

April 9, 2004

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION ON VARIANCE APPEAL**

SUBJECT: Department of Development and Environmental Services file no. **L02VA014**

**KIRKLAND BUILDERS GROUP**

Variance Appeal

Location: Lot B located east of property addressed as 6040 Northeast 135th Street,  
Kirkland

Appellant: **Mark Kuryla**  
13603 62nd Avenue Northeast  
Kirkland, WA 98034  
Telephone: (425) 204-0536

Applicant: **Mike Nykreim**  
Kirkland Builders Group  
101 – 10th Avenue  
Kirkland, WA 98033  
Telephone: (425) 466-2611

King County: Department of Development and Environmental Services, *represented*  
*by* **Chad Tibbits**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-7194  
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**SUMMARY OF DECISION/RECOMMENDATION:**

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

**EXAMINER PROCEEDINGS:**

Hearing Opened:	April 2, 2004
Hearing Closed:	April 2,
2004	

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

#### FINDINGS OF FACT:

1. Kirkland Builders Group has filed variance and reasonable use exception applications on two contiguous lots on Northeast 135<sup>th</sup> Street located in the Holmes Point area north of Kirkland and south of Kenmore. Lot B is the westerly of the two parcels and is subject to the variance application while Lot C to its east has requested a reasonable use exception. Both lots are bisected by a Class 2S stream and its associated Class 3 wetland with the consequence that the entirety of both lots are occupied by sensitive areas and their regulatory buffers. Road access to the two lots lies on their south side via Northeast 135<sup>th</sup> Street, although the northeast corner of Lot C also nearly has access to 62<sup>nd</sup> Avenue Northeast. Both lots are wooded and currently undeveloped.
2. A reasonable use exception was issued by King County DDES on December 1, 2003 for Lot C based on the fact that the proposed residence thereon not only is situated within the regulatory buffers but its north side impinges upon the Class 3 wetland itself. Reduction of a sensitive areas buffer can be authorized by a variance approval, but encroachment onto a wetland or stream proper requires a reasonable use exception. On December 12, 2003 DDES issued a variance approval for Lot B authorizing residential development within the wetland and stream buffers. The two decisions were appealed by neighborhood resident Mark Kuryla, whose property adjoins both Lots B and C along their northern boundaries. Because substantially the same issues were raised within both appeals, the two appeal hearings were consolidated into a single proceeding.
3. A pre-hearing conference was held upon the conjoined appeals on February 19, 2004 and a pre-hearing order issued on February 23, 2004. The issues identified within the pre-hearing order relate to the potential effects from residential development on an older dam lying upstream of Lot C at its eastern boundary, potential siltation and pollution impacts to the stream and wetland system from site preparation and construction, potential habitat loss, and the effects of increased traffic and vehicles on the already cramped private road system servicing Northeast 135<sup>th</sup> Street. The reasonable use exception appeal also raised a question of whether the Applicant has available reasonable alternative development uses for Lot C that would be less impactful to the environment.
4. Lot B encompasses 9,652 square feet with a residential footprint proposed at 1,932 square feet. The residence and garage are supported by an entry and deck area of 194 square feet and 353 square feet of driveway, for a total impervious area of 2,479 square feet. Lot C has a lot area of 8,652 square feet, a house and garage footprint of 1,420 square feet, 236 square feet of proposed deck and 522 square feet of proposed driveway, for a total impervious area of 2,178 square feet. For both lots mitigation of sensitive areas impacts is proposed to occur onsite within the wetland and its buffer in the form of removal of invasive plant species and their replacement with native varieties. Most of the mitigation effort will occur on the north side of the Class 2 stream away from residential construction.
5. Appellant Mark Kuryla has raised relevant concerns with respect to proposed residential development on Lots B and C, but has produced little in the way of solid evidence in support of his position. He submitted to the record a somewhat vague and generic letter from a civil engineer which suggests that the proximity of the Lot C residence to the older dam adjacent to

the east might have a destabilizing effect. In response the Applicant has offered to perform a geotechnical review of the siting and foundation plans for the two residences to determine if any risk to off-site properties will result from proposed construction. A condition to such effect will be added to the two DDES decisions. Mr. Nykreim of Kirkland Builders Group also pointed out the obvious fact that if this older dam is at risk of failure in its present state, the responsibility for correcting such condition lies with the dam's owner and not with downstream properties that may be threatened by its failure.

6. The stream that runs through Lots B and C is presumed under County regulations to be Class 2 with salmonids based on its flow characteristics. There is no actual evidence, however, of fish usage of this creek, and in view of development patterns downstream including blockages, it would be surprising if it were indeed subject to fish usage. It long has been landscaped, overrun by invasive plants and subject to water quality impacts from existing development. While construction on the highly constrained Lot B and C sites needs to be mitigated against release of sediment-laden flows, there is little likelihood that the stream will suffer as a consequence of the Applicant's projects significantly greater environmental abuse than it currently experiences. There is no reason to suppose that the County's mandatory drainage and erosion sedimentation control measures will not be adequate to reduce impacts to the stream and wetland to an acceptable level.
7. Finally, while Mr. Kuryla and a number of other neighbors have expressed concern that the additional traffic on Northeast 135<sup>th</sup> Street will further impact an already tight private roadway, it would seem that the amount of traffic generated by two new residences would be less of an issue than loss of streetside parking. Both of the new residences themselves will have adequate off-street parking to meet code requirements, and the other residences in this neighborhood have no vested right to the use of the shoulder along lots B and C for overflow parking. Again, while Mr. Kuryla has made allegations of serious problems existing in this realm, he has submitted nothing specific to the record in support of his position.

#### CONCLUSIONS:

1. The standards for granting a variance are stated at KCC 21A.44.030 and detailed within the December 12, 2003 DDES decision. Our discussion will focus on those standards that appear to be at issue within this proceeding, the understanding being that those which remain unmentioned are not in dispute.
2. It is clear that the strict enforcement of KCC Chapter 21A.24 would create an unnecessary hardship to the Applicant in that the imposition of sensitive areas and buffer requirements would preclude any development of Lot B. The unique aspects of the lot which give rise to this situation are its small size and, in particular, its topographical features, which are characterized by a regulated stream and wetland complex crossing the center of the site. There is no building envelope on the site that is unconstrained by sensitive areas buffers.
3. With the exception of certain specified facilities to serve the general public, the permitted uses within the R6 zone are almost entirely residential in nature. The Applicant has proposed on Lot B a single-family residence similar in character to other residences within the surrounding neighborhood. Therefore the operation of sensitive areas buffer requirements deprives the Applicant's property of the rights and privileges enjoyed by other parcels in the vicinity under an identical zoning designation.

4. Mr. Kuryla has not met his burden of proof to demonstrate by a preponderance of the evidence that granting the variance as requested will create health and safety hazards, will be materially detrimental to the public welfare or unduly injurious to property or improvements in the vicinity. With respect to the dam upstream of Lot C, there is no credible basis for suggesting that residential construction approximately 100 feet away on Lot B would create any risk to its structural integrity. If the dam itself is in its current condition a dangerous structure, the responsibility for correcting such defect lies entirely with the dam's owner. Existing structural defects within the dam would not create a legal basis for denying a variance to construct a single-family residence on a nearby lot.

The stream crossing Lot B, despite its presumptive Class 2 S rating under the Sensitive Areas Ordinance, is not a pristine amenity. The code-mandated review of the Applicant's building permit submittals for compliance with drainage, erosion and sedimentation control measures will be adequate to protect the stream and the wetland from deleterious long-term impacts. As to other potential hazards and off-site harms, while allegations have been made by the Appellant, no evidence in support of such contentions has been introduced to the record.

5. The Applicant's proposed single-family residential construction on Lot B will create slightly less than 2,500 square feet of new impervious surface which will accommodate in a compact rectangular space a garage, a bottom residential floor and require driveway and entry paving. The proposed bottom story residential floor area will occupy approximately 1,200 square feet. This development area constitutes the minimum necessary relief required for the Applicant to construct a single-family residence which is compatible with surrounding neighborhood development.
6. The Kirkland Builders Group application for a variance from sensitive areas buffer requirements on Lot B meets the variance standards stated at KCC 21A.44.030. The appeal of Mark Kuryla must be denied.

DECISION:

The appeal is DENIED.

ORDER:

1. Development shall be in accordance with the site plan prepared by Architects Northwest (Exhibit no. D-6 appended to the December 12, 2003 DDES decision), except as modified below and as further approved through the building permit review process. The wetland buffer may be reduced to a minimum of 7 feet measured from the northeast corner of the impact area. The buffer on the Class 2 S stream may be reduced to a minimum of 18 feet.
2. The development of this project is subject to all rules, regulations, policies, and codes that are not specifically modified by this approval.
3. All conditions attached to the building permit application shall also be considered conditions of approval for this reasonable use exception. A King County Senior Ecologist shall be notified in advance of clearing on the site, and be present on site to assure that no more than the minimum necessary clearing takes place.

4. A copy of the December 12, 2003 Variance decision shall be kept on-site during construction at all times.
5. Variance approval shall be implemented through issuance of a building permit within four years of the effective date of this approval. Failure to obtain a building permit within the prescribed time period shall be cause for this approval to become null and void.
6. The impact area will be as shown on Exhibit D-6. No extension further into the buffer will be allowed. This impact area will accommodate a 10-foot building setback line and the structure.
7. Mitigation, as described in the revised plan submitted on October 8, 2003 by CAi Cantrell & Associates, to enhance all remaining areas of wetland and buffer, must be installed prior to final occupancy for a building permit.
8. A financial guarantee for the mitigation project shall be posted prior to issuance of the building permit.
9. All areas outside of the 10-foot building setback shall be permanently fenced prior to finalizing the building permit.
10. Twenty linear feet of driveway shall be provided between the garage and the street property line (KCC 21A.12.030(8)).
11. Prior to issuance of a building permit, the owner shall file with the Records and Elections Division a Notice on Title approved by King County that depicts the on-site sensitive areas and buffers.
12. Prior to building permit approval the Applicant shall submit to DDES a geotechnical review performed by a licensed engineer analyzing the Applicant’s siting and foundation plans for their potential adverse effects on adjacent properties. If adverse effects are identified, the Applicant shall modify the proposal to eliminate or mitigate for such effects, as approved by DDES.

ORDERED this 9th day of April, 2004.

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Stafford L. Smith  
King County Hearing Examiner

TRANSMITTED this 9th day of April, 2004, to the following parties and interested persons of record:

Tanya Allison  
6034 NE 135th St.  
Kirkland WA 98034-1625

Russell Christensen  
13605 62nd Ave. NE  
Kirkland WA 98034

Joy Dettmer  
12604 Barrett Ln.  
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John Ive  
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Kristen Langley  
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Land Use Traffic  
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Betsy MacWhinney  
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Mark Mitchell  
DDES/LUSD  
Current Planning  
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Cass Newell  
KC Prosecuting Attys' Office  
Civil Division  
MS KCC-PA-0550

Chad Tibbits  
DDES - LUSD  
MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision.

MINUTES OF THE APRIL 2, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L02SAX08 & L02VA014.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Chad Tibbits and Betsy MacWhinney, representing the Department; Mark Kuryla, the Appellant; and Mike Nykreim, representing the Applicant.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES Reasonable Use Exception Report and Decision File No. L02SAX08  
Dated December 1, 2003
- Exhibit No. 2 DDES Variance Report and Decision File No. L02VA014 dated December 12, 2003
- Exhibit No. 3 DDES Supplemental Report to the Hearing Examiner
- Exhibit No. 4 DDES File No. L02SAX08

- Exhibit No. 5 DDES File No. L02VA014
- Exhibit No. 6 Letter to DDES from Thomas Kane dated March 10, 2004
- Exhibit No. 7 Two statements from Joy Dettmer to the Hearing Examiner dated March 24, 2004
- Exhibit No. 8 Letter to Kirkland Builders Group from Goldsmith & Associates dated March 25, 2004
- Exhibit No. 9 Email from Don Gauthier to Chad Tibbits dated March 30, 2004

SLS:gao  
L02VA014 RPT