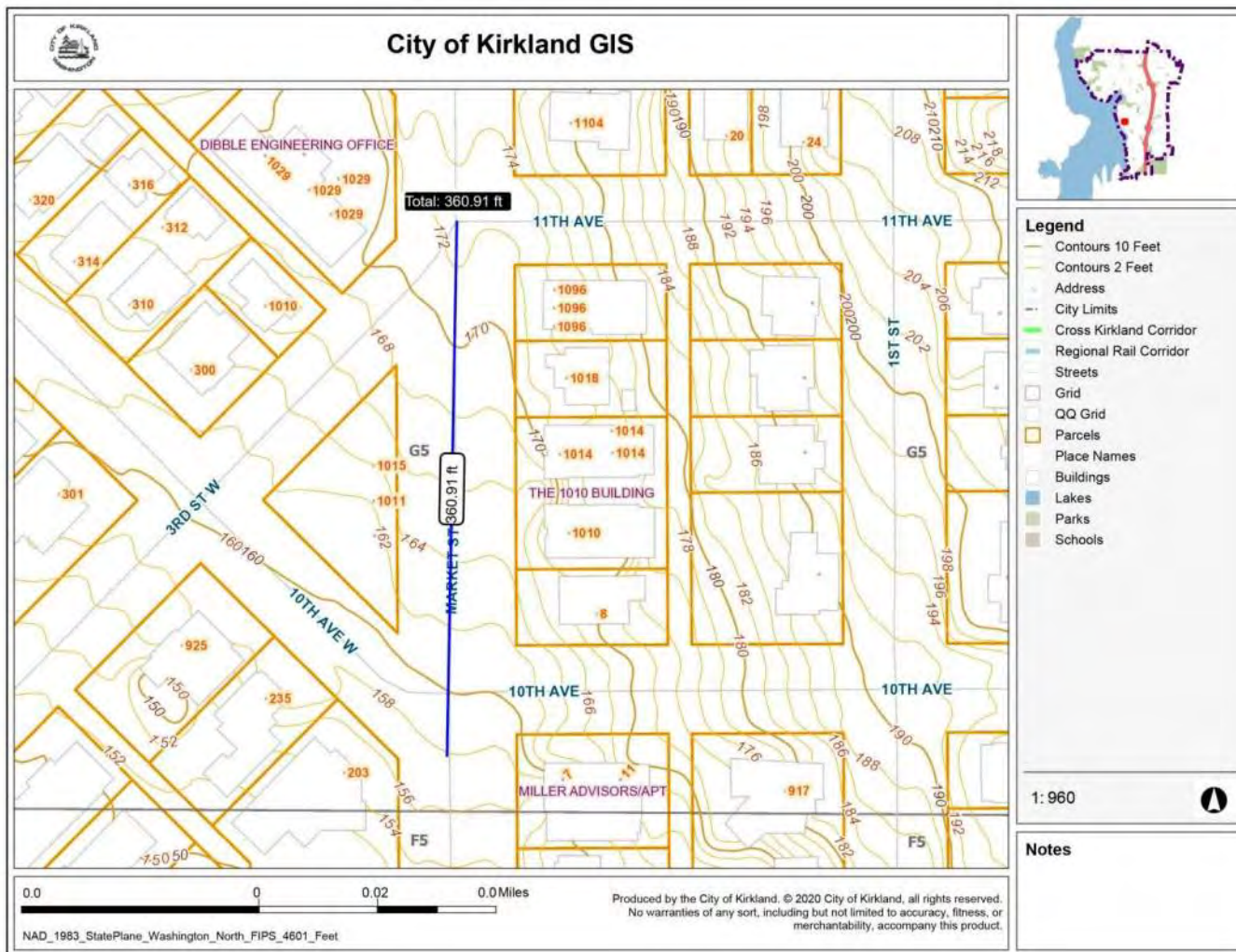
- Slope not shown for Market Street
- No Sight Distance allowance for slope



Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance



Neighborhood Topographical Map



Market Street Slope

- Market Street slope down to 10th Ave W appears to be about 5% - perhaps a 14' rise from 10th Ave W to 3rd St W
- The adjustment requirements of footnote (a) to Table 2 are triggered but not included in the analysis
- Believed to add at least 21 feet to required sight distance
- Presence of slope indicates need for additional study of building features that overhang above sidewalk and landscaping which may interfere with the sight triangle

Building Front Awning/Overhang



Project Name:
Market Street Dental Clinic Variance - Rev 2.1

Description:
Renderings

Date: 12/2/19
Scale: 3/32" = 1'-0"

Drawing Number:
VAR5.3

27

Overhang likely interferes with sight triangle due to

- Zero setback along Market St
- Slope of Market St

Proposed Landscaping/Barrier Interferes with Sight Triangle

VAR18-00070
ATTACHMENT 2



MERRICK LENTZ ARCHITECT
ARCHITECTURE - PLANNING
12815 NE 126th Place, Kirkland, WA - 98034

Project Name:
Market Street Dental Clinic Variance - Rev 2.1

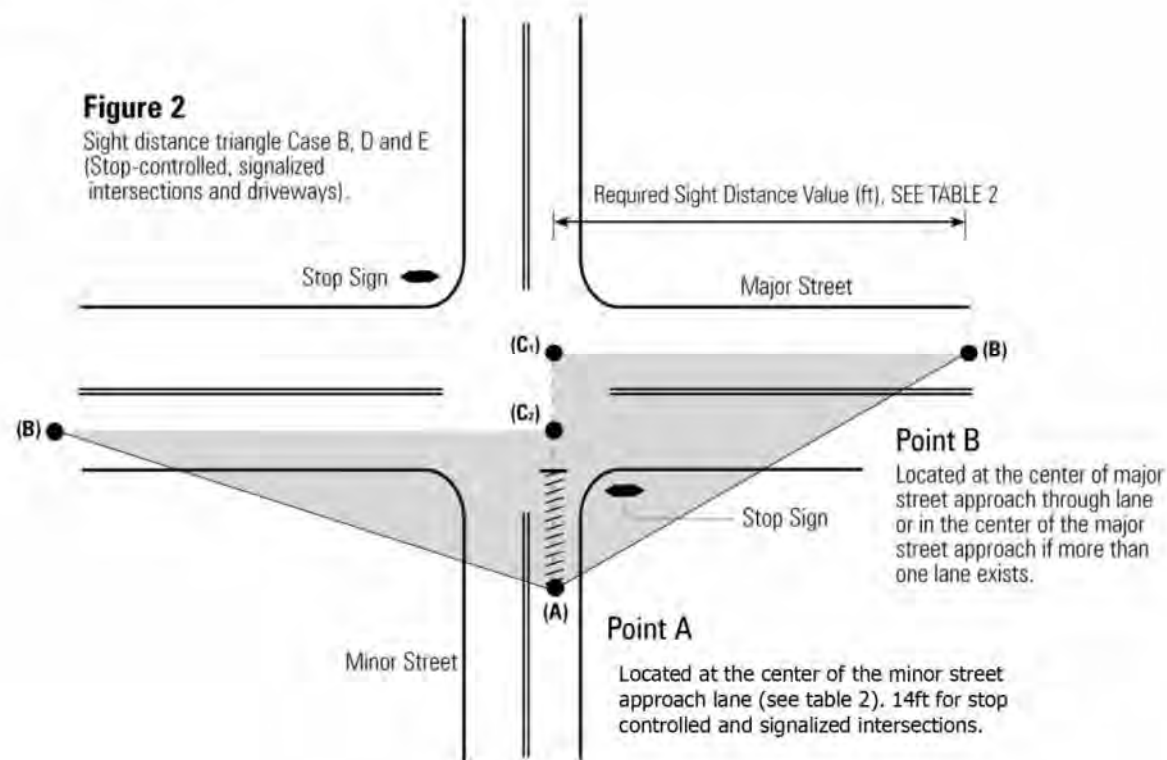
Description:
Renderings

Date:
12/2/19
Scale:
3/32" = 1'-0"

Drawing Number:
VAR5.1

Policy R-13 Drawing Shows a Right Angle Intersection

Pre-Approved Plans, Policy R-13
January 2020



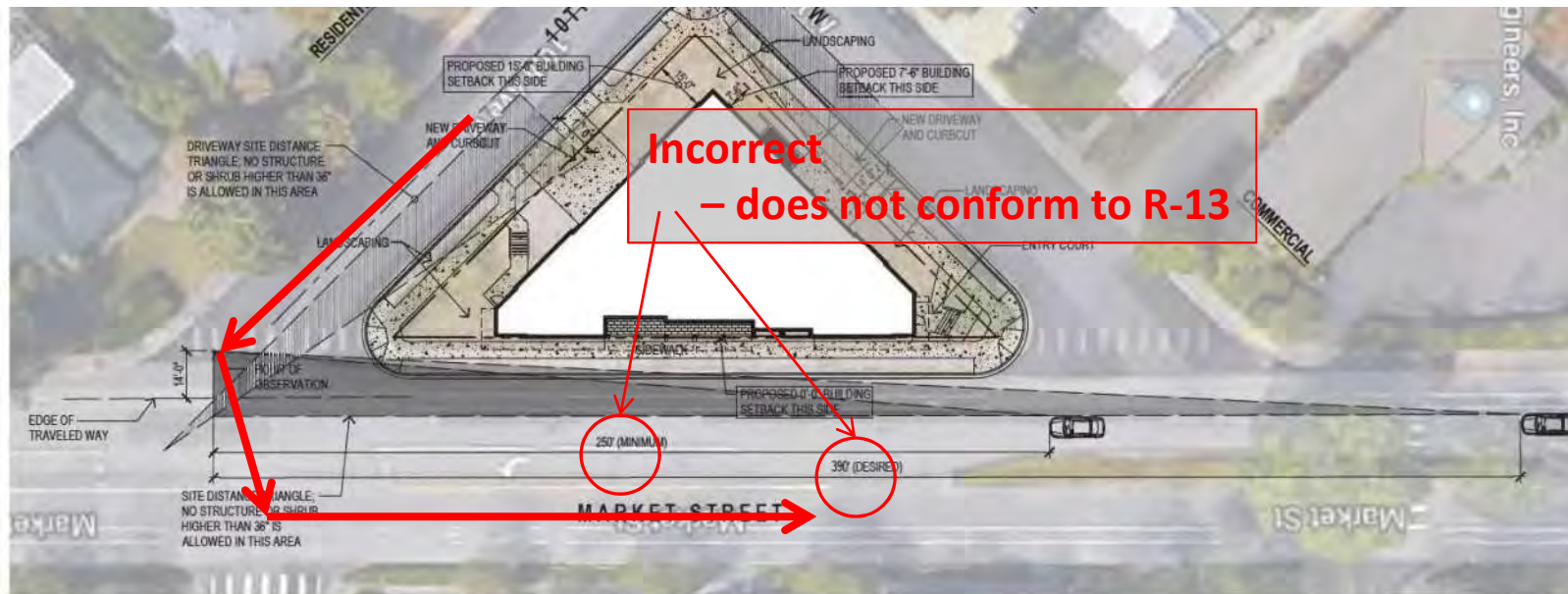
Policy R-13 Footnotes to Table 2

Footnotes:

- (a) These values should be adjusted for grades with slopes of a magnitude of grade greater than 3%, number of lanes greater than two, for skewed intersections or for design vehicles other than passenger cars, using the intersection sight distance procedures in Chapter 9 of a Policy on Geometric Design, AASHTO, 4th Edition
- (b) Distance back from center of intersection.
- (c) Distance back from point C1 or C2 for types C-1 and C-2 intersections.
- (d) Minimum (Required) only permitted if Recommended (Desired) is not possible (see page 3 for further explanation).
- (e) Distance from back of the sidewalk.
- (f) Distance parallel to the sidewalk from the center of the driveway.

Incorrect “Sight Distance Triangle”

- No sight distance allowance/increase for this “skewed intersection”
- Note especially complicated left turn to northbound Market St



Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance



Incomplete Analysis of 3rd Street Driveway Situation



Note: Sight Distance Diagram based on City of Kirkland Policy R-13 - Intersection Sight Distance



3rd Street Driveway Approach Safety Study & Remediation Needed

Reference Hearing Packet Page 115, 10/31/02
Memorandum from Thang Nguyen, Transportation
Engineer, to Tony Leavitt

Driveway Operation & Safety

It is forecasted that the project driveways will operate with good level of service. Sight distances at the driveways meet minimum requirements. The traffic report recommended that on-street parking on the north side of 10th Avenue West between the project driveway and Market Street be removed to maintain sight distance. Similarly, it was recommended that on-street parking on the east side of 3rd Street West between the project driveway and Market Street be removed to maintain sight distance.

The location of the project driveway on 3rd Street West is close to Market Street. There is not enough sight distance for vehicles heading south and turning right from Market Street onto 3rd Street West to see a vehicle stopping on 3rd Street West to make a left-turn into the disable parking stall. Although this is not a desirable situation, the traffic volume on 3rd Street West is low and the likelihood of this happening is rare. However, the City may require C-curd in the future to eliminate left-turn into the site if it becomes a problem.

3rd Street Driveway Approach Safety Study & Remediation Needed

- Traffic on Market is considerably more congested now than in 2002 and will get worse in the future.
- The left turn from the alley across 3rd Street is now prohibited due to traffic safety issues studied during the approval cycle for the Dibble Engineering Building.
- As stated in the 2002 memo, this driveway is unsafe for traffic turning right from southbound Market St onto 3rd St W when a car is stopped or slowed to turn left into the driveway.

Variance For Market Street Setback Is Not Necessary

1. Single family residence existed on site from 1949 to 2007
2. Variances to setbacks **only** on 3rd Street W and 10th Ave. W granted in 2003
3. Building Permit issued with no apparent variances in 2007

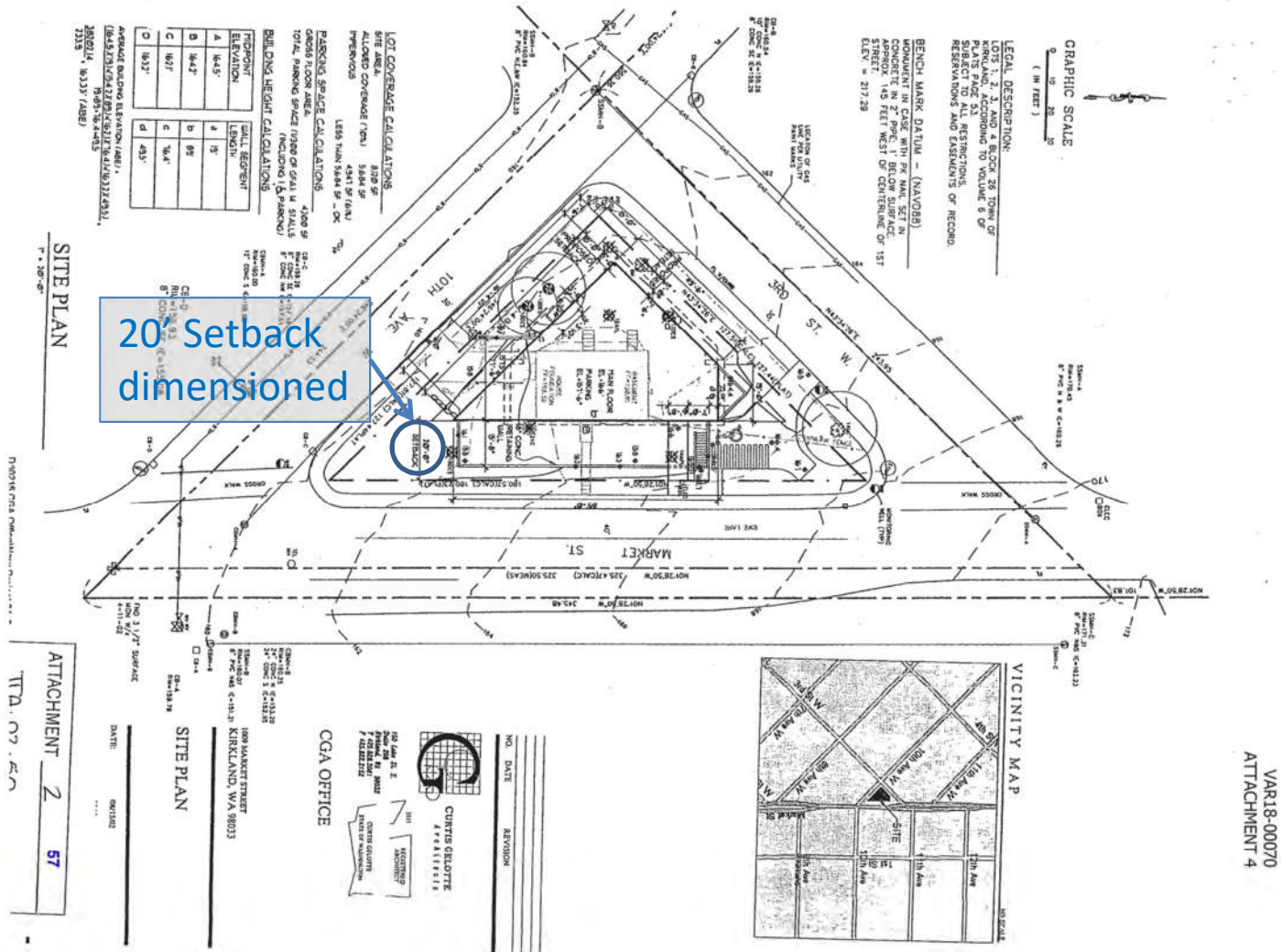
2003 Project

- Variance Requested at Hearing on February 6, 2003 (per page 45 of this hearing packet)

“Applicant is requesting a Variance to allow the **reduction of two of the three required front yard setbacks** (see Attachment 2). The 3rd Street required front yard setback would be reduced from the required 20 feet to 5 feet and the 10th Avenue required front yard setback would be reduced from the required 20 feet to 10 feet. The subject property currently contains one single-family residence. The existing residence is proposed to be demolished and replaced with a 4,200 square foot office building. Parking for the office building will be located in an underground garage (13 stalls) and one stall will be above ground. Access to the garage will be from a driveway off 10th Avenue West.”

- **No setback variance is requested on the Market Street front yard**
 - 3rd Street W setback request is 5 feet (from 20 feet)
 - 10th Ave W setback request is 10 feet (from 20 feet)
- Parking Access via a driveway off 10th Avenue West

2003 Project



2007 Project

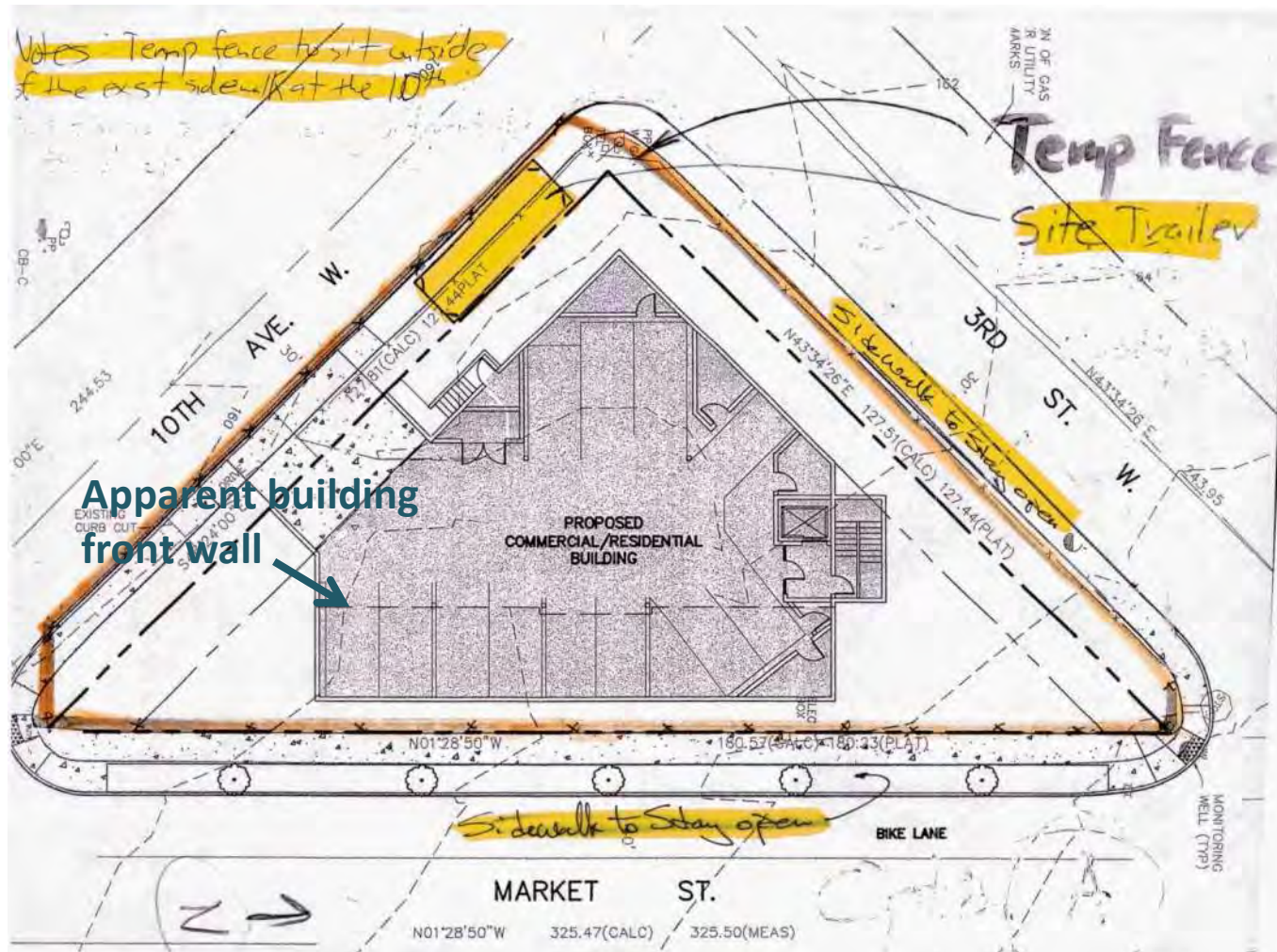
- Permit BLD07-00107
Type: Building Non Residential - BNR, Class: New

To build a mixed use building with 13 car garage below, 1st floor 2,700sq. ft. shell for 1 office , and 2nd floor 2,700 sq. ft for 1 residential unit.

PROJECT: IIA-02-50

- No evidence of any zoning variance has been found specific to this building proposal

2007 Building Permit Appears to Conform to Zoned Setbacks



Drawing from Development Services Department File for BLD07-00107

Denial of the Front Yard Market Street Variance is Requested

- Kirkland policy R-13 has been erroneously and incompletely applied
- There is no development hardship - parcel history demonstrates that development is possible with no Market Street setback variance
- Market St is not an urban area (except the 7th Ave historic district)
- The current Market Street Corridor Neighborhood Plan draft emphasizes neighborhood blend and building spacing that is consistent with surrounding low density residential
 - A zero front yard setback on Market Street is inappropriate
 - The Market Street Corridor vision is leafy, comfortable, spacious, and mixed use.
- The recently developed Dibble Engineering building across 3rd Street West is nicely setback from Market Street with some variance (granted by the Design Review Board) and complements its neighborhood



Department of Assessments

500 Fourth Avenue, Suite ADM-AS-0708, Seattle, WA 98104

Office Hours: Mon - Fri 8:30 a.m. to 4:30 p.m.

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- [iMap](#)
- [Recorder's Office](#)
- [Scanned images of surveys and other map documents](#)
- [Scanned images of plats](#)
- Notice mailing date: 07/04/2019**

PARCEL DATA

| | | | |
|----------------------|---------------------------|---------------------------------------|------------|
| Parcel | 388590-2055 | Jurisdiction | KIRKLAND |
| Name | KIRKLAND FAMILY DENTISTRY | Levy Code | 1701 |
| Site Address | 1009 MARKET ST | Property Type | C |
| Geo Area | 85-65 | Plat Block / Building Number | 28 |
| Spec Area | | Plat Lot / Unit Number | 1-2-3-4 |
| Property Name | VACANT SITE | Quarter-Section-Township-Range | NE-9 -25-5 |

Legal Description
 KIRKLAND ADD
 Plat Block: 28
 Plat Lot: 1-2-3-4

LAND DATA

Click the camera to see more pictures

| | |
|--|-----------------------|
| Highest & Best Use As if Vacant | MULTI-FAMILY DWELLING |
| Highest & Best Use As Improved | OTHER |
| Present Use | Vacant(Multi-family) |
| Land SqFt | 6,120 |
| Acres | 0.19 |

| | |
|-------------------------------|----------------|
| Percentage Unusable | |
| Unbuildable | NO |
| Restrictive Size Shepe | NO |
| Zoning | MSC 1 |
| Water | WATER DISTRICT |
| Sewer/Septic | PUBLIC |
| Road Access | PUBLIC |
| Parking | ADEQUATE |
| Street Surface | PAVED |

| | |
|-------------------------|--|
| Views | |
| Rainier | |
| Territorial | |
| Olympic | |
| Cascades | |
| Seattle Skyline | |
| Puget Sound | |
| Lake Washington | |
| Lake Sammamish | |
| Lake/River/Creek | |
| Other View | |

| | |
|-------------------------------------|----|
| Waterfront | |
| Waterfront Location | |
| Waterfront Footage | 0 |
| Lot Depth Factor | 0 |
| Waterfront Bank | |
| Tide/Shore | |
| Waterfront Restricted Access | |
| Waterfront Access Rights | NO |
| Poor Quality | NO |
| Proximity Influence | NO |

| | |
|--|--------|
| Designations | |
| Historic Site | |
| Current Use | (none) |
| Nbr Bldg Sites | |
| Adjacent to Golf Fairway | NO |
| Adjacent to Greenbelt | NO |
| Other Designation | NO |
| Deed Restrictions | NO |
| Development Rights Purchased | NO |
| Easements | NO |
| Native Growth Protection Easement | NO |
| DNR Lease | NO |

| | |
|-----------------------------------|------|
| Nuisances | |
| Topography | |
| Traffic Noise | HIGH |
| Airport Noise | |
| Power Lines | NO |
| Other Nuisances | NO |
| Problems | |
| Water Problems | NO |
| Transportation Concurrency | NO |
| Other Problems | |
| Environmental | |
| Environmental | NO |

BUILDING

TAX ROLL HISTORY

| |
|--|
| |
|--|

| Account | Valued Year | Tax Year | Omit Year | Lavy Code | Appraised Land Value (\$) | Appraised Imps Value (\$) | Appraised Total Value (\$) | New Dollars (\$) | Taxable Land Value (\$) | Taxable Imps Value (\$) | Taxable Total Value (\$) | Tax Value Reason |
|--------------|-------------|----------|-----------|-----------|---------------------------|---------------------------|----------------------------|------------------|-------------------------|-------------------------|--------------------------|------------------|
| 388580205507 | 2019 | 2020 | | 1701 | 812,000 | 0 | 812,000 | 0 | 812,000 | 0 | 812,000 | |
| 388580205507 | 2018 | 2019 | | 1701 | 890,200 | 0 | 890,200 | 0 | 890,200 | 0 | 890,200 | |
| 388580205507 | 2017 | 2018 | | 1701 | 841,400 | 0 | 841,400 | 0 | 841,400 | 0 | 841,400 | |
| 388580205507 | 2018 | 2017 | | 1700 | 592,700 | 0 | 592,700 | 0 | 592,700 | 0 | 592,700 | |
| 388580205507 | 2015 | 2018 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2014 | 2015 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2013 | 2014 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2012 | 2013 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2011 | 2012 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2010 | 2011 | | 1700 | 608,000 | 0 | 608,000 | 0 | 608,000 | 0 | 608,000 | |
| 388580205507 | 2009 | 2010 | | 1700 | 608,000 | 0 | 608,000 | 0 | 608,000 | 0 | 608,000 | |
| 388580205507 | 2008 | 2009 | | 1700 | 592,700 | 0 | 592,700 | 0 | 592,700 | 0 | 592,700 | |
| 388580205507 | 2007 | 2008 | | 1700 | 349,000 | 33,000 | 382,000 | 0 | 349,000 | 33,000 | 382,000 | |
| 388580205507 | 2008 | 2007 | | 1700 | 291,000 | 34,000 | 325,000 | 0 | 291,000 | 34,000 | 325,000 | |
| 388580205507 | 2005 | 2008 | | 1700 | 243,000 | 58,000 | 301,000 | 0 | 243,000 | 58,000 | 301,000 | |
| 388580205507 | 2004 | 2005 | | 1700 | 221,000 | 49,000 | 270,000 | 0 | 221,000 | 49,000 | 270,000 | |
| 388580205507 | 2003 | 2004 | | 1700 | 201,000 | 57,000 | 258,000 | 0 | 201,000 | 57,000 | 258,000 | |
| 388580205507 | 2002 | 2003 | | 1700 | 183,000 | 82,000 | 245,000 | 0 | 183,000 | 82,000 | 245,000 | |
| 388580205507 | 2001 | 2002 | | 1700 | 170,000 | 58,000 | 228,000 | 0 | 170,000 | 58,000 | 228,000 | |
| 388580205507 | 2000 | 2001 | | 1700 | 150,000 | 112,000 | 262,000 | 0 | 85,000 | 85,800 | 150,800 | FS |
| 388580205507 | 1999 | 2000 | | 1700 | 134,000 | 92,000 | 228,000 | 0 | 85,000 | 85,800 | 150,800 | FS |
| 388580205507 | 1998 | 1999 | | 1700 | 125,000 | 71,000 | 196,000 | 0 | 85,000 | 85,800 | 150,800 | FS |
| 388580205507 | 1997 | 1998 | | 1700 | 0 | 0 | 0 | 0 | 85,000 | 85,800 | 150,800 | |
| 388580205507 | 1996 | 1997 | | 1700 | 0 | 0 | 0 | 0 | 85,000 | 85,800 | 150,800 | |
| 388580205507 | 1994 | 1995 | | 1700 | 0 | 0 | 0 | 0 | 85,000 | 85,800 | 150,800 | |
| 388580205507 | 1992 | 1993 | | 1700 | 0 | 0 | 0 | 0 | 82,800 | 88,200 | 150,800 | |
| 388580205507 | 1990 | 1991 | | 1700 | 0 | 0 | 0 | 0 | 78,700 | 88,200 | 148,900 | |
| 388580205507 | 1988 | 1989 | | 1700 | 0 | 0 | 0 | 0 | 25,400 | 42,500 | 87,900 | |
| 388580205507 | 1986 | 1987 | | 1700 | 0 | 0 | 0 | 0 | 22,500 | 37,400 | 59,900 | |
| 388580205507 | 1984 | 1985 | | 1700 | 0 | 0 | 0 | 0 | 21,500 | 33,200 | 54,700 | |
| 388580205507 | 1982 | 1983 | | 1700 | 0 | 0 | 0 | 0 | 18,700 | 34,800 | 53,300 | |

SALES HISTORY

| Exclude Number | Recording Number | Document Date | Sale Price | Seller Name | Buyer Name | Instrument | Sale Reason |
|----------------|------------------|---------------|----------------|------------------------------------|------------------------------------|-------------------------|-------------|
| 2284512 | 20070515901655 | 5/4/2007 | \$1,035,000.00 | GHORBANIAN ABRAHAM+SOLTANI ZAHRA | GREENE BENJAMIN J | Statutory Warranty Deed | None |
| 2228087 | 20060808002552 | 8/7/2006 | \$850,000.00 | COFFEEHOUSE BUILDING LLC | GHORBANIAN ABRAHAM+SOLTANI ZAHRA | Statutory Warranty Deed | None |
| 2119231 | 20050428001001 | 4/28/2005 | \$750,000.00 | MCGEOUGH BREFFNI J+HOLLY A | COFFEEHOUSE BUILDING LLC | Statutory Warranty Deed | None |
| 2007979 | 20031215001617 | 12/12/2003 | \$525,000.00 | 1009 MARKET STREET DEVELOPMENT LLC | MCGEOUGH BREFFNI J+HOLLY A | Statutory Warranty Deed | None |
| 1957582 | 20030509002758 | 10/16/2002 | \$0.00 | GELOTTE CURTIS E | 1009 MARKET STREET DEVELOPMENT LLC | Quit Claim Deed | Other |
| 1898396 | 20020718000530 | 7/12/2002 | \$400,000.00 | PHILLIPS THERESA T | GELOTTE CURTIS | Statutory Warranty Deed | None |

REVIEW HISTORY

PERMIT HISTORY

| Permit Number | Permit Description | Type | Issue Date | Permit Value | Issuing Jurisdiction | Reviewed Date |
|---------------|---|---------------|------------|--------------|----------------------|---------------|
| BLD07-00102 | Build a mixed use bldg. with 13 car garage below, 1st floor 2,700 sq. ft. shell for 1 office & 2nd floor 2,700 sq. ft. for 1 residential unit | Building, New | 10/9/2007 | \$834,000 | KIRKLAND | 8/17/2010 |
| BLD07-00726 | Demolish SFR | Demolition | 8/15/2007 | \$0 | KIRKLAND | 12/13/2007 |

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January 30, 2020

Tony Leavitt, Project Planner
City of Kirkland
Planning and Building Department
123 Fifth Avenue
Kirkland, Washington 98033

Re: Case # VAR18-00070

Dear Mr. Leavitt,

Jeff and I have resided at 235 10th Ave West since 1980. When we first moved in, there was a residence located at 1009 Market Street and our neighborhood flourished. Sadly, when that family moved out and that property sold to architect Curtis Gelotte, our sense of residential community began to suffer, and has continued to suffer for some 20 years. When Ben Green purchased the property, he also purchased the plan with variances Gelotte had had approved by the City of Kirkland, but Dr. Green was unable to bring that building to fruition. For many years, it has been used as a staging area for heavy machinery, often staging building or utility projects for the city. The noise, dirt, inconvenience and intrusion into our lives -- sometimes it appeared semi-trucks with trailers were going to drive right up our pathway and into our front door -- has been interminable. Literally.

We favor a permanent building over continuing construction projects, as long as that building does not impact the residential quality of our lives. We are primarily concerned about parking, traffic, and a sense of barrier between the dental building and the neighborhood's homes. We have these questions related to those concerns:

- How will traffic be routed into the parking area?
 - Will it be routed through the neighborhood streets (3 St. W. and 10th Ave. W.)?
 - How many cars per day does this mean?

- How many parking places will be available under this building?
 - How many dental patients will be seen per day at this building?
 - How many employees will work in this building?
 - How many of those employees will park in those parking spaces?
 - Where will dental patients and employees park if not under the building?

- How will street parking be impacted?
 - Will employees be parking on the street? Will they be encouraged by their employer to do so? If so, does that become part of the scope of the project to be approved?
 - How much of the curb around the dental building will be redlined out? How does that affect the number of parking spaces available on the block surrounding the building, and how far into the neighborhood will the parking extend?
 - We believe there is a sight issue looking northward on southbound Market from the intersection of 10th Ave W and Market St. Will there be redlined curb going north on Market and will it be substantial enough to see oncoming cars – often it is quite difficult to merge into traffic going south on Market, and we need good visibility to make good judgments.
- Regarding the zero setback on Market, how will this impact the look-and-feel of the neighborhood? I notice that the building on the southwest corner of Market and 7th Ave. W. has indentations in the building façade facing Market to include planters, which mitigates a full on frontal assault on Market. Will this be considered as part of this plan?
- Regarding the setback on 3rd St. W., how will a setback of only 7.5 feet be mitigated to prevent the commercial building from impacting the residences along that street, the adjacent streets, and into the neighborhood?
- Regarding the setback on 10th Ave. W., the original variance for Gelotte included a landscaping barrier. This might in some way mitigate the impact of this building on the residential buildings along 10th Ave. W. With no landscape barrier required, it would be a stark contrast to the homes currently there. We very much hope that a landscaping barrier will be required.
 - If a landscape barrier is required, how will it be designated and how will it be monitored for compliance? For example, with the Gelotte variance, there were trees specified to remain as part of the barrier, but the owner did not care for the trees and in fact cut into their roots to such an extent that they became unviable and were never replaced. If the landscape barrier is required, we hope it will include some form of explicit guarantees that it will be honored.

We suspect that answers to the questions above will show that the impact of this building to the surrounding residential neighborhood in fact harms them, in these ways:

- Street parking on 3rd St. W. and 10th Ave. W. and into the surrounding neighborhood will be adversely impacted by employees and clients of the building
- Traffic will spike on 10th Ave. W. with access to the parking lot located on 10th Ave. W.
- Visibility to Market to merge onto southbound Market will be impacted and cause safety concerns, particularly during heavy traffic times

- There will be no way to mitigate the impact of this large, commercial building on the bordering residential community. And even if landscaping barriers are required, there is an open question of whether the design of such barriers are adequate and how they will be enforced over time.

Given that we anticipate a strongly negative impact of allowing the variances requested in this case, we propose the city purchase this land and use it as a public park. We feel that Kirkland's reputation for its parks and recreational areas is a source of city pride and encourages tourism. We believe turning this lot into a park is a benefit to the city.

Sincerely,

A handwritten signature in blue ink that reads "Melissa Thirloway". The signature is written in a cursive style with a large initial 'M'.

Melissa and Jeff Thirloway
235 10th Ave. W.
Kirkland, WA 98033
thirloway@gmail.com

XV.L. Market Street Corridor

1. Overview

The [Market Street Corridor](#) is centered on Market Street. It includes properties along the eastern border of the [Market Neighborhood](#) and the western border of the [Norkirk Neighborhood](#). The [Market Street Corridor](#) extends from 19th Avenue on the north to the Central Business District on the south. Market Street has a development pattern that includes a mix of commercial and residential uses and it is recognized as a transportation link serving both regional and local users.

2. Vision Statement

The [Market Street Corridor](#) is an attractive, economically healthy area that accommodates neighborhood-oriented businesses, office uses and multifamily housing. The commercial uses provide convenient shopping and services for residents of both the Market and [Norkirk Neighborhoods](#). The corridor is bounded by single-family residential neighborhoods to the north, east and west and a vibrant Central Business District to the south. Design of new development along the corridor incorporates landscaped buffers, site design and architectural treatments that complement and protect the adjacent residential neighborhoods.



Market Street Corridor

Market Street provides efficient access to both the Market and [Norkirk Neighborhoods](#), while continuing to function as a principal north/south arterial for local and regional traffic. Bicyclists and pedestrians use the [Market Street Corridor](#) as a connection between the Market and [Norkirk Neighborhoods](#), and to the Central Business District and the region as a whole.

The historic 1890s buildings at the intersection of Market Street and 7th Avenue represent the original town center and are still a focal point for Kirkland's history. This historic district reflects the City's past through both its old and new buildings and its streetscape, including street trees, public seating and street lights.



Sears Building at 701 Market Street

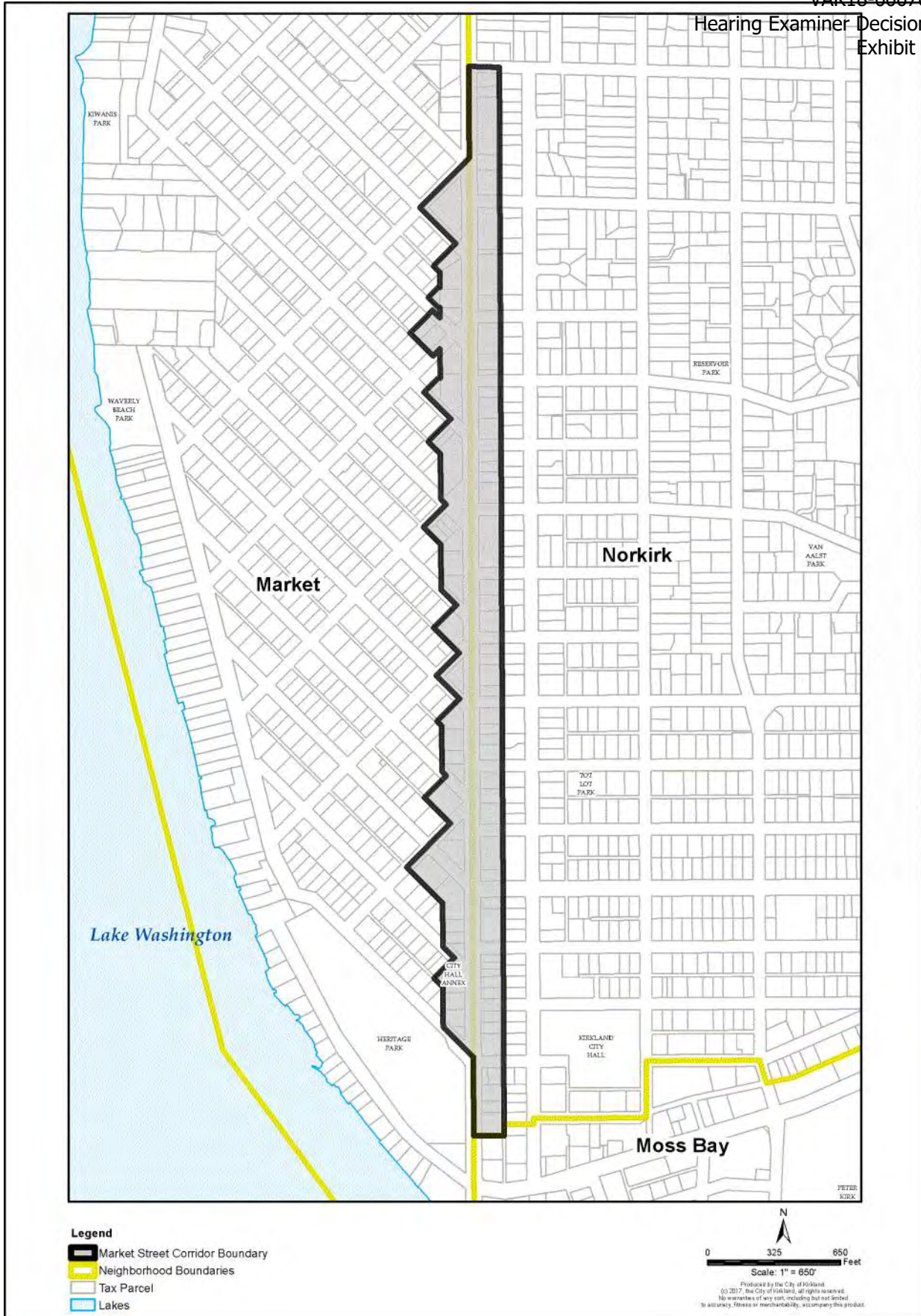


Figure MS-1: Market Street Corridor Boundary

3. Historic Context

Between 1888 and 1890, Peter Kirk's Kirkland Land and Improvement Company purchased much of the land that had been homesteaded in the 1870s to begin the proposed new city. This new city was to support the construction of the steel mill on Rose Hill near Forbes Lake. The new town center was at the intersection of Market Street and Piccadilly, which is now 7th Avenue. This intersection, with four remaining 1891 brick buildings, three of which are on the National Register of Historic Places, is one of the most historically significant in Kirkland. An alternative street plan was also developed which included a large square at this intersection and a hotel on what is now Heritage Park at the corner of Market and Waverly Way. The cluster of historic properties at the intersection of Market Street and 7th Avenue form an important historical link and entrance to both the Market and [Norkirk Neighborhoods](#).

Goal MS-1: Encourage preservation of structures and locations that reflect Kirkland's heritage.

Policy MS-1.1: Provide incentives to encourage retention of identified buildings of historic significance.

The City should include incentives in the Zoning and Building Codes for maintenance of the historic buildings at the 7th Avenue and Market Street Historic District. These incentives can help to make the maintenance of the historic structures more economically viable.



The Peter Kirk Building

620 Market Street

Policy MS-1.2: Provide markers and interpretive information for the historic sites located in the historic district at 7th Avenue and Market Street.

Providing this information will identify these important sites and enable future residents to have a link with the history of this significant area of Kirkland.

4. Land Use

Goal MS-2: Support a mix of higher intensity uses along the Market Street Corridor while

minimizing impacts on adjacent residential neighborhoods.

Policy MS-2.1: Encourage a mix of uses within the Market Street Corridor that include multifamily and office development as well as neighborhood oriented shops and services.

The majority of the corridor is developed with a mixture of small-scale multifamily residences at a density of 12 units/acre and office development. It is also appropriate to have other neighborhood businesses interspersed throughout. This scale and pattern of development for the corridor fits well with the adjoining neighborhoods.



Neighborhood Shopping Area

The area south of 6th Avenue and 5th Avenue West acts as a connection between the City's historic district and the Central Business District (CBD). Small-scale multifamily and office development are also allowed here, but some of the area is at a higher density than the 12 units/acre allowed north of the historic district. On the east side of Market Street, multifamily density can go up to 24 units/acre. This helps the area to make a better transition into the CBD.



Office Development on Market Street

There is also a node of neighborhood-oriented businesses located on the west side of Market Street, north of 14th Avenue West. This small shopping area provides convenient shopping and services for residents in the area. If redevelopment of this site occurs, the buildings and site should be designed so that their appearance blends with the character of the adjoining single-family neighborhood. The landscaping can be used to soften and separate the commercial uses on-site from the adjoining residential uses.

Policy MS-2.2: Designate the historic district between 8th Avenue/2nd Street West and 6th Avenue/5th Avenue West as a special planning area of the corridor.

This area should remain a business commercial zone allowing residential, office and retail uses, and should include special regulations that reinforce the historic nature of the intersection at 7th Avenue and Market Street.

Hearing Examiner Decision
ES-18-011

Policy MS-2.3: Restrict the development of new commercial and multifamily structures to locations within the limited boundaries designated for the Market Street Corridor.



Multifamily and commercial development should remain in designated areas within the [Market Street Corridor](#) and not extend into the single-family residential core of the Market and [Norkirk Neighborhoods](#) or beyond 19th Avenue to the north. The slope and alley parallel to the east side of Market Street provide a break between the corridor and the residential core of the [Norkirk Neighborhood](#). The break is not as well defined on the west side of the street between the corridor and the [Market Neighborhood](#) residential core; however it is generally located adjacent to properties that directly abut Market Street.

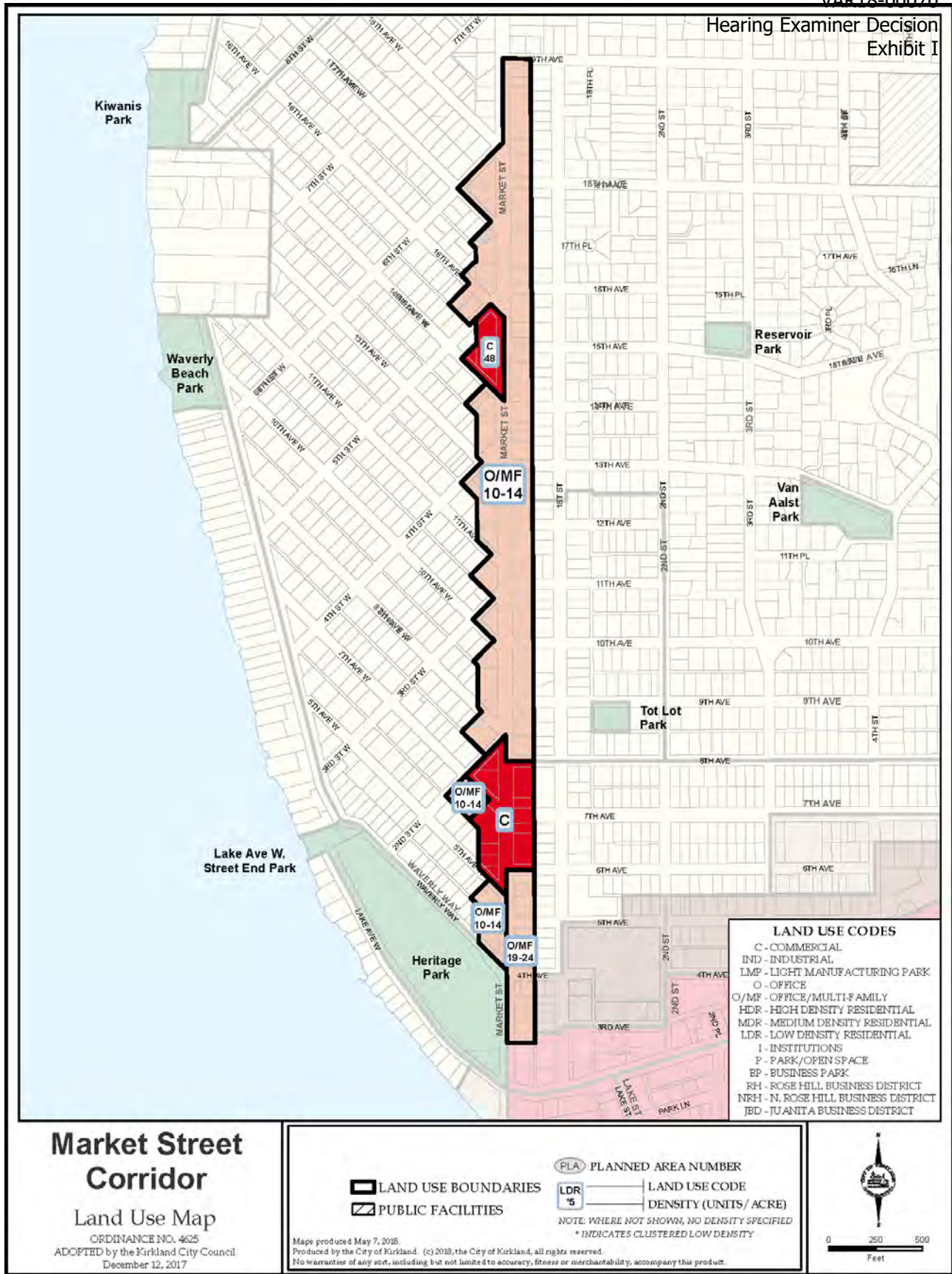


Figure MS-2: Market Street Corridor Land Use

5. Transportation

Market Street is a principal arterial that is the most traveled route into and along the borders of both the Market and [Norkirk Neighborhoods](#). It also plays an important Citywide role since it is the only principal arterial west of Interstate 405 between NE 85th Street and NE 116th Street. Most of Market Street is fully improved with one lane in each direction, and a series of left turn pockets. The street is fully developed with curbs, gutters, sidewalks, a landscape strip and bike lanes. A landscape median provides additional green space while controlling left-turn movements. A center turn lane north of the 7th Street West intersection extends to Forbes Creek Drive.

Goal MS-3: Maintain Market Street as a transportation corridor with a balance among transportation modes.

Policy MS-3.1: Promote transportation improvements that adequately support the existing and planned land uses in the Market Street Corridor and the adjoining neighborhoods.

Transportation improvements should maintain vehicular capacity on Market Street; minimize traffic delays; enhance connectivity between the Market and [Norkirk Neighborhoods](#); and discourage shortcuts through the neighborhoods.

Policy MS-3.2: Improve local access to Market Street from the Norkirk and Market Neighborhood residential areas.

Initial research indicates that such issues as pedestrian safety, sight distance problems, short acceleration lanes, speeding, lack of gaps for entry traffic, and transition to a 25 mph zone near the downtown all contribute to general traffic flow problems, particularly during peak hours. Possible solutions include: simplifying intersections; creating gaps in the traffic; and calming or slowing traffic on Market Street. Ongoing observation and study will be necessary to ensure that Market Street will continue to function as a principal arterial while providing efficient access to adjacent neighborhoods.



Pedestrian amenities

Policy MS-3.3: Encourage the use of nonmotorized transportation modes by providing facilities for pedestrians and bicyclists throughout the subarea.

Pedestrian improvements, including adequate pedestrian crossings between the Market and [Norkirk Neighborhoods](#), should be installed at appropriate locations to improve pedestrian safety and enhance the pedestrian environment. The installation of these improvements should be funded by the City and, when appropriate, also required as new development occurs.

Policy MS-3.4: Work with transit agencies to enhance transit service connecting the Market Street Corridor and the Market and Norkirk Neighborhoods to other areas of the City and region.

Hearing Examiner Decision
Exhibit I

Transit service is an important element of the City's transportation system. Metro Transit serves the Market and [Norkirk Neighborhoods](#) with routes along Market Street that provide service to the Kirkland Transit Center, Downtown Seattle, Totem Lake, Bellevue and other surrounding areas. As automobile traffic increases, alternative modes of transportation become more necessary. The [Market Street Corridor](#) is one of the main north/south connections through the City and is also a main transit route.



Bus shelter on Market Street

6. Urban Design

Goal MS-4: Identify and enhance the distinct characteristics of the different sections of the Market Street Corridor.

Policy MS-4.1: Maintain and enhance the character of the historic intersection at 7th Avenue and Market Street.



Intersection at 7th Avenue and Market Street

Existing historic resources should be considered when adjacent structures are being rebuilt or remodeled. The scale and design features of the historic buildings at the intersection of Market Street and 7th Avenue should be taken into account when development in that area occurs.

Policy MS-4.2: Utilize design review to administer building and site design standards in appropriate sections of the Market Street Corridor.

Design review is appropriate for the area surrounding the Market Street and 7th Avenue intersection (see Figure MS-3). It can also be a practical tool for other multifamily and commercial development along the corridor. The design review process can be used to review site and building design issues such as building placement, landscaping, and building details, as well as public improvements including sidewalk width and street furniture.



Goal MS-5: Provide streetscape, gateway and public art improvements that contribute to a sense of identity and enhanced visual quality.

Policy MS-5.1: Provide streetscape improvements that tie together the various sections of the Market Street Corridor.

Historic street lights, a consistent street tree plan, and pedestrian seating can all be used to add character and reflect the feeling of the corridor. The landscape strip on the east side of Market Street adds interest and provides

a more secure pedestrian environment. Additional street trees should be considered on the west side of Market Street. The City should also consider funding historic street lights within the historic district and possibly in other areas of the corridor.

Policy MS-5.2: Construct and improve gateway features at the locations identified in the Market and Norkirk Neighborhood Plan Urban Design Sections.

Desired gateway feature locations are indicated on Figure MS-3. Improvements such as landscaping, signs, public art, and other features that identify the neighborhood can be included if they are appropriate for a location. Public investment will be necessary in most instances, but the City can also pursue opportunities to work with private property owners to install gateway features as part of future development.

Goal MS-6: Provide transitions between low-density residential uses within the neighborhoods and the commercial and multifamily residential uses along Market Street.

Policy MS-6.1: Promote development regulations that address transitions and protect neighborhood character.

The building mass and/or height of the higher density structures should not overwhelm adjoining low-density uses. Landscape buffers should be used to soften and separate uses by creating a transition zone. Some of the existing buildings may also need enhanced landscaping in order to prevent commercial structures from having a negative impact on adjoining residential uses.

Policy MS-6.2: Establish multifamily building and site design standards that enhance neighborhood compatibility.

Building and site design standards should address issues such as building placement on the site; site access and on-site circulation by vehicles and pedestrians; building scale; site lighting; landscaping (including that for parking lots); signs; preservation of existing vegetation; and buffers between multifamily developments and single-family housing.

Policy MS-6.3: Orient commercial uses toward Market Street.

Commercial development which is oriented toward Market Street will have less impact on the adjacent low-density residential areas in the surrounding neighborhoods.





Figure MS-3: Market Street Corridor Urban Design Features

The Kirkland Municipal Code is current through Ordinance 4713, passed December 10, 2019.

Disclaimer: The City Clerk's Office has the official version of the Kirkland Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.kirklandwa.gov/> (<http://www.kirklandwa.gov/>)

City Telephone: (425) 587-3000

Code Publishing Company (<https://www.codepublishing.com/>)

Tony Leavitt

From: Melissa Thirloway <Thirloway@msn.com>
Sent: Tuesday, February 04, 2020 7:44 PM
To: Tony Leavitt
Cc: thirloway; Jeff Thirloway
Subject: Additional comments, Case # VAR18-00070

Tony Leavitt, Project Planner
City of Kirkland
Planning and Building Department
123 Fifth Avenue
Kirkland, Washington 98033

Re: Case # VAR18-00070

Dear Mr. Leavitt,

Since the hearing examiner allowed two weeks for additional remarks, we'd like to submit these follow-up remarks to hearing of this case on January 30th, 2020.

During the hearing on 1/30/20, traffic problems were discounted as an impediment to granting the requested variances. However, traffic patterns were presented as if in a neutral environment and not with real-world consequences. While there may be more, we anticipate at least two such consequences in addition to those presented on 1/30/20:

- During evening rush hour when Market Street northbound is moving at a crawl (it has taken ten minutes to drive one block at this time of night), the employees of the dental building will be ending their day and going home. This means at this peak time, clients' and employees' cars will be leaving the neighborhood and the garage and may be attempting to turn left from 10th Ave. W. onto northbound Market. The often relentless onslaught of northbound traffic will prohibit them from doing so, and traffic will build up at the stop sign on 10th Ave. W., and sit idling for long periods of time in front of the houses on 10th Ave. W. This will add to noise and air pollution for those homes along 10th Ave. W.
- It has been our experience that drivers, eager to turn left onto Market St. from 10th Ave. W., wait at the stop sign while their car has crossed over the unlined mid-point of 10th Ave. W. This hinders cars turning left from northbound Market onto 10th Ave. W., creating a driving hazard.

More history on the 2003 and 2007 building proposals:

- There was also some discussion at the 1/30/20 hearing about the history of variances on this site. One was granted to Curtis Gelotte in 2003, which allowed for a five-year option to build as approved. In 2007, an agent for Ben Green approached us and wanted to negotiate building a different building on this site, which required different set-backs. In exchange for our agreement to reduce the 15 foot

variance-approved set-back on 10th Ave. W., they were going to pay to move the fire hydrant then (as it is currently) located at 235 10th Ave. W. to 1009 Market St., freeing up another parking space on the 200 block of 10th Ave. W. The city had knowledge of this agreement and documents were prepared. However, we had reason to doubt the motives and sincerity of the builders, and never signed this agreement. Excavation for this new building was begun anyway.

- We do not remember a new variance request, or a hearing for such, or other any public notification in 2007. This omission prohibited other interested parties from becoming aware of the change of plans, or presenting any testimony on the change of plans and subsequent approval of a change of variance.

As a way to discount and deflect our concerns about the impact of this building on our neighborhood, during his rebuttal testimony on 1/30/20, the architect presenting the variance request stated that Dr. Green wants to be a good neighbor. Here are several examples of why we question this statement:

- After years of objections, Dr. Green has not demonstrated substantive concern about the objections of those of us who live in the neighborhood and have first-hand experience of the flow of traffic, the parking issues, and an interest in maintaining the character of the neighborhood. Since purchasing the Gelotte plan with approved variances, which we assumed he planned to build, he has only increased the size and impact to the neighborhood of each of the successive buildings he has proposed building.
- He doesn't proactively care about the safety of his neighbors – he repeatedly has allowed weeds and grass to grow to dangerous heights during the fire season. This has prompted neighbors to go to the city to make sure he cuts them down, particularly before the 4th of July when random fireworks present a dangerous possibility of starting a fire on his lot, threatening our homes.
- He did not conform to the language of the original variance, which required existing trees to be incorporated into the landscape barrier required by the variance. Instead, he neglected them, and even excavated so close to their root balls that they died. Since landscape barriers offer a major mitigation of the impact to the character of the bordering residential neighborhood, Dr. Green's commitment to following the decisions of this process remain a huge concern.
- He has destroyed the character of the neighborhood by placing huge temporary signs on this site advertising his business north on Market. I have no idea if these signs met code, or were approved by the city. They did not stay up long so I'm assuming they did not.

About the landscaping barrier along 10th Ave. W.:

- After almost 20 years of talking about what developing this property would mean, oddly it never occurred to us until now that a driveway cannot be landscaped – we just envisioned landscaping would separate this building from our home and reduce its impact. This project's driveway on 10th Ave. W. is directly opposite our front door. The way this building will look to us is a 25-foot-high wall stretching the entire north-south length of the lot, with a two-car-wide driveway pointed right at us. Since you can't plant concrete, there would have to be significant landscaping plans to hide or obscure the driveway to make it fit into a residential neighborhood. If a variance is allowed, landscaping design to mitigate the impact of the driveway should be specifically stated, as well as a process for redress if not carried out and maintained.

- Another solution would be to move the driveway access to 1009 Market from its current location on 10th Ave. W. to a spot further north on 10th Ave. W. The home on the corner of 10th Ave. W. and 3rd St. W. (facing onto 3rd St. W.) has its own landscaping barrier along their property on 10th Ave. W. and the negative visual impact to them would be less.

Additional concerns raised by testimony on 1/30/20:

- After hearing about the impact of light and noise from the Dibble Building, we, too, would be concerned that light, noise, and detritus (dust, odors, chemical fumes) from the dental building would flood nearby homes.

Again, given that we anticipate a strongly negative impact of allowing the variances requested in this case, we propose the city purchase this land and use it as a public park. We feel that Kirkland's reputation for its parks and recreational areas is a source of city pride and encourages tourism. We believe turning this lot into a park is a benefit to the city.

Sincerely,

Melissa and Jeff Thirloway

Melissa and Jeff Thirloway
235 10th Ave. W.
Kirkland, WA 98033
thirloway@gmail.com; jlthirloway@msn.com

Sent from [Mail](#) for Windows 10



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

MEMORANDUM

To: Susan Drummond, Kirkland Hearing Examiner Pro Tem
From: Tony Leavitt, Senior Planner
Date: February 13, 2020
Subject: MARKET STREET DENTAL CLINIC VARIANCE, VAR18-00070

At the Public Hearing on January 30th, the Hearing Examiner requested that the record remain open until 5pm on February 13th in order to allow the Public Works Transportation Engineer time to review and respond to the presentation that Nicole and Ken MacKenzie gave during the public hearing. Additionally, the record was kept open for any additional public comments.

Attached is a memorandum from Thang Nguyen (City of Kirkland Transportation Engineer) that concludes that the proposed building, with a setback of zero feet from the front property line, will have no impact on the sight distance for vehicles entering Market Street from 10th Avenue West and that the proposed project driveways on 3rd Street West and 10th Avenue West have adequate sight distance.

As noted in the Staff Advisory Report dated January 23rd, the project must comply with the Process IIA Zoning Permit Approval Criteria which states that an application may be approved if it:

- (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.

Based on the sight distance review memorandum provided by the Public Works Department, Planning Staff concludes that the proposed application complies with these criteria and should be approved with conditions as outlined in the Staff Advisory Report. The proposed building will have no impacts on the existing sight distance conditions and will not create safety issues for vehicles accessing the site and driving on adjacent streets. The project is not required to mitigate any existing traffic conditions. Neighbors may contact the City's Neighborhood Traffic Coordinator to resolve any traffic concerns that they may have.

Enclosures

1. Public Works Memo with Attachment



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.kirklandwa.gov

MEMORANDUM

To: Tony Leavitt, Senior Planner
From: Thang Nguyen, Transportation Engineer
Date: February 10, 2020
Subject: Market Street Clinic Sight Distance

The purpose of this memo is to clarify the sight distance measurement requirements for the proposed project and to respond to the presentation made at the public hearing by Nicole and Kenneth MacKenzie. Staff also reviewed the information provided in a letter from Ross Tilghman.

Staff Summary

- The applicant is not required to mitigate the sight distance at an existing intersection (Market Street/10th Avenue West).
- The location to measure sight distance at Market Street/10th Avenue West is 14 feet from the edge of the bike lane closest to the curb.
- Stopping sight distance (minimum sight distance) is the requirement for the project.
- Accounting for the grade on Market Street, the measured stopping sight distance at Market Street/10th Avenue West exceeds the requirement.
- The building's awning will not block the required stopping sight distance.
- There is adequate sight distance for the project driveways.
- There is no correlation between increase traffic volumes and traffic crashes when there is adequate sight distance.

Sight Distance Measurements

The applicant is required to provide adequate sight distance at the project driveways. The applicant is not required to provide or mitigate the sight distance at an existing public intersection, but any new structures or landscaping may not obstruct the sight distance

The intersection of Market Street and 10th Avenue West is required to meet sight distance for a Type-B intersection (see Attachment 1). For an existing intersection that is not a high accident location, the sight distance required is the "minimum" stopping sight distance listed in Table 2 of Policy R-13 of the Public Works Pre-Approved Plans. The required stopping sight distance for a 35 miles per hour street with up to 3% grade is 250 feet and for grades from 3% to 6% it is 275 feet (based on 2018 AASHTO Green Book 7th Edition). The grade on Market Street is approximately 5%. The sight distance looking north on Market Street is not affected by the skewed angle of the intersection of

Market Street and 10th Avenue West, therefore the adjustment for a skewed angle intersection is not applicable.

The location of the sight distance triangle is measured 14 feet back from the closest edge of the travel lane. If there is no on-street parking, it is 14 feet back from the face of curb. If there is on-street parking and bike lane, it is measured 14 feet from the edge between the bicycle travel lane and the parking lane. Figure 1 illustrates the locations where the sight triangle is measured from relative to the right-of-way lane configurations. Market Street has a 7-foot wide parking lane and a 5-foot wide bicycle lane. The intersection of Market Street and 10th Avenue West is a low accident intersection; therefore, it is appropriate to exclude the parking area from the travel way for the sight distance measurement.

Figure 1. Example of Sight Distance Measurements

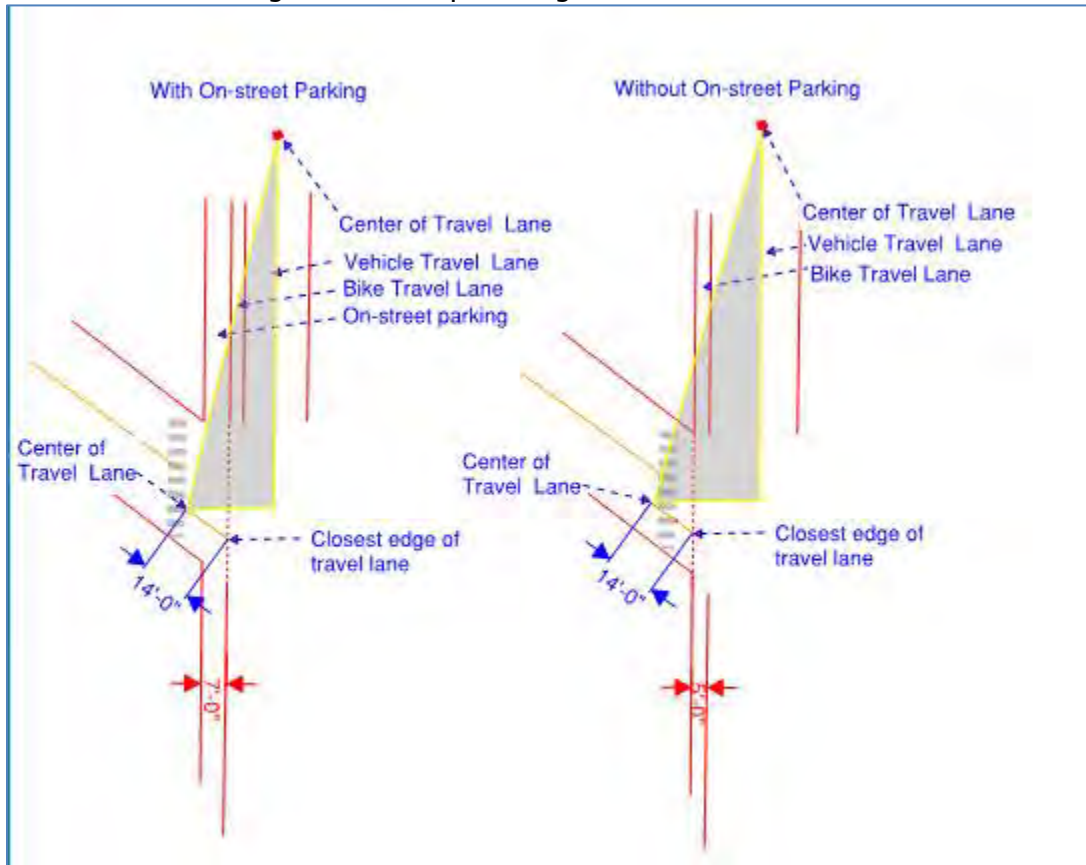
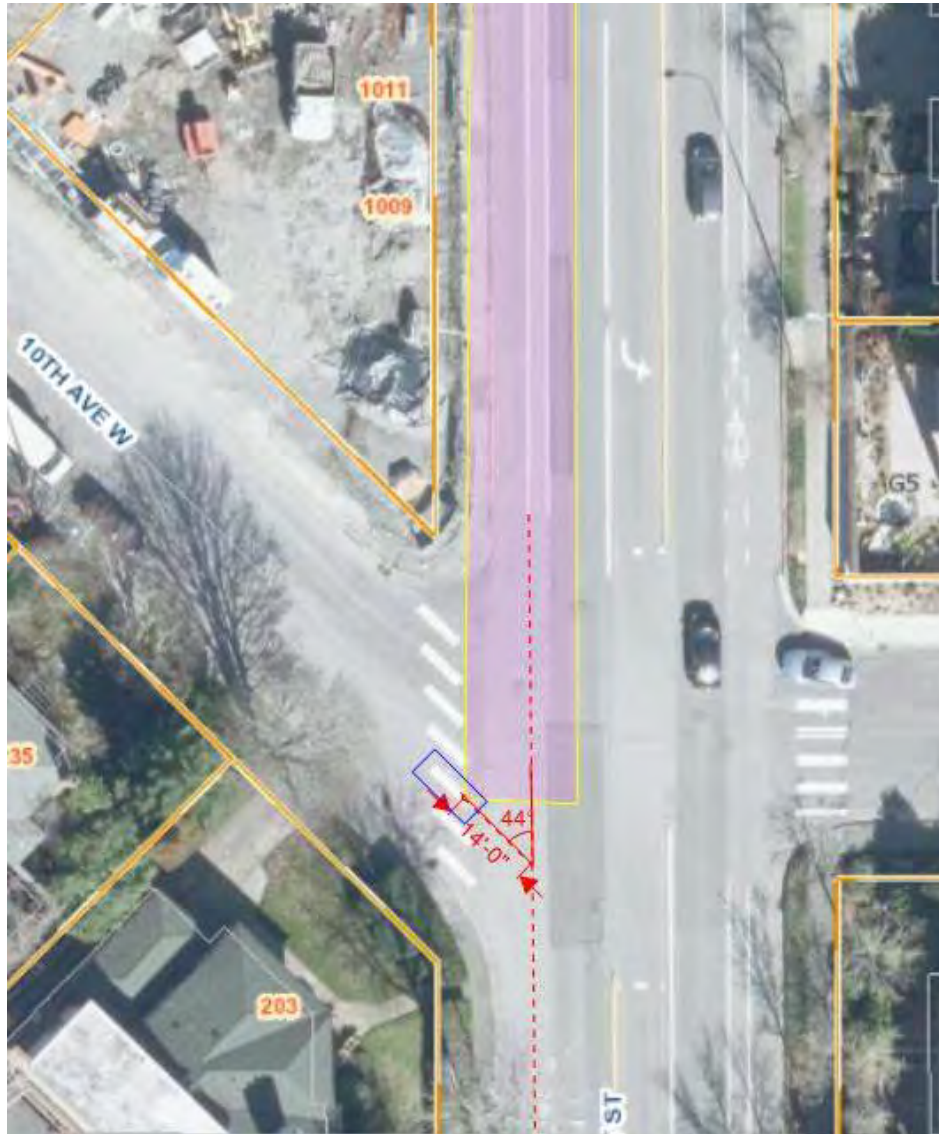


Figure 2 illustrates the point where the sight distance is to be measured. This approach is consistent with the approvals for other developments along Market Street. The MacKenzie's assertion that the measurement should be taken 14 feet from the face of curb is not consistent with how Public Works staff measures sight distance.

Figure 2. Point of Sight Distance Measurement



The measured sight distance at this intersection of Market Street/10th Avenue West is over 500 feet, which exceeds the required minimum sight distance of 275 feet. Realistically, there is approximately another eight feet from the point of measurement for a driver to move forward to increase the sight distance without encroaching into the travel lane.

As shown in Figure 2, the sight distance triangle is outside of the property line. Therefore, the awning of the proposed building will not obstruct the sight distance at the intersection of Market Street/10th Avenue West. Furthermore, on-street parking on Market Street is prohibited within 70 feet of the intersection of Market and 10th Avenue

West. This will provide a clearer view of vehicles approaching 10th Avenue West from the north.

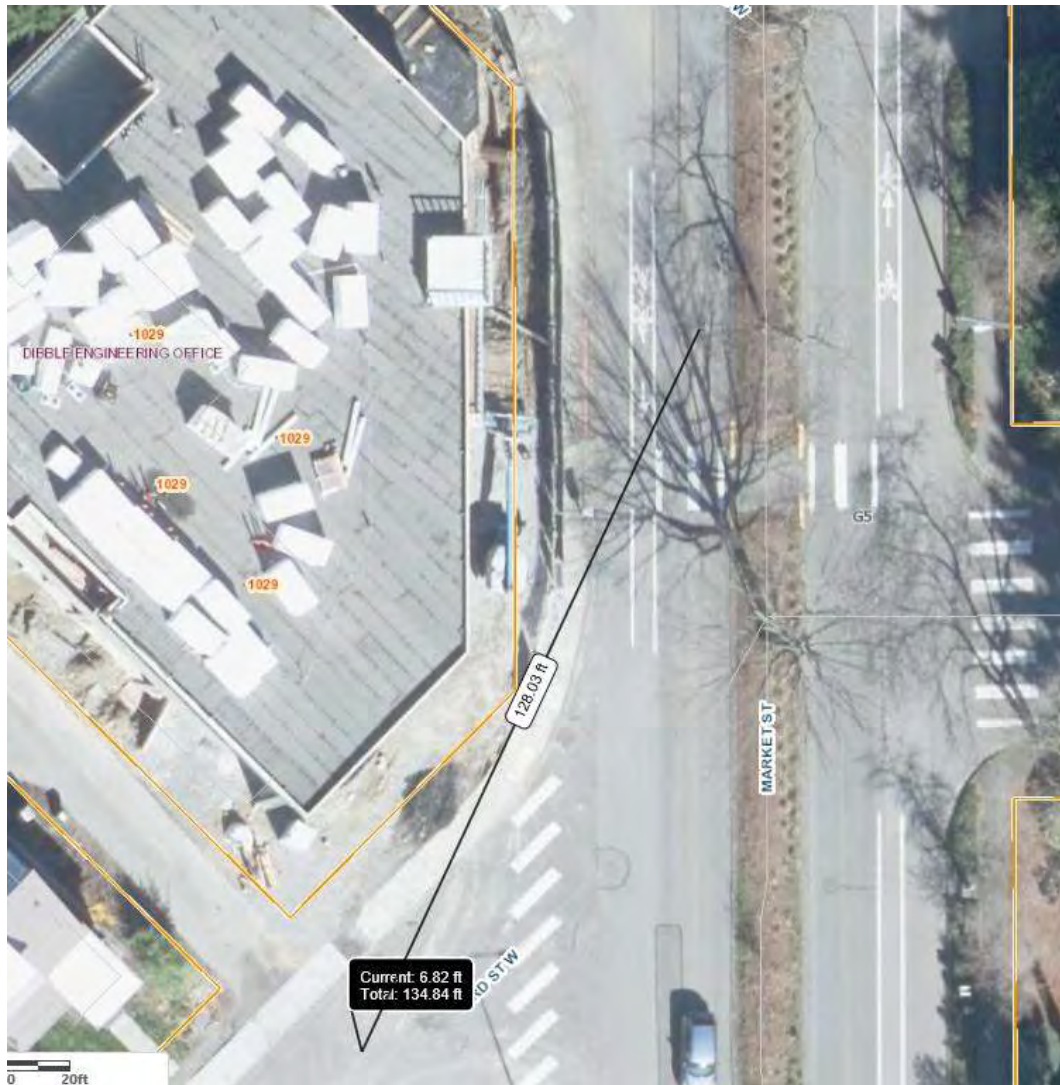
The required stopping sight distance for a driver turning onto 3rd Street West from Market Street is approximately 127 feet, adjusted for the grade on Market Street (based on 2018 AASHTO Green Book 7th Edition). As shown in Figure 3, with a vehicle waiting on 3rd Street West to turn into the project site, the measured site distance is approximately 167 feet.

Figure 3. Stopping Sight Distance for The Driveway on 3rd Street West



Figure 4 shows the sight distance needed for two vehicles stopping on 3rd Street West. The stopping sight distance is 128 feet, which meets the required stopping sight distance for the 3rd Street West.

Figure 4. Sight Distance



There is no evidence to suggest that increased traffic on Market Street will increase vehicle crashes when adequate sight distance is provided at the intersections in question.

The 2002 development proposal proposed a driveway on 3rd Street West that was much closer to Market Street and did not have adequate stopping sight distance and it was conditioned that it may have required a c-curb to eliminate left turns into the site. The current proposed driveway meets the safe sight distance requirements and would not require a c-curb. It should be noted that a c-curb has been installed with a neighboring office development.

Attachments:

1. Public Works Pre-Approved Plans Policy R13

CITY OF KIRKLAND

123 FIFTH AVENUE • KIRKLAND, WASHINGTON 98033-6189 • (425) 587-3800

**DEPARTMENT OF PUBLIC WORKS
PRE-APPROVED PLANS POLICY****Policy R-13: INTERSECTION SIGHT DISTANCE****Sight Distance at Intersections**

1. General – These guidelines establish the sight distance triangle that must be kept clear of sight obstructions for all intersections and driveways pertaining to new developments. They are also applicable to the investigation of sight-distance complaints at existing intersections and driveways. The sight distance triangle depends primarily on the required visibility for drivers and pedestrians at intersections and driveways. It is determined by the type of intersection control (stop or yield sign, traffic signal or no control) and the speed limit on the major road or street entered upon. In the following sub-sections, the sight distance requirements used to properly establish sight distances triangles at various types of intersections and driveways are presented. Table 2 on page 2 lists recommended (desirable) and minimum (required) sight distances values and Figures 1, 2, 3a, 3b and 4 on pages 5 through 8 show corresponding sight distance triangles.
2. Types of Intersections and Driveways. – Table 1 below summarizes the characteristics of various types of intersections and driveways.

TABLE 1: Types of Intersections and Driveways. Use this table to determine type (A through F)

| All cases except driveways | | | |
|---|---|------------------------------------|---|
| Type | Average Daily Traffic (ADT) on Major Street or Street Entered Upon. | Control Type | Speed Limit (MPH) on Major Street or street entered upon. |
| A | < 1000 | None | 25 |
| B | Any | Stop sign | Any |
| C1 | < 1000 | Yield (four-legged intersection) | 25 |
| C2 | < 1000 | Yield (T intersection) | 25 |
| D | Any | Signal | any |
| F | Cases not covered by Types A through D | | |
| Driveways (includes vehicular access easements and tracts) | | | |
| Type | Driveway PM Peak Volume | Major Street Average Daily Traffic | |
| E1 | <10 | <6000 | |
| E2 | 10 ≥ and < 50 | Any | |
| E3 | 50 ≥ and ≤ 200 | Any | |
| E4 | > 200 | Any | |
| F | Cases not covered by Types E1 through E4 | | |

3. How to Establish Sight Distance Triangles– Sight distance triangles for various types of intersections and driveways are shown in **Figures 1, 2, 3a and 3b** on pages 5 through 7. In these figures, the sight distance triangles are represented by the shaded areas. Point A, or driver's decision point, represents the location of the driver; Point B is located on the major road at a specific distance (to the right and to the left) from the driver. This distance, referred to as the required sight distance, represents how far (on the major road) the driver should be able to see so as to safely exit a minor road or driveway or to make a right turn on red at a signalized intersection. In Figure 4 on page 8 the driver/pedestrian sight distance triangle also referred to as "pedestrian/driver inter-visibility area" is represented by the shaded area. This is the area that must be kept free of obstructions thus drivers exiting a driveway can see approaching pedestrians on the sidewalk and vice versa. Figure 4 does not apply to entrance to buildings and/or parking lots located inside buildings. **Table 2** on page 2 shows (in the right most columns) the sight distances values that need to be used to determine the sight distance triangle at various types of intersections and driveways.

For **uncontrolled intersections** (no traffic light, stop sign or yield sign described in **Type A/Figure 1**) or a **yield-controlled intersection** described in **Type C/Figure 3a**, contact **Iris Cabrera**, City Transportation Engineer, at **425-587-3866** to have the Public Works Department determine the required sight distance triangle.

TABLE 2: Sight Distance Triangle Guidelines

| Type of Intersection or Driveways | Distance from Edge of Traveled Way (ft) | Major Street (Street Entered Upon) | | | |
|---|---|------------------------------------|-------------------|---|------------------------|
| | | Average Daily Traffic | Speed Limit (MPH) | Sight Distance Value (ft) (a) (B-C1) and (B-C2) | |
| | | | | Recommended (Desirable) | Minimum (Required) (d) |
| A – Uncontrolled (See Figure 1) | 115 (b) | <1000 | 25 | 115 | 115 |
| B - Stop Control on Minor Street (See Figure 2) | 14 | Any | 25 | 280 | 150 |
| | | | 30 | 335 | 200 |
| | | | 35 | 390 | 250 |
| C - Yield Sign On Minor Street | | | | | |
| C-1: Four-Legged Intersection (See Figure 3.a) | 130 (c) | <1000 | 25 | 295 | 295 |
| | | | 30 | 355 | 355 |
| | | | 35 | 415 | 415 |
| C-2: T- Intersection (See Figure 3.b) | 80 (c) | <1000 | 25 | 295 | 295 |
| | | | 30 | 355 | 355 |
| | | | 35 | 415 | 415 |
| D – Signalized Intersection (See Figure 2) | 14 | Any | 25 | 240 | 150 |
| | | | 30 | 290 | 200 |
| | | | 35 | 335 | 250 |
| E1 – E4 Driveways (See Figure 2) | | | | | |

| | | | | | |
|---------------------------------------|--------|-------|----|--------|-----|
| E1 (<10 Peak Hour Trips) | 10 | <6000 | 25 | 150 | 150 |
| | | | 30 | 200 | 200 |
| E2 (10-49 Peak Hour Trips) | 14 | <6000 | 25 | 150 | 150 |
| | | | 30 | 200 | 200 |
| | | | 35 | 250 | 250 |
| | | >6000 | 25 | 280 | 150 |
| | | | 30 | 335 | 200 |
| | | | 35 | 390 | 250 |
| E3 (50-200 Peak Hour Trips) | 14 | <6000 | 25 | 150 | 150 |
| | | | 30 | 200 | 200 |
| | 14 | >6000 | 25 | 280 | 150 |
| | | | 30 | 335 | 200 |
| | | | 35 | 390 | 250 |
| | | | 35 | 390 | 250 |
| E4 (>200 Peak Hour Trips) | 14 | <6000 | 25 | 280 | 150 |
| | | | 30 | 335 | 200 |
| | 14 | >6000 | 25 | 280 | 150 |
| | | | 30 | 335 | 200 |
| | | | 35 | 390 | 250 |
| | | | 35 | 390 | 250 |
| E1-E4 (See Figure 4) | 80 (e) | NA | NA | 22 (f) | NA |

Footnotes:

(a) These values should be adjusted for grades with slopes of a magnitude of grade greater than 3%, number of lanes greater than two, for skewed intersections or for design vehicles other than passenger cars, using the intersection sight distance procedures in Chapter 9 of a Policy on Geometric Design, AASHTO, 4th Edition

(b) Distance back from center of intersection.

(c) Distance back from point C1 or C2 for types C-1 and C-2 intersections.

(d) Minimum (Required) only permitted if Recommended (Desired) is not possible (see page 3 for further explanation).

(e) Distance from back of the sidewalk.

(f) Distance parallel to the sidewalk from the center of the driveway.

- a. The values in **Table 2** on page 2, referred to as **Recommended (Desirable)** sight distance are based on the intersection sight distance procedures in Chapter 9 of A policy on Geometric Design, AASHTO, 4th Edition.
- b. The values on **Table 2 on** page 2, referred to as **Minimum (Required)** sight distance are based on the stopping sight distance values in Chapter 3 of A policy on Geometric Design, AASHTO, 4th Edition.
- c. The **Recommended** values are required. If the **Recommended** values cannot be reasonably obtained due to the presence of fixed structures that cannot be removed or roadway features such as horizontal and vertical curves then the driveway shall be relocated or designed to maximize sight distance, but in no way can the sight distance be less than the **Minimum** value. The **Minimum** values may be permitted, on a case-by-case basis, on streets that allow angle parking and have 25 MPH speed limit.

- d. To determine the **Average Daily Traffic for Intersections A, B, C, C-1, C-2 and D**, see the Traffic Count Summary attached to the instructions (see Attachment 2), or the "Sight Distance Procedures" section in the Public Works home page on the City's web site at www.kirkland.wa.gov go to City Departments (blue tabs on left side), Public Works (listing on right side), Transportation and Streets (blue tabs on left side), Streets, Sight Distance Procedures.
- e. To determine the **Average Daily Traffic for Driveways E1 through E4**, use the PM Peak Trips Calculation Spreadsheet under the "Sight Distance Procedures" section in the Public Works home page on the City's web site at www.kirkland.wa.gov (go to City Departments (blue tabs on left side), Public Works (listing on right side), Transportation and Streets (blue tabs on left side), Streets, Sight Distance Procedures). Using the spreadsheet, insert the size of the project and the formula will calculate the average daily trips for the use(s) on the subject property.

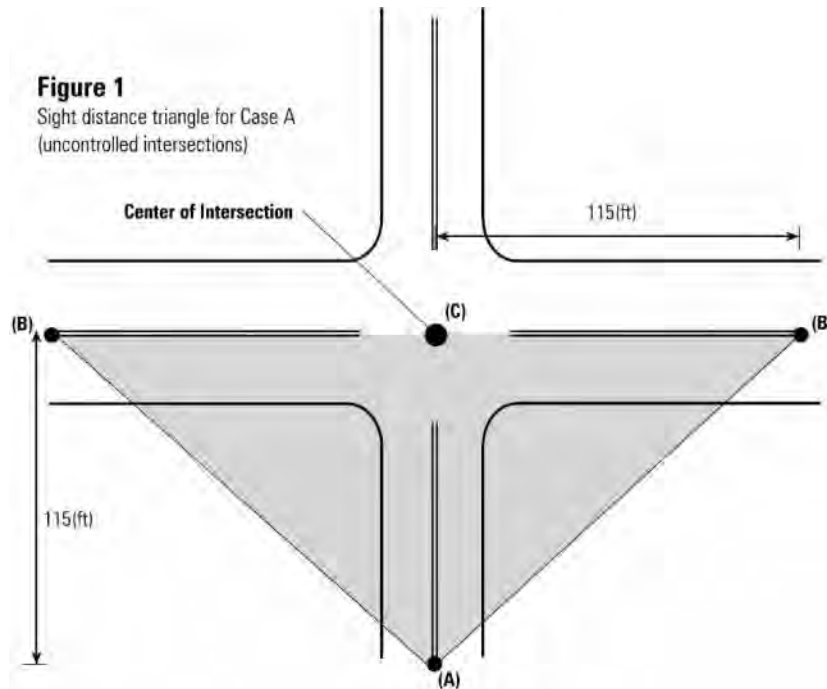
4. Permissible Intrusion in the Area To Be Kept Clear of Sight Obstruction

- a. General – Except as stated in subsection (4)(b) of this section or unless specifically approved by the Public Works Director, no structure, improvement, vegetation or other objects may be within the area to be kept clear of sight obstructions between three (3) feet and eight (8) feet above the elevations of the pavement edge of each intersecting street, private driveway, or vehicular access easement or tract where that street, driveway or vehicular access easement or tract meets the points of the triangle that form this area furthest away from the intersection.
- b. Exceptions – The following are permitted to be within the area that must be clear of sight obstructions:
Natural and fabricated objects and natural topography of the ground if the Public Works Director determines that adequate visual access is available. However, to fulfill the intent of this section, the Public Works Director may require land surface modification as part of any development activity on the subject property.

Type A – Uncontrolled Intersections

Uncontrolled intersections are not controlled by either stop or yield signs.

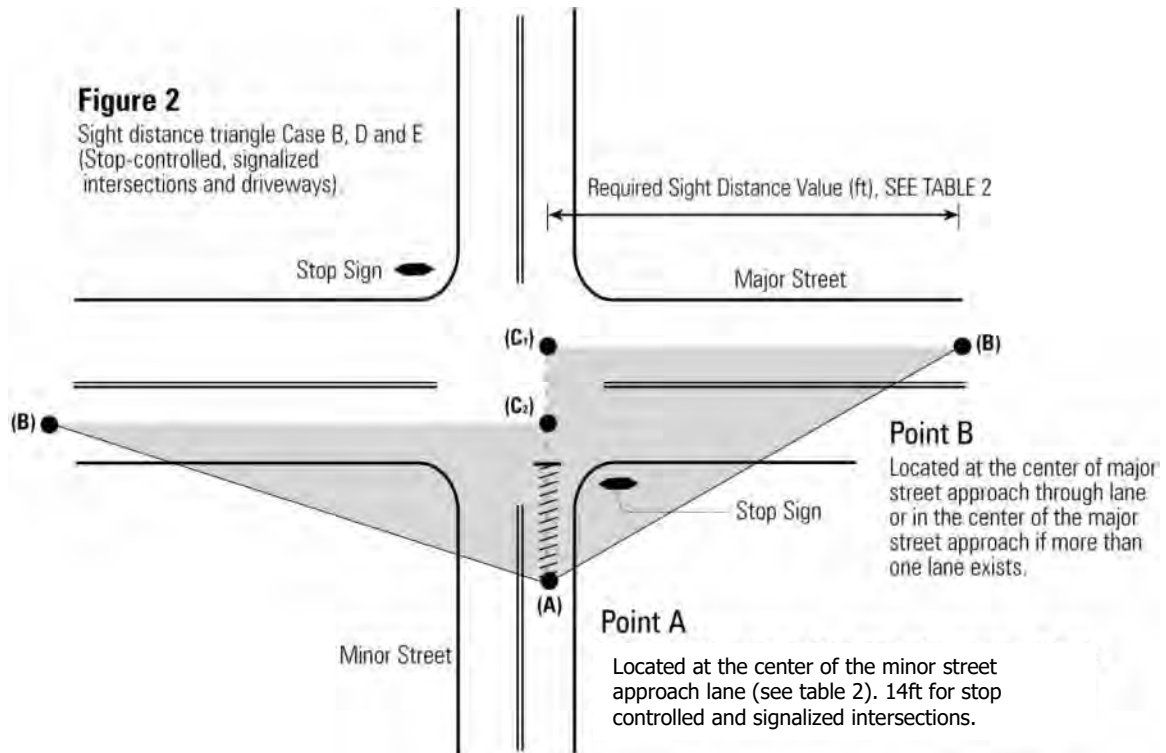
They are usually located on streets that carry very low volumes and have a 25 MPH speed limit. Figure 1 below shows the sight distance triangle for this type of intersection. In this Figure, Point A and point B are each located on the center of the intersecting street approaches, 115 ft from Point C, which is located at the center of the intersection. The sight distance triangle area that must be kept free of sight obstructions is the shaded area limited by segments AC, BC and AB.



Type B – Stop Controlled Intersections

Type B intersections are those at which the minor street approaches are controlled by stop signs. Sight distance triangle to the left is the shaded area bounded by segments A-B, B-C2 and A-C2; whereas sight distance triangle to the right is the shaded area bounded by the A-B, B-C1 and A-C1 segments as shown in Figure 2 below. Point A, or decision point, is located in the center of the minor street approach lane, 14 ft. from the edge of the major road's traveled way. **The traveled way is the portion of the road intended for the movement of vehicles and bicycles, exclusive of shoulders and turning lanes.** Point B is located on the center of the through lane on the major street (or in the center of the major street approach if more than one lane exists), a specific distance left and right from Points C1 and C2. The distance C1-B (same as C2 -B) is the required sight distance, which can be found in Table 2 on page 2.

Although it is not typical to do so, if a parking lane exists on the major street, it may be excluded from the traveled way in special cases. Usually these are cases where volumes and speeds are low and therefore the overall safety risk at the intersection is considered low.



Type C – Yield Controlled Intersections

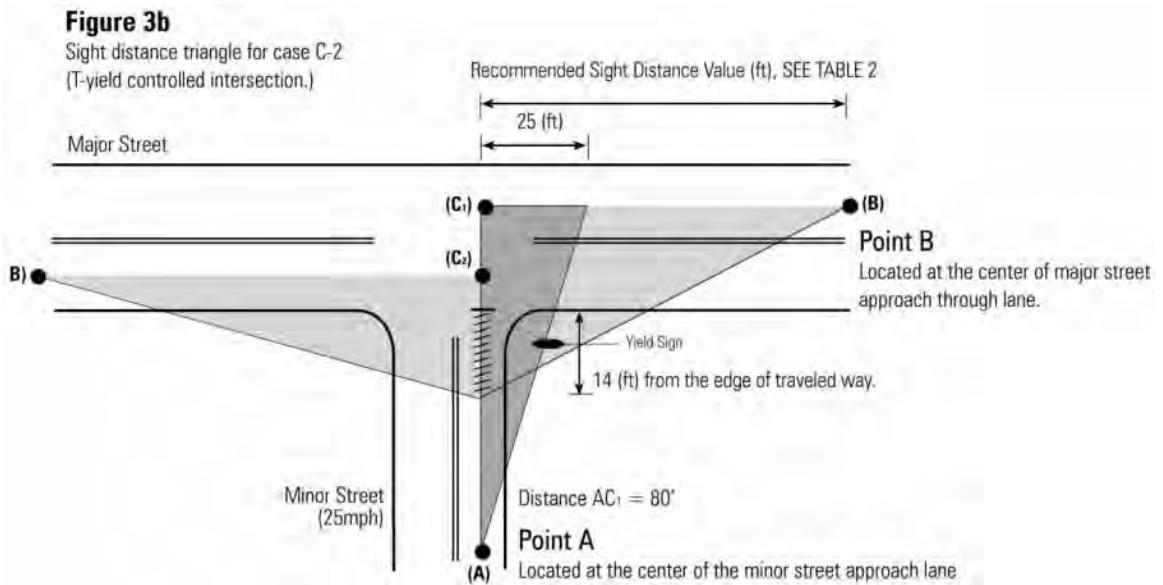
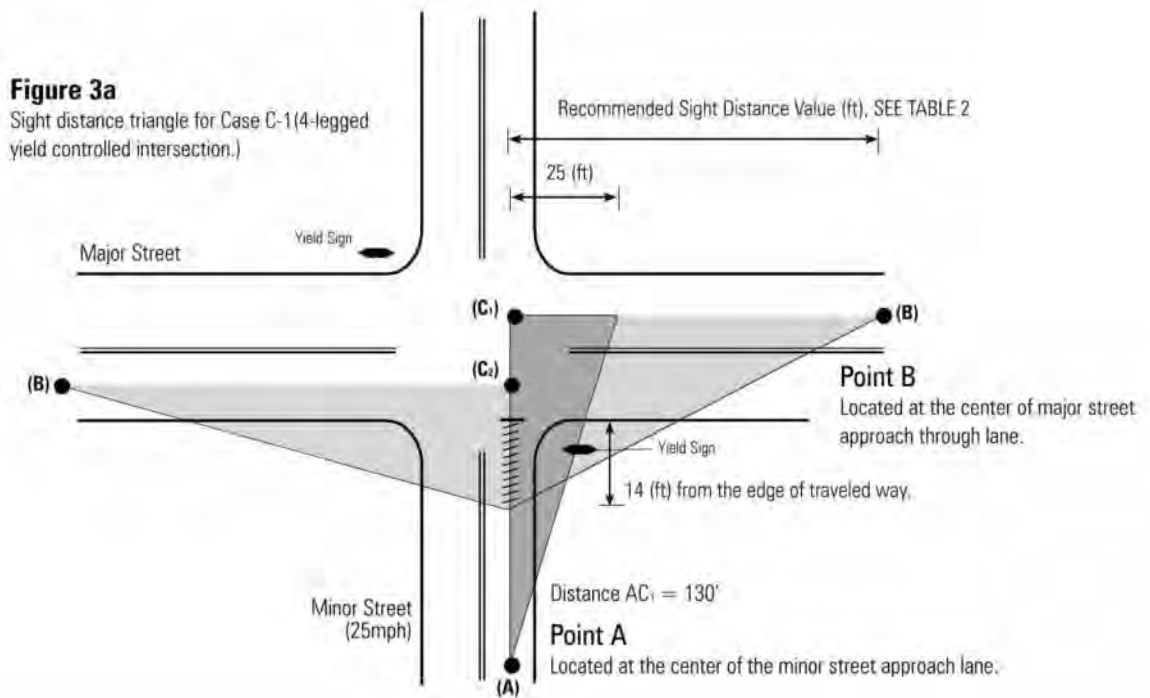
Two sight distance triangles need to be considered for Yield-controlled intersections: approach and departure sight distance triangles. **The approach sight distance triangle is the area that must be free of obstructions that may block an approaching vehicle's view of potentially conflicting vehicles. The departure sight distance triangle is the area that must be clear of obstructions that may block the view of a stopped vehicle.** These sight distance triangles are shown in Figures 3a and 3b on page 7 respectively for Types C-1, Yield-controlled Four Legged and C-2, Yield-controlled T intersections.

Figure 3a shows the approach sight distance triangles in dark shade and the departure triangle in light shade. Within the approaching sight distance triangle Point A is located in the center of the minor street approach lane, 130 ft from Point C₁, which is located at the center of the major street approach lane. The driver should be able to clearly see from Point A, a distance equal to 25 ft from C₁. At Yield –controlled T intersections (shown in Figure 3b) on page 4, the recommended distance from Point A to C₁ is 80 ft.

The departure sight distance triangle (shown as the light shaded area) at both types of yield controlled intersection is similar to the sight distance triangle at stop controlled intersections (Type B above on page 3) The driver's decision point or Point A is located in the center of the minor street approach lane, 14 ft. from the edge of the major road's traveled way. The **traveled way is the portion of the road intended for the movement of vehicles and bicycles, exclusive of shoulders and turning lanes.** Point B is located on the center of the major street approach through lane (or at the center of the major street approach if more than one lane exists), a specific distance to

the left and to the right of Points C1 and C2. This distance is the recommended sight distance, which can be found in Table 2 on page 2.

Although it is not typical to do so, if a parking lane exists on the major street it may be excluded from the traveled way in special cases. Usually these are cases where volumes and speeds are low and therefore the overall safety risk at the intersection is considered low.



Type D- Signalized Intersections and Signalized Driveways

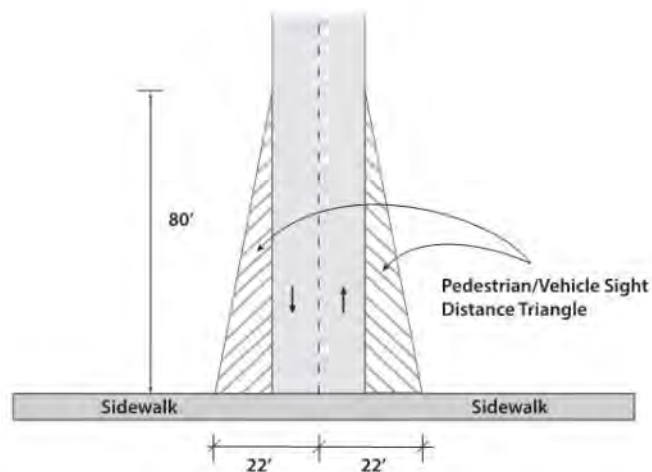
At signalized intersections and signalized driveways, in order to turn right on red, drivers should be able to clearly see vehicles approaching from the left; the applicable sight distance triangle is the shaded area bounded by the A-B, B-C1, and A-C1 setback lines shown in Figure 2 on page 6. Sight distance (B-C1) values are summarized in Table 2 on page 2.

Type E1 through E4 – Driveways not Controlled by Traffic Signals

Driveways not controlled by traffic signals operate as Type B, Stop-Controlled Intersections; therefore, the applicable sight distance triangles are shown in Figure 2 on page 6. For driveways Type E1, Point A is located 10 ft from the edge of the major route's traveled way. For driveway Types E2 through E4, Point A is located 14 ft from the edge of the major route's traveled way. Sight distances values (B-C1, B-C2) are summarized in Table 2 on page 2.

Additionally, drivers emerging from driveways must be able to see approaching pedestrians on the sidewalk and vice versa. In Figure 4 the shaded areas on each side of the driveway show the pedestrian/vehicle sight distance triangle or pedestrian/vehicle inter-visibility area which must be kept free of obstructions per Section 4 of these guidelines. The driver's point of view is located at the center of the driveway 80 feet from the back of the sidewalk. 80 feet is the stopping sight distance for a vehicle traveling at 10 MPH. The required sight distance is measured parallel to the sidewalk 22 feet from the center of the driveway. This distance is based on the driver's effective field of vision.

Figure 4
Pedestrian/Vehicle Sight Distance
Triangle at Driveways



Type F- Intersections and Driveways not Covered in Types A-E.

The sight distance triangle for intersections and driveways that do not fit any of the types previously described are to be analyzed on a case by case basis.

Nicole and Kenneth MacKenzie
kirklandcity@screamforicecream.net
236 7th Ave W
Kirkland, WA 98033

February 11, 2020

Tony Leavitt, Senior Planner - tleavitt@kirklandwa.gov
City of Kirkland Planning and Building Department
123 5th Avenue
Kirkland, WA 98033

Ref: File Number VAR18-00070 – 1/30/2020 Hearing before the Kirkland Hearing Examiner
Regarding Market Street Dental Clinic Variance at 1009 Market St

Dear Mr. Leavitt,

We submit this letter and the attachments to the public record of the above-referenced matter in further support of the points we and others made during the January 30th hearing – the request for a setback variance on the Market St. front yard of this development does not meet the required criteria and should be denied.

Specifically, the variance request is contrary to all three variance criteria.

Criteria 1: Would granting the variance 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?

See attached letter report of traffic engineer Ross Tilghman.

Criteria 2: Is the Variance necessary because of special circumstances regarding the size, shape, topography, or location of the subject property; or the location of a pre-existing improvement on the subject property that conformed to the Zoning Code in effect when the improvement was constructed?

A variance on Market St is unnecessary as there are no special circumstances that require it. Yes, the property is oddly shaped and offers challenges to some kinds of development. However, the history of the parcel reveals that development is possible:

| Date | Event | Description | Source |
|-----------|---|---|---|
| 1946 | Single family house constructed | From available photos, it appears to be a classic "Kirkland Rambler" | Attachments 2 & 3 |
| 2/14/2003 | Setback variance granted by Hearing Examiner | 4,200 square foot office building with underground parking for 13 cars proposed with driveway onto 10 th Ave W <ul style="list-style-type: none"> • 3rd St W setback reduced to 5' • 10th Ave W setback reduced to 10' • Market St setback unchanged at 20' | January 30, 2020 Hearing Examiner Packet pages 37 & 46. |
| 2/7/2007 | Application for Building Permit BLD07-00107 submitted | "To build a mixed use bldg. with 13 car garage below; 1 st floor 2,700 sq. ft. shell for 1 office & 2nd floor 2,700 sq. ft. for 1 residential unit" (Total 5,400 sq. ft.) | Attachment 2 |
| 5/14/2007 | Statutory Warranty Deed recorded | Transfer property to Benjamin J Green | Attachment 3 |

| | | | |
|------------|-------------------------------|--|-------------------|
| 8/15/2007 | BLD07- 00756 Issued | Demolish single family residence | Attachment 3 |
| 10/9/2007 | BLD07-00107 Issued | 5,400 sq. ft. mixed use building referenced above | Attachments 2 & 3 |
| 12/20/2007 | LSM07-00055_P Issued | Land Surface Modification permit issued for application that included a site plan showing no Market St setback variance. | Attachment 4 |
| 12/16/2009 | Request to cancel BLD07-00107 | Letter from Dr. Benjamin Green to City of Kirkland Building Division referring to “my building permit”. | Attachment 5 |

This trail of requests and approvals documents clearly that a useful building can be constructed on this parcel while maintaining the required 20 foot front yard setback on Market St. – neither the 4,200 square foot office building contemplated in the 2003 variance request nor the 5,400 square foot mixed office and residential building which was the subject of the 2007 permit application required a Market St. setback variance. Mr. Green purchased the property while the building permit application for the 5,400 square foot building was pending. More than 2 years elapsed from the time the building permit was issued to Mr. Green and his request to cancel it. Nine years later, Mr. Green submitted an application for three variances, including for the Market St. setback, in order to build a 5,387 square foot dental clinic – a building smaller than that of the 2007 building permit.

The point here is not to debate whys and wherefores about the building size and configuration. The history of the parcel and the various development requests made and granted by the City clearly and definitively defeat the conjecture that the geometry, layout, or circumstances of the parcel require a Market St setback variance. Indeed, the applicant may want a variance for some reason, but that is not part of the criteria. Nor do the criteria ask if a variance is necessary to accommodate a specific use – such as a medical office building – but whether one is necessary in order to accommodate *any* approved use for the designated Zone.

The applicant has clearly not met and cannot meet the requirements of variance request criteria 2.

Criteria 3: How would the Variance not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this Code allows to other property in the same area and zone as the subject property?

This property is part of the MSC-1 zone which applies to most all of the Market Street Corridor. MSC-2, MSC-3, and MSC-4 are small scattered zones along Market St where different rules apply for historical or land use reasons. Contrary to the applicant’s statement supporting the variance application and available on MyBuildingPermits.com (attachment 6), no buildings in MSC-1 have a zero front yard setback along Market St.

Granting the requested variance along Market St would create a visual and land use discontinuity along the Market Street Corridor that would be at odds with the “Market Street Corridor Neighborhood Plan” vision and specification. This plan is part of chapter 15 of the City’s “Comprehensive Plan.”

The most recent nearby development in MSC-1 is the Dibble Engineering Building which is located on Market St. just across 3rd St W from the subject property. On February 6, 2017, the Design Review Board approved what it termed “a minor variation to allow reduced front yard setbacks on Market ST, 3rd ST W and 11th Ave W” (see attachment 7). The approved setback for most of the parcel along Market St. is 14’, the approved setback along 11th Ave. W is a constant 15’ 6”, and the approved setback along 3rd St. W is a constant 16’.

Conclusion

Since the burden of proof that a variance request is appropriate lies with the applicant and since the applicant has clearly failed to demonstrate compliance with any of the three requirements for granting a variance, the variance for a 0' front yard setback on Market Street must be denied.

Regards,


Nicole MacKenzie


Kenneth E. MacKenzie

Attachments:

1. Letter from Ross Tilghman of the Tilghman Group reporting traffic safety issues at the intersection of Market St and 10th Ave W related to the proposed development.
2. Application for building permit BLD07-00107 with associated information about the existing single family house and proposed site plan.
3. Print out of a "Property Detail" report for 1009 Market St created on January 17, 2020 using the King County Department of Assessments web.
4. Site plan for Land Surface Modification permit LSM07-00055_P submitted to the City on 12/19/2007 and approved on 12/20/2007 (see page 2) showing the outline of the proposed building with 20' Market St front yard setback.
5. Letter from Dr. Green (owner of the subject property and ultimate applicant for the setback variance request) dated December 16, 2009 to the City of Kirkland Building Division requesting cancellation of building permit BLD07-00107.
6. Kirkland Land Use Application # 517552 for "Market Street Clinic" and associated "Supplemental" information regarding "Variance Criteria".
7. Design Review Board Decision 1029 Market ST, DRV16-03090.



10 February 2020

Hearing Examiner
City of Kirkland
Kirkland, WA

re: VAR18-00070 – 1009 Market Street Dental Clinic Variance

Dear Hearing Examiner:

I am writing on behalf of Ken and Nicole MacKenzie, neighbors of the proposed project, to express safety concerns about the project's effect on intersection sight distance at 10th Avenue W and Market Street, and the location of the project's 3rd Street W driveway. In making these comments, I have visited the site, measured sight distance and have reviewed the site plan and documents submitted for the January 30th hearing.

10th Ave W/Market Street

- 1. The sight-distance requirement at this intersection is 412 feet, following Kirkland's Pre-Approved Plans Policy R-13: Intersection Sight Distance.** This is greater than the applicant's assumption of 390 feet. The difference is due to the fact that traffic turning left from 10th Avenue W to Market Street must cross two lanes (the through lane plus the center left-turn lane) for which drivers need additional time. Per Policy R-13, specific adjustments for the number of lanes are found in *A Policy on Geometric Design of Highways and Streets*, AASHTO, 7th ed., 9-44 and 9-45. Applying those adjustments yields a sight-distance of 412 feet. Additionally, the correct point of measurement for sight-distance is 14 feet back of the traveled way – effectively the edge of the road since the parking lane is rarely excluded from the traveled way. This, too, differs from the applicant's previous sight-distance diagram. Consequently, the sight triangle covers virtually all of the project's sidewalk and planting strip along Market Street.
- 2. The requested setback variance puts the building too close to a driver's line of sight to see traffic on Market Street safely.** As shown on Figure 1, when measured from the correct point on 10th Avenue W, per Policy R-13, the driver's line of sight to the left (uphill on Market) crosses over the subject property. With no setback on Market Street, the proposed building comes right up to and may even interfere with the driver's line of sight. A more definitive determination requires more precise drawings than have been provided to date. Any limitation or interference in this sight triangle would violate Policy R-13's requirement "that no structure, improvement, vegetation or other objects may be within the area to be kept clear of sight obstructions between 3 feet and 8 feet above the elevations of the pavement edge of each intersecting street..."

Tilghman Group
4618 44th Ave South
Seattle, Washington 98118
Voice: 206-577-6953 email: ross@tilghmangroup.com



Figure 1.

3. **The skewed intersection creates additional complications for obtaining unobstructed sight-distance.** 10th Avenue W intersects Market Street at a sharp 45-degree angle. This angle results from the intersection of divergent street grids in Kirkland many decades ago and greatly exceeds design guidance for intersections that encourage intersecting angles of 75-degrees or more (see *A Policy on Geometric Design of Highways and Streets*, AASHTO, 7th ed., 9-33). Drivers must therefore crane their necks to see on-coming traffic to the left. Not all drivers possess such good range of motion so the look over the shoulder can be difficult. The sharp angle indicates that additional caution is prudent when considering the adequacy of sight-distance at this intersection.
4. **The parking lane and landscaping present obstacles to maintaining clear sight-distance.** Vehicles parked along the project's Market Street frontage would block a driver's sightline to on-coming traffic since the parking lane falls in the middle of the required sight-triangle. Wider and taller vehicles such as large SUV's, vans, or RV's would exacerbate the blockage. Landscaping taller than a low shrub would also fall within the sight-triangle and potentially obstruct a driver's sightline, particularly given the slope of the street in which drivers must literally look up the hill. While the city's "Design Guidelines for Pedestrian Oriented Business Districts" indicates that street trees should be considered for the west side of Market Street, the street's slope and the planting strip's location within the sight triangle suggest that street trees would not be appropriate on this frontage since they could restrict sight-distance. These two factors compound the difficulty of all drivers obtaining a clear line of sight from the intersection's skewed angle. It would be prudent to prohibit parking along the project's frontage and to limit the height of landscaping to no more than 36" above grade.

3rd Street W Driveway

1. **The project's driveway on 3rd Street should be considered for right-in/right-out only traffic flow.**
The argument for this restriction is that the driveway falls far short of the required 75-foot spacing from the adjacent intersection at Market Street, leaving little room for traffic turning from Market to stop for a vehicle that might be waiting to enter the driveway. While analysis has shown sight-distance to be adequate at this driveway, the case of multiple arriving vehicles does not appear to have been tested. This problem could be avoided by restricting the driveway's movements so that vehicles would not be pausing on 3rd Street after turning off of Market Street.

Thank you for your consideration of this important safety matter

Sincerely,



Ross Tilghman

Ross Tilghman is a transportation planning consultant with his own firm, the **Tilghman Group**. He has 35 years of experience in analyzing transportation demands for a wide variety of land uses and in developing solutions to meet transportation needs. A full member of the Urban Land Institute, Mr. Tilghman is a frequent participant in ULI Advisory Service Panels working in communities around the country and has been active in developing ULI's Building Healthy Communities initiative. He currently serves on ULI's Suburban Development and Redevelopment Council. Tilghman recently completed five years as a Commissioner on the Seattle Design Commission, including a year as Chair.



CITY OF KIRKLAND BUILDING PERMIT APPLICATION Permit # BA18000107

Hearing Examiner Decision

Exhibit I

- NEW COMMERCIAL/INDUSTRIAL/MULTIFAMILY** **COMMERCIAL ADDITIONS/ALTERATIONS**
 MULTIFAMILY ADDITIONS/ ALTERATIONS **NEW SITE-BUILT STRUCTURE**

#1 Site Address: 1009 + 1011 MARKET ST Project Name: G HORBANIAN COMMERCIAL SITE
 MULTIFAMILY- 1015A and 1015B
 Property Owner ABRAHAM SHORBANIAN Phone 425-450-5008
 Property Owner's Address 22106 SE 51ST PLACE City, Zip Code ISSAQUAH, WA 98029
 Describe Job to be Done 13 CAR GARAGE BELOW 2,000 # OFFICE BELOW 2,000 # RES.

#2 Contractor's Name TBD Contractor's Reg. # _____
 (Company Name) Expiration Date _____
 Contractor's Address _____ State UBI # _____
 City, Zip Code _____ Phone _____

OR

I have read Chapter 18.27.010 relating to definitions of general contractors and specialty contractors and Chapter 18.27.110, which prohibits issuing permits without proof of registration.

OWNER/CONTRACTOR SIGNATURE: _____

#3 Contact Person GREG SETLER DR. Ben Greene Daytime Phone 425-822-0245
710 2ND AVE. SUITE 1260 Alt. Phone 206-660-0803
 City SEATTLE State WA ZIP 98104 Fax 206-287-1531
 Email GLSC@SIENNAARCHITECTURE.COM

#4 Sewer District KIRKLAND Septic: Yes No Water District _____

#5 Total Estimated Project Cost \$ ~~400K~~ 500K Existing Building Valuation _____
 Lender own cash
 Address _____ Phone _____

#6 Property Tax Account Number (Parcel #) 388590-2055
 Legal Description LOTS 1, 2, 3 AND 4 BLOCK 26 TOWN OF KIRKLAND, ACCORDING TO VOLUME 6 OF PLATS PAGE 53.
 Please submit 3 separate 8 1/2 x 11 copies of the legal description with this application if it will not fit in space provided above.

#7 Type of Work:
 New Commercial Building - Total Building Square footage: _____ Commercial Addition - Sq ft. added: _____
 Commercial Alteration: Scope of work - _____
 New Mixed-Use Building (No. of Units 2) - Total Retail/Commercial Square footage: 2,134 #
 New Multi-Family Building (No. of Units _____) Multi-Family Addition Multi-Family Alteration
 Other _____
 (Detention vault, Shoring, Rockeries, New Cellular facility, Comm/Multi-family Swimming pool, etc.)

#8 Will any structures be demolished as part of this permit? YES NO _____ How many structures? ONE
 Describe structures to be demolished: 800 # 1 SINGLE FAMILY HOME
 Show structures to be demolished on site plan. Attach the completed Demolition checklist (included in this application), and supporting required documents. **You must contact the Puget Sound Clean Air Organization regarding Asbestos requirements:**
 by phone 1-800-552-3565 - or online: <http://www.pscleanair.org/asbestos/asbe-cont-info.shtml> for full details and to obtain asbestos forms, instructions, regulations or other questions. Failure to comply with asbestos requirements may result in penalties.

DEMO BLD07-00108

NOTE: ANY DEMOLITION PERMITS OBTAINED SEPARATELY FOR THIS PARCEL MUST BE FINALED PRIOR TO ISSUANCE OF A BUILDING PERMIT

NOTE: The City of Kirkland is responsible for providing all Electrical permits. If electrical service is needed, please advise your Electrical Contractor to obtain an electrical permit prior to doing any work. If located in an RH zone in the Rose Hill Business District please refer to the RHBD Exterior Lighting Requirements for (KZS section 115.85) Questions? Call the Planning Department 425-587-3225.

Hearing Examiner Decision
 Exhibit 1

| MECHANICAL INCLUDED IN PROJECT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>NOTE: IF MECHANICAL WORK WILL BE DONE, AND IS NOT INCLUDED IN THIS APPLICATION, A SEPARATE PERMIT IS REQUIRED.</i> | | | | PLUMBING INCLUDED IN PROJECT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>NOTE: IF PLUMBING WORK WILL BE DONE, AND IS NOT INCLUDED IN THIS APPLICATION, A SEPARATE PERMIT IS REQUIRED.</i> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| #9 Number of Mechanical Appliances: (G = Natural Gas, E = Electric, OT = Other) | | | | | #10 Number of Plumbing Fixtures (including rough-ins): | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table style="width:100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">New</th> <th style="text-align: left;">Move</th> <th style="text-align: left;">Existing</th> <th style="text-align: left;">Fuel type</th> <th style="text-align: left;">Size (BTU/kW)</th> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td><u>8</u></td> <td>_____</td> <td>_____</td> <td>E</td> <td>10</td> </tr> <tr> <td><u>8</u></td> <td>_____</td> <td>_____</td> <td>E</td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td><u>2</u></td> <td>_____</td> <td>_____</td> <td>E</td> <td></td> </tr> <tr> <td><u>2</u></td> <td>_____</td> <td>_____</td> <td>E</td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td></td> <td></td> </tr> </table> | New | Move | Existing | Fuel type | Size (BTU/kW) | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | <u>8</u> | _____ | _____ | E | 10 | <u>8</u> | _____ | _____ | E | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | <u>2</u> | _____ | _____ | E | | <u>2</u> | _____ | _____ | E | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | _____ | _____ | _____ | | | | | | | <table style="width:100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">New</th> <th style="text-align: left;">Move</th> <th style="text-align: left;">Existing</th> <th style="text-align: left;">Bar Sink</th> </tr> <tr> <td><u>4</u></td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td><u>2</u></td> <td>_____</td> <td>_____</td> <td>Bathub or Combo Bath/Shower</td> </tr> <tr> <td><u>2</u></td> <td>_____</td> <td>_____</td> <td>Bidet</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Clothes washer, Domestic</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Dishwasher, Domestic</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Hose Bibb, First</td> </tr> <tr> <td><u>2</u></td> <td>_____</td> <td>_____</td> <td>Hose Bibb, Each Additional</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Kitchen Sink, Domestic</td> </tr> <tr> <td><u>6</u></td> <td>_____</td> <td>_____</td> <td>Laundry Sink</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Lavatory (Bathroom Sinks)</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Lawn Sprinkler, Each Head</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Shower (Stand Alone)</td> </tr> <tr> <td><u>6</u></td> <td>_____</td> <td>_____</td> <td>Water Closet, (Toilet)</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Medical Gas System (Inlets/Outlets)</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Traps (Other than above items)</td> </tr> <tr> <td><u>3</u></td> <td>_____</td> <td>_____</td> <td>Water Heater</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Other- Describe _____</td> </tr> <tr> <td colspan="3"></td> <td>TOTAL FIXTURES: <u>25</u></td> </tr> </table> | New | Move | Existing | Bar Sink | <u>4</u> | _____ | _____ | _____ | <u>2</u> | _____ | _____ | Bathub or Combo Bath/Shower | <u>2</u> | _____ | _____ | Bidet | _____ | _____ | _____ | Clothes washer, Domestic | _____ | _____ | _____ | Dishwasher, Domestic | _____ | _____ | _____ | Hose Bibb, First | <u>2</u> | _____ | _____ | Hose Bibb, Each Additional | _____ | _____ | _____ | Kitchen Sink, Domestic | <u>6</u> | _____ | _____ | Laundry Sink | _____ | _____ | _____ | Lavatory (Bathroom Sinks) | _____ | _____ | _____ | Lawn Sprinkler, Each Head | _____ | _____ | _____ | Shower (Stand Alone) | <u>6</u> | _____ | _____ | Water Closet, (Toilet) | _____ | _____ | _____ | Medical Gas System (Inlets/Outlets) | _____ | _____ | _____ | Traps (Other than above items) | <u>3</u> | _____ | _____ | Water Heater | _____ | _____ | _____ | Other- Describe _____ | | | | TOTAL FIXTURES: <u>25</u> |
| New | Move | Existing | Fuel type | Size (BTU/kW) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| <u>8</u> | _____ | _____ | E | 10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>8</u> | _____ | _____ | E | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| <u>2</u> | _____ | _____ | E | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| New | Move | Existing | Bar Sink | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>4</u> | _____ | _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>2</u> | _____ | _____ | Bathub or Combo Bath/Shower | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>2</u> | _____ | _____ | Bidet | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Clothes washer, Domestic | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Dishwasher, Domestic | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Hose Bibb, First | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>2</u> | _____ | _____ | Hose Bibb, Each Additional | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Kitchen Sink, Domestic | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>6</u> | _____ | _____ | Laundry Sink | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Lavatory (Bathroom Sinks) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Lawn Sprinkler, Each Head | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Shower (Stand Alone) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>6</u> | _____ | _____ | Water Closet, (Toilet) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Medical Gas System (Inlets/Outlets) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Traps (Other than above items) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>3</u> | _____ | _____ | Water Heater | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| _____ | _____ | _____ | Other- Describe _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | TOTAL FIXTURES: <u>25</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Estimated cost, mechanical portion only (excluding fire protection and plumbing) \$ _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

#11 Water Department Service
 (proposed) Meter Size _____

#12 Sewer Service
 Side Sewer Contractor _____
 Contractor's Address _____
 City, Zip _____ Phone _____

#13 Street Use
 Contractor's License No. _____ Work to be done: _____

#14 Will significant trees be removed as part of this project? How many? FIVE 4 copies of the Site Plan are required with this application. The Site Plan must show all of the significant trees, and you may be required to provide a certified arborist report. See the 2006 Tree Regulations (attached) for Tree plan II for new Commercial/Industrial, commercial Tenant Improvement, and Multi-Family construction, or contact the Planning Department (425-587-3225) for further guidance regarding tree retention regulations.

#15 If you THINK that this Construction project MAY take more than one year: you must provide a Construction Schedule prior to permit issuance. The schedule is subject to approval by the Building Official. Ref. KMC 21.06.255.
 Will you be submitting a Construction Schedule? YES _____ NO X

#16

- By signing this application, I authorize employees/agents of the City of Kirkland to enter onto the property which is the subject of this application during regular business hours. The sole purpose of entry is to make any examination of the property which is necessary to process this application.
- By signing this application, I acknowledge that I understand and will comply with the Puget Sound Clean Air Organization's requirements regarding Asbestos Abatement.

I certify under penalty of perjury that the information furnished by me is true and correct to the best of my knowledge and, further, that I am authorized by the owner of the above premises to perform the work for which permit application is made. I further agree to save harmless the City of Kirkland as to any claim (including costs, expenses, and attorney's fees incurred in investigation and defense of such claim), which may be made by any person, including the undersigned, and filed against the City of Kirkland, but only where such claim arises out of the reliance of the City, including its officers and employees, upon the accuracy of the information supplied to the City as a part of this application.

OWNER/AGENT: _____ **DATE:** 2-1-07

NOTE: Permit Applications requiring plan review are accepted Monday-Tuesday-Thursday-Friday 8-4:00, Wednesday 10:30-4:00

City of Kirkland 123 5th Avenue Kirkland WA 98033 Phone: 425-587-3600 FAX: 425-587-3651
 CITY WEB SITE: www.ci.kirkland.wa.us PERMIT INFORMATION: www.kirklandpermits.net ONLINE PERMITS: www.MyBuildingPermit.com

Please complete #17 if adding plumbing fixtures (including rough-ins)

#17 Water Supply Piping

- A. Fixture Units: Number of Fixtures x Fixture Unit multiplier = Total Fixture Units (Public or Private)
- B. Distance from meter to most remote outlet: 60 feet.
- C. Difference in elevation between meter and highest fixture: 10 feet above meter or _____ feet below meter.
- D. Pressure in street main: _____ psi. (Measure with pressure gauge or check with water district).

| Plumbing Fixtures | Public | | Private – Multi-Family 3 Dwelling Units or more | Total Fixture Units |
|---|--------------------|------------------|---|---------------------|
| | Heavy Use Assembly | General Use | Total dwelling unit counts | |
| Bar Sink | | _____ x 2.0 | _____ x 1.0 | |
| Bathtub or Combination Bath/Shower - 1/2" Branch | | _____ x 4.0 | <u>4</u> x 4.0 | <u>16</u> |
| Bathtub or Combination Bath/Shower - 3/4" Branch | | _____ x 10.0 | _____ x 10.0 | |
| Bidet | | _____ x 1.0 | _____ x 1.0 | |
| Clinic Sink | | _____ x * | | |
| Clotheswasher, Domestic | | _____ x 4.0 | <u>2</u> x 4.0 | |
| Dental Unit, Cuspidor | | _____ x 1.0 | | |
| Dishwasher, Domestic | | _____ x 1.5 | <u>2</u> x 1.5 | <u>3</u> |
| Drinking Fountain or Water Cooler | _____ x 0.75 | <u>2</u> x 0.5 | _____ x 0.5 | <u>1</u> |
| Hose Bibb, First | | _____ x 2.5 | _____ x 2.5 | |
| Hose Bibb, Each Additional | | _____ x 1.0 | _____ x 1.0 | |
| Kitchen Sink, Domestic | | _____ x 1.5 | _____ x 1.5 | |
| Laundry Sink | | _____ x 2.0 | _____ x 1.5 | |
| Lavatory (Bathroom Sink) | _____ x 1.0 | <u>2</u> x 1.0 | <u>4</u> x 1.0 | <u>6</u> |
| Service Sink or Mop Basin | | _____ x 3.0 | _____ x 1.5 | |
| Shower (List Each Head) | | _____ x 2.0 | _____ x 2.0 | |
| Urinal, 1.0 GPF Flushometer - See 610.10 | _____ x 5.0 | _____ x 4.0 | | |
| Urinal, Flush Tank | _____ x * | _____ x 2.0 | _____ x 2.0 | |
| Wash Fountain, Circular Spray | | _____ x 4.0 | | |
| Washup Sink, Each Set of Faucets | | _____ x 2.0 | | |
| Water Closet, 1.6 GPF Gravity Tank | _____ x 3.5 | <u>2</u> x 2.5 | <u>4</u> x 2.5 | <u>10</u> |
| Water Closet, 1.6 GPF Flushometer Valve - 1/2" Branch | _____ x * | 2 x * | 2 x * | |
| Water Closet, 1.6 GPF Flushometer Valve 1" Branch -see 610.10 | _____ x * | _____ x * | _____ x * | |

• Refer to Table 6-4, 2003 UPC

Hydraulic Analysis attached

| | |
|---------------------------|-----------|
| Total Fixture Units: | <u>36</u> |
| Total if Using Table L-1: | |

Plumbing Appendix L Table L-1 may be used for Multifamily 3 or more dwelling units instead of the multiplier above (L-1 worksheet next page)

Number of plumbing fixtures must be entered in table above on all applications – you do not have to complete the multiplier when using Table L-1.

OFFICE USE ONLY (PLEASE DO NOT WRITE BELOW THIS LINE)

MINIMUM METER SIZE: _____ INCHES MINIMUM BUILDING SUPPLY: _____ INCHES PRV. NEEDED? YES _____ NO _____



CITY OF KIRKLAND
UNIFORM PLUMBING CODE – WATER SUPPLY FIXTURE UNITS
ALTERNATE PLUMBING SYSTEMS – TABLE L-1

Serving 3 or more Dwelling Units

| Bathroom Groups having 1.6 GPF Gravity or Pressure Tank Water Closets | Number | Total Units |
|---|---------|-------------|
| Half-Bath or Powder Room | _____ x | 2.5 _____ |
| 1 Bathroom Group | _____ x | 3.5 _____ |
| 1 ½ Bathrooms | _____ x | 6.0 _____ |
| 2 Bathrooms | _____ x | 7.0 _____ |
| 2 ½ Bathrooms | _____ x | 8.0 _____ |
| 3 Bathrooms | _____ x | 9.0 _____ |
| Each additional ½ Bath | _____ x | 0.5 _____ |
| Each additional Bathroom Group | _____ x | 1.0 _____ |
| Bath Group (1.6 GPF Flushometer Valve) | _____ x | 4.0 _____ |
| Kitchen Group (Sink and Dishwasher) | _____ x | 1.5 _____ |
| Laundry Group (Sink and Clothes Washer) | _____ x | 3.0 _____ |
| Additional units not on Table L-1 | | |
| Bidet | _____ x | 1.0 _____ |
| Bar sink | _____ x | 1.0 _____ |
| Hose Bib, First | _____ x | 2.5 _____ |
| Hose Bib, Each Additional | _____ x | 1.0 _____ |
| Additional Units not listed, use table 6-4 for fixture count | _____ x | _____ |
| Total Fixture Units | | _____ |

Notes:

- 1. A bathroom group, for the purpose of this table, consists of one water closet, up to two lavatories, and either one bathtub or one shower.**
- 2. A half-bath or powder room, for the purposes of this table, consists of one water closet and one lavatory.**
- 3. See Appendix L for scope and application of alternate plumbing systems.**

**King County**[Home](#)[News](#)[Services](#)[Comments](#)[Search](#)***By law this information may not be used for commercial purposes.*****Assessor Real Property Records:**

| | | | |
|------------|--------------------------------------|----------------------|----------------------------|
| Taxpayer | KIRKLAND FAMILY DENTISTRY | Parcel Number | 3885802055 |
| | | Account Number | 388580205507 |
| Tax Year | 2007 | Levy Code | 1700 |
| Tax Status | TAXABLE | Taxable Value Reason | NONE OR UNKNOWN |

| | | | |
|-----------------------------|------------------|---------------------------|------------------|
| Appraised Land Value | \$291,000 | Taxable Land Value | \$291,000 |
| Appraised Improvement Value | \$34,000 | Taxable Improvement Value | \$34,000 |

| | | | |
|------------|--------------------------------------|----------------------|----------------------------|
| Taxpayer | KIRKLAND FAMILY DENTISTRY | Parcel Number | 3885802055 |
| | | Account Number | 388580205507 |
| Tax Year | 2008 | Levy Code | 1700 |
| Tax Status | TAXABLE | Taxable Value Reason | NONE OR UNKNOWN |

| | | | |
|-----------------------------|------------------|---------------------------|------------------|
| Appraised Land Value | \$349,000 | Taxable Land Value | \$349,000 |
| Appraised Improvement Value | \$33,000 | Taxable Improvement Value | \$33,000 |

Assessor Property Sales Records:

Tip: Use the [Recorders Office: Excise Tax Affidavits Report](#)
to see more sales records details

| | | | |
|-------------|---|------------|--------------------|
| Sale Date | 5/4/2007 | Sale Price | \$1,035,000 |
| Seller Name | GHORBANIAN ABRAHAM+SOLTANI ZAHRA | | |
| Buyer Name | GREENE BENJAMIN J | | |
| Sale Date | 8/7/2006 | Sale Price | \$850,000 |
| Seller Name | COFFEEHOUSE BUILDING LLC | | |
| Buyer Name | GHORBANIAN ABRAHAM+SOLTANI ZAHRA | | |
| Sale Date | 4/26/2005 | Sale Price | \$750,000 |
| Seller Name | MCGEOUGH BREFFNI J+HOLLY A | | |
| Buyer Name | COFFEEHOUSE BUILDING LLC | | |
| Sale Date | 12/12/2003 | Sale Price | \$525,000 |
| Seller Name | 1009 MARKET STREET DEVELOPMENT LLC | | |
| Buyer Name | MCGEOUGH BREFFNI J+HOLLY A | | |
| Sale Date | 10/16/2002 | Sale Price | \$0 |
| Seller Name | GELOTTE CURTIS E | | |

| | | | |
|-------------|---|------------|------------------|
| Buyer Name | 1009 MARKET STREET DEVELOPMENT LLC | | |
| Sale Date | 7/12/2002 | Sale Price | \$400,000 |
| Seller Name | PHILLIPS THERESA T | | |
| Buyer Name | GELOTTE CURTIS | | |

Assessor Parcel Records:

| | | | |
|------------------------|--------------------------------|----------------|-------------------------------------|
| District Name | KIRKLAND | | |
| Property Name | | Property Type | RESIDENTIAL |
| Plat Name | KIRKLAND ADD | Present Use | Single Family (Res Use/Zone) |
| Plat Block | 26 | Water System | WATER DISTRICT |
| Plat Lot | 1-2-3-4 | Sewer System | PUBLIC |
| Lot Area | 8,120 SqFt (0.19 acres) | Access | PUBLIC |
| Section/Township/Range | NE 6 25 5 | Street Surface | PAVED |

Assessor Legal Description Records:

| | |
|-------------------|---------------------|
| Legal Description | KIRKLAND ADD |
|-------------------|---------------------|

Assessor Residential Building Records:

| | | | |
|------------------------------|-----------------------------|-------------------------|------------|
| Address | 1009 MARKET ST 98033 | | |
| Building Grade | Low Average | Building number | 1 |
| Condition | Average | Bedrooms | 3 |
| Year Built | 1949 | Baths | 1 |
| Year Renovated | 0 | 1/2 Baths | 0 |
| Total Living SqFt | 1590 | 3/4 Baths | 0 |
| 1st Floor SqFt | 910 | Stories | 1 |
| Half Floor SqFt | 0 | Single Story Fireplace | 0 |
| 2nd Floor SqFt | 0 | Multi Story Fireplace | 1 |
| Upper Floor SqFt | 0 | Free Standing Fireplace | 0 |
| Total Basement SqFt | 910 | Basement Garage SqFt | 230 |
| Total Finished Basement SqFt | 680 | Attached Garage SqFt | 0 |
| Finished Basement Grade | Fair | Open Porch SqFt | 0 |
| Daylight Basement | Y | Enclosed Porch SqFt | 0 |
| Heat System | Forced Air | Deck SqFt | 0 |

Heat Source | Oil | Percent Brick Stone | 0

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| |
|---|
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| King County Assessor: Submit a request to correct this information |
| DDES: Permit Applications Report |
| King County: Districts and Development Conditions Report |
| King County Assessor: eReal Property Report (PDF format requires Acrobat) |
| King County Assessor: Quarter Section Map Report (PDF format requires Acrobat) |
| King County Treasury Operations: Property Tax Information |
| Recorders Office: Excise Tax Affidavits Report |
| Recorders Office: Scanned images of plats, surveys, and other map documents |

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July 25, 2007

Sienna Architecture
Gregory Seiler
710 – 2nd Avenue Suite 1260
Seattle, WA 98104

Re: Kirkland Marketplace Tree Retention Evaluation and Report (Tree Plan II)

Dear Mr. Seiler:

The Jay Group, Inc has been retained for the purpose of conducting an evaluation and assessment of the eight significant trees located at the proposed project site. The project site is one triangular-shaped parcel (Tax ID: 3885802055) located at the intersection of Market Street, 3rd Street W. and 10th Avenue W. in the City of Kirkland, WA. The site visit and tree assessment were performed on July 24, 2007.

Project Description

The proposed project is a multi-use development consisting of commercial and residential space, parking, utilities, vehicle and pedestrian access. The existing single family home will be removed under the current site plan. New sidewalks and streetscapes are proposed on all sides of the development.

The area of study for this evaluation was limited to the eight existing significant trees (Trees T-1 through T-8 for the purposes of this report) growing throughout the subject parcel. The City of Kirkland defines a significant tree as a tree that is at least 6” in diameter at breast height (DBH), 4.5’ above ground level. The eight trees were evaluated with the purpose of determining which trees would be suitable for retention on the site following development, in relation to the locations of roadways, pedestrian access, utility corridors, proposed building footprints, and overall site grading. Trees which are located in areas that physically allow retention can be retained if 1) the tree is of suitable health and lacks specific hazard features which would pose an unreasonable hazard to life and property; and 2) tree retention guidelines for construction and development can be followed.

pcp

Kirkland Marketplace Tree Evaluation

For the purposes of this assessment, the above ground portions of each tree surveyed were evaluated, including the occasional use of an increment borer to determine the presence and extent of crown rot where such conditions were suspected. No inspection below the root crown was performed, and no excavations were done to assess root health. The visual assessment of the above ground portions of the trees focused on specific hazard indicators such as the degree of lean, co-dominant leaders, dead wood and/or breakage in the crown or trunk, and the overall health and vigor of the tree.

In order for a tree to present a potential hazard, two things must be present: 1) there must be a target within range of the tree; and 2) there must be some indication that the tree(s) in question have a significant risk of failure. Given the existing structures and proposed development plans for the site, all eight trees evaluated will have targets within range, imparting great importance to the condition evaluation with respect to potential tree failure. This hazard tree assessment follows the methodology outlined in *Evaluation of Hazard Trees in Urban Areas* (Matheny and Clark, 1994).

An additional assessment was performed with respect to the site development plans, to evaluate potential impacts associated with grading for roads and structures, as well as site contouring in general. Cuts and fills associated with these grading activities can result in damage to below-ground portions of trees, causing eventual decline and death (with associated hazards to human health and safety) if certain precautions and construction techniques are not adhered to during development.

The result of the evaluation of the eight trees is summarized below.

Tree Retention Evaluation

Eight trees meeting the City's definition of significant were identified during the field investigation (see Table 1 for tree details). Seven of the trees either have physiological or structural defects that render them unsuitable for retention, or are located in areas of the site where structures or grading are proposed that would render the trees unsafe following the completion of construction.

Four of the trees would currently be considered hazardous, with significant structural or health issues contributing to a high short-term likelihood of failure. The only suitable candidate for retention, based on the construction activities and building footprint proposed, is the Crimson King maple, identified on the plan and in the table as T-5. This tree is currently healthy and structurally sound, and located in an area that will be between the proposed building and new sidewalk location. Whether or not this tree will actually be able to be retained will not be ascertainable until construction is in progress, and it can be determined what the impacts will be to the existing root system. It also appears, based on the dripline width, that there will be some interference with the exterior wall of the proposed building. Some pruning to minimize this is acceptable, but again the exact impact cannot be determined until construction is in progress. Generally, loss of more than a third of the canopy of an existing tree is undesirable, and removal is preferable. It is recommended that an arborist visit the site during construction to inspect

Kirkland Marketplace Tree Evaluation

the actual impacts to the tree before a final recommendation for removal or retention is made, if the tree is proposed for retention.

| Tree ID Number | Species | DBH (inches) | Condition/Notes | Retention |
|----------------|---|--------------|--|-----------|
| T-1 | Black walnut (<i>Juglans nigra</i>) | 16.5 | 90% dead, unsuitable for retention | Yes |
| T-2 | Lawson false cypress (<i>Chamaecyparis lawsoniana</i>) | 18 | Located within proposed footprint, unable to be retained | No |
| T-3 | Apple (<i>Malus sp.</i>) | 16 | Located within proposed footprint, unable to be retained | No |
| T-4 | Sugar maple (<i>Acer saccharum</i>) | 19 | Significant structural defect, large fissure, unsuitable for retention | Yes |
| T-5 | Norway maple (<i>Acer platanoides</i> 'Crimson King') | 14 | Outside development footprint, suitable for retention | No |
| T-6 | Apple (<i>Malus sp.</i>) | 10 | Located within proposed footprint, unable to be retained | No |
| T-7 | Mountain ash (<i>Sorbus aucuparia</i>) | 24 | Extensive fungal infection, 50% dead, unsuitable for retention | Yes |
| T-8 | Mountain ash (<i>Sorbus aucuparia</i>) | 11 | Likely fungal infection, unsuitable for retention | Yes |

Tree Retention and Protection Guidelines

These guidelines pertain to any trees retained near any of the proposed clearing, grading and excavation limits. Extensive clearing and grading to any depth (within the dripline) is considered a disturbance and may be detrimental to the health of trees.

Stakes delineating the clearing and grading limits will be set in the field before any clearing and grading activities occur. After the stakes are placed, the consulting arborist will make a final determination of the trees that will be preserved depending on the construction limits and expected impacts to major roots. Clearing limits may be adjusted in the field by the consulting arborist if such adjustments are warranted for proper protection of the tree(s) roots.

A tree protection barrier shall be installed in the field as directed by the consulting arborist. The barrier shall be constructed of orange construction fencing attached to firmly placed stakes or supports. The consulting arborist, together with the contractor,

Kirkland Marketplace Tree Evaluation

shall determine the extent and method of clearing near retained trees. No parking, storage, dumping, or burning of materials is permitted within 15 feet of the tree protection barrier, and no signage shall be attached to any live trees.

Where vehicular or equipment access is required within the protected area of any preserved tree, the soil (and tree roots) shall be protected from compaction with at least 10-inches of wood chips placed over the path of the vehicle, and removed when access is no longer needed. Any landscaping within 1.5 times the maximum dripline extent of each retained tree shall be done with care. Precautions shall be taken to ensure that all roots, trunks and branches of any retained trees shall not be damaged. This may necessitate the use of hand, as opposed to mechanized, labor in these areas. The area consisting of 1.5 times the maximum dripline is necessary to adequately protect the shallower feeder roots of retained trees. This area is referred to as the root protection zone.

Any roots of retained trees damaged during site grading shall be re-cut with a hand pruning saw following excavation so as to provide a cleanly cut surface, which will promote faster and more successful healing of these wounds. Unwanted vegetation within the root protection zone will be removed by hand, and will be indicated as such to the contractor by the consulting arborist. Stumps of trees to be removed within the root protection zone of preserved trees will be ground down to below ground surface and not excavated, but preferably left in place. The consulting arborist will determine to what extent backfilling is allowed within the root protection zone of a retained tree on a case-by-case basis.

All recommended tree maintenance, including deadwood and low limb removal, cabling and bracing, and any other arboricultural procedures shall be completed after clearing and before landscaping. An ISA Certified Arborist shall be preferred as the contractor for performing all arboricultural procedures. ANSI A300 American Standards for Pruning shall be followed, unless other standards are required by the local jurisdiction. The usage of preservation measures such as tree wells, rockeries, or aeration piping in areas of fill will be determined at the time of inspection of the clearing and grading limits. The trees proposed for retention on this project should have a high probability of survival and future landscape value if the above listed retention recommendations are followed.

Use and Limitations of this Report

This Tree Evaluation and Retention Report has been prepared for the applicant, as a means of determining, to the most thorough extent practicable, conditions of the existing trees on the subject property and recommending a course of action relative to these trees through the development and construction process. This report is based primarily on readily observable and ascertainable conditions, with limited use of invasive means to evaluate tree condition.

There are several conditions that can affect a tree's health that may be pre-existing and unable to be ascertained with a surficial analysis. These conditions include root and stem

Kirkland Marketplace Tree Evaluation

rot, internal cracks, structural flaws or construction damage to roots, which may be hidden beneath the soil. Additionally, post-construction circumstances can cause a relatively rapid deterioration of a tree's condition. This report has been prepared as an assessment of the current condition of trees on the project site, and may not be valid during or after construction. Every reasonable means has been used to examine the trees on the site, however, this report is a professional opinion and no expressed or implied guarantee is made of tree conditions on the site. No attempt has been made to determine the presence of hidden or concealed conditions which may contribute to the hazard or failure potential of trees on the site. The work for this report conforms to the standard of care employed by ISA Certified Arborists. No other representation or warranty is made concerning the work or this report and any implied representation or warranty is disclaimed.

Respectfully submitted,



Kevin Karlson
ISA Certified Arborist #PN-2649A
Attachments: Site photos



Figure 1: Black walnut (T-1); extensive canopy death



Figure 2: T-2, Lawson cypress, within proposed new building footprint



Figure 3: T-3, apple within proposed new building footprint



Figure 4: T-4, sugar maple with significant structural flaw (trunk fissure)

Kirkland Marketplace Tree Evaluation



Figure 5: T-5, Crimson King maple possibly suitable for retention



Figure 6: T-6, apple within proposed new building footprint

Kirkland Marketplace Tree Evaluation



Figure 7: T-7, mountain ash with significant fungal infection and dead wood, unsuitable for retention



Figure 8: T-8, mountain ash within site grading area, unsuitable for retention

LOTS 1,2,3 AND 4 BLOCK 26 TOWN OF KIRKLAND,
 ACCORDING TO VOL. 6 OF PLATS PAGE 53 TAX #388580-2055



KIRKLAND
 MARKETPLACE

APPLICANT/CONTACT

SEMA ARCHITECTURE / GREGORY SELER
 710 2ND AVE, STE. 1200
 SEATTLE, WA 98104 206.278.1512

CITY OF KIRKLAND
 PLANNING AND DEVELOPMENT SERVICES
 APPROVED FOR CONSTRUCTION

By: _____
 R/W PERMIT NO: _____

SCALE: 1"=20'
 DATE: 1-25-07
 TAG: FILENAME: S:\2006\Landscape\PLANS\07_0662_LP.dwg

REVISIONS

| REV# | DESCRIPTION | BY | DATE |
|------|---------------|-----|---------|
| 1 | CITY COMMENTS | KJM | 7-25-07 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

TREE
 RETENTION PLAN

SHEET

L-3
 OF 5

TREE PROTECTION REQUIREMENTS

ALL VEHICLE TRAFFIC SHALL BE ROUTED AWAY FROM SIGNIFICANT TREES DURING CONSTRUCTION TO AVOID EXCESSIVE SOIL COMPACTION. WHERE VEHICULAR TRAFFIC IS REQUIRED THE SOIL SHALL BE PROTECTED WITH A 10" LAYER OF WOODCHIPS AND/OR PLYWOOD PLACED OVER THE PATH OF THE VEHICLE. THE WOODCHIPS MAY BE REMOVED WHEN NO LONGER NEEDED.

ALL SIGNIFICANT TREES TO BE SAVED AND/OR RETAINED SHALL BE PROTECTED WITH A 5' HIGH CHAINLINK OR PLASTIC NET FENCING PLACED 5' BEYOND TREE DRIP LINES DURING CONSTRUCTION. THE FENCING SHALL NOT BE REMOVED WITHOUT THE AUTHORIZATION OF THE CONSULTING ARBORIST OR SITE SUPERVISOR.

TRENCHING WITHIN TREE DRIP LINES SHALL BE AVOIDED. TUNNELING AROUND PRIMARY TREE ROOTS IS PERMITTED WHEN DISTURBANCE WITHIN DRIP LINES IS NECESSARY.

STUMP PULLING OF ALL TREES TO BE REMOVED IN THE VICINITY OF SIGNIFICANT TREES TO BE RETAINED SHALL BE AVOIDED. STUMP GRINDING IS PERMITTED AS NECESSARY.

IT MAY BE NECESSARY TO PROVIDE SUPPLEMENTAL IRRIGATION DURING DRY PERIODS WITHIN THE CONSTRUCTION PROCESS, AND MULCHING OVER THE ROOTS OF ANY OR ALL PRESERVED TREES.

EXISTING CONDITIONS

- (5) Trees, located within the perimeter of the developed areas, to be removed.
- (4) Existing Significant Trees, within open space, to remain

Tree Replacement Calculations

8,167 Total SF
 8,167 SF/43,560 SF=187x30=5.62 Trees

Required Tree Credits=6 Trees

Quantity of Trees, located within perimeter of the developed areas, to be removed = 7 Trees

Quantity of Significant Trees retained within open space landscaping = 1 Trees

Retained Trees Credits=8 Trees

(1) 8" DBH= 1 Tree Credit +

=1 Retained Tree Credits

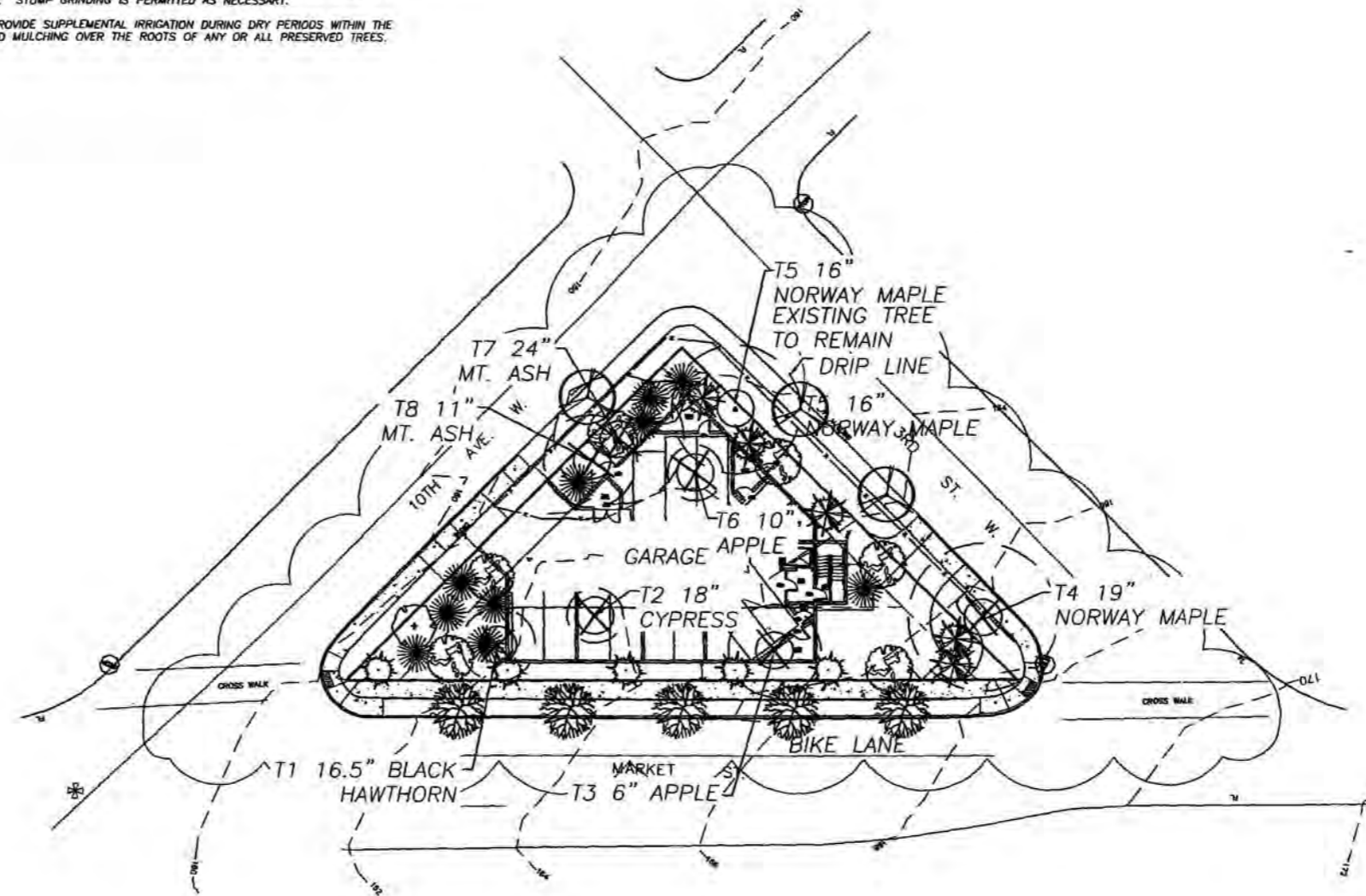
Required Replacement Trees = 5

1 Retained Tree Credits-6 Required Tree Credits

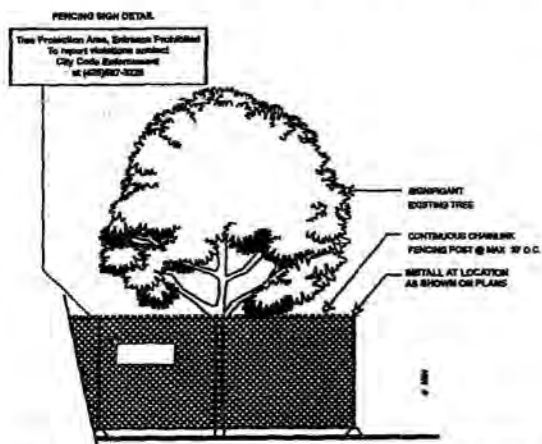
Quantity of New Trees Required: 5 Trees

Quantity of New Trees Provided: Total = 36
 Conifers = 20
 Deciduous = 16

Note: See Sheet L-2 For Species, Size, Quantity, Placement, and Condition.



1 TREE RETENTION PLAN
 SCALE: 1"=20'



1. MINIMUM FOUR (4) FOOT HIGH TEMPORARY CHAINLINK FENCE SHALL BE PLACED AT THE CRITICAL ROOT ZONE OR DESIGNATED LIMIT OF DISTURBANCE OF THE TREE TO BE SAVED. FENCE SHALL COMPLETELY SURROUND TREE. (B) INSTALL FENCE POSTS USING PIER BLOCK ONLY. AVOID POINT OR STAKED INTO MAJOR ROOTS. MODIFICATIONS TO FENCING MATERIAL AND LOCATION MUST BE APPROVED BY PLANNING OFFICIAL.
2. TREATMENT OF ROOTS EXPOSED DURING CONSTRUCTION: FOR ROOTS OVER ONE (1) INCH DIAMETER DAMAGED DURING CONSTRUCTION, MAKE A CLEAN STRAIGHT CUT TO REMOVE DAMAGED PORTION OF ROOT. ALL EXPOSED ROOTS SHALL BE TEMPORARILY COVERED WITH DAMP BURLAP TO PREVENT DRYING, AND COVERED WITH SOIL AS SOON AS POSSIBLE.
3. NO STOCKPILING OF MATERIALS, VEHICULAR TRAFFIC, OR STORAGE OF EQUIPMENT OR MACHINERY SHALL BE ALLOWED WITHIN THE LIMIT OF THE FENCING. FENCING SHALL NOT BE MOVED OR REMOVED UNLESS APPROVED BY THE CITY PLANNING OFFICIAL. WORK WITHIN PROTECTION FENCE SHALL BE DONE MANUALLY UNDER THE SUPERVISION OF THE ON-SITE ARBORIST AND WITH PRIOR APPROVAL BY THE CITY PLANNING OFFICIAL.
4. FENCING SIGNAGE AS DETAILED ABOVE MUST BE POSTED EVERY FIFTEEN (15) FEET ALONG THE FENCE.

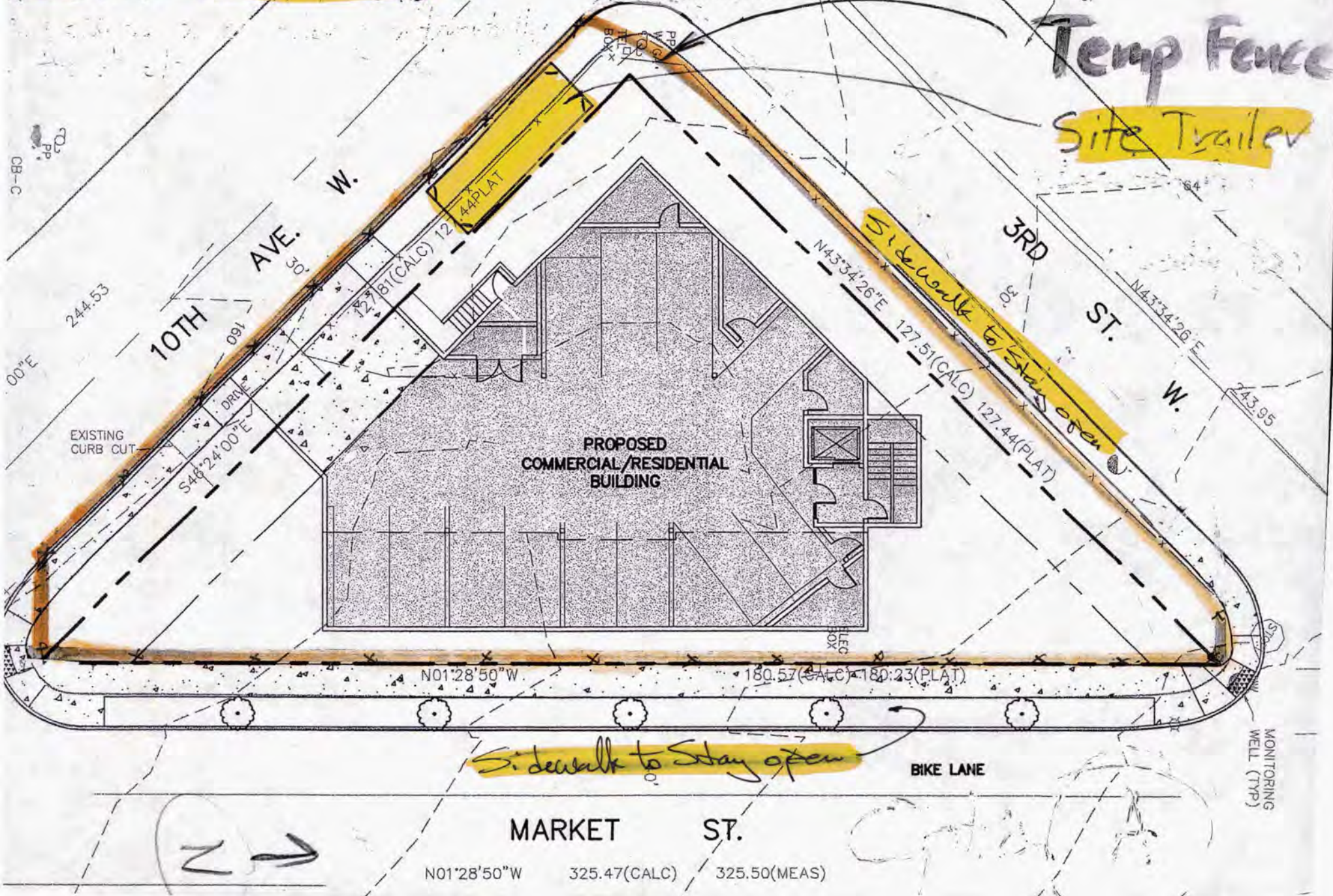
2 TREE PROTECTION FENCING DETAIL
 (For public & private trees)

3 TREE PROTECTION FENCING DETAIL
 SCALE: NTS

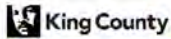
Notes - Temp fence to sit outside of the exist sidewalk at the 10th

File: VAR18-000701009
Market Street Dental Clinic Variance
MacKenzie Comments 2/11/2020
Attachment 2

VAR18-00070
Hearing Examiner Decision
Exhibit L



Optical



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King County Department of Assessments

Fair, Equitable, and Understandable Property Valuations

You're In: Assessor > Viewing Property Information > Full Report

Department of Assessments

500 Fourth Avenue, Suite AD1-AS-0706, Seattle, WA 98104

Office Hours: Mon - Fri 8:30 a.m. to 4:30 p.m.

TEL: 206-296-7300 FAX: 206-296-5107 TTY: 206-296-7888

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PARCEL DATA

| | | | |
|---------------|---------------------------|--------------------------------|------------|
| Parcel | 38880-2055 | Jurisdiction | KIRKLAND |
| Name | KIRKLAND FAMILY DENTISTRY | Levy Code | 1701 |
| Site Address | 1009 MARKET ST | Property Type | C |
| Geo Area | 85-65 | Plat Block / Building Number | 26 |
| Spec Area | | Plat Lot / Unit Number | 1-2-3-4 |
| Property Name | VACANT SITE | Quarter-Section-Township-Range | N1E-6-2S-5 |

Legal Description
 KIRKLAND ADD
 PLat Block: 26
 Plat Lot: 1-2-3-4

LAND DATA

Click the camera to see more pictures.

| | | | |
|---------------------------------|-----------------------|------------------------|----------------|
| Highest & Best Use As If Vacant | MULTI-FAMILY DWELLING | Percentage Unusable | |
| Highest & Best Use As Improved | OTHER | Unbuildable | NO |
| Present Use | Vacant(Multi-family) | Restrictive Size Shape | NO |
| Land SqFt | 8,120 | Zoning | MSC 1 |
| Acres | 0.19 | Water | WATER DISTRICT |
| | | Sewer/Septic | PUBLIC |
| | | Road Access | PUBLIC |
| | | Parking | ADEQUATE |
| | | Street Surface | PAVED |

Views

| | |
|------------------|--|
| Rainier | |
| Territorial | |
| Olympics | |
| Cascades | |
| Seattle Skyline | |
| Puget Sound | |
| Lake Washington | |
| Lake Sammamish | |
| Lake/River/Creek | |
| Other View | |

Waterfront

| | |
|------------------------------|----|
| Waterfront Location | |
| Waterfront Footage | 0 |
| Lot Depth Factor | 0 |
| Waterfront Bank | |
| Tide/Shore | |
| Waterfront Restricted Access | |
| Waterfront Access Rights | NO |
| Poor Quality | NO |
| Proximity Influence | NO |

Designations

| | |
|-----------------------------------|--------|
| Historic Site | |
| Current Use | (none) |
| Nbr Bldg Sites | |
| Adjacent to Golf Fairway | NO |
| Adjacent to Greenbelt | NO |
| Other Designation | NO |
| Deed Restrictions | NO |
| Development Rights Purchased | NO |
| Easements | NO |
| Native Growth Protection Easement | NO |
| DNR Lease | NO |

Nuisances

| | |
|-----------------|------|
| Topography | |
| Traffic Noise | HIGH |
| Airport Noise | |
| Power Lines | NO |
| Other Nuisances | NO |

Problems

| | |
|----------------------------|----|
| Water Problems | NO |
| Transportation Concurrence | NO |
| Other Problems | NO |

Environmental

| | |
|---------------|----|
| Environmental | NO |
|---------------|----|

BUILDING

TAX ROLL HISTORY

Reference Links:

- [King County Tax Links](#)
- [Property Tax Advisor](#)
- [Washington State Department of Revenue \(External link\)](#)
- [Washington State Board of Tax Appeals \(External link\)](#)
- [Board of Appeals/Equalization](#)
- [Districts Report](#)
- [iMap](#)
- [Recorder's Office](#)
- [Scanned Images of surveys and other map documents](#)
- [Scanned Images of plats](#)
- Notice mailing date: 07/04/2019**

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| Account | Valued Year | Tax Year | Omit Year | Levy Code | Appraised Land Value (\$) | Appraised Imps Value (\$) | Appraised Total Value (\$) | New Dollars (\$) | Taxable Land Value (\$) | Taxable Imps Value (\$) | Taxable Total Value (\$) | Tax Value Reason |
|--------------|-------------|----------|-----------|-----------|---------------------------|---------------------------|----------------------------|------------------|-------------------------|-------------------------|--------------------------|------------------|
| 388580205507 | 2019 | 2020 | | 1701 | 812,000 | 0 | 812,000 | 0 | 812,000 | 0 | 812,000 | |
| 388580205507 | 2018 | 2019 | | 1701 | 690,200 | 0 | 690,200 | 0 | 690,200 | 0 | 690,200 | |
| 388580205507 | 2017 | 2018 | | 1701 | 641,400 | 0 | 641,400 | 0 | 641,400 | 0 | 641,400 | |
| 388580205507 | 2016 | 2017 | | 1700 | 592,700 | 0 | 592,700 | 0 | 592,700 | 0 | 592,700 | |
| 388580205507 | 2015 | 2016 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2014 | 2015 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2013 | 2014 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2012 | 2013 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2011 | 2012 | | 1700 | 552,100 | 0 | 552,100 | 0 | 552,100 | 0 | 552,100 | |
| 388580205507 | 2010 | 2011 | | 1700 | 609,000 | 0 | 609,000 | 0 | 609,000 | 0 | 609,000 | |
| 388580205507 | 2009 | 2010 | | 1700 | 609,000 | 0 | 609,000 | 0 | 609,000 | 0 | 609,000 | |
| 388580205507 | 2008 | 2009 | | 1700 | 592,700 | 0 | 592,700 | 0 | 592,700 | 0 | 592,700 | |
| 388580205507 | 2007 | 2008 | | 1700 | 348,000 | 33,000 | 382,000 | 0 | 349,000 | 33,000 | 382,000 | |
| 388580205507 | 2006 | 2007 | | 1700 | 291,000 | 34,000 | 325,000 | 0 | 291,000 | 34,000 | 325,000 | |
| 388580205507 | 2005 | 2006 | | 1700 | 243,000 | 58,000 | 301,000 | 0 | 243,000 | 58,000 | 301,000 | |
| 388580205507 | 2004 | 2005 | | 1700 | 221,000 | 49,000 | 270,000 | 0 | 221,000 | 49,000 | 270,000 | |
| 388580205507 | 2003 | 2004 | | 1700 | 201,000 | 57,000 | 258,000 | 0 | 201,000 | 57,000 | 258,000 | |
| 388580205507 | 2002 | 2003 | | 1700 | 183,000 | 62,000 | 245,000 | 0 | 183,000 | 62,000 | 245,000 | |
| 388580205507 | 2001 | 2002 | | 1700 | 170,000 | 58,000 | 228,000 | 0 | 170,000 | 58,000 | 228,000 | |
| 388580205507 | 2000 | 2001 | | 1700 | 150,000 | 112,000 | 262,000 | 0 | 85,000 | 65,800 | 150,800 | FS |
| 388580205507 | 1999 | 2000 | | 1700 | 134,000 | 92,000 | 226,000 | 0 | 85,000 | 65,800 | 150,800 | FS |
| 388580205507 | 1998 | 1999 | | 1700 | 125,000 | 71,000 | 196,000 | 0 | 85,000 | 65,800 | 150,800 | FS |
| 388580205507 | 1997 | 1998 | | 1700 | 0 | 0 | 0 | 0 | 85,000 | 65,800 | 150,800 | |
| 388580205507 | 1996 | 1997 | | 1700 | 0 | 0 | 0 | 0 | 85,000 | 65,800 | 150,800 | |
| 388580205507 | 1994 | 1995 | | 1700 | 0 | 0 | 0 | 0 | 85,000 | 65,800 | 150,800 | |
| 388580205507 | 1992 | 1993 | | 1700 | 0 | 0 | 0 | 0 | 82,800 | 68,200 | 150,800 | |
| 388580205507 | 1990 | 1991 | | 1700 | 0 | 0 | 0 | 0 | 78,700 | 68,200 | 146,900 | |
| 388580205507 | 1988 | 1989 | | 1700 | 0 | 0 | 0 | 0 | 25,400 | 42,500 | 67,900 | |
| 388580205507 | 1986 | 1987 | | 1700 | 0 | 0 | 0 | 0 | 22,500 | 37,400 | 59,900 | |
| 388580205507 | 1984 | 1985 | | 1700 | 0 | 0 | 0 | 0 | 21,500 | 33,200 | 54,700 | |
| 388580205507 | 1982 | 1983 | | 1700 | 0 | 0 | 0 | 0 | 16,700 | 34,600 | 53,300 | |

SALES HISTORY

| Excise Number | Recording Number | Document Date | Sale Price | Seller Name | Buyer Name | Instrument | Sale Reason |
|---------------|------------------|---------------|----------------|------------------------------------|------------------------------------|-------------------------|-------------|
| 2284512 | 00070516001655 | 5/4/2007 | \$1,035,000.00 | GHORBANIAN ABRAHAM+SOLTANI ZAHRA | GREENE BENJAMIN J | Statutory Warranty Deed | None |
| 2228087 | 00080808002552 | 8/7/2006 | \$850,000.00 | COFFEEHOUSE BUILDING LLC | GHORBANIAN ABRAHAM+SOLTANI ZAHRA | Statutory Warranty Deed | None |
| 2119231 | 00050428001001 | 4/26/2005 | \$750,000.00 | MCGEOUGH BREFFNI J+HOLLY A | COFFEEHOUSE BUILDING LLC | Statutory Warranty Deed | None |
| 2007979 | 00031215001617 | 12/12/2003 | \$625,000.00 | 1009 MARKET STREET DEVELOPMENT LLC | MCGEDUGH BREFFNI J+HOLLY A | Statutory Warranty Deed | None |
| 1957582 | 00030508002756 | 10/16/2002 | \$0.00 | GELOTTE CURTIS E | 1009 MARKET STREET DEVELOPMENT LLC | Quit Claim Deed | Other |
| 1688386 | 00020718000530 | 7/12/2002 | \$400,000.00 | PHILLIPS THERESA T | GELOTTE CURTIS | Statutory Warranty Deed | None |

REVIEW HISTORY

PERMIT HISTORY

| Permit Number | Permit Description | Type | Issue Date | Permit Value | Issuing Jurisdiction | Reviewed Date |
|---------------|--|---------------|------------|--------------|----------------------|---------------|
| BL-007-00107 | Build a mixed use bldg with 13 car garage below, 1st floor 2,700 sq. ft. shell for 1 office & 2nd floor 2,700 sq. ft. for 1 residential unit | Building, New | 10/9/2007 | \$524,000 | KIRKLAND | 8/17/2010 |
| BL-007-00756 | Demolish SFR | Demolition | 8/15/2007 | \$0 | KIRKLAND | 12/13/2007 |

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| ELEVATION MIDPOINT | SEGMENT LENGTH |
|---------------------------------|--------------------|
| A = (163.2') x | a (50') = 8,180 |
| B = (164.5') x | b (19') = 3,125.5 |
| C = (164.2') x | c (89') = 14,613.8 |
| D = (162.2') x | d (76') = 12,327.2 |
| | 234 38,226.5 |
| <hr/> | |
| $\frac{38,226.5}{234} = 163.36$ | ABE = 163.36 |

File: VAR18-000701009
Market Street Dental Clinic Variance
MacKenzie Comments 2/11/2020
Attachment 4



1009 Market Street

Kirkland, Washington

Project Team



Permit Re-submittal #2



| Date | Project Number |
|---------------|-------------------------------|
| April 1, 2007 | 07004.00 |
| Revision | |
| 6-1-07 | Schematic Progress Set |
| 6-12-07 | Schematic Progress Set |
| 7-24-07 | Permit Re-submittal / Bid Set |
| 9-10-07 | Progress Set |
| 9-14-07 | Permit Re-submittal #2 |

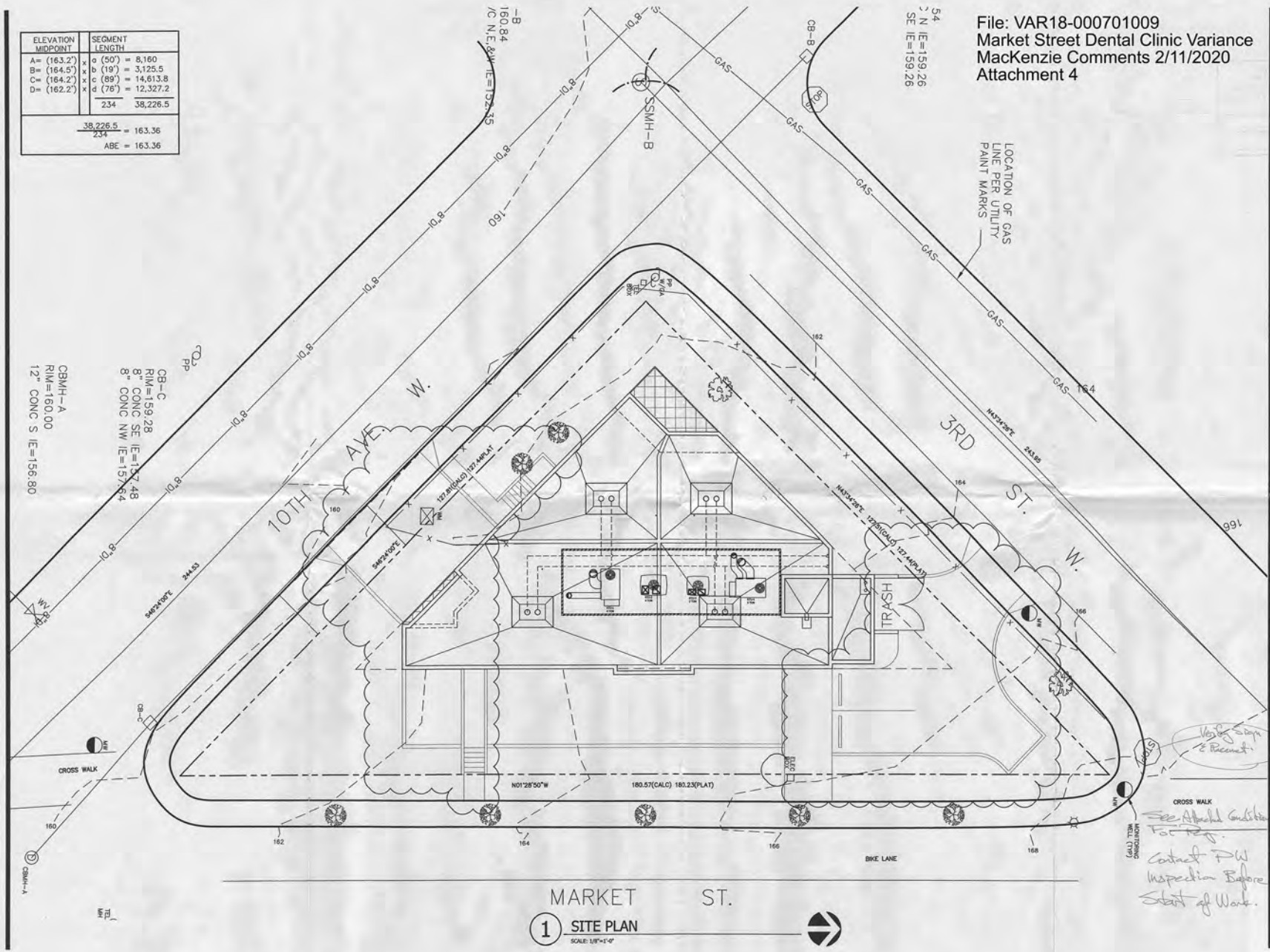
Drawn By: kc, ab
Checked By: kc, sh

SITE PLAN & DETAILS

Scale: AS NOTED

Sheet Number

A-1.00



1 SITE PLAN
SCALE: 1/8"=1'-0"

*Verify with
& Recent!*

*See Attached Guidelines
For Reg.*

*Contact F.W.
Inspection Before
Start of Work.*

| CITY OF KIRKLAND APPROVED FOR SUBMITTAL | |
|--|---|
| | Type of Review |
| Building | <input checked="" type="checkbox"/> DP <input type="checkbox"/> FT <input type="checkbox"/> MSF |
| Planning | <input type="checkbox"/> |
| Public works | <input type="checkbox"/> |

*OTC
Lsm permit*

File: VAR18-000701009
Market Street Dental Clinic Variance
MacKenzie Comments 2/11/2020
Attachment 4

Build Copy

| CITY OF KIRKLAND BUILDING DEPARTMENT | |
|---|--------------------|
| PERMIT # | LSM07-20055 |
| ADDRESS | 1017 MARKET ST |
| PLANS FOR LAND SURVEY ASSOCIATION | |
| PROJECT | GENERAL |
| OWNER | OTC |
| DATE SUBMITTED | 12/22/2019 |
| DATE APPROVED | 02/11/2020 |
| APPROVED BY | <i>[Signature]</i> |

*to Rachel
Re. Excavation
See Attached
Conditions*

1715 Market Street, Suite 104
Kirkland, WA 98033

December 16, 2009

Steve Lybeck, Permit Technician Supervisor
City of Kirkland Building Division
123 5th Avenue
Kirkland, WA 98033

Dear Steve,

I wish to cancel my permit number BLD07-00107 and would like a refund of all refundable fees, associated with the project.

Sincerely,



Benjamin J. Greene
D.D.S., P.S.

RECEIVED
DEC 16 2009
BUILDING



CITY OF KIRKLAND

Land Use Application #517552 - Market Street Clinic

| Applicant | | | | |
|--|---------------------------|----------------------------|-------------------------|-------------------|
| First Name | Last Name | | Company Name | |
| Craig | Chaney | | Merrick Lentz Architect | |
| Number | Street | Apartment or Suite Number | | E-mail Address |
| 12815 | NE 126th Place | | | craigc@mlarch.com |
| City | State | Zip | Phone Number | Extension |
| Kirkland | WA | 98034 | 4257473177 | |
| Contractor | | | | |
| Company Name | | | | |
| | | | | |
| Number | Street | Apartment or Suite Number | | |
| | | | | |
| City | State | Zip | Phone Number | Extension |
| | | | | |
| State License Number | License Expiration Date | UBI # | E-mail Address | |
| | | | | |
| Project Location | | | | |
| Number | Street | Floor Number | Suite or Room Number | |
| 1009 | MARKET ST | | | |
| City | Zip Code | County Parcel Number | | |
| KIRKLAND | 98033 | 3885802055 | | |
| Associated Building Permit Number | | Tenant Name | | |
| | | | | |
| Additional Information (i.e. equipment location or special instructions): | | | | |
| | | | | |
| Work Location | | | | |
| | | | | |
| Property Owner | | | | |
| First Name | Last Name or Company Name | | | |
| Family Dentistry | Kirkland | | | |
| Number | Street | Apartment or Suite Number | | |
| 1715 | MARKET ST | 104 | | |
| City | State | Zip | | |
| KIRKLAND | WA | 98033 | | |
| Certification Statement - The applicant states: | | | | |
| I certify that I am the owner of this property or the owner's authorized agent. If acting as an authorized agent, I further certify that I have full power and authority to file this application and to perform, on behalf of the owner, all acts required to enable the jurisdiction to process and review such application. I have furnished true and correct information. I will comply with all provisions of law and ordinance governing this type of application. If the scope of work requires a licensed contractor to perform the work, the information will be provided prior to permit issuance. | | | | |
| Date Submitted: 1/31/2018 | | Submitted By: Craig Chaney | | |



CITY OF KIRKLAND

Land Use Application #517552 - Market Street Clinic

Project Contact

Company Name: Merrick Lentz Architect

Name: Craig Chaney **Email:** craigc@mlarch.com

Address: 12815 NE 126th Place **Phone #:** 4257473177
Kirkland WA 98034

| Project Type | Activity Type | Scope of Work |
|------------------|--|------------------------|
| Any Project Type | Deviations, Modifications, Variances, or Waivers | Variance - Process IIA |

Project Name: Market Street Clinic

Description of Work: Variances are requested to the required Building and Landscape Setbacks for this MSC-1 zoned property, for the future construction of an approximately 5387 sf dental clinic building with 2 floors of parking below.

Project Details

Project Information

Sign company name for public notice signs. Market Street Clinic

Quantity and Size Specifications

| | |
|--|------|
| Gross floor area of new nonresidential | 5387 |
| Number of proposed new residential units | 0 |
| Property size in square feet | 8120 |

Additional Project Information

Date preapplication meeting was held. 7/19/2016



Jurisdiction: Kirkland
 Project Name: Market Street Clinic
 Application ID: 517552

Supplemental Name: Variance Criteria

An answer to each of the following questions must be submitted with any application:

1. How would the Variance 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?

Since the property is completely isolated and bordered on all sides by city streets, no adjacent property shares a property line nor directly borders the subject property. This unique and unusual situation creates 60 feet of space between the subject property and the closest neighboring properties. In addition, proposed landscape buffers and building setbacks of 15 feet on 10th Ave W and 7.5 feet on 3rd St W will further soften the transition from the proposed building to the neighboring properties. This space will ensure that the proposed structure does not overwhelm adjoining low-density uses as described in MS-6.1.

2. How is the Variance necessary because of special circumstances regarding the size, shape, topography, or location of the subject property; or the location of a pre-existing improvement on the subject property that conformed to the Zoning Code in effect when the improvement was constructed?

The subject property, zoned MSC-1, is irregular and highly unique for the City of Kirkland. It is one of just two privately owned triangular shaped parcels with right-of-ways on all three sides. Each of the three property lines currently requires a 20 foot front yard setback. The other privately owned triangular property, located at 1715 Market St, is developed with an office building. The lot at 1715 Market St is 25,853 Ft² and is not proportionally as affected by the 20 foot front yard setbacks on all three sides as the subject lot, which is less than one third the size of the property at 1715 Market Street. Consequently, the current zoning requirements prevent the construction of an equitable project on this 8,120 ft² lot, as these landscape buffers and setbacks remove a much higher proportion of buildable square footage than for other lots along the Market Street Corridor. Insufficient buildable space to justify the cost of development has prevented the completion of the past several development attempts on the irregularly shaped subject property. In order to achieve an equitable square footage, we are requesting variances that enable development of a 5,387 ft² long-term home for Kirkland Family Dentistry. A dental office building this size does not exceed the 70% lot coverage allowed by MSC-1 zoning. This can be achieved in a combination of ways by granting variances on any of the 3 sides of the irregularly shaped lot. With the requested landscape strips and setbacks of 7.5 feet on 3rd St W and 15 feet on 10th Ave W, we are requesting a 0 foot landscape buffer and setback on Market Street to achieve the necessary square footage to develop the property. Without this 0 foot setback on Market Street, the lot remains unbuildable due to the inequitable cost per square foot, as has been demonstrated by the past several failed attempts at developing the subject property. In its undeveloped state, the lot currently provides no buffer to neighboring residences from the noise and automobile headlights caused by traffic along Market Street. The requested variances, including the 0 foot request at Market St, would improve the residential buffer and protection from these elements, enhancing the transition from the commercial activity of Market Street to adjoining residential homes. The neighbors adjacent to the subject property on 3rd St W have supported in a notarized document the reduction of the 20 foot front setback and 15 foot landscape strip to each be reduced to the 7.5 feet as proposed on 3rd St W. The neighbors adjacent to the subject property on 10th Ave W prefer to maintain the 15 foot landscape buffer. Therefore, the required 15 foot landscape buffer will be maintained as part of this proposal, though the 20 foot front setback would be reduced to 15 feet as proposed on 10th Ave W. Not reducing the landscape buffer on the 10th Ave W side of the building necessitates a 0 foot setback and 0 foot landscape buffer on Market Street to attain the equitable square footage needed for development. As Policy MS-6.3 states, "commercial development which is oriented toward Market Street will have less impact on the adjacent low-density residential areas in the surrounding neighborhoods." A 0 foot setback on Market Street allows for an equitable development while limiting the setback variance needed along 10th Ave W that is adjacent to low density residential areas and where the neighbors prefer to keep the 15 foot landscape buffer. The City of Kirkland has already approved setback variances for this lot in the past. The City approved a 5 foot setback with 7.5 foot landscape strip at 3rd St W, as well as a 10 foot setback at 10th Ave W. The setback variances previously approved at 3rd St W and 10th Ave W each allowed a building to have closer proximity to the lot lines than the proposed variances would on these respective streets. We are requesting lesser variances for the building setbacks on these two streets in conjunction with a 0 foot Market Street setback. This combination of variances would allow for a building with equitable square footage on the subject lot, and is also in line with the aforementioned Policy MS-6.3; "commercial development which is oriented toward Market Street will have less impact on the adjacent low-density residential areas in the surrounding neighborhoods."

3. How would the Variance not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this Code allows to other property in the same area and zone as the subject property?

The proposed variances would not constitute special privilege based on the wording in the KZC 120.05 which states, "the provisions of this code can be varied on a case-by-case basis if the application of these provisions would result in an unreasonable and unusual hardship." This is applicable as can be seen by several failed development attempts on the subject property in the past. Therefore, without variances to allow an equitable square footage for the subject property, "provisions would result in an unreasonable and unusual hardship." Due to the irregular, triangular shape of the subject property, MSC-1 zoning that requires 20 foot front yard setbacks on all three property lines removes a disproportionate amount of buildable square footage compared to all properties along the Market Street Corridor. A 0 foot landscape strip and setback along the Market St property line has been allowed in the past for several buildings along the Market Street Corridor. As the only undeveloped and smallest privately owned triangular lot along the Market St Corridor, granting a 0 foot setback would not set precedent for other properties which are more regular in shape, have existing structures, and do not have front yard setbacks on all sides. Granting a 0 foot setback and 0 foot landscape buffer along Market Street would enable the cost effective development of a dental office building within the 70% lot coverage allowed by current MSC-1 zoning.

Supplemental Name: Right to Enter Property/Hold Harmless Agreement

AUTHORITY TO ENTER PROPERTY/HOLD HARMLESS AGREEMENT -- READ CAREFULLY BEFORE CLICKING AGREE AND



Jurisdiction: Kirkland
Project Name: Market Street Clinic
Application ID: 517552

ENTERING NAME BELOW

I/we acknowledge that by clicking Agree below and submitting this application I/we are authorizing employees or agents of the City of Kirkland to enter onto the property which is the subject of this application during the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, for the sole purpose of making any inspection of the limited area of the property which is necessary to process this application. In the event the City determines that such an inspection is necessary during a different time or day, the applicant(s) further agrees that City employees or agents may enter the property during such other times and days as necessary for such inspection upon 24 hours notice to applicant(s), which notice will be deemed received when given either verbally or in writing.

I/we acknowledge that by clicking agree below and submitting this application I/we certify under penalty of perjury, the truth and/or accuracy of all statements, designs, plans and/or specifications submitted with said application and hereby agrees to defend, pay, and save harmless the City of Kirkland, its officers, employees, and agents from any and all claims, including costs, expenses and attorney's fees incurred in investigation and defense of said claims whether real or imaginary which may be hereafter made by any person including the undersigned, his successors, assigns, employees, and agents, and arising out of reliance by the City of Kirkland, its officers, employees and agents upon any maps, designs, drawings, plans or specifications, or any factual statements, including the reasonable inferences to be drawn therefrom contained in said application or submitted along with said application.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Agree

Enter Full Name of Person(s) Agreeing with Statements Above:

Jonathan Everett



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

DESIGN REVIEW BOARD DECISION

DATE: February 13, 2017
FILE NUMBER: DRV16-03090
PROJECT NAME: 1029 Market ST Office
APPLICANT: Chris Amonson, Freiheit and Ho Architects
PROJECT PLANNER: Janice Coogan, Senior Planner

I. SUMMARY OF DECISION

On February 6, 2017, the Design Review Board (DRB) voted to approve the plans to construct a new two story, 11,931 sq. ft. office building with associated parking for 40 stalls at 1029 Market ST. Freiheit and Ho Architects are the applicants on behalf of Robb Dibble. The Board approved a minor variation to allow reduced front yard setbacks on Market ST, 3rd ST W and 11th Ave W (See Attachment 2, Plans).

The application includes a modification to Public Works Department policies for the driveway location distance to intersections (see Attachment 1, Development Standards). The original application included a request to reduce the number of parking stalls on site and utilize on street parking, however, this is no longer proposed. A height variance to calculate the average building elevation using historical grade rather than existing grades is being processed under a separate Process IIA zoning permit. After holding a public hearing, the Hearing Examiner will make a final decision on the variance.

The project as shown on the plans dated February 6, 2017 is subject to the following conditions and Attachment 1, Development Standards:

- A. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 1, Development Standards, intended to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations.
- B. As part of the application for a building permit the applicant shall submit the following:
 1. Construction plans demonstrating compliance with the project plans approved by the DRB including:
 - a. Building and plaza materials, paint colors and lighting fixtures called out on plans.
 - b. Reduced front yard setbacks along the following streets:

Market ST: 6 ft. encroachment for most of facade (14 ft. setback from the property line) and 9 ft. 4 inch encroachment for the elevator (12 ft. wide) (11 ft. 4 inches setback from the property line).

11th Ave West: 5 ft. 6 inches encroachment for façade (15 ft. 6 inches setback from the property line).

3rd ST West: 4 ft. encroachment (16 ft. setback from property line).

- c. Signed agreements from three adjoining property owners agreeing to any landscape buffer modification.
 2. Parking calculations.
 3. Detailed plans and materials for the garbage/recycling enclosure and rooftop appurtenance screening for staff review. For the rooftop screening enclosure, revise plans to show a material and color as directed by the DRB (lighter in material and structure, of a matt finish to reduce glare and a color that blends in with the roof or façade color).
 4. Cornerstone or plaque that meets the requirements of KZC 92.92.35.7.
- C. Prior to final inspection of a building permit by the Planning Official, the project architect shall submit a letter stating that they have evaluated the project to ensure it is consistent with the plans approved through Design Board Review and no modifications have been made that were not previously approved by the City.

II. DESIGN RESPONSE CONFERENCE MEETINGS

A. Background Summary

Below is a summary of the Board's discussions at the two Design Response Conferences held on January 23, 2017 and February 6, 2017. Staff reports for each meeting can be found online at the following web address:

[http://www.kirklandwa.gov/depart/planning/Boards and Commissions/DRB Meeting Information.htm](http://www.kirklandwa.gov/depart/planning/Boards%20and%20Commissions/DRB%20Meeting%20Information.htm)

January 23, 2017 conference: The Design Review Board reviewed the plans submitted by Freiheit and Ho Architects dated January 23, 2017. Staff provided an overview of the Zoning Code for the MSC 1 zone and the key design issues for the project. Staff's memo dated January 11, 2017 provides an analysis of project consistency with the Zoning regulations, and Design Guidelines for Pedestrian Oriented Districts and unique to the Market Street Corridor.

After receiving public comment on the project and deliberating, the Board discussed the request for reduced front yard setback and the need for the project to show that the request results in superior design, especially at the front entrance. The Board requested the project show less of an encroachment on 11th Ave West to be compatible with the openness of the single family residential on 11th Ave West. The Board requested the applicant to return for a second meeting to respond to the following DRB comments regarding:

- Decorative sidewalk details
- Sunshade design and material
- Other building elevations including along alley
- Building materials and paint color details
- HVAC screening design and materials

- Window glazing
- Sidewalk details
- Garage openings and door details
- ADA access at front entrance and potential design changes
- Landscape plan details. Check to be sure landscaping meets sight distance requirements. Verify street tree variety.

February 6, 2017 conference: The Architects presented how the revised plans dated February 6, 2017 had changed to respond to the Board's comments at the previous meeting. The Board discussed the following design changes:

- Main entrance revisions including canopy, distressed corten panels around elevator and door, plaza elimination of stairs, stamped concrete plaza, bench materials and color and sculpture
- Elevations on each side of building
- Building material details and colors
- Window colors
- Sunshade material details
- Roof membrane color, rooftop screening enclosure material
- Sculpture materials and color
- Landscape plan showed the revised street tree and low growing vegetation for landscape strip to meet sight distance triangle requirements at driveway entrances

The Board discussed the changes and at the conclusion of the meeting voted to approve the project with conditions. See Section III below for more information regarding the Board's discussion and conclusions.

B. Public Comment

All public comment letters and e-mails received related to the Design Response Conference meetings were forwarded to the Board for consideration. Oral comments from the public were given at the meetings. All comments are contained in the City's official file. Below is a summary of the general public comment themes that emerged through the design review process:

- Transportation and access issues
 - Locations of driveways on 11th Ave West and alley/3rd ST West rather than a preferred driveway on Market ST
 - Use of alley and lower parking garage entrance on 3rd ST West potential conflicts with drivers on 3rd ST West
 - Potential sight distance issues from cars exiting out of alley onto 3rd ST W because of on-site landscaping and design of extended curb on 3rd ST W.
- Potential safety conflicts with increased number of vehicles from the office building traveling north on alley and kids playing in the alley.
- Precedence setting decision of approving reduced front yard setbacks with future requests from properties along Market ST.
- Building too large for size of lot.
- Parking modification to reduce number of parking stalls on-site and use of street parking for employees.

Staff Comments: Throughout the design review process the property owner/applicant reached out personally to many of the property owners surrounding the subject property to discuss their

concerns. Letters of both support and concern were received. The project was reduced in size so that all required parking will be provided on site and below the threshold for SEPA review.

Many of the concerns were transportation related and not within the authority of the Design Review Board. The applicant did submit a traffic impact analysis to show compliance with City Public Works transportation, driveway, circulation and sight distance policies. The City's transportation engineer did review the applicant's traffic engineer reports for compliance with City regulations and policies and did make recommendations for conditions related to the approval of the project described in Attachment 1. The building permit application will need to show compliance with those conditions.

III. DESIGN REVIEW BOARD DISCUSSION AND CONCLUSIONS

The Design Review Board reviews projects for consistency with Design Guidelines for Pedestrian-Oriented districts as adopted in the Kirkland Municipal Code Chapter 3.30. There are a few guidelines unique to the Market Street Corridor regarding minimizing impacts to low density uses, streetscape design, increased street trees along Market ST. With recommended conditions of approval, the DRB concludes that the proposed project is consistent with applicable design guidelines.

Below is a summary of the key issues and conclusions reached by the Design Review Board during the design review process. For more background on these issues and evaluation of how the project meets the Zoning Code and Design Guidelines see staff advisory reports from the design response conferences contained in File DRV16-03090.

A. MINOR VARIATION TO REDUCE FRONT YARD SETBACKS

Zoning Code MSC 1 zone requires structures provide a minimum 20' front yard setback from the property line on all three streets (Market, 3rd ST West and 11th Ave West). As part of design review, KZC Section 142.37.1.a allows an applicant to request minor variations to the minimum required setbacks in the MSC 1 zone. The DRB may grant a minor variation only if it finds that the following criteria are met (KZC Section 142.37.4):

1. *The request results in superior design and fulfills the policy basis for the applicable design regulations and design guidelines;*
2. *The departure will not have any substantial detrimental effect on nearby properties and the City or the neighborhood.*

The approved plans dated February 6, 2017 show the following encroachments and reduced front yard setbacks:

Market ST: 6 ft. encroachment for most of facade (14 ft. setback from the property line) and 9 ft. 4 inch encroachment for the elevator (12 ft. wide).

11th Ave West: 5 ft. 6 inches encroachment for facade (14 ft. 6 inches setback from the property line).

3rd ST West: 4 ft. encroachment (16 ft. setback from property line).

The applicant's response to the criteria is contained in Attachment 3.

DRB Discussion: The applicant revised the plans from the Conceptual Design Conference in response to the Board's request to provide a greater setback on 11th Ave W to be more

consistent with the single family zoned residential street. The DRB discussed how the applicant's plans meet the criteria and implications of approving reduced front yard setbacks.

DRB conclusions: The DRB concluded that the project meets the criteria. The Board was more comfortable supporting reduced setbacks rather than total elimination of front yard setbacks. The Board discussed the importance of keeping wider setbacks to keep the openness along the single family residential streets. The Board concluded the project as designed provides superior design for a greater public benefit and will not have any substantial impacts on nearby properties, City or neighborhood. The Board concluded that the following elements provide a superior design to justify the reduced front yard setbacks:

Market Street facade: The building's main entrance and elevator tower shows use of quality materials with different textures. The entrance contains a pedestrian oriented plaza with decorative scored concrete pavement connects to provide a wider sidewalk in the right of way, concrete benches, planters with landscaping on either side of entrance and art sculpture. The additional protrusions of the elevator and entry canopy help break up the façade along Market Street to provide superior architectural and pedestrian scale.

Market, 3rd ST West and 11th Ave West Streets: Superior landscaping is provided between the building frontage and property line on all three streets. The landscape strips along all three streets go beyond what code requires by providing low growing vegetation and street trees.

B. BUILDING HEIGHT, ARCHITECTURAL AND HUMAN SCALE

MSC 1 allows a maximum height of 25 feet measured above the existing average grade. General Regulation for MSC 1, 51.08.3 and KZC 115.136 establishes that within 30 feet of a low density zone, any portion of structure greater than 15 feet in height shall be no greater than 50 feet in length. The property adjoins low density zones to the northwest and southwest, and therefore the maximum building height is 25 feet and the maximum building façade length requirement of 50 ft. applies to the west and southwest facades.

Rooftop appurtenances and screening may exceed the height limit by a maximum of four feet if the area of all appurtenances and screening does not exceed 10 percent of the total area of the building footprint.

The applicant is proposing solar panels on the roof. Solar panels on flat roof forms may exceed height limits by a maximum of 20 inches.

Under a separate review process, the applicant is requesting to use the historical grade of the property to measure the average building elevation and maximum height. The difference between the existing and historical grades which would be a difference of approximately 1 ft. 8.16 inches. The Hearing Examiner will review the height variance request through a Process IIA zoning permit.

DRB Discussion: The Board's discussion focused on the design of the roof, rooftop appurtenances, and lower level of the building entrance as it meets the Market ST.

DRB Conclusions: The design complies with the maximum horizontal façade requirements adjacent to a low density use. With submittal of the most recent plans, the DRB concluded the project was consistent with the guidelines and regulations related to architectural and human scale. The Hearing Examiner will make a final decision on the height variance after holding a public hearing on the request. The applicant will need to show compliance with the maximum building height, maximum height of rooftop appurtenance, solar panels and screening requirements with the building permit application.

C. VEHICULAR AND PEDESTRIAN ACCESS

Location for the vehicular access driveways are constrained by the shape of the corner lot, volume of traffic along Market ST, and close proximity to the Market ST intersection. The applicant's transportation consultant evaluated the project's turning movements and circulation within the neighborhood, distance to intersections, sight distance compliance and other issues. The location of the driveway distances to the intersections needed a variance from city policies and review by the City's Transportation Division. The driveway access along the alley to the lower garage was redesigned to an angled position to encourage use of 3rd ST West and discourage vehicles to travel north on the alley through the residential area. Transportation related conditions are described in Attachment 1. Pedestrian access is available at the main entrance, rear entrance along the alley and within the garage. A canopy provides overhead weather protection at the main entrance.

DRB discussion: At the first meeting, the DRB noticed that that plans needed to show ADA accessibility to the main entrance. Revised plans eliminated the main entrance stairs to allow for ADA wheelchair access.

DRB conclusions: Transportation impact analysis is beyond the Board's decisional authority. As part of the building permit application the plans with need to show compliance with Building Code ADA requirements and compliance with the recommendations from the Transportation Engineer in Attachment 1.

D. SIDEWALK AND LANDSCAPE STRIP

There is an existing 5' wide sidewalk located next to the curb and trees along the property line. Market Street Corridor Design Guidelines encourage a well-designed streetscape with wider sidewalks and new street trees. To provide greater protection for the pedestrian from Market ST, the new landscape strip with street trees is shown to be located next to the curb as recommended by staff. A minimum 5 ft. wide sidewalk is required, however, a wider sidewalk is shown along Market ST tapering to 5 ft. along 3rd ST and 11th Ave W. A wider landscape strip on 3rd ST West was recommended as a mitigation measure to slow vehicles turning west from Market ST onto 3rd West (see Attachment 1). The proposed landscape plan shows low growing landscaping in addition to new street trees.

DRB discussion: The DRB discussed the proposed landscape plan and street trees. The variety of street tree was changed to provide higher start of the canopy and lower vegetation in the landscape strip to meet sight distance requirements.

DRB conclusions: The DRB approved the proposed sidewalk and landscape plan.

E. BUILDING MATERIALS, COLOR AND DETAIL

Below is a summary of the approved plans building materials shown on Attachment 2, pages 8, 9 and 14:

- Building: Precast concrete in brown for lower panels and light grey for upper panels.
- Main Entrance/Elevator tower: Stained cedar underneath metal black steel canopy, horizontal weathered steel Corten with vertical metal panel for elevator tower.
- Roof: grey roof membrane
- Windows: blue tint glazing with spandrel and clear at entrance

- Accents: aluminum light shelf, sunshade periodically placed along building; not on north facade
- Patio: two toned stamped concrete with border. Concrete bench (2).
- HVAC: Per DRB, revise the corrugated steel panel to a different pattern, matt finish and color to blend in with the roof parapet surround color
- Garage entrances: lower garage secured mesh gate; upper open.

DRB discussion: The DRB discussed the proposed building materials, color and detail for the building. The proposal includes the following building materials:

DRB conclusions: The Board agreed with the proposed building materials and colors as compliant with the Design Guidelines.

F. LANDSCAPING

KZC 95 requires a 15 ft. landscape buffer along the west and northwest property lines. The landscape plan shown on Attachment 2, page L-1 and 2 shows supplemental plantings to the existing trees on the northwest property line. Along the alley, the applicant requested a modification to reduce the buffer to 10 ft. Three property owners submitted agreements approving the reduced width. The Planning Official may approve a landscape buffer modification if criteria in KZC 95 are met. The proposed landscape buffer meets the modification criteria and adjacent property owners have agreed to the reduced buffer. The agreements will need to be recorded with King County prior to issuance of the building permit. The proposed landscape plan was reviewed to be sure it met sight distance from the driveway policies and it does.

DRB discussion: The DRB had very little discussion about the proposed landscape plan.

DRB conclusions: The DRB agree with the planned landscaping plan.

IV. DEVELOPMENT REVIEW COMMITTEE

Comments and requirements placed on the project by City departments are found on the Development Standards, Attachment 1.

V. 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 in KZC 142.50.

VI. APPEALS OF DESIGN REVIEW BOARD DECISIONS AND LAPSE OF APPROVAL

Appeals

Section 142.40 of the Zoning Code allows the Design Review Board's decision to be appealed to the Hearing Examiner by the applicant or any person who submitted

written or oral comments to the Design Review Board. The appeal must be in the form of a letter of appeal and must be delivered, along with a fee (\$219.00) to the Planning and Building Department by 5:00 p.m., 3/3/17, fourteen (14) calendar days following the postmarked date of distribution of the Design Review Board's decision. The letter of appeal must contain a clear reference to the matter being appealed and a statement of the specific elements of the Design Review Board decision disputed by the person filing the appeal.

Only those issues under the authority of the Design Review Board as established by Kirkland Zoning Code 142.35(3) and (4) are subject to appeal.

Lapse of Approval (KZC 142.55)

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.

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 seven (7) years after the final approval on the matter or the decision becomes void.

VII. ATTACHMENTS

1. Development Standards
2. Approved Plans dated February 6, 2017
3. Applicant response to minor variation criteria

VIII. PARTIES

The parties of record list of people who have submitted written or oral comment to the DRB is contained in the official file.

IX. APPROVAL



Chair, Design Review Board
Date: 2/14/17

CC: Parties of Record List in DRV16-03090

Barbara Loomis
304 8th Ave. West
Kirkland, WA 98033
bloomis304@gmail.com

February 13, 2020

Tony Leavitt, Senior Planner
tleavitt@kirklandwa.gov
City of Kirkland Planning and Building Department
123 5th Avenue
Kirkland, WA 98033

Ref: File Number VAR1800070 – 1/30/2020
Hearing before the Kirkland Hearing Examiner
Regarding Market Street Dental Clinic Variance at 1009 Market St

Dear Mr. Leavitt,

I just wanted to comment on some of the testimony at the hearing January 30, 2020. The applicant DOES NOT have any neighborhood support contrary to what the architect said at the hearing. There were three notarized letters in the file from a previous application that were signed by some of the neighbors in 2017. The letters being written by a couple dentists stating that the neighbors supported modifications to the required landscape buffer. This application (VAR1800070) is different from the one submitted in 2017 when the letters were signed.

A lot can happen in three years! I've talked to the residences of those properties and all of them are now opposed to this application: VAR18-00070 and this building. Kathryn Keegan Grindeland at 925 3rd Street West is opposed and testified to that effect the night of the hearing. Mark Fosdale at 1010 3rd Street West is also opposed and sent an email that I read into the record. Julie Muller at 300 10th Ave. West told me she has just signed a five year lease and is opposed to the project. The owners of her house have moved out of the country. Both Kathryn and Mark said they didn't really understand what the project entailed.

And, NO ONE – all neighbors, who testified at the public hearing, were in support of this project including myself.

For about 2.5 years those of us who live in this residential neighborhood had to put up with an industrial use on this piece of property. It was a staging area for a City project to put in sewers on 1st Street across Market Street in the Norkirk Neighborhood. Dibble Engineers were denied use of this property to do their staging for their new building. They were told that an industrial use was not allowed on this property. But the City of Kirkland allowed the contractor that they hired to use the property for staging of a City project!!

This application should be denied! It will be a health and welfare detriment to the neighbors in both the Market Neighborhood and the Norkirk Neighborhood. And to the bikers, walkers, and cars who heavily utilize Market Street every day. The City of Kirkland should buy this property and turn it into a small neighborhood park – they owe us that much after violating their own codes for 2.5 years.

Respectfully submitted,
Barbara Loomis

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235 10th Ave. W
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March 10, 2020

Tony Leavitt, Senior Planner - tlevitt@kirklandwa.gov
City of Kirkland Planning and Building Department
123 5th Avenue
Kirkland, WA 98033

Ref: VAR18-00070 – 2/21/2020 Findings of Fact, Conclusions of Law, and Decision of Kirkland
Hearing Examiner Regarding Market Street Dental Clinic Variance at 1009 Market St

Dear Mr. Leavitt,

We submit this letter of appeal to the City of Kirkland Hearing Examiner's February 21, 2020 Findings of Fact, Conclusions of Law, and Decision regarding VAR-18-00070 for Market Street Dental Clinic Variance at 1009 Market Street.

RECEIVED
12:50 pm
MAR 11 2020

City of Kirkland
Planning & Building Dept.

MC

Specifically, this appeal disputes the following Findings of Fact and Conclusions of Law of the Hearing Examiner:

Finding of Fact 1.6

The Hearing Examiner finds that the City's Transportation Engineer's supplemental sight line analysis accounted for "the angle of the Market Street/10th Avenue West intersection" and that the "measurements were made consistent with how Public Works measures sight distance for other projects." The Hearing Examiner quotes from the City Transportation Engineer's analysis and states "that analysis credibly details how the project sight lines were reviewed consistent with City Public Works traffic policy." We dispute that the City Transportation Engineer's analysis accounted for the angle of the intersection or properly applied or was consistent with the City's written Policy R-13.

Finding of Fact 1.9

The Hearing Examiner quotes the Staff Report, which made the claim that the small triangular lot and the height restrictions "makes the development of a viable commercial property within the standard setbacks unfeasible" and that "the owner has determined that they require 5000 sf office space for development of this site to be viable." The Hearing Examiner finds that "variances are a necessity for a viable commercial use," citing the Applicant's statement regarding Variance Criteria which claimed that without the zero foot setback on Market Street, "the lot remains unbuildable due to the inequitable cost per square foot, as has been demonstrated by the past several failed attempts at developing the subject property." We dispute that a viable commercial use is not feasible without a zero foot setback on Market Street. We further dispute that any evidence was presented to support a finding that the past prior approved developments failed.

Finding of Fact 1.12

The Hearing Examiner found that eliminating the Market Street setback would not be out of character with the area. Again, the evidence does not support such a finding. As the only property on Market Street outside of the Historic Downtown district between 5th Ave. W and 7th Ave. W with a zero foot setback, it would necessarily be out of character with the surrounding areas.

Finding of Fact 1.14

The Hearing Examiner observed that the property is within a mixed commercial/residential corridor as described in the Market Street Corridor Plan. She found that the project "has been reviewed for traffic impacts, and is designed consistent with Plan policies which support addressing sight distance and pedestrian safety, to ensure efficient and safe traffic flow" and the project is "consistent with the Plan and responds appropriately to the site and surrounding community." We dispute that the evidence supports these findings.

Conclusion of Law 2.1

The Hearing Examiner concludes "there is no material detriment to the property or area improvements, or to the City more generally." We dispute this conclusion.

The Hearing Examiner further concludes "*the* variance is necessary due to the site's unique triangular shape, constrained size, and the code treatment of such a site, which requires not one, but three front yard setbacks." (Emphasis added.) We dispute the conclusion that the Applicant sought a single variance (implied in the statement "the variance") and the conclusion that all three variances are necessary.

Additionally, the Hearing Examiner concludes "the design for this commercial building is the minimum necessary, given the landscape buffer, setback, and parking requirements imposed." We dispute this conclusion.

This letter is only intended to meet the requirements of Kirkland Zoning Code Section 150.80 Appeals. We specifically reserve our right under Kirkland Zoning Code Section 150.90 Participation in the Appeal to submit written arguments in support of our position to the City Council prior to the commencement of the City Council's consideration of the appeal and to appear in person at the City Council's consideration of the appeal and provide oral and/or written arguments directly to the City Council.

Regards,



Nicole R. MacKenzie



Kenneth E. MacKenzie



Mark Fosdale



Kathryn Grindelard



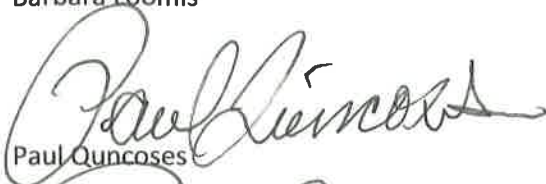
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June 3, 2020

Kirkland Mayor Sweet
Kirkland Deputy Mayor Arnold
Kirkland City Councilmembers
123 5th Avenue
Kirkland, WA 98033

Ref: VAR18-00070 – 2/21/2020 Findings of Fact, Conclusions of Law, and Decision of Kirkland Hearing Examiner Regarding Market Street Dental Clinic Variance at 1009 Market St

Dear Mayor Sweet, Deputy Mayor Arnold, and Councilmembers,

We submit these written arguments in support of our letter of appeal to the City of Kirkland Hearing Examiner's February 21, 2020 Findings of Fact, Conclusions of Law, and Decision regarding VAR-18-00070 for Market Street Dental Clinic Variance at 1009 Market Street.

Kirkland Zoning Code §120.20 governs the criteria for granting a variance and specifies that the City may grant a variance only if all three of the following criteria are met.

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; and
2. The variance is necessary because of special circumstances regarding the size, shape, topography, or location of the subject property, or the location of a preexisting improvement on the subject property that conformed to the Zoning Code in effect when the improvement was constructed; and
3. The variance will not constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this code allows to other property in the same area and zone as the subject property.

For the reasons set forth herein, none of the three criteria have been met and the Hearing Examiner's decision should be reversed entirely or modified as supported by the correct Findings of Fact and Conclusions of Law.

I. The variances sought will 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 Hearing Examiner makes several incorrect Findings of Fact with respect to the first required criterion which much be met.

First, in Finding of Fact 1.6, the Hearing Examiner finds that the City's Transportation Engineer's supplemental sight line analysis accounted for "the angle of the Market Street/10th Avenue West intersection" and that the "measurements were made consistent with how Public Works measures sight distance for other projects" and the variance would "have no impact on the sight distance for vehicles entering Market Street from 10th Avenue W." The Hearing Examiner quotes from the City Transportation

Engineer’s analysis and states “that analysis credibly details how the project sight lines were reviewed consistent with City Public Works traffic policy.”

The City Department of Public Works Pre-Approved Plans Policy R-13, which may be found at https://www.kirklandwa.gov/depart/Public_Works/DevelopmentServices/Pre-Approved_Plans/Roadway.htm, governs intersection sight distances. Policy R-13, **the only publicly published written policy on sight distances**, “establish[es] the sight distance triangle that **must** be kept clear of sight obstructions for all intersections and driveways pertaining to new developments.” Policy R-13 section 1 (emphasis added.) Policy R-13 sets forth clear rules for establishing sight distance triangles for the various types of intersections and driveways. The required sight distance is defined to be “how far (on the major road) the driver should be able to see so as to **safely** exit a minor road or driveway....” R-13 section 3 (emphasis added.) Table 2 in the Policy shows the sight distance values that need to be used to determine the sight distance triangle at various types of intersections and driveways.

TABLE 2: Sight Distance Triangle Guidelines*

| Type of Intersection or Driveways | Distance from Edge of Traveled Way (ft) | Major Street (Street Entered Upon) | | | |
|---|---|---------------------------------------|-------------------|---|------------------------|
| | | Average Daily Traffic | Speed Limit (MPH) | Sight Distance Value (ft) (a) (B-C1) and (B-C2) | |
| | | | | Recommended (Desirable) | Minimum (Required) (d) |
| A – Uncontrolled (See Figure 1) | 115 (b) | <1000 | 25 | 115 | 115 |
| B - Stop Control on Minor Street (See Figure 2) | 14 | Any | 25 | 280 | 150 |
| | | | 30 | 335 | 200 |
| | | | 35 | 390 | 250 |

*Table truncated here for space.

Footnotes:

- (a) These values should be adjusted for grades with slopes of a magnitude of grade greater than 3%, number of lanes greater than two, for skewed intersections or for design vehicles other than passenger cars, using the intersection sight distance procedures in Chapter 9 of a Policy on Geometric Design, AASHTO, 4th Edition
- (b) Distance back from center of intersection.
- (c) Distance back from point C1 or C2 for types C-1 and C-2 intersections.
- (d) Minimum (Required) only permitted if Recommended (Desired) is not possible (see page 3 for further explanation).
- (e) Distance from back of the sidewalk.
- (f) Distance parallel to the sidewalk from the center of the driveway.

The intersection of 10th Avenue W and Market Street is a stop controlled intersection on the minor street and therefore is a Type B Intersection. Since the speed limit on Market Street at that point is 35 mph, the recommended site distance is 390 feet. Per Footnote (d), the minimum required distance of 250 feet is permitted **only if** the recommended site distance is not possible, as clarified by R-13 section 3.c. R-13 section 3.c. specifies that “[t]he **Recommended** values are **required**” and only if they cannot be reasonably obtained due to the presence of fixed structures that cannot be removed or roadway features shall the driveway be relocated or designed to **maximize** sight distance and in no case shall it be less than the minimum value. Further, Footnote (a) requires that the values be adjusted for grades with slopes of a magnitude greater than 3% and for skewed intersections.

City Staff and specifically the City Transportation Engineer acknowledges that the grade on Market Street up from the intersection with 10th Avenue. W is approximately 5%. (See City Memorandum dated February 13, 2020 with attached Public Works Memo dated February 10, 2020.) The engineer further acknowledges that the **minimum** required site distance for a 35 mph street with grades from 3% to 6% is 275 feet based on the 2018 AASHTO Green Book, 7th Edition. *Id.* However, applying the adjustments in

2018 AASHTO, 7th Ed., 9-44 and 9-45, the **Recommended**, and therefore per Policy R-13, the *required* distance is **412 feet**. (See Tilghman Group report dated 2/10/2020 which is Attachment 1 to MacKenzie Comment Letter dated 2/11/2020.) The engineer's analysis did *not* properly account for the Market Street grade since it did not reference the Recommended, i.e. *required*, 412 feet sight line distance.

Additionally, acknowledges that the intersection angle at 10th Avenue W and Market Street is skewed, but dismisses it saying, *without any supporting evidence or authority*, that *sight distance* looking north on Market Street is not affected by the skewed angle and therefore adjustment for a skewed angle intersection is not applicable. In fact, per Public Works' own published policy, the required sight distance values *necessarily must be adjusted for skewed intersections*. The Tilghman Group report notes that 10th Avenue W intersects with Market Street at a sharp 45 degree angle which greatly exceeds the design guidance for intersections that encourage intersecting angles of 75 degrees or greater. (Citing to *A Policy on Geometric Design of Highways and Streets*, AASHTO, 7th Ed., 9-33.)

Drivers on 10th Avenue W at the intersection must severely crane their necks to see on-coming traffic to the north of the intersection. Clearly a driver's sight line and sight distance are significantly impacted by the skewed intersection such that *if* that were the criteria for determining whether the adjustments for a skewed angle intersection are applicable, the answer is a resounding yes. They would be further negatively impacted by the presence of a permanent structure with no setback on Market Street encroaching in the sight distance triangle. Thus, the Hearing Examiner's finding that the City's Transportation Engineer's supplemental sight line analysis accounted for "the angle of the Market Street/10th Avenue West intersection" is incorrect on its face.

Policy R-13 section 4 states "no structure, improvement, vegetation or other objects may be within the area to be kept clear of sight obstructions between three (3) feet and eight (8) feet above the elevations of the pavement edge of each intersecting street ... where that street ... meets the points of the triangle that form this area furthest away from the intersection." One of the clear purposes of front yard setbacks and policy R-13 is to make certain, long before plans are drawn and building permits are requested, that the perimeter of every new structure is set safely and does not create a traffic hazard by obstructing any line of sight.

For a Type B controlled intersection, it specifies that the "decision point" is located at the center of the minor street approach lane at a distance of 14 feet from the edge of the traveled way. Traveled way is defined as "the portion of the road intended for the movement of vehicles and bicycles, exclusive of shoulders and turning lanes." Notably, Policy R-13 provides the following additional clarification.

Although it is not typical to do so, if a parking lane exists on the major street, it *may be excluded* from the traveled way in special cases. ***Usually*** these are cases ***where volumes and speeds are low and*** therefore the ***overall safety risk*** at the intersection is considered ***low***.

There is both a bicycle lane and a parking lane on Market Street. As noted previously, the speed limit on Market Street at the subject intersection is 35 mph and the City has acknowledged in many different contexts, including the recently updated Market Street Corridor Plan, that Market Street is a transportation link serving both regional and local users and that traffic volume on the Corridor is high. Thus, this intersection does not fall within the circumstances that allow for the rare exclusion of the parking lane from the traveled way.

It is also abundantly clear that the increasing traffic loads, together with the ever-increasing need to provide efficient transit service on Market Street will likely result in the existing parking lane being repurposed for a bus-only lane or another regular traffic lane (*see e.g.* southbound Market Street at Forbes Creek Drive). Any analysis concerning the safety of this intersection and the location of a new permanent structure would be short-sighted and inappropriate if it ignored this obvious likely occurrence.

The safety of bicyclists, bus passengers, and auto passengers on southbound Market Street at this intersection requires that the City's policy be faithfully and wisely applied.

Despite the fact that the practice of excluding parking lanes from the traveled way is clearly disfavored by the Public Works' own published policy, the traffic engineer claims that it is appropriate to exclude on-street parking lanes from the traveled way and measure the decision point from the edge between the bicycle travel lane and the parking lane if both on-street parking and a bike lane exist. In failing to follow Public Works' written published policy with respect to determining the applicable required sight distance and the location of the decision point, the City's Transportation Engineer reached incorrect and improper conclusions about whether the requested variances, including specifically for a zero foot setback along Market Street, result in the proposed improvement encroaching the sight distance triangle.

Contrary to the Hearing Examiner's findings, the City's Transportation Engineer's measurements and analysis were not made consistent with written published City Public Works traffic policy. The 412 foot site line distance from the correct decision point **required** by proper application of City policy R-13 to this particular intersection is clearly and obviously not possible should a building be located according to the requested Market Street front yard zero foot setback variance.

Second, in Finding of Fact 1.10, the Hearing Examiner finds that the 7.5 foot landscape buffer along 3rd Street W is "consistent with KZC Section 95.46.1 because the adjoining owners agreed in writing to the modification in and the 'distance of development from the neighboring property decreases or eliminates the need for buffering.'" As noted in Section 1.5.1 of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision, the neighbors who had initially consented to the modification did not fully appreciate at the time what was being proposed and have now expressed in writing and on the oral record opposition to the proposed modification. Therefore, even by the Hearing Examiner's own account, the adjoining owners *do not agree* to the modification or that the need for buffering is decreased or eliminated.

Third, in Finding of Fact 1.12 the Hearing Examiner found that eliminating the Market Street setback would not be out of character with the area. Again, the evidence does not support such a finding. The property is part of the MSC-1 zone which applies to most all of the Market Street Corridor. MSC-2, MSC-3, and MSC-4 are small zones scattered along Market Street where different rules apply for historical or land use reasons. Contrary to the applicant's statement supporting the variance application and available on MyBuildingPermits.com, no buildings in MSC-1 have a zero front yard setback along Market Street. (See also MacKenzie letter dated 6/12/2018 at pp. 172-180 of the 1009 Market Street Variance HE Packet 01302020 – VAR18-00070 and MacKenzie letter dated 2/11/2020.) As the only property on Market Street outside of the Historic Downtown district between 5th Avenue W and 7th Avenue W with a zero foot setback, it would necessarily be out of character with the surrounding areas.

The Hearing Examiner, in Finding of Fact 1.14, observed that the property is within a mixed commercial/residential corridor as described in the Market Street Corridor Plan. She found that the project "has been reviewed for traffic impacts, and is designed consistent with Plan policies which support addressing sight distance and pedestrian safety, to ensure efficient and safe traffic flow" and the project is "consistent with the Plan and responds appropriately to the site and surrounding community."

However, Policy MS-3.2 of the Market Street Corridor Plan (Exhibit I to the 1009 Market Street Variance HE Packet 01302020 – VAR18-00070) notes that there are general traffic flow problems on Market Street that are impacted by sight distance problems, short acceleration lanes, speeding, lack of gaps for entry traffic, and transition to a 25 mph zone near the downtown.

Though not specifically discussed in Policy MS-3.2, the previously noted increased traffic volume and importance of the Corridor to mass transit offerings and the resulting safety implications are among the issues contemplated by the Policy. Possible solutions identified in the Policy include simplifying intersections, creating gaps in the traffic, and calming or slowing traffic on Market Street. Allowing

variances that make already challenging intersections even more difficult to navigate (see discussion above) is in direct conflict with the Plan and Policy MS-3.2.

Likewise, the Plan calls 1) for promotion of development regulations that address transitions and protect neighborhood character, noting that building mass of higher density structures should not overwhelm adjoining low-density uses and landscape buffers should be used to soften and separate uses (MS-6.1); and 2) for establishing multifamily building and site design standards that enhance neighborhood compatibility by addressing issues such as building placement on the site, site access and on-site circulation by vehicles and pedestrians, building scale, landscaping, and buffers between multifamily developments and single-family housing (MS-6.2). The three variances requested are not consistent with Plan Policies MS-3.2, MS-6.1, or MS-6.2.

Since the Hearing Examiner's Findings of Fact 1.6, 1.10, 1.12, and 1.14 are incorrect as discussed fully above, her Conclusion of Law 2.1 that "there is no material detriment to the property or area improvements, or to the City more generally" is not supported by the evidence or correct Findings of Fact.

II. The variances are not necessary because of special circumstances regarding the size, shape, topography, or location of the subject property, or the location of a preexisting improvement on the subject property that conformed to the Zoning Code in effect when the improvement was constructed.

The Hearing Examiner, in Finding of Fact 1.9, quotes the Staff Report, which made the claim that the small triangular lot and the height restrictions "makes the development of a viable commercial property within the standard setbacks unfeasible" and that "the owner has determined that they require 5000 sf office space for development of this site to be viable." The Hearing Examiner finds that "variances are a necessity for a viable commercial use," citing the Applicant's statement regarding Variance Criteria which claimed that without the zero foot setback on Market Street, "the lot remains unbuildable due to the inequitable cost per square foot, as has been demonstrated by the past several failed attempts at developing the subject property."

Disregard for the requisites established by ordinance for the granting of a variance justifies a conclusion the decision-maker acted in an arbitrary and capricious fashion. *Cooper-George Co. v. City of Spokane*, 3 Wn.App. 416, 418, 475 P.2d 568, (Div. 3 1970). KZC §120.20 requires that the requested variance(s) be "necessary" due to special circumstances. The City's choice of the word "necessary" is a more restrictive standard than other standards customarily applied to variances by other jurisdictions, such as "practical difficulty," or "undue hardship," or "unnecessary hardship." *Cooper-George Co.* at 418. Here, there is no substantial evidence to support the Applicant's claim or the Hearing Examiner's finding that 5000 square feet of office space must be provided for the Applicant's dental office to be economically viable. No evidence is provided as to whether prevailing rental rates in the community would be sufficient to amortize costs for a conforming structure, residential or commercial.

Furthermore, the criteria is whether the variance(s) is necessary for any development allowable under the applicable zoning, not whether it is necessary for the property owner's desired development. "Necessary" is related only to the condition of the property, not to the wishes of an individual property owner. The standard is objective, not subjective. *St. Clair v. Skagit County*, 43 Wn.App. 122, 127, 715 P.2d 165, (Div. 1 1986). A nontechnical statutory term is typically given its dictionary meaning. In this case, the dictionary defines the term "necessary" to mean "indispensable" or "[a]bsolutely required" or "[n]eeded to bring about a certain effect or result." *Cooper Point Ass'n v. Thurston County*, 108 Wn.App. 429, 440, 31 P.3d 28 (2001)(quoting WEBSTER'S II NEW COLLEGE DICTIONARY 731 (1999)). *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 17, 57 P.3d 1156, (2002). The record indicates that the front yard variance on Market Street is not "indispensable" because a building permit for proposal has been issued that did not include a front yard variance on Market Street.

“Necessary” should be construed to assure regulations do not deprive the owner of “all or substantially all economic use of the land.” *Estate of Friedman v. Pierce County*, 112 Wn.2d 68, 78, 768 P.2d 462, (1989). The history of the parcel reveals that economic uses exist given the expense and effort of preparing the necessary materials.

| Date | Event | Description | Source |
|------------|---|---|--|
| 1946 | Single family house constructed | From available photos, it appears to be a classic “Kirkland Rambler” | Attachments 2 & 3 to MacKenzie Comment Letter of 2/11/2020 |
| 2/14/2003 | Setback variance granted by Hearing Examiner | 4,200 square foot office building with underground parking for 13 cars proposed with driveway onto 10th Ave W <ul style="list-style-type: none"> • 3rd St W setback reduced to 5’ • 10th Ave W setback reduced to 10’ • Market St setback unchanged at 20’ | January 30, 2020 Hearing Examiner Packet pages 37 & 46. |
| 2/7/2007 | Application for Building Permit BLD07-00107 submitted | “To build a mixed use bldg. with 13 car garage below; 1st floor 2,700 sq. ft. shell for 1 office & 2nd floor 2,700 sq. ft. for 1 residential unit” (Total 5,400 | Attachment 2 to MacKenzie Comment Letter of 2/11/2020 |
| 5/14/2007 | Statutory Warranty Deed recorded | Transfer property to Benjamin J Green | Attachment 3 to MacKenzie Comment Letter of 2/11/2020 |
| 8/15/2007 | BLD07- 00756 Issued | Demolish single family residence | Attachment 3 to MacKenzie Comment Letter of 2/11/2020 |
| 10/9/2007 | BLD07-00107 Issued | 5,400 sq. ft. mixed use building referenced above | Attachments 2 & 3 to MacKenzie Comment Letter of 2/11/2020 |
| 12/20/2007 | LSM07-00055_P Issued | Land Surface Modification permit issued for application that included a site plan showing no Market St setback variance. | Attachment 4 to MacKenzie Comment Letter of 2/11/2020 |
| 12/16/2009 | Request to cancel BLD07-00107 | Letter from Dr. Benjamin Green to City of Kirkland Building Division referring to “my building permit”. | Attachment 5 to MacKenzie Comment Letter of 2/11/2020 |

This trail of requests and approvals documents clearly that a useful building can be constructed on this parcel while maintaining the required 20 foot front yard setback on Market St. – neither the 4,200 square foot office building contemplated in the 2003 variance request nor the 5,400 square foot mixed office and residential building which was the subject of the 2007 permit application required a Market St. setback variance.

Mr. Green purchased the property while the building permit application for the 5,400 square foot building was pending. He should have known what the applicable setbacks were for the property and what variances had been granted that would apply to the then pending proposed development when he purchased the property. More than 2 years elapsed from the time the building permit was issued to Mr. Green and his request to cancel it. Nine years later, Mr. Green submitted the **current application for three variances**¹, including for the Market Street setback, in order to build a 5,387 square foot dental clinic – a building smaller than that of the 2007 building permit.

¹ The Applicant and City Staff treated the requests as seeking a single variance in addressing whether each of the three criteria for granting variances are met. By treating the three requests as one, they were able to argue that no commercial development is viable without “the” variance. Each variance requested should properly be evaluated separately to whether each meets all three of the required criteria for granting each one.

There is no evidence in the record as to why the prior owners decided to seek a building permit for a 5,400 square foot mixed use building rather than moving forward with construction of the 4,200 square foot office building. Nor is there any evidence in the record as to why Mr. Green decided not to pursue construction of the already approved 5,400 square foot building.

The history of the parcel and the various development requests granted by the City clearly and definitively defeat any argument that the geometry, layout, or circumstances of the parcel require a Market Street setback variance. Denial of the Market Street setback variance does not deprive Mr. Green of "all or substantially all economic use of the land" (*Estate of Friedman at 78, supra*), nor is the variance indispensable to development of the parcel.

While it is possible that the combination of setback requirements and parking requirements may preclude certain kinds of development of this property, there are other conceivable uses and developments and therefore there is no requirement that all *three front yard setback variances* be granted. The Hearing Examiner's Conclusion of Law 2.1 that "*the variance is necessary due to the site's unique triangular shape, constrained size, and the code treatment of such a site, which requires not one, but three front yard setbacks*" is an indication that the Examiner likewise treated the application as seeking a single variance and failed to evaluate each requested variance individually against the three criteria. As such, the conclusion is unsupported by the evidence and must be overturned.

- III. **The variance will constitute a grant of special privilege to the subject property which is inconsistent with the general rights that this code allows to other property in the same area and zone as the subject property.**

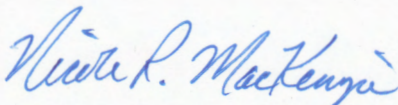
As noted above, Finding of Fact 1.12 asserted that eliminating the Market Street setback would not be out of character with the area. As previously discussed, the property is part of the MSC-1 zone which applies to most all of the Market Street Corridor and *no* buildings in MSC-1 have a zero front yard setback along Market Street. As the *only* property on Market Street *outside* of the Historic Downtown district between 5th Avenue W and 7th Avenue W with a zero foot setback, the Market Street setback variance would necessarily be out of character with the area and constitute a grant of special privilege that is inconsistent with the general rights the City's Codes allow to other properties in the same area and zone.

Conclusion

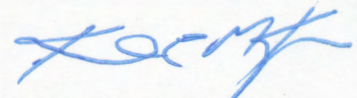
As demonstrated in great detail, the Hearing Examiner's Findings of Fact 1.6, 1.9, 1.10, 1.12, and 1.14 and Conclusion of Law 2.1 are not supported by the evidence in the record and must therefore be reversed or modified to conform to the evidence. Further, since KZC §120.20 requires that all three of the stated criteria must be met in order for a variance to be granted and the Market Street setback variance fails to meet any of the criteria, the variance for a zero foot front yard setback on Market Street must be denied.

We specifically reserve our right under Kirkland Zoning Code Section 150.90 to submit additional written arguments to the City Council prior to the hearing and to appear in person at the hearing and provide oral and/or written arguments directly to the City Council.

Regards,



Nicole R. MacKenzie



Kenneth E. MacKenzie



MERRICK LENTZ ARCHITECT
ARCHITECTURE - PLANNING

June 3, 2020

Mr. Tony Leavitt, Senior Planner
City of Kirkland Planning and Building Department
123 5th Avenue
Kirkland, WA 98033

RE: Applicant Response to Letter of Appeal
VAR18-00070
Market Street Clinic, 1009 Market Street

Dear Mr. Leavitt,

The owners to the above-named project are pursuing a variance for the property at 1009 Market Street to allow the construction of a 5000 square foot dental office building. The site is a small triangular lot on Market Street, fronted on all three sides by streets, and has been vacant since 2007. The site is located in the Market Street Corridor zone (MSC-1), in which development of multi-family or office buildings along Market Street is encouraged. With the front yard setbacks applied on all sides the total buildable area of the site without variance is 1749 square feet, about 22% of the 8120 square foot property. The variance requests a reduction of the standard front yard setback on all three sides as required to create a building footprint large enough to provide for the proposed 5000 square foot building. The variance hearing was held on January 30, 2020 and the record held open until February 13, 2020. The City of Kirkland Hearing Examiner issued the Findings of Fact, Conclusions of Law and Decision for Variance VAR180-00070 on February 21, 2020 approving the requested variance with conditions. Seven neighboring residents have appealed the decision and provided the City a Letter of Appeal, dated March 10, 2020, as required by KZC Section 150.80, indicating the specific findings that are being disputed by the appellants.

The appellants have disputed 4 Findings of Fact and 1 section of the Conclusions of Law. The disputed Sections are included in the discussion that follows, along with the Applicant's response to the disputed determination.

Finding of Fact 1.6

From the appeal letter: *The Hearing Examiner finds that the City's Transportation Engineer's supplemental sight line analysis accounted for "the angle of the Market Street/10th Avenue West*

intersection" and that the "measurements were made consistent with how Public Works measures sight distance for other projects." The Hearing Examiner quotes from the City Transportation Engineer's analysis and states "that analysis credibly details how the project sight lines were reviewed consistent with City Public Works traffic policy." We dispute that the City Transportation Engineer's analysis accounted for the angle of the intersection or properly applied or was consistent with the City's written Policy R-13.

Applicant response: The appellants provide no basis for their assertion that the City Transportation Engineer was in error in analyzing the sight lines at the intersection of Market Street and 10th Avenue West. The Examiner left the record open to specifically address this issue and permit the City Transportation Engineer to prepare supplemental analysis of the sight lines. Per the decision the engineer's analysis "credibly details how the project sight lines were reviewed consistent with City Public Works traffic policy. The Department's analysis was prepared by a traffic engineer, with expertise in applying the City's adopted policies, including Policy R-13, which was attached to the engineer's memo." The City Transportation Engineer, in analyzing the Market Street grade, intersection configuration, and building and awning location and configuration determined that the measured sight distance from the Market Street/10th Avenue West intersection exceeds 500', far exceeding the required 275 foot minimum. Further he asserted that granting the Variance would have "no impact on the sight distance for vehicles entering Market Street from 10th Avenue West and that the proposed project driveways on 3rd Street West and 10th Avenue West have adequate site distance. ... The proposed building will have no impacts on existing sight distance conditions and will not create safety issues for vehicles accessing the site and driving on adjacent streets." As discussed in the meeting a great deal of care will be required during permitting to ensure that street trees and landscaping do not block lines of sight from the intersection, but as clearly demonstrated by the applicant and confirmed by the Transportation Engineer the building will not impact sight lines and create a safety problem at this intersection.

Finding of Fact 1.9

From the appeal letter: The Hearing Examiner quotes the Staff Report, which made the claim that the small triangular lot and the height restrictions "makes the development of a viable commercial property within the standard setbacks unfeasible" and that "the owner has determined that they require 5000 sf office space for development of this site to be viable." The Hearing Examiner finds that "variances are a necessity for a viable commercial use," citing the Applicant's statement regarding Variance Criteria which claimed that without the zero foot setback on Market Street, "the lot remains unbuildable due to the inequitable cost per square foot, as has been demonstrated by the past several failed attempts at developing the subject property." We dispute that a viable commercial use is not feasible without a zero foot setback on Market Street. We further dispute that any evidence was presented to support a finding that the past prior approved developments failed.

As noted above and in testimony at the variance hearing, the small, triangular site has a very small buildable area, 1749 sf (square feet), within the standard front yard setbacks on all sides. As testified, without a variance granted the building and all surface parking improvements would

by code be required to be within this 1749 sf footprint. The applicant testified to the property owner's determination that 5000 square feet of building would be required to make this a viable commercial project at this site. Given the medical use the parking requirements are significant, and two under-building parking levels are necessary to provide the required parking. As noted in the hearing a smaller building does not provide the revenue sufficient to support the expensive construction of multiple levels of parking. Also as testified, the applicant proposed reduced buffers that provided just enough buildable property for the 5000sf office building. The decision was made to reduce the setbacks on the residential sides as little as possible in deference to the neighbors, and request the largest setback reduction along Market Street, given that the MSC zone is designed to encourage orientation to pedestrian activity along Market Street, there are zero setback properties one long block to the south, and a reduced setback at the office building immediately to the north. As indicated in the Examiner's report, "A 0 foot setback on Market Street allows for an equitable development while limiting the setback variance needed along 10th Ave W that is adjacent to low density residential areas and where the neighbors prefer to keep the 15 foot landscape buffer."

The appellants have offered only an unsubstantiated assertion and no evidentiary testimony that the project is commercially viable without setback modifications. The owner has testified to the negative impacts the undeveloped property has on the adjacent properties, and the appellants agreed with their testimony. The vacant site supports the finding that prior attempts to develop the property commercially have not succeeded.

Finding of Fact 1.12

From the appeal letter: *The Hearing Examiner found that eliminating the Market Street setback would not be out of character with the area. Again, the evidence does not support such a finding. As the only property on Market Street outside of the Historic Downtown district between 5th Ave. W and 7th Ave. W with a zero foot setback, it would necessarily be out of character with the surrounding areas.*

As testified, the proposed project is located in the Market Street Corridor zone, in an area designated for commercial uses. It will be less than half the size of the office building immediately to the north, and smaller than the nearby office at 312 11th Avenue. Additionally, the City Planner testified that the percent of lot coverage is less than both of those referenced buildings. The applicant testified that the building would use high quality materials consistent with development in the area, and would use modulation of form and material to lessen the impacts of the proposed reduced setbacks. As noted in the Examiner's finding "(e)liminating the Market Street setback would not be out of character with this area, which is intended for pedestrian oriented commercial uses." Additionally, the applicant and the City Planner testified that there are zero setback properties in the surrounding area.

Finding of Fact 1.14

From the appeal letter: *The Hearing Examiner observed that the property is within a mixed commercial/residential corridor as described in the Market Street Corridor Plan. She found that the project "has been reviewed for traffic impacts, and is designed consistent with Plan policies*

which support addressing sight distance and pedestrian safety, to ensure efficient and safe traffic flow" and the project is "consistent with the Plan and responds appropriately to the site and surrounding community." We dispute that the evidence supports these findings.

The Planning Department staff report testifies to the purpose of the Market Street Corridor, to support "a mix of higher intensity uses along the Market Street Corridor while minimizing impacts on adjacent residential neighborhoods." The site is located within this mixed commercial/residential corridor area, and the zone is specifically intended to encourage developments of this kind. As indicated in the Examiner's report, the proposed building is oriented toward Market Street, will undergo Design Review, and includes "modulation, landscaping, sidewalk improvements, and other mitigation." The applicant has prepared a traffic study to ensure safe movement to and from the property vehicular access points. The transportation engineer has reviewed the study, and performed additional sight line analysis during the open record period after the hearing, as discussed previously. The Examiner concludes the project "responds appropriately to the site and surrounding community", and the appellants provided no testimony or evidence to substantiate the assertion that this project is not consistent with the Comprehensive Plan.

Conclusion of Law 2.1

From the appeal letter: *The Hearing Examiner concludes "there is no material detriment to the property or area improvements, or to the City more generally." We dispute this conclusion.*

The Hearing Examiner further concludes "the variance is necessary due to the site's unique triangular shape, constrained size, and the code treatment of such a site, which requires not one, but three front yard setbacks." (Emphasis added.) We dispute the conclusion that the Applicant sought a single variance (implied in the statement "the variance") and the conclusion that all three variances are necessary.

Additionally, the Hearing Examiner concludes "the design for this commercial building is the minimum necessary, given the landscape buffer, setback, and parking requirements imposed." We dispute this conclusion.

The appellants offer no evidence to support the assertion that the application fails to meet burden of proof criteria number 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;" As noted by the Examiner, the City staff report and Applicant demonstrated that "(w)ith the required landscaping, buffering, Design Review, and improved pedestrian circulation, there is no material detriment to the property or area improvements, or to the City more generally. While the Market Street setback is eliminated, the commercial building is oriented toward Market Street, will provide a better transition than the current vacant lot, and the building has been designed to facilitate pedestrian activity. The landscaped buffers on the other two sides address use change and provide for compatibility between the uses."

Regarding burden of proof criteria 2, the appellant appears to argue that the variance request is not one variance action, but three variance actions. First, this is not an argument that was put forward during the hearing, and we've seen no evidence it was made during the open period

following the hearing, and therefore should not be considered as an argument in support of the appeal. Per KZC 150.95 “The appeal will be considered only on the record developed in the hearing before the Hearing Examiner. No new evidence may be presented.” This assertion should be struck from the appeal as an attempt to introduce new evidence. Additionally, the City has accepted this as a single Variance action, addressing the setbacks on each frontage of the property.

Second, the City staff report and the Applicant clearly demonstrated that the variance is necessary because of special circumstances regarding the size and shape of the property. As summarized by the Examiner, “(t)he variance is necessary due to the site's unique triangular shape, constrained size, and the code treatment of such a site, which requires not one, but three front yard setbacks... As one of only three similarly situated sites within the City, one of which is a park, these do constitute special and unique circumstances.”

Addressing burden of proof criteria 3, the City staff report and applicant have clearly demonstrated that the granting of the Variance does not constitute a grant of special privilege to the subject property which is inconsistent with the general rights this code allows to other property in the same area and zone at the subject property. As was testified, this is a modestly sized office building, scaled appropriately with the property size, and consistent with nearby commercial buildings. The Examiner concluded that “(a)s detailed in the findings, the design for this commercial building is the minimum necessary, given the landscape buffer, setback, and parking requirements imposed. The appellants have offered no evidence in support of their assertions to the contrary.

For the reasons noted above we believe the decision of the Hearing Examiner is clearly and demonstrably correct and should be upheld by City Council.

As a final note, the appellants Letter of Appeal is a general document disputing 5 findings of fact by the Hearing Examiner, but it does not provide any substantive supporting arguments for claiming the Examiner’s findings are in error. The letter has the form of a place-holder, by the appellants’ own admission:

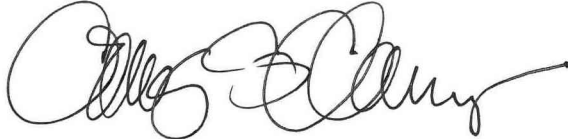
“This letter is only intended to meet the requirements of Kirkland Zoning Code Section 150.80 Appeals. We specifically reserve our right under Kirkland Zoning Code Section 150.90 Participation in the Appeal to submit written arguments in support of our position to the City Council prior to the commencement of the City Council's consideration of the appeal and to appear in person at the City Council's consideration of the appeal”

Section 150.90 provides the applicant the right to submit a written response to the appeal as indicated: “Only those [persons](#) entitled to appeal the decision under KZC [150.80](#)(1) who file an appeal under KZC [150.80](#)(2) may participate in the appeal; *provided, that the applicant may submit a written response to an appeal filed by an appellant...*” (Emphasis added.)

To date, no additional written arguments supporting their position have been submitted and it appears that the appellants will not do so prior to the Applicant’s deadline for providing their response to the appeal. Given the general nature of their appeal letter, lacking evidence and arguments supporting their assertions, it appears this may be a strategy to deny the applicants the

opportunity to exercise their right under Section 150.90 to file a considered, written response to the appellants' arguments. To date the appellant has failed to provide any evidence from the meeting record and arguments presented that the Hearing Examiner's determination was in error, beyond their assertion to that effect. The Applicant would like to reserve the right provided for in KZC 150.90 to provide a written response to any additional arguments submitted by the appellants.

Respectfully Submitted on behalf of the property owners,

A handwritten signature in black ink, appearing to read 'Craig Chaney', with a long horizontal flourish extending to the right.

MERRICK LENTZ ARCHITECT
Craig Chaney