

RESOLUTION R-5321

A RESOLUTION OF THE CITY OF KIRKLAND APPROVING THE ISSUANCE OF A PROCESS IIB PERMIT AS APPLIED FOR IN THE PLANNING AND BUILDING DEPARTMENT FILE NOS. ZON17-00578 AND SAR17-00579 BY THE LAKE WASHINGTON SCHOOL DISTRICT BEING WITHIN A RS 7.2 ZONE, AND SETTING FORTH CONDITIONS TO WHICH SUCH PROCESS IIB PERMIT SHALL BE SUBJECT.

1 WHEREAS, the Planning and Building Department has received an
2 application for a Process IIB permit filed by Lake Washington School
3 District, the owner of said property described in said application and
4 located within RS 7.2 zone; and

5 WHEREAS, pursuant to the City of Kirkland's Concurrency
6 Management System, KMC Title 25, a concurrency application has been
7 submitted to the City, reviewed by the responsible Public Works official,
8 the concurrency test has been passed, and a concurrency test notice
9 issued; and

10 WHEREAS, pursuant to the State Environmental Policy Act (SEPA),
11 Chapter 43.21C RCW, and the Administrative Guideline and local
12 ordinance adopted to implement it, the Lake Washington School District,
13 as SEPA Lead Agency, performed SEPA review for the application; and

14 WHEREAS, said environmental checklist and determination have
15 been available and accompanied the application through the entire
16 review process; and

17 WHEREAS, the application has been submitted to the Hearing
18 Examiner, who held hearing thereon at her special meeting of May 9,
19 2018; and

20 WHEREAS, the Hearing Examiner after her public hearing and
21 consideration of the recommendations of the Department of Planning
22 and Community Development did adopt certain Findings, Conclusions,
23 and Recommendations and did recommend approval of the Process IIB
24 permit subject to the specific conditions set forth in said
25 recommendation; and

26 WHEREAS, the City Council, in regular meeting, did consider the
27 environmental documents received from the responsible official,
28 together with the recommendation of the Hearing Examiner;

29 NOW, THEREFORE, be it resolved by the City Council of the City
30 of Kirkland as follows:

31 Section 1. The findings, conclusions, and recommendation of the
32 Hearing Examiner as signed by the Hearing Examiner and filed in the
33 Department of Planning and Community Development Files No. ZON17-
34 00578 and SAR17-00579 are adopted by the Kirkland City Council as
35 though fully set forth herein.

36 Section 2. The Process IIB permit shall be issued to the applicant
37 subject to the conditions set forth in the recommendations hereinabove
38 adopted by the City Council.

39 Section 3. Nothing in this resolution shall be construed as
40 excusing the applicant from compliance with any federal, state, or local
41 statutes, ordinance, or regulations applicable to this project, other than
42 expressly set forth herein.

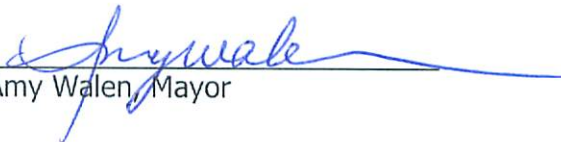
43 Section 4. Failure on the part of the holder of the permit to
44 initially meet or maintain strict compliance with the standards and
45 conditions to which the Process IIB permit is subject shall be grounds
46 for revocation in accordance with Ordinance 3719, as amended, the
47 Kirkland Zoning Ordinance.

48 Section 5. A complete copy of this resolution, including Findings,
49 Conclusions and Recommendations adopted by reference, shall be
50 certified by the City Clerk who shall then forward the certified copy to
51 the King County Department of Assessments.


52 Section 6. A copy of this resolution, together with the findings,
53 conclusions, and recommendations herein adopted shall be attached to
54 and become a part of the Process IIB permit or evidence thereof
55 delivered to the permittee.

56 Passed by majority vote in open meeting of the Kirkland City
57 Council on the 5th day of June, 2018.

58 Signed in authentication thereof this 5th day of June, 2018.
59


Amy Walen, Mayor

Attest:


Kathi Anderson, City Clerk

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

APPLICANT: Lake Washington School District

FILE NO: ZON17-00578, SAR17-00579

APPLICATION:

Site Location: 1312 6th Street

Request: Application for approval of a Master Plan and Chapter 90 Public Agency Exception for the replacement of the existing Peter Kirk Elementary School with a new building located north of the existing structure (see Appendices 2 and 3, attached to the Staff Advisory Report filed by the Department of Planning and Community Development ("Department")). The proposed project includes the following elements:

Master Plan

- School building with a total gross floor area of approximately 79,000 square feet that includes classrooms, administration, commons, kitchen, library and gymnasium.
- Associated site improvements that include a new staff parking lot and bus loading area, a new visitor parking lot with parent pickup area, a new playfield and a new covered play area.
- The existing school will be operational while the new school is constructed. A temporary staff parking lot will be located west of the existing school.

Public Agency Exception

- The Public Agency Exception requests the following exceptions from the requirements of KZC Chapter 90 regarding wetland and stream regulations:
 - Permanent critical area buffer impacts to allow the building and associated improvements within the required buffers.
 - Temporary critical area buffer impacts for construction-related activities such as site access and staging.
 - An exception from the vegetative buffer standards.
 - Allowance of improvements within the required buffer setback.

-An exception from stream daylighting requirements for the existing culverted stream.

Review Process: Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision.

Major Issues:

- a. Compliance with Zoning Permit Approval Criteria
- b. Compliance with Public Agency Exception Criteria

SUMMARY OF RECOMMENDATIONS:

Department of Planning and Community Development:	Approve with conditions
Hearing Examiner:	Approve with conditions

PUBLIC HEARING:

The Hearing Examiner held a public hearing on the application at 9:00 am on May 9, 2018, in the Council Chamber, City Hall, 123 Fifth Avenue, Kirkland, Washington. 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 at the Department. The Examiner visited the site visit following the hearing.

PUBLIC COMMENT:

A list of those who testified at the public hearing, and a list of the exhibits offered at the hearing are included at the end of this Recommendation. The testimony is summarized in the hearing minutes.

For purposes of this recommendation, all section numbers refer to the Kirkland Zoning Code (“KZC” or “Code”) unless otherwise indicated.

FINDINGS, CONCLUSIONS AND RECOMMENDATION:

After considering the evidence in the record and inspecting the site, the Examiner enters the following findings of fact and conclusions:

A. Findings:

1. The Findings of Fact set forth at pages 3 through 15 of the Department’s Advisory Report, Exhibit A, are adopted by reference.
2. A neighbor to the south expressed an objection to the proposal, specifically the new visitor lot with parent pickup area, which will be located in proximity to his rear property line. He cited the need for study of alternatives to the proposed site

configuration, and was concerned that increased vehicle noise, carbon emissions, light pollution, and visual impacts would detrimentally affect his use and enjoyment of his property. He submitted a letter from his attorney, Allan Bakalian, detailing these concerns.

3. The proposed visitor lot with parent pickup area complies with all setback requirements.

B. Conclusions:

1. The conclusions set forth in the Department's Advisory Report at pages 3 through 15 are adopted by reference.

2. The configuration of the proposed visitor lot and pick up lot location complies with all code requirements.

C. Recommendations:


Based upon the foregoing findings of fact and conclusions, the Hearing Examiner recommends that the Council approve the Master Plan and Chapter 90 Public Agency Exception subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Appendix 4, Development Standards, is provided in the staff report to familiarize the applicant with some of the additional development regulations. This Appendix does not include all additional regulations. When a condition of approval conflicts with a development regulation in Appendix 4, the condition of approval shall be followed.
2. As part of the land surface modification permit submittal, the applicant shall submit a final tree retention plan.
3. As part of the building permit application, the applicant shall provide a lighting plan showing the location, height, fixture type and wattage of all proposed exterior lights. The lighting plan shall be consistent with the requirements in KZC Section 115.85.
4. Prior to issuance of the building permit, the applicant shall apply for and receive approval of a modification of the proposed height of rooftop appurtenances.
5. Prior to the final inspection of the building permit for the school building, the applicant shall complete the required restoration work and submit a report

prepared by the applicant's consultant. The work will be subject to inspection and final acceptance by the City's critical area consultant at the applicant's expense.

6. The applicant shall submit monitoring reports, as outlined in Appendix 10 of the Staff Advisory Report, to the City to review.

Entered this 11th day of May 2018.


Barbara Dykes Ehrlichman
Hearing Examiner

SUBSEQUENT MODIFICATIONS

Modifications to the approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

CHALLENGES AND JUDICIAL REVIEW

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

A. CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., May 24, 2018, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters and delivered to the Planning Department. The challenge will be

considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

B. JUDICIAL REVIEW

Section 152.110 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 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, 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 152.110, 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 152 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.

TESTIMONY:

The following persons testified at the public hearing:

From the City:

Tony Leavitt, Senior Planner

From the Applicant:

Forrest Miller, CFM, REFP, EFM

Sarah Corbin, PWS

From the Public:

Atsushi Yoshida

EXHIBITS:

The following exhibits were offered and entered into the record at the public hearing:

A. Department of Planning and Community Development Staff Advisory Report dated April 20, 2018, with 19 Appendices

B. Letter from Allan Bakalian, Attorney-At-Law, on behalf of Atsushi Yoshida and Yoriko Fujimaki

PARTIES OF RECORD

Yoriko Fujimaki

Atsushi Yoshida

Applicant

Department of Planning and Community Development

Department of Public Works

Department of Building and Fire Services


**BEFORE THE HEARING EXAMINER
CITY OF KIRKLAND**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings, Conclusions, and Recommendation** to each person listed below, or on the attached mailing list, in the matter of **Lake Washington School District**, Hearing Examiner Files: **ZON17-00578 & SAR17-00579**, in the manner indicated.

Party	Method of Service
Tony Leavitt City of Kirkland Planning and Building Dept. 123 Fifth Ave Kirkland, WA 98033 tleavitt@kirklandwa.gov Planning and Building Admin pbadmin@kirklandwa.gov	<input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: May 16, 2018



 Alayna Johnson
 Legal Assistant

Appellant	<input type="checkbox"/>	ADMITTED	<input checked="" type="checkbox"/>	1
Respondent	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	
Department	<input checked="" type="checkbox"/>			


FILE # ZON17-00578 & SAR17-00579




CITY OF KIRKLAND
Planning and Building Department
 123 5th Avenue, Kirkland, WA 98033
 425.587.3600 - www.kirklandwa.gov

**ADVISORY REPORT
 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

To: Kirkland Hearing Examiner

From:  Tony Leavitt, Senior Planner

 Eric R. Shields, AICP, Planning Director

Date: May 4, 2018

File: **ZON17-00578, SAR17-00579**
PETER KIRK ELEMENTARY SCHOOL MASTER PLAN AND PUBLIC AGENCY
EXCEPTION

Hearing Date and Place: May 9, 2018; 9:00 AM
 City Hall Council Chamber
 123 Fifth Avenue, Kirkland

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I. INTRODUCTION

A. APPLICATION

1. Applicant: Lake Washington School District
2. Site Location: 1312 6th Street (see Attachment 1)

Request: Application for approval of a Master Plan and Chapter 90 Public Agency Exception for the replacement of the existing Peter Kirk Elementary School with a new building located north of the existing structure (see Attachments 2 and 3). The proposed project includes the following elements:

Master Plan

- School building with a total gross floor area of approximately 79,000 square feet that includes classrooms, administration, commons, kitchen, library and gymnasium.
- Associated site improvements include a new staff parking lot and bus loading area, a new visitor parking lot with parent pickup area, a new playfield and a new covered play area.
- The existing school will be operational while the new school is constructed. A temporary staff parking lot will be located west of the existing school.

Public Agency Exception

- The Public Agency Exception requests the following exceptions from the requirements of KZC Chapter 90 regarding wetland and stream regulations:
 - Permanent critical area buffer impacts to allow the building and associated improvements within the required buffers.
 - Temporary critical area buffer impacts for construction related activities such as site access and staging.
 - An exception from the vegetative buffer standards.
 - Allowance of improvements within the required buffer setback.
 - An exception from stream daylighting requirements for the existing culverted stream.
3. Review Process: Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision.
 4. Summary of Key Issues:
 - a. Compliance with Zoning Permit Approval Criteria (see Section II.F.1)
 - b. Compliance with Public Agency Exception Criteria (see Section II.F.2)

B. RECOMMENDATIONS

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of this application subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 4, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 4, the condition of approval shall be followed.
2. As part of land surface modification permit submittal, the applicant shall submit a final tree retention plan (see Conclusion II.G.4).
3. As part of its building permit application, the applicant shall provide a lighting plan showing the location, height, fixture type and wattage of all proposed exterior lights. The lighting plan shall be consistent with the requirements in KZC Section 115.85 (see Conclusion II.G.5).
4. Prior to issuance of the building permit, the applicant shall apply for and receive approval of a modification for the proposed height of rooftop appurtenances (see Conclusion II.G.2).
5. Prior to final inspection of the building permit for the school, the applicant shall complete the required restoration work and submit a report prepared by the applicant's consultant. The work will be subject to inspection and final acceptance by the City's critical areas consultant at the applicant's expense. Additionally, the applicant shall submit monitoring reports, as outlined in Attachment 12, to the City for review (see Conclusion II.F.2).

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:
 - a. Facts:
 - (1) Size: 15.2 acres
 - (2) Land Use: The subject property contains the existing Peter Kirk Elementary School and associated improvements.
 - (3) Zoning: The subject property is zoned RS 7.2 (Residential Single-family). A School Use is an allowed use, subject to approval of a Master Plan, within this zone.
 - (4) Terrain: The developed portion of the site is relatively flat except for the knoll on the north portion of the property. The northern and southern undeveloped portions of the property have some significant slope.
 - (5) Vegetation:

- (a) The subject property contains numerous significant trees. The applicant's arborist and tree plan identified a total of 155 healthy, significant trees on the site that could potentially be impacted by the proposed redevelopment (see Section II.G.4).
- (b) The eastern edge of the property contains a Type F stream and three wetlands.

b. Conclusions:

- (1) Size, land use, and terrain are not constraining factors in the review of this application.
- (2) Zoning is a relevant factor in the review of this application, due to the fact that a School Use occupying a property of more than 5 acres must be approved through a Master Plan process (see Section II.F.1).
- (3) Tree protection and retention on the subject property are factors in the review of the proposed development (see Section II.G.4).
- (4) The presence of critical areas on and near the site is a factor in review of the application.

2. Neighboring Development and Zoning:

- a. Facts: The neighboring properties are zoned as follows and contain the following uses:

North, West and South: Zoned RS 7.2 (Low Density Residential). Single-family residences.

East: Zoned RS 8.5. Single-family residences and the Cross Kirkland Corridor.

- b. Conclusion: The neighboring development and zoning are factors in the review of the proposed Master Plan and Planned Unit Development applications as the school is located a residential zone.

B. HISTORY

1. Facts: In 1973, the City approved a Master Plan for the existing campus. The original school was constructed on the site in 1974.

C. PUBLIC COMMENT

1. Facts: The initial public comment period for this application ran from November 7, 2017 to December 8, 2017. Staff received four comment letters during the initial comment period (see Attachment 5). The most common issues raised along with staff responses are summarized below.

- Impacts to 14th Place

Neighbors are concerned about project impacts to the 14th Place right-of-way. Specifically they are concerned about the right-of-way being used for parent drop off and pickup and by school buses.

Staff Response: Staff has been working with the applicant to address neighbor concerns and the current plans reflects this (see Attachment 2). The applicant will be required to install a fence the entire length of 14th Place that limits direct pedestrian and vehicular access to the site from 14th Place. The Fire Department will have access to the school site via gates. Additionally the applicant will install “no parking” signs along the southern edge of the right-of-way to restrict parking on the narrow right-of-way.

- Impacts to the 6th Street Crosswalk

A neighbor is concerned about project impacts to the crosswalk across 6th Street, near 13th Avenue, to the southern entrance to the school.

Staff Response: The project plans show that the crosswalk will be relocated to the north side of 13th Avenue to align with the new sidewalk to the school’s main entrance.

- Public Pedestrian Access to the Cross Kirkland Corridor

A neighbor would like to see public access to the Cross Kirkland Corridor through the school campus.

Staff Response: Public Works Staff has been working with the applicant on a public pedestrian pathway that will lead from 6th Street to the Cross Kirkland Corridor. The pathway will utilize new sidewalks and existing trails in the wooded portion of the site. The requirement for the pathway is part of the City’s vacation of existing public right-of-ways on the property.

- Tree Retention

Neighbors are concerned about project impacts to trees on the site.

Staff Response: The applicant is required to comply the tree retention requirements of KZC Chapter 95 (See Section II.G.4).

D. STATE ENVIRONMENTAL POLICY ACT (SEPA)

1. Facts: Pursuant to WAC 197-11-924, the Lake Washington School District assumed Lead Agency status for the project. A Determination of Nonsignificance (DNS) was issued by the Lake Washington School District on August 15, 2017. The Environmental Checklist and Determination are included as Attachment 6.
2. Conclusion: The Lake Washington School District has satisfied the requirements of SEPA.

E. CONCURRENCY

1. Facts: The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for traffic on July 18, 2017. A Notice of Concurrency was distributed, published, and posted on November 7, 2017.
2. Conclusion: The applicant and City have satisfied Concurrency requirements.

F. APPROVAL CRITERIA

1. Master Plan

a. Facts:

- (1) Kirkland Zoning Code (KZC) Section 15.20.130 Permitted Use Special Regulation 2 requires that a School Use with a property size of five acres or more receive Master Plan approval through a Process IIB review. The Master Plan must show building placement, building dimensions, roadways, utility locations, land uses within the Master Plan area, parking locations, buffering, and landscaping.
- (2) The applicant has submitted development plans that show building locations and dimensions, roadways, utility locations, land uses within the Master Plan area, parking locations, buffering, and landscaping (see Attachment 2).
- (3) Zoning Code section 152.70.3 states that a Process IIB application may be approved if:
 - (a) It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
 - (b) It is consistent with the public health, safety, and welfare.
- (4) Some of the potential impacts of the proposed project include traffic and parking impacts related to increased enrollment, impacts to onsite critical area buffers, and impacts associated with the location of the new structure. Staff addresses these impacts in Section II.F.3 and II.G of this report.

b. Conclusions:

- (1) The application complies with the Master Plan requirements outlined in KZC Section 15.20.130 Permitted Use Special Regulation 2 (see Section II.G.1).
- (2) The proposal complies with the criteria in KZC Section 152.70.3. It is consistent with all applicable development regulations (see Section II.G) and the Comprehensive Plan (see Section II.H). In addition, the proposal is consistent with the public health, safety, and welfare because the project will provide the community with an updated school campus while minimizing impacts on the surrounding neighborhood.

2. Public Agency Exception

a. Facts:

- (1) The subject property contains a total of 3 wetlands (two Category 3 and one Category 4) and a Type F Stream. KZC Section 90.55 requires respective buffer widths of 40 feet and 165 feet for the two wetland types (based on habitat points). KZC Section 90.65 requires a 100 foot buffer width from the Type F stream (see Attachment 7).
- (2) Within the required buffers, the site currently contains an existing sand play area and lawn area.

- (3) The applicant is proposing to construct the school structure and associated improvements within the required buffer areas. KZC Section 90.55.1 and 90.65.1 would not allow the proposed improvements.
- (4) The School District must keep the existing school facility open during construction of the new school facility.
- (5) KZC Section 90.75.1 states that the City encourages opening up a stream that is located in a culvert to restore the stream to a more natural and open condition. The purpose is to improve the values and functions of the stream, including maintaining water quality, reducing storm and flooding water flow, and providing wildlife habitat.
- (6) KZC Section 90.75.4 states that the City may require a stream to be daylighted as part of a Process IIB permit pursuant to Chapter 152 KZC if the required daylighting is proportionate to the scope and nature of the Process IIB permit.
- (7) KZC Section 90.45 states that if the strict application of Chapter 90 would prohibit a development proposal by a public agency, the agency may apply for an exception pursuant to this section. The Lake Washington School District meets the definition of a public agency.
- (8) The applicant is requesting a Public Agency Exception (PAE) to exempt the project from certain requirements of KZC Chapter 90. Specifically, the PAE will be used for the following sections of KZC 90:
 - (a) KZC 90.60 - Wetland Modification and 90.70 - Stream Modification
 - (b) KZC 90.130 - Vegetative Buffer Standards
 - (c) KZC 90.140 - Structure Setback from Critical Area Buffer
 - (d) KZC 90.75- Daylighting of Streams
- (9) The applicant has submitted a report outlining the exceptions being requested (see Attachment 8) and a mitigation plan (see Attachment 9). The following is a summary of the requested exceptions:
 - (a) **Permanent Buffer Impacts:** The onsite permanent buffer impacts total 44,717 square feet, which includes a portion of the new school building, a fire lane made of porous grass pavement, portable classrooms, and other elements associated with the school such as pathways and landscaping. The reduced buffers also include the establishment of a new structure setback. KZC 90 does not permit buffer impacts, except those associated with direct stream or wetland impacts (KZC 90.60 and 90.70). Therefore, the project's permanent impacts to stream and wetland buffers must be processed under a PAE.

- (b) **Temporary Buffer Impacts:** Temporary buffer impacts total 49,200 square feet and will result from construction-related activities, such as site access and staging and removal of hazard trees. Also, a gravel driveway and rockery associated with an old residence will be removed from the buffer, resulting in temporary earth disturbance. KZC 90 does not permit buffer impacts, except those associated with direct stream or wetland impacts (KZC 90.60 and 90.70). Therefore, the project's temporary impacts to stream and wetland buffers must be processed under a PAE.
- (c) **Exception to Vegetative Buffer Standards:** The project will result in a net increase in impervious surface greater than 1,000 square feet. As a result, the vegetative buffer standards, KZC Section 90.130, would apply to the project and be required within the entire buffer area. These standards require native cover of at least 80 percent throughout the wetland and stream buffer area, requires less than 10 percent of the buffer consist of noxious weeds, and require that existing improvements and structures in the buffer be removed. The forested portions of buffer in the north and south portions of the site meet the vegetative buffer standards. The remaining buffer, not impacted by the permanent buffer impacts, will be replanted pursuant to the mitigation plan. Additionally, an existing network of trails and a footbridge located in the forested buffer (used daily by students, parents, and the community) will not be removed as part of this project. Due to the fact that the project cannot fully implement the requirements of KZC 90.130, a PAE is requested.
- (d) **Structure Setback:** The KZC 90.140 outlines required structure setback widths for specific improvement types from critical area buffers. The code requires a structure setback of 10 feet from the buffer edge and identifies other improvements that may extend further into the structure setback. The proposed gravel pathway will encroach into the required structure setback in order to connect to an existing gravel trail in the buffer. Therefore, a PAE is requested for these improvements that exceed the allowances within KZC 90.140.
- (e) **Stream Daylighting:**
- The City identified the stream culvert as a candidate for daylighting prior to the submittal of the application. The applicant submitted a stream daylighting assessment as part of their application (see Attachment 13). The applicant's assessment concluded that the daylighting would result in largely insignificant benefits to the stream system at a disproportionate cost.

- The assessment was reviewed by The Watershed Company (see Attachment 14). They concluded that the prospect of returning the piped stream segment to an open channel is an opportunity to improve water quality, storm flow attenuation and habitat quality in Kirkland.
 - The applicant submitted a response to The Watershed Company's review (see Attachment 15). Shannon and Wilson, LWSD's Consultant, argues that the ecological benefits that typically accompany a stream daylighting project can be present in varying degrees and can depend on the existing health and condition of the subject stream. Daylighting the short segment of the stream on the Peter Kirk property would result in largely insignificant benefits to the stream system at a tremendous cost to the District and taxpayers. The applicant also states that preliminary design and construction cost indicate that the stream daylight could cost the School District up to \$1,000,000.
- (10) Zoning Code section 90.45.3 states that a public agency exception application may be approved if:
- (a) There is no other practical alternative to the proposed project with less impact on the critical areas or buffer;
 - (b) Strict application of this chapter would unreasonably restrict or prohibit the ability to provide public utilities or public agency services to the public;
 - (c) The proposal minimizes impacts to the critical area or buffer through mitigation sequencing, and through type and location of mitigation, pursuant to KZC 90.145 and 90.150, if applicable, including such installation measures as locating facilities in previously disturbed areas, boring rather than trenching, and using pervious or other low impact materials; and
 - (d) The proposal protects and/or enhances critical area and buffer functions and values, consistent with the best available science and with the objective of no net loss of critical area functions and values.
- (11) The applicant has submitted a report addressing the criteria (see Attachments 8 and 9). The report was reviewed and commented on by The Watershed Company (see Attachment 10). The applicant submitted a response (see Attachments 11 and 12) that was reviewed by Staff.
- (12) KZC 90.160 specifies requirements for monitoring and maintenance of the proposed mitigation.

b. Conclusions:

- (1) A Public Agency Exception is required to allow the permanent and temporary buffer impacts, an exception from the vegetative buffer standards, improvements in the buffer setback, and a departure from stream daylighting requirements.
- (2) The Watershed Company's review of the applicant's report concludes that the proposed redevelopment of Peter Kirk Elementary and the associated unavoidable critical area buffer impacts complies with the applicable decisional criteria for a Public Agency Exception under KZC 90.45.3. Staff concurs with the assessment that stream daylighting would result in a net environmental benefit. Therefore, staff reviewed the applicant's request to not daylight the stream as part of the Public Agency Exception.
- (3) The proposed gravel pathway that encroaches into the required structure setback is allowed pursuant to KZC Section 90.40.6.c., which allows nonmotorized trails in the outer 25 percent of the buffer area and needs to be connected to the portion in the buffer setback.
- (4) Based on the following analysis, and with the recommended conditions of approval, the application meets the established criteria in KZC Section 90.45.3 for approving a Public Agency Exception.
 - (a) There is no other practical alternative to the proposed project with less impact on the critical areas or buffer;
Staff Response: The area available for construction of the new school is significantly impacted by the critical areas, associated buffers, and forested areas. A fundamental project requirement is to keep the existing school open during construction of the new school. Given existing site and development constraints, there is no alternative to siting the new school in a location east of the existing school. Section (c) below further addresses these constraints.
 - (b) Strict application of this chapter would unreasonably restrict or prohibit the ability to provide public utilities or public agency services to the public;
Staff Response: The strict application of Chapter 90 buffer requirements would require that the applicant construct the new school in the same location as the existing school and remove all existing improvements (including the sand play area and trails). Additionally it would require the applicant to relocate all students during demolition of the existing school and construction of the new school.

The strict application of Chapter 90 stream daylighting requirements would require that the applicant daylight the stream at a significant cost to the school district, which would impact funds available for other project elements necessary to serve the public purpose of elementary school education.

- (c) The proposal minimizes impacts to the critical area or buffer through mitigation sequencing, and through type and location of mitigation, pursuant to KZC 90.145 and 90.150, if applicable, including such installation measures as locating facilities in previously disturbed areas, boring rather than trenching, and using pervious or other low impact materials.

Staff Response: The proposal has met the mitigation sequencing requirements of KZC Section 90.145. As outlined in the applicant's report (see Attachment 12) the measure taken include:

- *Avoid: The project will not impact any site wetlands or streams. Additionally, the configuration of the project elements has been designed to avoid impacting the mature forest inside and outside the buffer. For example, the entire school building has been located as far south as possible, within 15 feet of the existing school, in order to avoid impacting the forest that is contiguous with Wetland A in the northern part of the site. A new parking area on the south was laid out to avoid impacting a coniferous forest associated with Wetlands B and C. All parking and athletic facilities are located on the west side of the site, opposite the critical areas, and will be phased to coordinate with demolition of the existing school. The project also avoids impacting a large mature western red cedar that stands alone within the temporary buffer impact area.*
- *Minimize: The applicant has designed the project to minimize buffer impacts by limiting woody vegetation removal within the buffer, limiting grading for the new building, reducing the size of the storm vault, keeping the same storm water discharge point, use of grass modular grid pavement for the fire lane and minimizing the footprint of the new building by constructing a two story building.*
- *Rectify: All areas with temporary impacts will be expeditiously restored. The existing sand play field and lawn will be incorporated into the buffer mitigation plans and replanted with native plants and trees.*

- *Reduce or eliminate impacts: The project design has reduced and eliminated impacts to critical areas and buffers to the extent possible. The project will remove approximately 15,000 sf of existing sand playfield from the buffer and will eliminate daily use and regular maintenance and mowing from 42,900 sf of the buffer through implementation of the buffer enhancement plan. An existing home, driveway, retaining wall, and shipping container will also be removed from a portion of the buffer at the north end of the property.*
- *Compensate: The applicant has implemented a mitigation plan that incorporates a combination of the buffer averaging and enhancement (see Attachments 11 and 12). The plans has been reviewed by The Watershed Company and found to be consistent with applicable requirements of KZC 90.*
- *Monitoring: Monitoring of the buffer mitigation areas will be required for a five year period.*

- (d) The proposal protects and/or enhances critical area and buffer functions and values, consistent with the best available science and with the objective of no net loss of critical area functions and values.

Staff Response: The proposal is avoiding impacts to the stream and wetlands onsite and minimizing to the extent possible permanent impacts to the critical area buffers. The proposal also includes enhancement of the remaining buffer that is currently being used as a play field and lawn area. With the buffer restoration activities described above, the project will result in an overall improvement of critical area functions and values over existing conditions.

- (5) Prior to final inspection of the building permit for the school, the applicant should complete the required restoration work and submit a report prepared by the applicant's consultant. The work will be subject to inspection and final acceptance by the City's critical areas consultant at the applicant's expense. Additionally, the applicant shall submit monitoring reports, as outlined in Attachment 12, to the City for review.

G. DEVELOPMENT REGULATIONS

1. School Location Criteria

- a. **Facts:** KZC Section 15.20.130 Permitted Use Special Regulation 4, states that a school use may be located in a RSX zone only if:
- (1) It will not be materially detrimental to the character of the neighborhood in which it is located.
 - (2) Site and building design minimizes adverse impacts on surrounding residential neighborhoods.
 - (3) The property is served by a collector or arterial street.

- b. Conclusions: The proposal is consistent with the criteria established in KZC Section 15.20.130 Permitted Use Special Regulation 4 as follows:
- (1) There is an existing school at the site that includes recreational areas, parking lots, and other facilities normally associated with a school use. The proposal will not introduce new facilities or activities which would materially impact the character of the neighborhood.
 - (2) The new site plan and building have been designed to minimize impacts on surrounding residential development by designing the proposed structure with substantial setbacks from adjoining residential properties.
 - (3) The primary access to the site is from 6th Street, classified as a collector street.

2. Building Height

a. Facts:

- (1) KZC Section 15.03.130, Density Dimensions Special Regulation 31 permits the structure height of schools to be increased to up to 35 feet, if:
 - (a) The school use can accommodate 200 or more students; and
 - (b) The required side and rear yards for the portions of the structure exceeding the basic maximum structure height are increased by 1 foot for each additional 1 of structure height; and
 - (c) The increased height is not specifically inconsistent with the applicable neighborhood plan provisions of the Comprehensive Plan.
 - (d) The increased height will not result in a structure that is incompatible with surrounding uses or improvements.
- (2) The applicant is requesting to increase the maximum allowed height from 25 feet to 35 feet.
- (3) To help mitigate potential impacts of the increased height, the applicant proposes landscaping along the 14th Place right-of-way.
- (4) The proposed design also includes rooftop appurtenances that exceed the applicable height limit. The applicant will need to apply for a rooftop appurtenance modification (pursuant to KZC Section 115.120.4) to permit the proposed appurtenances.

b. Conclusions: The proposal is consistent with the criteria established in KZC Section 15.03.130, Density Dimensions Special Regulation 31 as follows:

- (1) The proposed school use is designed to accommodate 665 students.
- (2) The required setback for a school use is 50 feet. In order to increase the maximum height to 35 feet, the required setback is 60 feet. The closest that a proposed structure is to a property line is 65 feet. The proposal also utilizes landscaping to help minimize visual impacts.

- (3) The Norkirk Neighborhood Plan does not contain any policies concerning building heights for the area in which the school is located.
- (4) Prior to issuance of the building permit, the applicant should apply for and receive approval of a modification for the proposed height of rooftop appurtenances.

3. Parking

a. Facts:

- (1) KZC Section 15.40.130 does not establish a required parking ratio for school uses. Instead, it defers to KZC Section 105.25, which authorizes the Planning Official to establish required parking on a case-by-case basis.
- (2) In this case, City staff determined the required number of parking stalls for the school is 71 stalls, based on a parking analysis prepared by Gibson Traffic Consultants (see Attachment 16). The proposed project will provide a total of 73 stalls.
- (3) The proposed parking was reviewed by the City's Transportation Engineer and concludes that the proposed parking supply is adequate (see Attachment 17).

b. Conclusions:

- (1) The proposed parking supply in the current design, 73 stalls, is adequate to serve the school use.

4. Natural Features- Significant Landscaping

a. Facts:

- (1) Regulations regarding the retention of trees can be found in Chapter 95 of the Kirkland Zoning Code. The applicant is required to retain all trees with a moderate retention value to the extent feasible and those with high retention value to the maximum extent possible.
- (2) The applicant has submitted an arborist report prepared by a certified arborist (see Attachment 18) and a tree retention plan (see Attachment 2).
- (3) Tree removal is concentrated in the interior of the site including removal within parking lots and around existing structures. Impacts to trees in the northern and southern wood areas and near the Cross Kirkland Corridor will be minimal.
- (4) The applicant is proposing a significant amount of new landscaping including additional trees within the parking lots and around the buildings.

- #### b. Conclusions: As part of land surface modification permit submittal, the applicant should submit a final tree retention plan.

5. Site Lighting

- a. Facts: KZC Section 115.85 requires that the applicant use energy efficient light sources, comply with the Washington Energy Code with respect to the selection and regulation of light sources, and select, place, and direct light sources both directable and nondirectable so that glare produced by any light source, to the maximum extent possible, does not extend to adjacent properties or to the right-of-way. The current submittal does not contain a detailed lighting plan that would show the location, height, fixture type, and wattage of proposed lights.
- b. Conclusion: As part of its building permit application, the applicant should provide a lighting plan showing the location, height, fixture type and wattage of all proposed exterior lights. The lighting plan shall be consistent with the requirements in KZC Section 115.85.

H. COMPREHENSIVE PLAN

1. Facts: The subject property is located within the Norkirk neighborhood. The Norkirk Neighborhood Land Use Map designates the subject property as a public facility use (see Attachment 19).
2. Conclusion: The proposal is consistent with the public facility use designation.

I. DEVELOPMENT STANDARDS

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards, Attachment 4.
2. Conclusion: The applicant should follow the requirements set forth in Attachment 4.

III. SUBSEQUENT MODIFICATIONS

Modifications to the approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

IV. CHALLENGES AND JUDICIAL REVIEW

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

A. CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

B. JUDICIAL REVIEW

Section 152.110 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.

V. LAPSE OF APPROVAL

Under Section 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, 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 152.110, 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 152 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.

VI. APPENDICES

Attachments 1 through 19 are attached.

1. Vicinity Map
2. Development Plans
3. Project Narrative
4. Development Standards
5. Public Comments
6. SEPA Determination
7. Wetland and Stream Delineation prepared by Shannon and Wilson dated August 10, 2017
8. Public Agency Exception Assessment prepared by Shannon and Wilson dated May 3, 2018
9. Buffer Mitigation Plan prepared by Shannon and Wilson dated August 31, 2017
10. PAE and Mitigation Plan Review Letter prepared by The Watershed Company dated April 23, 2018
11. PAE Response prepared by Shannon and Wilson dated April 27, 2018
12. Revised Buffer Mitigation Plan prepared by Shannon and Wilson dated April 30, 2018
13. Stream Daylighting Assessment prepared by Shannon and Wilson dated August 10, 2017
14. Peer Review of Stream Daylighting Assessment prepared by The Watershed Company dated March 14, 2018
15. Response to Peer Review of Stream Daylighting Assessment prepared by Shannon and Wilson dated April 24, 2018
16. Traffic Impact Analysis prepared by GTC dated August 2017
17. City's Transportation Review Memo prepared Thang Nguyen dated May 3, 2018
18. Arborist Report prepared by AFM dated March 27, 2017
19. Norkirk Land Use Map

VII. PARTIES OF RECORD

Applicant
Planning and Building Department
Department of Public Works

A written recommendation will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.

Links to Hearing Examiner Recommendation Exhibits:

Part 1: Staff Report and Attachments 1 thru Attachment 7, Part 1

Part 2: Attachment 7, Part 2

Part 3: Attachments 8 thru Attachment 15, Part 1

Part 4: Attachments 15, Part 2 thru Attachment 18, Part 1

Part 5: Attachment 18, Part 2 and Attachment 19

Appellant _____
Respondent ADMITTED
Department _____ DENIED _____
FILE # ZON17-00578 & SAR17-00579

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BAKALIAN & ASSOCIATES P.S.

Allan B. Bakalian
admitted in OR & WA

4020 LAKE WASHINGTON BLVD. NE, SUITE 100
KIRKLAND, WASHINGTON 98033-7862

abakalian@zenobakalian.co
m
(425) 985-6527

5/9/2018

Via Email tleavitt@kirklandwa.gov

Tony Leavitt
City of Kirkland
Planning and Building Department
123 Fifth Avenue
Kirkland, WA 98033

**Re: Peter Kirk Elementary Master Plan, ZON17-00578 and SAR17-00579
Public Comments on Behalf of Atsushi Yoshida and Yoriko Fujimaki, residing at
638 12th Avenue, Kirkland, WA 98033**

Dear Mr. Leavitt:

I am representing Atsushi Yoshida and Yoriko Fujimaki and on whose behalf these comments are being submitted regarding the proposed Master Plan and Public Agency Exception for the redevelopment of the Peter Kirk Elementary school referenced above. Mr. Yoshida and Ms. Fujimaki live immediately adjacent and south of Peter Kirk school and will be adversely impacted by the redevelopment in several ways, as described below.

In general, after reviewing the redevelopment proposal and supporting reports, it appears that the City and Lake Washington School District have placed expediency over substance regarding the impacts the project will have on the surrounding residents and the existing 15-acre largely developed school parcel. Rather than using the existing footprint, the project will create additional, increased impacts from moving the school to the north and increasing the impervious driveway access, ball fields, parking areas, and new, separate bus and student drop off/pick up driveways and parking areas. The student driveway will be located adjacent to the Yoshida/Fujimaki property. They are rightly concerned about the increased vehicle noise, carbon emissions, light pollution and visual impacts which will adversely affect their use and enjoyment and overall value of their property. It will only take about 15 vehicles before the line is queued up to their property.

The City failed to consider other reasonable alternatives to the need for separate car and bus access driveways and parking areas, or sequencing construction on the existing school grounds to avoid additional construction impacts. As evident from the City's staff report, the proposed redevelopment will increase the environmental impacts to the site, avoid compliance with the City's Critical Area Code's wetlands and stream regulations and buffer mitigation and

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enhancement requirements. It would also result in forgoing an opportunity to enhance and mitigate this otherwise valuable site and habitat.

The staff report acknowledges that the project will remove over 155 healthy trees from the site to accommodate the new construction. The staff report seeks to justify the project, without considering any alternatives, because of the apparent mandate that “*A fundamental project requirement is to keep the existing school open during construction of the new school.*” (p. 10, Conclusion b.4) To further that self-imposed mandate¹, the City has recommended that because the Lake Washington School District is a public entity, the critical area rules will not apply. However, the purpose of the exemption, typically for public utilities, is out of necessity not expediency. Indeed, there is no difference from a two-story school building and a large impervious parking lot than a grocery store plaza. Absent another justifiable basis, the City should not condone irresponsible development as if it was considering the school’s original construction in 1974.

There needs to be greater consideration to the driveway and parking areas, and the building location, to meet the setbacks and buffers, even if it means reducing the footprint of the new development. The student driveway for drop off and pick up should be moved north, and the proposed rain garden in the visitor parking lot should be moved south, along the backside of my client’s and other neighboring properties. This will not only increase the buffer, but the infiltration capacity of the rain garden which can be connected to the adjacent wetland to the east. Apparently, it is not something the City even considered.

In addition to traditional parking lots (not impervious pavement), there is nothing innovative about the project in terms of its design and environmental or aesthetic impacts. The City’s own environmental consultant, Wetland Resources, has advocated for daylighting the existing stream and protecting the buffers and trees, and enhancing and mitigating the wetland buffers. Specifically, the City’s consultant recommended applying the 33 percent increase in the wetland buffers consistent with the design criteria in KZC 90.45. Nonetheless, the City staff recommends the project should receive an exemption from KZC 90.45. In this situation, the exemption is neither necessary or appropriate. The school has an opportunity to restore the buffers and enhance the water quality and hydrology of the wetlands and stream, which should be daylighted even if it is only for the children to see and learn from – until the rest of the mile-long culvert is someday removed.

The use of the public agency exception in this case is improper. The district should consider other alternatives to the proposed project footprint and driveways and parking areas to minimize the neighborhood impacts. Considering alternatives is required to under SEPA, which it appears the City issued a Determination of Non-Significance for in August 2017, before the design or plans were finalized in the past few months. Indeed, the City’s consultant determined and notified the City in April 2018 that the project would have adverse environmental impacts if the

¹ It may be laudable, but there is no requirement that replacing an existing school requires building a new one next to it first. That is simply not the case or even possible in most cases, and this would not be the first time an eastside school used temporary classrooms or had to sequence construction during active classes. Timing and sequencing construction should have been considered here.

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buffers were reduced and the stream not daylighted, and it was only since then the City decided to grant a public agency exemption. As a result, it would be appropriate for the City to have the applicant prepare a new SEPA checklist with the revisions and to be issued for public comment consistent with the project itself. As noted in the staff report, other permits will be necessary for the project, including an HPA for keeping the stream in the culvert, since the Department of Fish and Wildlife will not allow development use of culverts when not necessary (under a road) or without mitigation – neither is the case here.

Thank you for considering these comments and requiring the City ensure the project complies with its critical areas code and considers reasonable alternatives to avoid unnecessary, adverse impacts to my clients and the surrounding residences.

Sincerely,

Allan Bakalian