

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

APPLICANT: Ken Smith

FILE NO.: ZON06-00010

SITE LOCATION: 9746 Slater Avenue NE

APPLICATION: Approval of a stream buffer reduction through enhancement, to reduce the 75-foot stream buffer for Forbes Creek, a Class A stream, to a minimum of 50 feet to allow previous improvements made to an existing non-conforming house.

REVIEW PROCESS: Process IIA, Hearing Examiner conducts public hearing and makes decision on stream buffer modification.

MAJOR ISSUES: Compliance with development regulations and applicable stream buffer modification requirements and criteria; and the obtaining of necessary construction permits for the previous improvements made to the existing house.

RECOMMENDATION:

Department of Planning and Community Development: Approve with conditions

PUBLIC HEARING:

After reviewing the Department of Planning and Community Development Advisory Report, the Hearing Examiner held a public hearing on the application. The hearing commenced at 1:00 p.m., June 21, 2007, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. The record was held open through June 28, 2007, to allow the parties to submit additional information concerning the applicant's request for a modification to the number of plants required by the buffer enhancement plan. A verbatim recording of the hearing is available in the City Clerk's Office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development.

The following persons spoke at the public hearing:

From the City:

Ronald Hanson, Project Planner

From the Applicant:

Kenneth Smith, owner

Grant Kinnear, representing the owner

Hearing Examiner Decision

File No. ZON06-00010

Page 2 of 5

Margaret Clancy, Adolfson Associates

From the Community:

Charles Kindschi

Ravi Dewan

CORRESPONDENCE:

The following persons submitted written comments on this application:

Ken Smith

Grant Kinnear (on behalf of Ken Smith)

Duane Oswald

Ravi Dewan

FINDINGS AND CONCLUSIONS

After considering the evidence in the record and inspecting the site on June 21, 2007, the Hearing Examiner enters the following findings of fact and conclusions.

A. Findings of Fact

1. The Facts set forth in Section II of the Department's Advisory Report are adopted by reference herein.
2. The applicant at hearing indicated agreement with most of the proposed conditions of approval. The applicant has recommended some modifications to the recommended conditions contained in the Advisory Report at Section I.B. The applicant asks that the first sentence of I.B.2.a.5 ("Consider planting the entire slope on the right bank") but that the applicant be required to seed the areas as requested by the City. The applicant also requests that condition I.B.6 be changed to the language contained at page 3 in the June 21, 2007 letter from Grant Kinnear to the Hearing Examiner. The Department concurs with these modifications to the conditions of approval.
3. The applicant also requested that condition I.B.2.a.3, regarding calculation of numbers of plants, be modified to require the plant counts recommended in the February 2006 report of Adolfson Associates (Advisory Report, Attachment 6).
4. The City's consultant, The Watershed Company, has reviewed the proposed modification and has determined that it is reasonable to reduce the required numbers of plants to reflect the presence of existing vegetation. The consultant's June 28, 2007 letter to the City recommends planting 9 trees, 60 shrubs and 160 ferns. The applicant submitted a letter dated June 28, 2007, indicating that he agreed with the plant count recommended by the Watershed Company.

B. Conclusions

1. The conclusions set forth in Section II of the Department's Advisory Report are adopted by reference as part of the Hearing Examiner's conclusions.

2. The applicant and the City disagree as to whether or not some of the applicant's past activities at the house constituted "repair and maintenance" or "new construction" under the Zoning Code, so as to necessitate obtaining permits and approvals, including stream buffer modification approval. It is not necessary to resolve or otherwise consider this issue for purposes of reviewing this application, and the applicant has chosen to simply move forward with obtaining permits.

3. Under KZC 90.100.2, an improvement or land surface modification within a stream buffer may be approved only if the criteria listed in this section are met. The criteria in this section are met by the proposal as conditioned, with certain modifications to the recommended conditions.

4. The conditions set forth in the Advisory Report in Section I.B, should be amended to read as follows:

2.a.3 The number of plants needed for the spacing specified in Table 2 will be calculated as recommended by the June 28, 2007 Watershed Consultant letter.

2.a.5 Areas of weed removal shall be reseeded.

6. The applicant shall submit completed building permit application(s) to the City of Kirkland by September 1, 2007, for all improvements made to the existing house without the required building permits (See Advisory Report, Conclusion III.B.2). Applicant shall timely pay all applicable application fees and process the application to completion and issuance of building permit(s) in a timely manner based upon the City of Kirkland Development Regulations.

5. The proposed stream buffer modification meets all applicable criteria and should be approved.

DECISION

Based upon the foregoing findings of fact and conclusions, the application is approved, subject to the conditions set forth in the Advisory Report at Section I.B., modified as noted in Conclusion 4 above.

Entered this 29th day of June, 2007.

Anne Watanabe
Hearing Examiner

EXHIBITS

The following exhibits were offered and entered into the record:

Planning and Community Development Staff Advisory Report

Attachments:

1. Vicinity Map
2. Site Plan
3. Development Standards
4. Planning Department Staff Report (APL06-00009)
5. Public Comment Letters
 - a. Letter from Duane Oswald
 - b. Letter from Ravi Dewan
 - c. Letter from Grant Kinnear, attorney at law
6. Stream Buffer Modification and Enhancement Plan dated February 28, 2006, by Adolfson and Associates, Inc.(including LC Lee and Associates plan)
7. Letter from the Watershed Company, dated August 21, 2006
8. North Rose Hill Neighborhood Land Use Map
9. Letter from the Watershed Company, dated June 28, 2007
10. Letter from Ken Smith, dated June 28, 2007

PARTIES OF RECORD

Applicant, Ken Smith, 9746 Slater Avenue NE, Kirkland, WA 98033 (and by Grant Kinnear, attorney at law, 120 – 112th Avenue NE, Suite C-110, Bellevue, WA 98004)
Duane Oswald, 12045 NE 100th Street, Kirkland, WA 98033
Ravi Dewan, 9724 Slater Avenue NE, Kirkland, WA 98033
Charles Kindschi, 9722 Slater Avenue NE, Kirkland, WA 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

APPEALS AND JUDICIAL REVIEW

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

Appeal to City Council:

Under Section 150.80 of the Zoning Code, the Hearing Examiner's decision may be appealed by the applicant and any person who submitted written or oral testimony or comments to the Hearing Examiner. A party who signed a petition may not appeal unless

such party also submitted independent written comments or information. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5 p.m. _____, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

Judicial Review:

Section 150.130 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

LAPSE OF APPROVAL

Under Section 150.135 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 150, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 150.130, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 150 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.