

RESOLUTION NO. R-4405

A RESOLUTION OF THE CITY OF KIRKLAND APPROVING THE ISSUANCE OF A PROCESS IIB PUD PERMIT AS APPLIED FOR IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. IIB-01-62 BY WEST WATER REAL ESTATE SERVICES BEING WITHIN A BUSINESS COMMERCIAL(BC) ZONE, AND SETTING FORTH CONDITIONS TO WHICH SUCH PROCESS IIB PUD PERMIT SHALL BE SUBJECT.

WHEREAS, the Department of Planning and Community Development has received an application for a Process IIB PUD permit, filed by West Water Real Estate Services, the owner of the property described in the application and located within the BC zone; and

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

WHEREAS, pursuant to the State Environmental Policy Act, RCW 43.21C, and the Administrative Guideline and local ordinance adopted to implement it, an environmental checklist has been submitted to the City of Kirkland, reviewed by the responsible official of the City of Kirkland, and a determination of non-significance("DNS") reached; and

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

WHEREAS, an appeal of the DNS was filed on January 2, 2002 with respect to the elements of Earth, Air, Water, Animals, Environmental Health, Land and Shoreline Use, Aesthetics, Light & Glare and Transportation; and

WHEREAS, the application and the appeal have been submitted to a Hearing Examiner Pro Tem who held a hearing thereon at his meetings on February 21, 2002 and February 26, 2002; and

WHEREAS, the Hearing Examiner Pro Tem after his public hearing and consideration of the recommendations of the Department of Planning and Community Development, adopted certain Findings, Conclusions, and Recommendations, reversed the DNS on the Land and Shoreline Use element only, and recommended modification of the application in conformance with certain conclusions, with any approval after modification subject to certain conditions; and

WHEREAS, the City Council considered and ruled upon various issues raised by challenges to the Examiner's recommendations, and voted to return the application to the Planning Director for further proceedings consistent with the Examiner's SEPA decision and the Council's determinations of the various issues; and

WHEREAS, the responsible SEPA official did issue a DS on July 17, 2002 and a Final Environmental Impact Statement (EIS) was issued on October 17, 2003; and

WHEREAS, the City Council, in regular meeting on November 3, 2003 considered the environmental documents received from the responsible official, together with the recommendation of the Hearing Examiner Pro Tem;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:

Section 1. The City Council adopts by reference the "City of Kirkland City Council Findings, Conclusions and Decision" attached to this resolution ("Decision").

Section 2. The Process IIB PUD permit shall be issued to the applicant in accordance with the Decision.

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

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

Section 5 A complete copy of this resolution, including the Decision, shall be certified by the City Clerk who shall then forward the certified copy to the King County Department of Assessments.

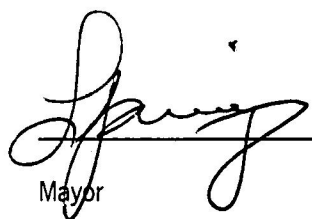
Section 6 A certified copy of this resolution, including the Decision, shall be attached to and become a part of the Process IIB PUD permit or evidence thereof delivered to the permittee.

Section 7 Certified or conformed copies of this resolution shall be delivered to the following:

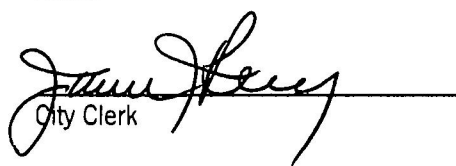
- (a) Department of Planning and Community Development of the City of Kirkland
- (b) Fire and Building Departments of the City of Kirkland
- (c) Public Works Department of the City of Kirkland
- (d) The City Clerk for the City of Kirkland
- (e) All persons listed in KZC 152.105.

PASSED by majority vote in open meeting of the Kirkland City Council on the 18th day of November, 2003.

SIGNED IN AUTHENTICATION thereof on the 18th day of November, 2003.


Mayor

Attest:


City Clerk

**CITY OF KIRKLAND
CITY COUNCIL FINDINGS, CONCLUSIONS AND DECISION**

APPLICANT: West Water Real Estate Services

FILE NO.: IIB-01-62

APPLICATION: Preliminary planned unit development approval for the 617 Market Street Project, which includes modifications of code regulations for building height, required yards, lot coverage, horizontal façade modulation, landscape buffering, residential use on the ground floor and on-site parking.

SITE LOCATION: Southwest quadrant of the Market Street and 7th Avenue West intersection.

SUMMARY OF DECISION:

Approve subject to modifications as set forth in this decision, subject to conditions.

Section 1 RECITALS AND FINDINGS

1.1 Procedural Background

1.1.1 West Water Real Estate Services ("West Water" or "applicant") is seeking a Process IIB zoning permit for preliminary planned unit development approval of a three-story mixed use development project ("Project") located at 617 Market Street.

1.1.2 The environmental review for the Project was completed in October of 2003 when the Environmental Impact Statement ("EIS") prepared for the Project was issued. EIS issuance followed a SEPA appeal hearing on February 21 and 26, 2002, before the Hearing Examiner Pro Tem ("Examiner") on the Determination of Nonsignificance ("DNS") issued on December 17, 2001. The Examiner upheld the DNS with respect to all impacts except land use. On July 17, 2002, a Determination of Significance ("DS") limited to land and shoreline use was issued per SEPA.

1.1.3 All other administrative review required to approve the PUD has been completed. The Examiner held a public hearing on the PUD on February 21 and 26, 2002 and issued a recommendation to the City Council on March 5, 2002. The Examiner recommended modification of the application in conformance with certain legal conclusions, subject to various conditions. The Examiner's recommendation on the PUD application was challenged by the applicant, Karen Nau, and Lloyd and Sharon Powell. On June 4, 2002, the Council considered and ruled upon various issues raised by challenges to the Examiner's

recommendation, and voted to return the PUD application to the Planning Director for further proceedings consistent with the Examiner's SEPA decision and the Council's determinations of the various issues. On November 3, 2003, the Council considered the EIS and the Examiner's decision, together with the Council vote taken on June 4, 2003, and voted to approve the application as modified in this decision, subject to conditions.

1.2 Site Location and Physical Setting

1.2.1 The site is located in the Market Street Neighborhood of the City. Located in the southwest quadrant of Market Street/7th Avenue West intersection, the approximately .49-acre "dogleg" shaped site has approximately 147 feet of frontage on Market Street and 99 feet of frontage on 7th Avenue West. The site also borders an alley to the west. Across the alley are single-family residential homes fronting on 5th Avenue West. Most of these homes have garages at the rear of the lot along the alley.

1.2.2 The Market Street and 7th Avenue West intersection is a historic center in the City. In 1891 the four brick buildings currently occupying the intersection area were constructed. These buildings are the Joshua Sears Buildings, the Campbell Building, the Fifth Brick Building and the Peter Kirk Building. All of these buildings have historic significance, and three of the four buildings are listed on the National and State Registries of Historic Places. A fifth brick building, the three-story Leland Hotel, was constructed on the project site in 1891, but was demolished in the 1960's after a fire. The site was then developed as a Chevron gas station that was subsequently removed in the 1980s. The site currently contains a parking lot with a drive-thru espresso business.

1.3 Project Description

1.3.1 The applicant proposes 5,217 square feet of commercial retail and/or office space and 38 residential apartment units. Underground parking sufficient to provide one parking stall per bedroom (*See* Section 2.4.2) and office or retail parking per code and 6 on-street parking stalls will be provided. The Project height approximates the heights of the surrounding historic buildings and its architectural design borrows from its surroundings, including the use of red brick facing, and other architectural treatment. Pedestrian amenities include ten-foot sidewalks and a pedestrian plaza at the junction of Market Street and 7th Avenue West. See Section 2 for additional Project description.

Section 2 CONCLUSIONS

2.1 Introduction

2.1.1 The Project is located on property designated "Commercial" by the Comprehensive Plan and zoned "Community Business." The uses proposed (retail/residential/offices) are permitted outright by the Kirkland Zoning Code ("KZC").

2.1.2 A PUD may be approved for a development project which is innovative or otherwise beneficial but which does not strictly comply with the provisions of KZC. See KZC 125.05. The PUD process provides the Council with some discretion on development standards to encourage such projects. As authorized by the PUD regulations, the applicant seeks modifications from code regulations for building height, required yards, horizontal façade modulation, residential use on the ground floor, and on-site parking.

2.1.3 The applicant originally sought a modification for landscape buffering and lot coverage. However, the Design Alternative developed as part of the EIS included the elimination of modifications for landscape buffering and lot coverage. In response to public comment on the EIS, the applicant proposed a 15-foot buffer on the back of the Project, as required by code, eliminating the need for landscaping and lot coverage modifications. The Council accepts the 15-foot buffer on the back of the Project.

2.1.4 The Council may authorize the development standard modifications and approve the Project so long as the three PUD (KZC 125.35) and two process IIB criteria (KZC 152.70(3)) are met.

2.2 PUD Criteria

2.2.1 *PUD Criterion 1 - Does the proposed PUD meet all requirements of the PUD Chapter?*

All requirements of the PUD Chapter are met. The PUD development standards in the KZC may be modified and the PUD approved so long as the PUD criteria are met. KZC 125.20; KZC 125.35. Each of the requested deviations is reasonable and limited to modest modifications, as more specifically addressed in Sections 2.4 and 2.5 herein.

2.2.2 *PUD Criterion 2 - Are the adverse impacts or undesirable effects of the proposed PUD clearly outweighed by specifically identified benefits to the residents of the City?*

The identified adverse impacts or undesirable effects of the proposal are clearly outweighed by the paramount importance given in the City of Kirkland Comprehensive Plan ("Plan" or "Comprehensive Plan") to historic preservation and development of new structures in historic areas that are compatible in design and scale (See e.g. Plan, p. I-1 and Policies CC-2.3 and 2.4). The Project is consistent in design and scale to the surrounding historic buildings. Specifically identified benefits of the proposal are more fully described below, in Section 2.2.3 herein.

2.2.3 *PUD Criterion 3 - Is the applicant providing one or more of the following benefits to the City?*

(a) *Public facilities that could not be required by the City for development of the property without a PUD.*

The Project provides a large pedestrian plaza on the east side of the building at the intersection of Market Street and 7th Avenue West and ten-foot wide sidewalks (as opposed to five-foot wide required sidewalks). The sidewalk area will have patterned concrete, street lights and tree grates of historic appearance and will be compatible with the architectural character of the existing surrounding buildings, including the Joshua Sears Building, the Campbell Building, the Fifth Brick Building, and the Peter Kirk Building, all built in 1891.

(b) *The proposed PUD will preserve, enhance or rehabilitate natural features of the subject property such as significant woodlands, wildlife habitats or streams that the City could not require the applicant to preserve, enhance or rehabilitate through development of the subject property without a PUD.*

There is no enhancement, preservation, or rehabilitation of natural features above and beyond what would be required of a new development in the BC zone without a PUD.

(c) *The design of the PUD incorporates active or passive solar energy systems.*

There are no active or passive solar systems above and beyond what would be required of a new development in the BC zone without a PUD.

(d) *The design of the proposed PUD is superior to a non-PUD development in one or more of the following ways.*

(i) *Increased open space or recreational facilities:*

There are no increased open spaces or recreational facilities above and beyond what would be required of a new development in the BC zone without a PUD.

(ii) *Superior circulation patterns or location or screening of parking facilities:*

All parking, except the 6 on-street stalls, is located in an underground parking garage that provides superior screening and aesthetics to the surface parking allowed by the code.

(iii) *Superior landscaping, buffering or screening in or around the proposed PUD:*

Landscaping is provided in the proposed streetscape along Market Street and 7th Avenue West. This includes street trees consistent with existing street trees and accent landscaping at the perimeter of the pedestrian plaza within the right-of-way. Although this landscaping adds to the historic appearance of the project and is considered a benefit, it does not meet this criterion for superior landscaping, buffering or screening in or around the proposed PUD.

(iv) *Superior architectural design, placement, relationship or orientation of structure:*

The Project design is superior as it recognizes the historic character of the intersection at Market Street and 7th Avenue West. The height and front yard setback of the Project are consistent with the existing three historic structures at the intersection, while including a transition to the shorter Brooks building to the south. The detailing of the building façades along Market Street and 7th Avenue West compliment that of the surrounding historic buildings. The facades would be faced with "distressed" red brick and topped with decorative cornices. The window sizes would be consistent with the surrounding structures and accented by lintels with a historic appearance.

The Project provides additional historic design features as detailed in 2.2.3(a) and a historical marker commenting on the significance of the site as encouraged in the Plan (Policy CC-2.5).

(v) *Minimum use of impervious surface materials:*

Much of the site, except for landscaped areas, will be covered with impervious surface, so the City does not decrease impervious surface with the Project.

2.3 Process IIB Criteria

2.3.1 *Is the proposed PUD consistent with all applicable development regulations, and to the extent there is no applicable development regulation, the Comprehensive Plan?*

The Project is consistent with all code requirements and the Comprehensive Plan. See Sections 2.2, 2.3 and 2.4. The deviations requested through the PUD process are authorized by the KZC and consistent with the vision of the City for this historic area.

2.3.2 *Is the proposed PUD consistent with the public health, safety and welfare?*

The Project provides much needed housing in a mixed use, pedestrian oriented, urban development that complements the historic nature of the neighborhood. The Project should not be detrimental to the public health, safety or welfare, as confirmed by the EIS prepared for the Project.

2.4 PUD Development Standard Modifications

2.4.1 *Landscape Buffering and Lot Coverage*

(a) *Landscape Buffering*

The KZC provides for a 15-foot wide landscaped buffer if the property adjoins a low density use. KZC 95.25.2. The applicant previously proposed a five-foot wide landscape strip along the alley, with the addition of a six-foot tall solid fence to enhance screening. However, as part of the EIS, a Design Alternative was developed that did not require modifications for landscape buffering or lot coverage. This was accomplished by pulling back the west wall of the parking garage and slightly changing the façade modulation on the south section of the first floor on the west side of the building. These changes allow a full 15-foot wide landscape buffer along the west side of the building and consequently reduce total lot coverage to the 80% allowed in the BC zone. These changes also necessitate the adoption of the 1 car per bedroom parking count (as was requested in the original application) due to the reduced parking garage square footage. The applicant proposed these changes, and the Council accepts them as part of the Project.

(b) *Lot Coverage*

Maximum lot coverage is typically 80% in the BC zone. The surrounding historic buildings are close to 100% lot coverage. The Applicant's decision to no longer request the landscape buffer modification in response to concerns raised by residents to the west reduces the Project's total lot coverage to 80%. Thus, this PUD modification is no longer required.

2.4.2 *Parking*

The applicant has requested that the number of residential parking stalls be decreased from 1.7 stalls per unit to 1.0 stall per bedroom. Parking reductions may be granted "if the number of spaces proposed is documented by an adequate and thorough parking study to be sufficient to fully serve the use." KZC 105.103.3(c). Parking reductions also may be based in whole or in part on the provision of pedestrian facilities, such as pedestrian plazas. KZC 105.103.3(c).

The applicant has proposed a pedestrian plaza on the Market Street side of the Project, which eliminates the need for a parking study. However, parking studies in the Central Business District, referenced in the staff report, demonstrate that calculating parking based on the number of bedrooms per unit results in sufficient parking to serve fully the use. A standard of one parking stall per bedroom is consistent with similar approved modifications for projects in the Central Business District. Since 1995, all new projects for downtown have used the one parking stall per bedroom standard. The City originally required parking studies when this reduced standard was proposed for downtown projects. But based upon such parking studies, the City concluded that the reduced standard provides adequate parking for multifamily uses, and eliminated the parking study requirement for downtown development. It is reasonable and appropriate also to use the conclusions of such parking studies for the Project, as it is located only three blocks from the Central Business District and is within easy walking distance of downtown office and retail amenities and within close proximity to transit facilities. Also, the

office/retail parking will be available in the evening for residential use, and the applicant is providing 6 on-street parking stalls. Thus, parking to be provided for the residential use is adequate.

2.4.3 *Ground Floor Residential*

The applicant requests that residential uses be permitted on the ground floor. Residential uses are allowed in the BC zone. Although residential uses are not expressly permitted on the ground floor of a structure in the BC zone, there is no proposed residential use on the street frontage facing Market Street and 7th Avenue West.

The PUD criteria do not require justification for each requested modification; instead, they require that the benefits of the proposal as a whole clearly outweigh the adverse impacts or undesirable effects. In weighing the "adverse impacts" and "undesirable effects" of ground floor residential uses, the primary consideration should be whether the ground floor preserves adequate space for commercial use on the street front. Commercial use oriented to the street front is considered more economically viable than commercial adjoining the alley. Multifamily residential uses are also considered to be more consistent with adjacent single-family residential areas than commercial uses. Thus, the proposed residential use on the ground floor adjacent to the alley provides appropriate commercial orientation to Market Street and 7th Avenue while orienting a use with lower impacts toward the alley, and the adjacent single family neighborhood.

2.4.4 *Height Modification*

The proposed height of the Project fronting Market Street was originally designed to range from approximately 29' to 41' above average building height ("ABE"). However, additional mitigation was proposed by the applicant, and accepted by the Council, to lower the overall height fronting Market Street by one-foot to an elevation of 169'6" and lower the roof parapet height on the west side of the building (alley side) by two feet to an elevation of 168'6". With this mitigation, approximate building height would range from 29' to 40' above ABE along Market Street. The height of the building would be lowest (approximately 29' above ABE) at the underground garage entrance on market Street, immediately north of the Brooks building.

The basic building height limit in the BC Zone is 30' above ABE. The maximum height is reduced to 25' above ABE for any portion of a building within 100' of an adjoining low-density residential zone. The proposed request to allow up to approximately 40' above ABE in building height can be permitted as a PUD modification.

The Applicant's proposal is necessary to allow an overall building height consistent with the height of adjacent historic brick buildings, allow a ground floor height similar to the height of the adjacent historic buildings and maintain a consistent floor elevation for the second and third stories.

Because the KZC PUD process authorizes the modification, review of the Plan is not necessary. Plan provisions are only applied in the absence of zoning code requirements. *Citizens v. Mount Vernon*, 133 Wash.2d 861, 947 P.2d 1208 (1997); *See also* KZC 152.70(3). However, even if review of Plan policies on height is necessary, the Project is consistent with them. The Plan policies for new development in historic areas provide that such new development should preserve the design, scale and character of the historic neighborhood and match the design and scale of historic structures. "Matching" in this case authorizes and encourages a new building with the Project's height. In addition to being consistent with its surroundings, the Project does not block views designated in the Plan.

Viewed in its entirety and as a whole, the Plan promotes consistency in design and scale of new development with existing and historic structures. An applicant can therefore seek approval for a building that is consistent with the scale of surrounding development and that is in excess of 30' above ABE. The height limitation provisions of the Market neighborhood plan (20' above ABE) apply to office/multifamily development; the proposal is at a location that is designated for commercial development so these policies do not apply. Also, the subarea plan for the Market neighborhood was last amended in 1977 and recognizes that where there are more up to date policies in the Plan, these should be deferred to instead. Comprehensive Plan, Subarea Plan section, p. XV.J-1; Plan, p. I-7.

2.4.5 *Horizontal Modulation*

When a property adjoins a low density residential zone, the horizontal façade modulation requirements of the BC zone apply. *See* KZC 45.08; KZC 45.10.

The Project includes a façade along the alley that is greater than 50' wide. However, as addressed in the EIS, it includes frequent horizontal and vertical modulation to minimize the visual bulk of the building as viewed from the west. As part of the applicant's proposal to provide a 15' landscape buffer, accepted by the Council, the horizontal modulation provided by window bays which extend out beyond the face of the building on the first floor will be eliminated. This design change is necessary to facilitate an increased buffer without shadowing the ground floor residential units or eliminating patios. Windows mounted flush to the building face would still be provided for the first floor residential units facing the alley. The horizontal façade modulation as proposed is reasonable.

2.4.6 *Front Yard Setbacks*

The BC zone normally requires a 20-foot front yard setback, although parking may be permitted within the setbacks. A front yard setback makes eminent sense in the midst of a residential block. However, the preservation of the historic intersection provided for by the Plan would be compromised at this location by providing a front yard setback which does not exist at the other three corners of the intersection. The 610 Market Building located in the general vicinity demonstrates the incompatible and disruptive effect of a significant front yard

setback with exposed surface parking. For all these reasons, and those cited in the Staff Report and by the Kirkland Heritage Society, the setback request is reasonable and does not depart significantly from the KZC. Also, in view of the design elements provided and the ten-foot sidewalks, a pedestrian friendly setting which is consistent with the surrounding historic architecture is created. *See* Section 2.2.3.

2.5 Issues Regarding Interpretation of the KZC

2.5.1 *Extent of Modification Permitted*

The PUD provisions allow an applicant to propose an innovative or otherwise beneficial development which does not strictly comply with the provisions of the KZC. KZC 125.05; KZC 125.20. The KZC is clear on what can and cannot be modified through the PUD process. *See* KZC 125.20.1-8. The applicant does not seek any major deviation from KZC requirements, so this is not an issue. The appropriateness of each requested deviation is addressed individually. *See* Section 2.4.

2.5.2 *Use of Comprehensive Plan in Considering PUD Regardless of Development Regulations*

The KZC and Plan provide a framework to evaluate the PUD and there is no issue of vague requirements in this case. The Code (KZC 125.20.1-8) is clear on what can and cannot be modified through the PUD process. It would not be appropriate to disregard the direction provided by the KZC in favor of the more policy based Plan provisions. Under *Citizens v. Mount Vernon*, 133 Wash.2d 861, 947 P.2d 1208 (1997), a specific zoning code provision prevails over any inconsistent comprehensive plan provision.

Where there are no development regulations, Comprehensive Plan policies can apply, and potentially subarea plan policies, to the extent consistent with the Plan. "However, because all of the neighborhood plans were adopted prior to this plan update, portions of some of the neighborhood plans may contain inconsistencies. Where this is the case, the conflicting portions of the Citywide Elements will prevail." Comprehensive Plan, p. I-7.

2.5.3 *Use of Comprehensive Plan as SEPA Policy*

The City adopted the Plan as part of its SEPA policies, and may condition or deny projects based on this substantive SEPA authority. However, given the mitigation developed by the Project, and amenities provided to ensure KZC consistency, it is not necessary to provide additional mitigation beyond applicable development regulations and what has been developed and agreed to by the applicant. This is particularly so when the development regulations are specifically designed to address many of the Project's impacts.

2.5.4 *Residential Density Limits*

The BC zone (KZC 45.10) does not contain any density regulation for multi-family housing. Other zones contain express density limitations; therefore, the absence of an express density limit in the BC zone evidences Council intent not to limit density in the BC zone. This does not mean that the BC zone has no practical way to limit density. For example, indirect controls address issues such as height and setbacks. These collectively serve to provide a natural limitation on the potential density yield for any parcel.

The Plan does contain some policies on density limitations for multi-family housing along Market Street, but does not explicitly differentiate between multi-family housing in that corridor located in the BC zoned area or that located elsewhere in the neighborhood. However, in context, the intent of the policies is to apply density limitations to properties other than the BC zoned area. The Plan does not expressly discuss the BC zone at the Market Street/7th Avenue intersection.

2.5.5 *Comprehensive Plan Protection of Views from Up-Slope Properties*

There are no Plan policies regarding view protection which are inconsistent with the Project. In the Plan, the only protected views are "local and territorial views" specifically designated in the neighborhood plans; such views are not designated for the Project site. The Plan also discusses public views, not private views.

The view protection provisions of XV.J-9 through .J-11 for the Market Neighborhood reference view blockage, but not for the Project site. Also, the view blockage provisions are applicable to the areas of Market Street that are designated for office/multifamily development; the proposal is at a location that is designated for commercial development. The neighborhood plan policies in pp. XV.J-9 through .J-11 should be read together with the entire Plan and its City-wide elements relating to development near historic structures.

2.6 Conditions of Approval

2.6.1 *Should condition 5 of the Staff Report, relating to administrative modifications to the approved site plan, be omitted?*

Condition 5 authorizes the Department of Planning and Community Development to administratively approve minor modifications to the approved site plan. This authority is consistent with the authority provided at KZC 125.60. Ensuring the availability of a process to make minor modifications to the PUD approval is reasonable as it offers the applicant some flexibility should minor changes be required but does not authorize significant changes which would substantially change the Project or its impacts.

Section 3 SUMMARY - ORDER

3.1 Any finding that is better characterized as a conclusion is incorporated into part 2 of this decision. Any conclusion that is better characterized as a finding is incorporated into part 1 of this decision.

3.2 The Process IIB PUD is granted consistent with this decision, subject to the conditions set forth in Attachment A to this decision.

3.3 Appeal of this decision (along with EIS adequacy challenges) may be made to Superior Court under the Land Use Petition Act (Chapter 36.70C RCW) within 21 days of the adoption of the resolution that adopts this decision by reference.

ATTACHMENT A**CONDITIONS OF APPROVAL**

Based on the City of Kirkland Statements of Findings, Conclusions and Decision, approval of this application is 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. When a condition of approval conflicts with a development regulation, the condition of approval shall be followed.
2. As part of an application for a Final PUD, the applicant shall submit:
 - a. A revised site plan and landscape plan including a fifteen foot wide landscape buffer to be placed along the west property line to buffer the structure from the adjoining single family zone. The buffer must meet the requirements of Zoning Code section 95.25.2 (buffering Standard 2). The revised site plan must also show a maximum of 80% lot coverage.
 - b. Revised elevations with the height of the overall building lowered by one foot to an elevation of 169'-6". In addition to the one foot height reduction for the building, the cornice height on the west elevation of the building, adjacent to the alley, must be reduced by two feet, to an elevation of 168'-6".
 - c. Plans that show the design and location of the historic marker for the site. The design of the marker must incorporate some of the brick remaining on the site from the original hotel.
3. As part of the application for a Building Permit the applicant shall submit:
 - a. Building elevations showing the building materials approved during the PUD process, including brick facades, door and window detailing, and defined cornice treatment to provide contrast.
 - b. Plans showing shielded lighting for all outdoor lights on the west side of the building that meet the requirements of Zoning Code section 115.85.
 - c. Plans for installing the required improvements in the Market Street (an arterial type street), 7th Avenue West (a collector type street), and alley rights-of-way bordering the subject property to be approved by the Department of Public Works.

These plans must include:

- Half street improvements within Market Street along the subject property, including pedestrian lighting (3 minimum), replacement of the existing curb and gutter, and installation of a 10 foot wide sidewalk with street trees in 4' x 6' tree grates 30 feet on-center.
- Half street improvements within 7th Avenue West along the subject property, including widening the street to 40 feet from the curb on the north side of the street, installation of storm drainage, curb and gutter, pedestrian lighting (1 minimum) and installation of a 10 foot wide sidewalk with street trees in 4' x 6' tree grates 30 feet on-center.

- Pedestrian lighting is to be approved by the Planning Department and must reflect the historic character of this intersection of the City.
 - Curb, gutter and sidewalk at the intersection of 7th Avenue West that bumps out to the width of the on-street parking.
 - 12 foot wide alley pavement from 6th Avenue West to the west property limits and installation of storm drainage collection and conveyance in the alley.
 - The redesign of 7th Street West detailing parking stalls, markings, and traffic control devices to be approved by the Department of Public Works.
 - Painting the curb within 10 feet of the project driveway red.
- d. Plans that meet the parking limits outlined below:
- One parking stall per bedroom (including 1 parking stall per each studio apartment)
 - One parking stall per each 300 square feet of gross floor area for commercial space.
4. Prior to occupancy, the applicant shall:
- a. Complete all site improvements indicated on the site plan and elevations approved by the Department of Planning and Community Development at the time of application for building permit.
- b. Install the required ROW improvements for Market Street, 7th Avenue West, and the alley to the west of the site.
- In lieu of completing any required improvements, a security device to cover the cost of installing the improvements may be submitted if the criteria in Zoning Code Section 175.10.2 are met.
- c. Submit for approval by the Department of Planning and Community Development a signed and notarized landscape maintenance agreement for the required buffer along the west boundaries of the site to be recorded with the King County Records and Elections Division.
5. The Department of Planning and Community Development shall be administratively authorized to approve modifications to the approved site plan if they meet the criteria outlined in sections 125.60 and 152.125 of the Zoning Code.
6. 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 Conditions of Approval within six (6) years after the final approval on the matter, or the decision becomes void.

The applicant must obtain approval of the final PUD and submit to the City a complete building permit approved under Chapter 125 within four (4) years after approval of the preliminary PUD, or the lapse provisions of Section 152.115 will apply.