

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

In the Matter of the Appeal of

PETER AND JULIE LEMME

From a Short Plat decision by the Director,
Planning and Community Development Department

Appeal Number:
APL06-00015

File No.:
SPL06-00014

Introduction

The Director issued a decision conditionally approving the Casady Short Plat (File No. SPL06-00014), and the appellants timely filed an appeal. The appeal was heard by the undersigned Hearing Examiner on January 4, 2007, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. Parties represented at the proceeding were: the appellants, Peter and Julie Lemme, by Peter Lemme, pro se; the Director, by Stacy Clauson, Project Planner; and the applicant, Casady Enterprises, Inc., by James Fitzgerald, attorney at law. A verbatim recording of the hearing is available in the City Clerk's office, and minutes of the hearing are available from the Department of Planning and Community Development.

Exhibits

The following exhibits were placed into the record during the hearing on January 4, 2007:

1. Department's Memorandum, December 28, 2006
Attachments to Exhibit 1:
 - A. Letter of Appeal
 - B. KZC 145.60-145.105
 - C. Vicinity Map
 - D. Proposal Drawings
 - E. Casady Short Plat Staff Report (SPL06-00014) with attachments 1-19
 - F. Required Yard Exhibit for Lot 3
2. Appellants' PowerPoint Presentation

Witnesses offering testimony at the January 4, 2007 hearing were:

Stacy Clauson, Project Planner, Planning and Community Development Department
Peter Lemme, Appellant
James Fitzgerald, Applicant's attorney

For purposes of this decision, all section numbers refer to the Kirkland Municipal Code (Code) unless otherwise indicated. After due consideration of all information and

material within the scope of the appeal submitted by persons entitled to participate in the appeal, and the Hearing Examiner's inspection of the site, the Hearing Examiner makes the following findings of fact, conclusions, and decision on this appeal.

Findings of Fact

1. The subject property is located at 9216 and 9222 112th Avenue NE. The site is approximately 32,023 square feet in size and is zoned RS 8.5, low density residential with a minimum lot size of 8,500 square feet. The zoning of the surrounding areas is also RS 8.5.
2. The site is bounded to the west by 112th Avenue NE. An alley to the south of the property is open between 112th Avenue NE and a garage structure on the property. The alley has a 16-foot right-of-way, although its developed width is less than this. North of the site are single family residences. The site is bounded on the east by properties developed with single family residences.
3. The proposed short plat would create three lots, as shown and described in Attachment D to Exhibit 1. Each lot would exceed the minimum lot size of 8,500 square feet. Lots 1 and 2 abut 112th Avenue NE. The proposal includes the installation of a 12-foot wide paved access easement which would provide vehicular access to Lots 2 and 3.
4. Lots 1 and 2 are currently being developed with single family houses, as shown in the photographs submitted by the appellants (Exhibit 2).
5. The Director approved the short plat with conditions, as described in the October 23, 2006 Advisory Report.
6. The Director has consistently interpreted the language of KZC 15.10.010 to require a five-foot minimum side yard for lots with three side yards.
7. Appellants Peter and Julie Lemme live immediately east of the site. They have lived here for many years, and have viewed with some alarm recent residential construction in the neighborhood. The design and scale of new houses has led the Lemmes to believe that construction on proposed Lot 3 will negatively affect their privacy and enjoyment of their home.

Conclusions

1. Pursuant to KZC 145.60, the Hearing Examiner has jurisdiction over this appeal. Under KZC 145.75, the scope of the appeal is limited to those elements of the decision that are disputed in the appeal letter. Under KZC 145.95, the person filing an appeal has

the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision.

2. The appeal alleges that the decision is in error, because it fails to require a rear yard setback of 10 feet from the east boundary line of proposed Lot 3.¹

3. The appellants raised three arguments in support of their appeal: (1) that the proposed easement would be a joint easement serving Lots 2 and 3; (2) the easement is only less than 21 feet in width because of a modification granted by the Department, and should be considered to be a 21-foot wide easement for purposes of KZC 5.10.720; and (3) even if the east boundary line is a side yard rather than a rear yard, under KZC 15.10.010, any two of the three side yards for Lot 3 must equal at least 15 feet.

4. Under KZC 105.10, Lots 1 and 2 are not considered to be “served” by the proposed easement because the lots abut 112th Avenue NE. Thus, only one lot, Lot 3, would be “served” by the easement, and therefore the east boundary line of Lot 3 could not be considered a rear property line under KCZ 5.10.720.

5. The Department granted a modification from the 21-foot minimum easement width. However, as noted by the parties at hearing, even if no modification had been granted, no property lines on Lot 3 would be adjacent to an easement that exceeded 21 feet in width, and would not therefore meet the definition of rear property line under KZC 5.10.720.

6. Finally, the appellants argued that where a lot has three or more side yards, KZC 15.10.010 requires that any two of those side yards must equal 15 feet or more. While the appellants’ interpretation is not unreasonable on its face, the Director has consistently construed this Code language to allow a five-foot side yard where a property has three side yards. This interpretation is not inconsistent with the Code language, and to the extent there is ambiguity in the Code language, the Director is entitled to deference in the administration of the Zoning Code; see, e.g., *Williams-Batchelder v. Quasim*, 103 Wn.App. 8, 14, 19 P3d. 421 (2000). Given this deference, and on the record in this case, the appellants have not met their burden to show that the Director’s decision is incorrect.

7. Because the appellants have not shown that the decision was incorrect with regard to the issues identified in the appeal, the appeal must be denied.

¹ The determination of required setbacks, as noted by the Department at hearing, is typically not a part of a short plat decision, but is a development standard that is applied at the time of a building permit. However, in the absence of motions and arguments to dismiss, the appeal has been considered as one that challenges the short plat decision’s consistency with applicable development regulations under KZC 145.45.

Decision

The decision of the Planning Director to approve with conditions the Casady Short Plat, File No. SPL06-00014, is hereby **AFFIRMED**.

Entered this 12th day of January, 2007.

Anne Watanabe
Hearing Examiner

Concerning Further Review

KZC 145.110 states: “The action of the City in granting or denying an application under this chapter may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the City. For more information on the judicial review process for a land use decision, see Chapter 36.70C RCW.”