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**BEFORE THE HEARING EXAMINER FOR THE CITY OF KIRKLAND**

Phil Olbrechts, Hearing Examiner

RE: 11 9th STREET FRONT YARD VARIANCE  VAR21-0543	<b>FINDINGS OF FACT, CONCLUSIONS  OF LAW AND FINAL DECISION.</b>
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**INTRODUCTION**

Mike Smith of Chrysalis Homes has requested a variance to the 20-foot front yard setback of the RM3.6 district set by KZC 20.30.010 to build a duplex on a triangular shaped lot bordered by two rights-of-ways. Mr. Smith requests that the setback be reduced to ten feet. The variance is approved without conditions.

**ORAL TESTIMONY**

Tony Leavitt, Senior Kirkland City Planner, summarized the proposal. He noted that adjoining Kirkland Way right of way is 60 feet wide and that the nearest building is 80 feet from the Kirkland Way property line. The adjoining property to the west, occupied by a fourplex, is screened by vegetation on that property. The Applicant is proposing to place vegetation in the remaining setback, thereby further reducing visual impacts. For these reasons, staff does not consider the proposal to be materially detrimental to surrounding properties. He noted that the special circumstances include that the property is constrained by two right of ways as a triangular lot, reducing developable area to 32.9%. Staff considers the shape and limited developable area to qualify as a special circumstance. As to special privilege, the Applicant proposes units of 2,100 square feet, which is within the range of size of surrounding units. A couple setback variances for similarly constrained triangular shaped lots have also been approved in other parts of the City.

In response to Examiner questions, Mr. Leavitt confirmed that single-family homes are authorized in the zoning district of the proposal. He also confirmed that in theory a 4,000 single-family home could be built without the variance, but that the development area is triangular in shape, which would be challenging for a single-family home design. He also confirmed that a requirement for hardship was not integrated into the three variance criteria.

1 Hearing participants did not object to the Examiner reviewing the two variances  
approved for similar circumstances.

2 Mike Smith, Applicant, thanked the Examiner for his consideration of the proposal.

3 No members of the public testified. The Examiner left the record open until 5:00 pm,  
4 May 6, 2022 for anyone who was unable to testify due to technical reasons. A phone  
5 number was provided for persons who wished to submit comments for that reason.

## 6 EXHIBITS

7 The April 25, 2022 staff report and attachments 1-6 were admitted during the hearing  
8 as Exhibit 1.

## 9 FINDINGS OF FACT

### 10 Procedural:

- 11 1. Applicant. The Applicant is Mike Smith of Chrysalis Homes,
- 12 2. Hearing. A virtual Zoom hearing was held on the application on May 5,  
13 2022 at 9:30 am, Meeting ID 874 6372 6158. The hearing was left open through 5  
14 pm, May 6, 2022 for any persons who had trouble participating due to  
internet/computer technical problems.

### 15 Substantive:

- 16 3. Site/Proposal Description. Mike Smith of Chrysalis Homes has requested  
17 a variance to the 20-foot front yard setback to Kirkland Way in the RM3.6 district set  
18 by KZC 20.30.010 to build a duplex on a triangular shaped lot bordered by two  
rights-of-ways. Mr. Smith requests that the setback be reduced to ten feet.

19 The parcel subject to the variance request is 6,428 square feet in size. It currently  
20 accommodates a single-family residence that will be demolished. In addition to  
21 Kirkland Way, the triangular shaped lot also borders 9<sup>th</sup> Street. The size of the  
proposed duplex will be 4,212 square feet.

- 22 4. Characteristics of the Area. The subject property is located within the  
23 Moss Bay Neighborhood. To the north and west, properties are developed with  
24 townhomes, a fourplex and a single-family residence. Properties to the east and south  
are zoned LIT (Light Industrial Technology) and developed with the Cross Kirkland  
Corridor, a bike trail.

- 25 5. Adverse Impacts. No adverse impacts are anticipated from the proposal.

1 The proposal would not result in a loss of perceived openness. The Kirkland Way  
2 right-of-way is 60 feet wide. The nearest building to the north is approximately 80  
3 feet from the Kirkland Way property line. The Applicant also proposes plantings  
4 along the Kirkland Way frontage, Att. 6, to further shield the setback encroachment  
5 from view. The granting of the variance along Kirkland Way would move the  
6 structure closer to the neighboring properties to the north, but impacts would be  
7 lessened by the required proposed landscaping and right-of-way separation. The two  
8 properties to the west are buffered by extensive vegetation and/or landscaping as  
9 shown in the aerial photograph of Ex. 5. The property to the east and south is  
10 buffered by 9<sup>th</sup> Street and is comprised of the Kirkland Corridor trail.

11 The extra building space facilitated by the variance would be compatible with  
12 surrounding development. As outlined in the staff report, the proposal would comply  
13 with all applicable zoning standards, which assures a high degree of compatibility as  
14 contemplated in the City's zoning code. As further testified by staff, dwelling units  
15 on neighboring properties range in size from 864 square feet to 3,440 square feet.  
16 The proposed 4,212 square foot duplex will be similar in size to the adjoining  
17 fourplex to the west<sup>1</sup>, which in turn is smaller or similar in size to most of the  
18 surrounding buildings as depicted in the aerial photograph of Ex. 5. From this  
19 information, it can be concluded that the extra size facilitated by the variance would  
20 not result in a building that is out of character in size and scale to surrounding  
21 buildings.

22 6. Necessity/Special Circumstances. Numerous special circumstances attach to the  
23 variance request. As testified by staff, the unique triangular shape of the parcel  
24 combined with the unique circumstances of two adjoining rights-of-way results in a  
25 highly reduced developable area comprised of only 32.9% of the project area, which  
totals 2,116 square feet. The property is zoned to allow for duplexes. The Applicant  
wishes to build a duplex containing two units of 2,106 square feet each. The size of  
these units is well within the range of unit sizes in the area. The only way to achieve  
this size (other than building up), is via approval of the variance. Consequently, it is  
concluded that the special circumstances of the project site necessitate the variance.

## CONCLUSIONS OF LAW

### **Procedural:**

1. Authority of Hearing Examiner. KZC 120.10 provides that variance requests shall be processed under the Process IIA review process. Chapter KZC 150 provides that Process IIA applications shall be subject to hearing and final decision by the Hearing Examiner.

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<sup>1</sup> The smallest the fourplex would be under the range of 864-3,440 square feet per unit would be 3,456 square feet.

1 **Substantive:**

2 2. Zoning Designation. The property is zoned RM-3.6.

3 3. Review Criteria and Application. KZC 120.20 governs the criteria for  
4 variances. KZC 150.65.3(3) also imposes general review criteria that apply to all  
5 Process IIA applications. Applicable criteria are quoted in italics below and applied  
6 via associated conclusions of law.

7 **KMC 120.20(1):** *The variance will not be materially detrimental to the property or*  
8 *improvements in the area of the subject property or to the City in part or as a whole; and*

9 4. Criterion met. The proposal will not be materially detrimental to properties of the  
10 area or the City as a whole for the reasons identified in Finding of Fact No. 5.

11 **KMC 120.20(2):** *The variance is necessary because of special circumstances regarding*  
12 *the size, shape, topography, or location of the subject property, or the location of a*  
13 *preexisting improvement on the subject property that conformed to the Zoning Code in*  
*effect when the improvement was constructed; and*

14 5. Criterion met. The proposal is necessary because of special circumstances  
15 composed of lot shape and location adjoining two rights-of-way as outlined in Finding of  
16 Fact No. 6.

17 **KMC 120.20(3):** *The variance will not constitute a grant of special privilege to the*  
18 *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.*

19 6. Criterion met. The proposal enables a building of similar size with similar sized  
20 dwelling units to other buildings as outlined in Finding of Fact No. 6. Triangular lots  
21 under similar circumstances have had front yard setback variances approved under  
22 VAR18-00070 and ZON97-00012. For these reasons, the Applicant is not requesting  
privileges that have not been made available to others. No special privileges are  
conferred by approval of the variance.

23 **Process IIA General Criteria**

24 **KZC 150.65.3(3):** *Decisional Criteria – The Hearing Examiner shall use the*  
25 *criteria listed in the provision of this code describing the requested decision in*  
*deciding upon the application. In addition, the Hearing Examiner may approve the*  
*application only if:*

1 a. *It is consistent with all applicable development regulations and, to the extent*  
2 *there is no applicable development regulation, the Comprehensive Plan; and*

3 7. Criterion met. As outlined in the staff report, the proposal is consistent with all  
4 applicable development regulations and the Comprehensive Plan. (*see* Staff Report  
5 Sections II.D, E & F).


6 **KZC 150.65.3(3)(b):** *It is consistent with the public health, safety and welfare.*

7 8. Criterion met. The proposal is consistent with public health, safety and welfare  
8 because it doesn't create any significant adverse impacts as outlined in Finding of  
9 Fact No. 5 while also accommodating urban growth within an urban growth area as  
10 encouraged by the Washington State Growth Management Act, Chapter 36.70A  
11 RCW.

### 12 **DECISION**

13 VAR21-0543 is consistent with all applicable criteria as outlined in the Conclusions  
14 of Law above and for that reason is approved. No conditions are imposed.

15 Dated this 13th day of May 2022.

16   
17 Phil A. Olbrechts

18 City of Kirkland Hearing Examiner

### 19 **Appeal and Valuation Notices**

20 Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be  
21 appealed by the applicant and any person who submitted written or oral testimony or  
22 comments to the Hearing Examiner. The appeal must be in writing and must be  
23 delivered, along with any fees set by ordinance, to the Planning Department by 5:00  
24 p.m., fourteen (14) calendar days following the date of distribution of the Hearing  
25 Examiner's decision on the application.

Affected property owners may request a change in valuation for property tax purposes  
notwithstanding any program of revaluation.