



---

**CITY OF MERCER ISLAND**

9611 SE 36<sup>th</sup> Street • Mercer Island, WA 98040-3732

(206) 275-7605 • FAX (206) 275-7726

www.mercergov.org

**CRITICAL AREA DETERMINATION**

**NOTICE OF DECISION**

**September 17, 2018**

<b>Project Number:</b>	CAO18-001
<b>Description:</b>	A request for a Critical Areas Determination (MICC 19.07.070(B). The proposal is for the reduction of a 50-foot Type II stream buffer to 25-feet using buffer reduction (MICC 19.07.070(B)(2)).
<b>Applicant:</b>	David Taber Neiman Taber 1421 34 <sup>th</sup> Ave Seattle WA 98122
<b>Owner:</b>	Craig Pazarena 8430 SE 47 <sup>th</sup> Place Mercer Island WA 98040
<b>Site Address:</b>	8430 SE 47 <sup>th</sup> Place, Mercer Island, WA, 98040; Identified by King County Assessor tax parcel 331750-0120
<b>Zoning:</b>	R-9.6
<b>SEPA Compliance:</b>	Exempt from SEPA review under WAC 197-11-800(2)(e) and WAC 197-11-800(1)(b)(i).
<b>Exhibits:</b>	<ol style="list-style-type: none"><li>1. Site Plan received by the City on July 10, 2018.</li><li>2. Development Application dated January 2, 2018.</li><li>3. Project Summary prepared by Neiman Taber, dated received by the City on April 6, 2018</li><li>4. Critical Area Study prepared by The Watershed Company, received by the City on September 7, 2018.</li><li>5. Geotechnical Report, prepared by Nelson Geotechnical Associates, Inc., dated June 16, 2017, received by the City on January 4, 2018.</li><li>6. Geotechnical Report Plan Review and Minimal Risk Statement, prepared by Nelson Geotechnical Associates, Inc., dated December 15, 2017, received by the City on April 6, 2018.</li><li>7. Geotechnical Report Clarification Letter prepared by Nelson Geotechnical Associates, Inc., received by the City on July 10, 2018</li><li>8. Public comment submitted by Ralph Bufano, received by the City on May 12, 2018.</li></ol>

---

**I. FINDINGS OF FACT**

**1. Application Description:**

The applicant has requested approval of a critical area determination to reduce a Type 2 watercourse buffer to construct additions to an existing one-story, detached, two-car garage that is accessory to an existing single-family dwelling. A one-car garage addition is proposed over an existing concrete pad adjacent to the garage. The ground floor addition (not on the existing concrete pad) also includes a spa, hot tub, bathroom, and a deck. A new second floor addition will contain two bedrooms, a bathroom, a kitchen, and a game room. A cantilevered deck would extend from the southern and eastern walls of the expanded structure.

**2. Zoning:**

The existing zoning of the subject site is R-9.6(Residential, 9,600 square foot minimum lot area).

**3. Adjacent Land Use:**

The surrounding land uses consist of single family residences on all sides.

**4. Consistency with Land Use Code/Zoning Requirements:**

MICC 19.16 Definitions "Critical Area Determination" states that the land use application is "[a]n administrative action by the code official pursuant to MICC 19.15.010(E) to allow reduction or averaging of a wetland or watercourse buffer, or alteration of a steep slope." The applicant has applied for a Critical Area Determination to reduce a watercourse buffer to construct an addition to an existing garage.

**5. SEPA:**

This project is exempt from SEPA review under WAC 197-11-800(2)(e) and WAC 197-11-800(1)(b)(i).

**6. Public Noticing and Comments:**

There is no public hearing requirement for a Critical Area Determination (an administrative action) pursuant to MICC 19.15.010(E) and 19.15.020(F)(1). On April 30, 2018, City staff sent a Public Notice of Application to all property owners within 300 feet of the subject property and placed the Public Notice of Application in the City Weekly Permit Bulletin. The site was posted with a public notice sign, in a location that is visible to the public right-of-way on April 30, 2018 as required by MICC 19.15.020(E)(4)(a). A public comment period ran from April 30, 2018 through 5:00 P.M. on May 30, 2018. One public comment was received during the public comment period.

The public comment was provided by Ralph Bufano, neighbor. Mr. Bufano felt there was ample room to build on the site without obtaining the requested setback. He was also concerned that the stormwater plan had not yet been developed.

Response: The applicant considered locating the proposed addition in a location outside of the watercourse buffer, but determined that for multiple reasons, it was best located where proposed. Please see Exhibit 3 and Exhibit 4 (Section 5) for the applicants' explanation. The current application is limited to the reduction of the watercourse buffer and does not encompass stormwater impacts. The stormwater management plan will be considered during building permit review.

**7. MICC 19.07.070(B)(2)(a) and (b):**

Reduction of Buffer Widths.

(a) The code official may allow the standard buffer width to be reduced to not less than the above listed minimum width in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the watercourse, the impacts will be mitigated by using combinations of the below mitigation options, and the proposal will result in not net loss of watercourse and buffer functions. However, in no case shall a reduced buffer contain a steep slope.

(b). The code official may consider the following mitigation options:

- i. Permanent removal of impervious surfaces and replacement with native vegetation;
- ii. Installation of biofiltration/infiltration mechanisms such as bioswales, created and/or enhanced wetlands, or ponds supplemental to existing storm drainage and water quality requirements;
- iii. Removal of noxious weeds, replanting with native vegetation and five-year monitoring;
- iv. Habitat enhancement within the watercourse such as log structure placement, bioengineered bank stabilization, culvert removal, improved salmonid passage and/or creation of side channel or backwater areas;
- v. Use of best management practices (e.g., oil/water separators) for storm water quality control exceeding standard requirements;
- vi. Installation of pervious material for driveway or road construction;
- vii. Use of “green” roofs in accordance with the standards of the LEED Green Building Rating System;
- viii. Restoration of off-site area if no on-site area is possible;
- ix. Removal of sources of toxic material that predate the applicant’s ownership; and
- x. Opening of previously channelized and culverted watercourses on-site or off-site.

**Staff Analysis:**

*The applicant provided a Critical Area Study (Exhibit 4) that provides mitigation measures that will prevent the mitigate for project impacts and result in no net loss of buffer functions. Section 6 of the Critical Area Study also provides recommendations for mitigation, including vegetation enhancement and tree replacement. Provided the recommendations of the Critical Area Study are followed, the criteria of MICC 19.07.070(B)(2)(a) and (b) will be met. This decision conditions that the applicant follow the procedures laid out in Section 5 and Section 6 and the plan sheets in Appendix A of the Critical Area Study.*

**8. Permit Expiration:**

MICC 19.15.020(K) states “Except for building permits or unless otherwise conditioned in the approval process, permits shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised. Responsibility for knowledge of the expiration date shall be with the applicant.”

**Staff Analysis:**

*A condition of approval has been added to this decision, requiring the above standard to be met.*

---

**II. CONCLUSIONS OF LAW**

---

Based on the above Findings of Facts, the following Conclusions of Law have been made:

1. The subject property contains a Type 2 watercourse.
2. The proposed reduction of the watercourse buffer, as conditioned, is consistent with the provisions of MICC 19.07.070.

---

### **III. DECISION**

---

Based upon the above noted Findings of Fact and Conclusions of Law, critical area determination application CAO18-001 to reduce a watercourse buffer, as depicted by Exhibits 1 and 4 is hereby **APPROVED** subject to the following Conditions of Approval. This decision is final, unless appealed in writing consistent with adopted appeal procedures.

---

### **IV. CONDITIONS OF APPROVAL**

---

The following conditions shall be binding on the "Applicant," which shall include owner or owners of the property, heirs, assigns and successors.

1. The approval of the permit is based on the proposal substantially complying with the submittal, as shown in Exhibits 1 and 4; in particular Section 5 and Section 6 and the plan sheets in Appendix of the Critical Area Study (Exhibit 4).
2. This permit approval shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised.
3. This project is subject to building permit review, peer review, and subsequent approval. The applicant shall obtain all required permits for construction.
4. The applicant shall install and have inspected full temporary erosion and sediment control measures prior to construction.
5. The applicant shall follow the recommendations listed in the Conclusions and Recommendations section of the Geotechnical Report (Exhibit 3) and shall follow best management practices for grading.

**Approved this 17<sup>th</sup> day of September, 2018.**



**Nicole Gaudette**  
**Senior Planner**  
**Development Services Group**  
**City of Mercer Island**

Parties of record have the right to appeal the decision on this action when it is issued. If at that time you desire to file an appeal, you must submit the appropriate form, available from the Development Services Group, and file it with the City Clerk within fourteen (14) days from the date this decision is signed. Upon receipt of a timely complete appeal application and appeal fee, an appeal hearing will be scheduled. To reverse, modify or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.

Please note that the City will provide notice of this decision to the King County Department of Assessment, as required by State Law (RCW 36.70B.130). Pursuant to RCW 84.41.030(1), affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation by contacting the King County Department of Assessment at (206) 296-7300.