LAND USE HEARING EXAMINER

Kimberly A. Allen
Hearing Examiner

CITY OF KENT

In the Matter of the Application of	)	No. V-2012-1 KIVA#RPP3-2123069
Wayne Jones, on behalf of Smith Court, LLC	)	**Smith Court Homes**
For Approval of a Variance	)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a variance from Kent City Code (KCC) 15.04.170 to reduce a 20-foot wide rear yard setback to a minimum 10-feet wide; KCC 15.04.180.11 to reduce a 20-foot wide side yard setback to a minimum 10-feet wide; and KCC 15.04.180.15 to reduce 23.5-feet of building separation to a minimum 6-feet one-inch for the development of a 27-unit condominium development located at 24315 64th Avenue South, Kent, Washington, is **GRANTED**.

SUMMARY OF RECORD

Request:
Wayne Jones, on behalf of Smith Court, LLC, requests a variance from the Kent City Zoning Code to reduce rear and side yard setbacks and reduce building separation for the development of a 27-unit condominium development. The property is located at 24315 64th Avenue South, Kent, Washington.

Hearing Date:
The Hearing Examiner held an open record hearing on the request on December 19, 2012. The Hearing Record was held open until December 20, 2012, to receive an International Fire Code exhibit from the City.

Testimony:
The following individuals presented testimony under oath at the open record hearing:

Matt Gilbert, City Planner
Wayne Jones, Applicant Representative

Exhibits:

1. Staff Report, dated December 12, 2012
2. Distribution of Agenda and Staff Report, dated December 12, 2012
3. Variance Application, received September 24, 2012, with the following attachments:
   a. Variance Submittal Requirements Checklist
   b. Letter from Wm. Wayne Jones, Jr., Lakeridge Development, to City of Kent, dated January 10, 2007 (Variance Project Description)
   c. Letter from Wm. Wayne Jones, Jr., Lakeridge Development, to City of Kent, dated January 10, 2007 (Request for Variance)
   d. Letter from Patrick W. McBride, GMS Architectural Group, to City of Kent, dated September 20, 2012, with Legal Description, dated September 20, 2012; Code Data, dated September 20, 2012; Streetscape drawing, dated September 19, 2012; Unit Plans, dated September 19, 2012
4. Notice of Public Hearing, dated December 7, 2012; with Affidavit of Posting and mailing, distribution list, and email from *Kent Reporter* to City of Kent, acknowledging receipt of Notice of Public Hearing, dated December 5, 2012[1]
5. Routing Sheet, dated September 25, 2012
6. Notice of Application, dated October 12, 2012; with Affidavit of Posting, dated October 11, 2011
7. Distribution List, undated; email from *Kent Reporter* to City of Kent, acknowledging receipt of Notice of Application, dated October 9, 2012
8. Mitigated Determination of Nonsignificance, dated October 18, 2005
9. Deadline date sheets
10. Project Plans
    a. Site Plan #3 (Sheet A 2.1), dated September 19, 2012
    b. Composite Site Plan (Sheet 2.2), dated September 19, 2012
    c. Streetscape (Sheet M 1.1), dated September 19, 2012
    d. Unit Plans (Sheet M 1.2), dated September 19, 2012
    e. Overall Landscape Plan (Sheet L-1 of 5), dated June 3, 2008, and revised September 10, 2012
    f. Rec Plan and Planting Details (Sheet L-2 of 5), dated June 3, 2008, and revised September 10, 2012
11. Aerial Photo, undated (same as Exhibit 1, Staff Report, Figure 1, page 3)
12. KCC 13.01.050.U and V; 2009 International Fire Code, Section 503

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

[1] At the open record hearing, the City provided notarized copies of notice of public hearing publication and posting.

FINDINGS

1. Wayne Smith, on behalf of Smith Court LLC (Applicant), requested approval for a variance from Kent City Code (KCC) 15.04.170 to reduce a 20-foot wide rear yard setback to a minimum 10-feet wide along the west property line; KCC 15.04.180.11 to reduce a 20-foot-wide side yard setback to a minimum 10-feet wide along the north and south property lines; and KCC 15.04.180.15 to reduce 23.5-feet of building separation to a minimum six-feet one-inch for the development of a 27-unit condominium development. The property is a single 2.5 acre parcel located at 24315 64th Avenue S, Kent, Washington.[2] *Exhibit 1, Staff Report, page 1; Exhibit 3; Exhibit 10.*

2. The City of Kent (City) determined the variance application was complete on September 24, 2012. The City gave notice of the application by posting notice on the subject property on October 11, 2012; publishing notice in the *King County Journal* on October 12, 2012; and mailing notice to owners of property within 300 feet of the subject property. The City gave notice of the open record hearing by posting notice on the subject property and publishing notice in the *King County Journal* on December 7, 2012; and mailing notice to owners of property within 200 feet of the subject property.[3] *Exhibit 1, Staff Report, page 4; Exhibit 6; Exhibit 7;*

3. Variances are categorically exempt from environmental review required by the State Environmental Policy Act (SEPA), chapter 43.21C RCW.[4] *WAC 197-11-800(6) (b); Exhibit 1, Staff Report, page 4.*

4. The subject property is vacant, long, and narrow, running east/west. The parcel is designated Medium Density Multifamily (MDMF) by the City's Comprehensive Land Use Plan Map (Comprehensive Plan Map).[5] City Planner

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[2] The subject property is identified by King County Assessor Parcel Number 2322049055. The legal description of the subject property is included on the Site Plan. *Exhibit 1, Staff Report, page 2; Exhibit 10.a.* The City staff report states the property address as on 64th Avenue SE and 64th Avenue S, while the public notices state the property address as on 64th Avenue SE. The aerial photo in the City staff report addresses the property as on 64th Avenue S. This decision will address the property as on 64th Avenue South. *Exhibit 1, Staff Report, pages 2, 3 and 8; Exhibit 4; Exhibit 6.*

[3] The notarized statement states the City mailed notice to property owners within 200 feet of the subject property. The City staff report states the City mailed notice to property owners within 300 feet of the subject property. *Exhibit 1, Staff Report, page 4; Exhibit 4.*

[4] The City reviewed the environmental impact of a rezone proposal for the subject property in 2005. The City found that with a condition, the rezone would not have a probable significant adverse environmental impact, and issued a Mitigated Determination of Nonsignificance (MDNS) on October 18, 2005 (#ENV-2005-35). The copy of the MDNS submitted for the record, Exhibit 8, did not include a copy of any condition. *Exhibit 1, Staff Report, page 4; Exhibit 8.*

[5] The MDMF Medium Density Multifamily land use designation allows an MR-M zoning district classification for the subject property. *Comprehensive Plan (last revised May 4, 2006), page 4 – 9.*

Matt Gilbert testified that property to the west, north and east is also designated MDMF. Property to the south is designated MHP, Mobile Home Park. *City Comprehensive Plan Map (last revised May 16, 2006); Exhibit 1, Staff Report, page 5; Testimony of Mr. Gilbert.*

5. The subject property is located within the City's Medium Density Multifamily (MR-M) zoning district.[6] This zoning district allows development of residential single-family, duplex and multifamily dwellings. *KCC 15.04.020.* Property to the west, north, and east is also zoned MR-M with multifamily and senior housing. Property to the south is zoned Mobile Home Park (MPH) at a density of approximately 12 dwelling units per acre. *Exhibit 1, Staff Report, page 3; Exhibit 3.d.*

6. Mr. Gilbert testified that the subject parcel has not been subdivided and the City analyzed the subject parcel as one property. The MR-M zoning district allows a development density of up to 23 dwelling units per acre on the subject parcel. The Applicant proposes 27 detached units, for a development density of 10.8 dwelling units per acre.[7] *KCC 15.04.170; Exhibit 2; Testimony of Mr. Gilbert.*

7. Within the MR-M zoning district, each dwelling type is subject to different development standards. *KCC 15.04.170.* The City staff report states that the City considers the proposed condominium development a multifamily development because the subject parcel would contain multiple dwelling units on one property, though the development would look and function much like a single-family residential development. *Exhibit 1, Staff Report, page 6.*

8. Multifamily development standards for the MR-M zoning district allow buildings up to three stories tall that contain several dwelling units, with 20-foot wide side and rear yard setbacks. *KCC 15.04.170.* According to KCC Sections 15.04.170 and -.180.30, single-family development standards for the MR-M zoning district allow buildings up to 2.5 stories tall that contain a single dwelling unit, with a three-foot wide side yard setback and a five-foot wide rear yard setback. The proposed ten-foot wide variance would allow the rear yard setbacks to vary from 11 feet to 30-feet six-inches. *Exhibit 1, Staff Report, page 5; Exhibit 3.d; Exhibit 10.a.*

9. Mr. Gilbert testified that the proposed variance would allow a building separation of six-feet one-inch, rather than the 23.5 feet required by the MR-

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[6] In January 2006, the City Council approved a rezone application to change the zoning of the subject property from GC, General Commercial, to MR-M, Medium Density Multifamily. *Exhibit 1, Staff Report, pages 3 and 4.*

[7] The density calculation is 27 dwelling units / 2.5 acres = 10.8 dwelling units/acre.

M zone in KCC 15.05.180.15. Mr. Gilbert testified that the proposed project would meet the multifamily transition area requirements set out in KCC 15.08.215.[8] *Exhibit 10.a; Testimony of Mr. Gilbert.*

10. The Applicant requests the variance due to the size and shape of the long and narrow property. The proposed condominium units would appear as two-story, single-family residential homes constructed on the subject parcel. Fifteen units would contain three bedrooms each and 12 units would contain two bedrooms each. All unit bedrooms would have front or rear egress windows. Each unit's front door and driveway would face Smith Court Road, a proposed private road. Landscaping would be placed along the subject property's south, west, and north property lines. A six-foot tall wood fence would be constructed along the south, west, and north property line adjacent to the landscaping. The site plan depicts a four-foot tall wrought iron/landscape fence and pedestrian gate at the 64th Avenue South entrance. Wayne Jones, Applicant Representative, testified that the proposed project received a similar variance, now expired, for the same layout design in 2007.[9] *Exhibit 1, Staff Report; pages 6 and 7; Exhibit 3.d; Exhibit 10.a and .e; Testimony of Mr. Jones.*

11. The proposed condominium units would have access from 64th Avenue South. The access point would be located north of the 64th Avenue South/West Smith Street intersection. The Applicant would provide frontage improvements along 64th Avenue South. A "T"-shaped road, Smith Court Road, would extend west from 64th Avenue South through the development. It would stub out in a "hammer-head" adjacent to the subject parcel's north and south boundaries. Smith Court Road would be 20-foot wide with a five-foot wide planter strip and five-foot sidewalk along the north side. City code requires 54 parking stalls. *KCC 15.05.040.* The proposed project would provide 42 garage stalls and 54 driveway stalls. Prior to the issuance of any building permit for the proposed development, the Applicant would meet City requirements for provision of water, sewer and drainage for the proposed development. *Exhibit 1, Staff Report, pages 4 and 8; Exhibit 10.a.*

12. The proposed buildings would be constructed with a minimum of 1-hour wall assemblies along the common building separation walls with additional fire blocking with no gable or eave vents for fire safety. The development would be required to meet the hydrant and turnaround requirements of the 2009

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[8] KCC 15.08.215.A provides: "Multifamily transition area requirements are designed to provide a buffer between multifamily residential districts and adjacent single-family districts, and between multifamily districts and abutting streets."

[9] KCC 15.09.040.E provides: "Period of validity. Any variance authorized by the hearing examiner shall remain effective only for three (3) years, unless the use is begun within that time or construction has commenced. If not in use or construction has not commenced within three (3) years, the variance shall become invalid."

International Fire Code, adopted by the City, for single-family development. *KCC 13.01.050.U and .V; 2009 International Fire Code, Section 503; Exhibit 1, Staff Report, page 8; Exhibit 3.d; Exhibit 10.a; Exhibit 12.*

13. Mr. Gilbert testified that City staff reviewed the application, consulted other City departments, and recommends that the variance request be approved without conditions. *Exhibit 1, Staff Report, pages 4 and 8; Testimony of Mr. Gilbert.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide variance applications pursuant to KCC 15.09.040.

Criteria for Review

The criteria for review of a variance application are set forth in KCC 15.09.040.C. In order to grant a variance, the Hearing Examiner must find that:

1. The variance shall not constitute a grant of special privileges inconsistent with a limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located;

2. Such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

3. The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

The criteria for review adopted by the Kent City Council are designed to implement the requirement of RCW Chapter 36.70B to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

1. **Approval of the requested variance does not constitute a grant of special privileges inconsistent with a limitation upon uses of other property in the vicinity and zone where the property subject to the variance requests is located.** Approval of the requested variance would enable development of multifamily housing on the subject parcel, consisting of 27 detached condominium units constructed on the parcel. Construction of single-family, duplex or multifamily housing is a permitted use within the City's MR-M zoning district, where the subject property is located. Property to the west, north and east of the subject property is also located within the MR-M zoning district and currently contains multifamily and senior housing, consistent with land uses permitted within the MR-M zoning district. The property to the south contains a mobile home park zoned Mobile Home Park (MHP). The proposed condominium units would be shorter than the maximum permitted building height for multifamily housing within the MR-M zoning district, and would be constructed at a lesser density than the maximum development density permitted within the MR-M zoning district. With the variance, the proposed condominium development would incorporate minimum 10-foot wide rear and side yard setbacks and a minimum six-foot one-inch wide building separation. The requested setbacks are wider than the minimum required side and rear yard setback for single-family dwellings within the MR-M zoning district. *Findings 1-2, 4-13.*

2. **The requested variance is necessary to develop the proposed condominium units due to the long and narrow shape of the subject parcel.** The long and narrow shape of the subject parcel would make compliance with City code multifamily setback and building separation standards difficult for the proposed condominium development. The long and narrow shape of the subject parcel would limit the number and placement of buildings, landscaping and building access options. The requested variance is necessary to permit development of detached single-family housing on the subject parcel, a use allowed within the MR-M zoning district. *Findings 1 -2, 4-13.*

3. **Approval of the requested variance will not be materially detrimental to the public welfare or injurious to property or improvements located in the vicinity and zone where the subject property is situated.** The City provided adequate notice and opportunity for public comment on the application. The City did not receive any public comment on the application. Only the City Planner and the Applicant's Representative testified at the open record hearing. Variance applications are exempt from environmental review under SEPA; however, the City reviewed the environmental impact of the rezone of the subject property to a MR-M zoning classification and issued a Mitigated Determination of Nonsignificance in 2007. Granting the requested variance would permit multifamily

development on the subject parcel, consisting of condominium homes and a private access road for development residents. Proposed condominiums would appear as single-family residential homes and would have driveway access to the proposed private access road. Landscaping and fencing would buffer the proposed development from surrounding properties. The Applicant would meet City water, sewer and drainage requirements for the proposed development prior to building permit issuance. The Applicant would comply with the 2009 International Fire Code requirements for single-family development and provide 1-hour wall assemblies as part of building construction for fire safety. Development of multifamily housing on the subject parcel is an allowed use within the MR-M zoning district. Development would occur at approximately half the maximum allowed development density within the MR-M zoning district. *Findings 1-13.*

DECISION

Based on the preceding Findings and Conclusions, the request for variance from Kent City Code Sections 15.04.170, 15.04.180.11, and 15.04.180.15 to reduce side yard and rear yard setbacks to a minimum of 10-feet wide and allow a minimum building separation of six-foot one-inch at 24315 64th Avenue South, Kent, Washington, is **GRANTED.**

DATED this 31st day of December 2012.

KIMBERLY A. ALLEN
Hearing Examiner
Sound Law Center