



CITY OF KIRKLAND

Planning and Building Department
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ADVISORY REPORT FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Kirkland Hearing Examiner

From: Adam Weinstein, AICP, Planning Director
Allison Zike, AICP, Senior Planner

Date: January 30, 2020

File: APPEAL OF K5 OASIS SHORT PLAT, 7435 NE 129TH STREET
FILE NO. SUB16-01774

Hearing Date and Place: Thursday, February 6, 2020, 9:00 a.m.
City Hall Council Chamber
123 Fifth Avenue, Kirkland

I. INTRODUCTION

1. Appellants: Charles Coats, Biff Lenihan, and John Giaudrone (hereinafter referred to as "appellants"), residing at 7428 NE 129th St, 12824 Holiday Dr NE, and 12825 Holiday Dr NE, respectively.
2. Actions Being Appealed: The Planning Director's decision to approve a short plat application to subdivide a 61,874 sq. ft. parcel into five (5) single-family lots in the RSA 4 zone through an Integrated Development Plan (IDP) process (see Enclosure 1).
3. Summary of Issues Under Appeal: The appellants have contested the Planning Director's decision on the following bases: (i) the Average Building Elevation (ABE) for the future homes will be affected by unpermitted fill on proposed Lots 1 and 2; (ii) trees on-site have been impacted by unpermitted fill on proposed Lots 1 and 2; (iii) setbacks on Lots 1, 2, 3, and 4 are insufficient for the 20-foot required front yards; and, (iv) the City did not evaluate the entire property for wetlands and/or streams (see Enclosure 2).

II. RULES FOR THE APPEAL HEARING AND DECISION

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

The appellant, applicant, and any person who submitted written comments or information to the Planning Director on the application during the comment period established in the Notice of Application may participate in the appeal hearing; except that a party who signed a petition may not participate in the appeal unless such party also submitted independent written comments or information. The applicant may submit a written response to an appeal filed by an appellant. Further, the Hearing Examiner, in their discretion, may ask questions of the appellant, applicant, parties of record or staff regarding facts in the record, and may request oral argument on legal issues. The Hearing Examiner may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

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

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

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

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

III. BACKGROUND AND SITE DESCRIPTION

1. Site Location: 7435 NE 129th St
2. Zoning and Land Use: The subject property is zoned RSA 4, Low Density Residential, and is currently developed with one (1) single-family residence.
3. Original Proposal: Subdivide a 61,874 sq. ft. parcel into five (5) single-family lots in the RSA 4 zone using the Integrated Development Plan (IDP) process.
4. Planning Director Decision: On November 5, 2019, the Planning Director issued a decision of approval for the short plat proposal. The Planning Director's decision was based on findings of consistency with the decisional criteria established for short plats in Kirkland Municipal Code (KMC) Section 22.20.140, and Kirkland Zoning Code (KZC) Section 145.45.
5. Appeal Submitted: On November 26, 2019 the Planning and Building Department received a timely appeal of the Director's decision from the appellants (see Enclosure 2).
6. Applicant Response: On January 2, 2020 the applicant provided a response to the letter of appeal (see Enclosure 3).

IV. STAFF ANALYSIS

KZC Section 145.80 requires that staff prepare an analysis of the specific factual findings and conclusions disputed in the letter of appeal. A summary of the appellants' supporting arguments are listed below by topic (following the same order in the appeal letter) and followed by an analysis by Planning Division staff. The full text of the appellant's appeal letter is included in this packet as Enclosure 2.

1. Average Building Elevation (ABE) Calculations: The appellants take issue with illegal fill being brought onto the subject property prior to the submittal of the short plat application. They cite that, pursuant to KZC 115.59.1, the ABE (used as the basis for the allowed maximum structure height) for each new home shall be calculated using the existing predevelopment grades, which in this case should be the grades prior to any fill being placed on the property. They request that the City require either: removal of any illegal fill; or, add a condition to the short plat that the developers lower the ABE by 10 feet; or, show the previous ground elevation levels to calculate ABE and the respective maximum structure heights.

Staff Response: The City received a complaint alleging illegal fill on the subject property on November 20, 2015. The City opened a code enforcement investigation (File No. COM15-00665) and posted a cease and desist order on the property on November 23, 2015. The code enforcement case was closed with no additional corrective actions taken on December 17, 2015.

The applicant has provided a response to this basis of appeal in which they provide a topographic survey of the site in June 2015, prior to any fill being placed on the site, and

state that the grades shown on their approved plans match the 2015 topography (see Enclosure 3). The original topographic survey dated June 24, 2015 is included as Enclosure 4 to this staff report. Staff has reviewed the topographic survey from June 2015 and confirmed that the grades shown do match the grades shown on the survey submitted with the short plat application. The grades shown throughout the approved IDP short plat plan set (see Attachment 2 to the Director's Decision, Enclosure 1) match the pre-fill, or predevelopment, grades. As required by KZC 115.59.1, the City will use predevelopment grades as the grades for ABE calculations for each new home. This is standard practice, as required by the Kirkland Zoning Code.

The previous code enforcement case was closed prior to the short plat application and does not have bearing on the Director's Decision as issued. The short plat materials included a topographic survey that satisfactorily met application requirements and can subsequently be used to calculate the ABE for each new home in accordance with the requirements in KZC 115.59.

2. **Fill Impact on Trees:** Related to the same instance of illegal fill mentioned above, the appellants state that the short plat approval should be conditioned on the removal of the unpermitted fill in order to restore the health of trees that were put at risk by being enveloped by any soil placement that was not permitted.

Staff Response: The code enforcement case (File No. COM15-00665) related to the illegal fill brought onto the site was closed on December 17, 2015, prior to the short plat application being received on August 5, 2016. The code enforcement case did not require the removal of any fill, and that code enforcement case has no bearing on the City's review and approval of the short plat application. The applicant submitted application materials that satisfactorily met the requirements for the review and approval of the IDP plan included in the Director's Decision (see Enclosure 1) and will be subject to the conditions of approval contained within that decision.

3. **Setback Requirements:** The appellants claim that the setbacks on Lots 1-4 do not meet the minimum required front yards per KZC 15.30.060.

Staff Response: Staff provided a compliance analysis of the RSA 4 development standards, including setbacks, in the Director's decision (see Section V.A, Enclosure 1). The short plat approval includes an approved short plat IDP plan (see Attachment 2 to the Director's Decision, Enclosure 1) which shows approved building footprints. As proposed and approved, the building footprints shown on Lots 1-5 comply with the minimum required yards in the RSA 4 zone pursuant to KZC 15.30.060. The applicant has provided an explanation of the designed setbacks in their appeal response letter (see Enclosure 3). Enclosure 5 shows an excerpt of the approved short plat IDP plan which includes the required building footprint locations, along with staff notations explaining the required setbacks and a compliance analysis.

4. **Critical Area Determinations:** The appellants state that the subject property "traverses a ravine" that includes a creek. They contend the City did not conduct a thorough review of the property for the presence of any wetlands or other critical areas and request that the City evaluate the property for critical area status as a short plat condition or prior to building permit review.

Staff Response: The subject property slopes down from the northwest to the southeast. In the course of the City's review of the short plat application, a critical area evaluation of the property indicated the presence of mapped high and moderate landslide hazard, which required geotechnical peer review and are discussed in the Director's decision (see Section V.E, Enclosure 1). The City's critical area mapping does not indicate the presence of any stream or wetlands on the property and no indicators of such features were noted during staff's on-site reconnaissance of the site or on in the survey or technical reports provided by the applicant and reviewed by the City.

The City's GIS mapping does show Denny Creek, a mapped stream feature within a ravine located approximately 340 feet away from the southeast property corner at its nearest point. KZC 90.105 requires the applicant to prepare a critical area report when site conditions indicate that a wetland exists, or may exist, within 300 feet of the subject property and/or a stream exists, or may exist, within 125 feet of the subject property. The only City-mapped stream feature is located more than 125 feet from the subject property. Therefore, in accordance with the above-referenced KZC regulation, the City did not require a stream or wetland critical area report for the subject property to be submitted with the short plat application.

The appellants have not presented any evidence within their letter of appeal that would suggest the presence of stream or wetland on, or near, the subject property contrary to the findings of fact in the Director's decision (see Enclosure 1).

V. STAFF RECOMMENDATION

Per KZC 145.95, the person filing the appeal has the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision. The Planning Director's decision was based on staff's analysis of the Kirkland Municipal Code (KMC) 22.20.140 and KZC 145.45 criteria listed below:

Kirkland Municipal Code (KMC) Section 22.20.140 states that the Planning Director may approve a short subdivision only if:

1. There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools; and
2. It will serve the public use and interest and is consistent with the public health, safety, and welfare. The Planning Director shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17.

Kirkland Zoning Code (KZC) Section 145.45 states that the Planning Director may approve a short subdivision only if:

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

The appellant submitted 4 unique bases of appeal disputing the findings of fact and conclusions as presented in the Director's Decision in Enclosure 1. The appellants' comments primarily revolve around requesting corrections for possible impacts of illegal fill and contending errors in the Director's review of the development regulations. Many of these comments are addressed in the analysis sections the original staff report (see Enclosure 1), or in the case of a previous code enforcement case where indicated above, are not relevant to the Director's review and approval of the short plat application. Staff's analysis of these comments has not found any evidence to change the issued findings of fact and conclusions, and as such, Staff recommends that the Hearing Examiner uphold the Planning Director's decision for approval with conditions for the K5 Oasis Short Plat.

VI. ENCLOSURES

1. SUB16-01774 Director's Decision, Staff Report, and Attachments
2. Appeal Letter, prepared by appellants, dated November 26, 2019
3. Appeal Response Letter, prepared by applicant, dated January 2, 2020
4. Topographic Survey dated June 24, 2015 (pre-fill)
5. Setback Exhibit