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BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND

In the Matter of:

Development Code Interpretation No. 22-004

Hearing Examiner File No. _____
(Interpretation No. 22-004)

**NOTICE OF APPEAL OF
INTERPRETATION OF THE DIRECTOR**

I. INTRODUCTION

Stroum Jewish Community Center of Greater Seattle, Island Synagogue, French American School of Puget Sound, Congregational Church of Mercer Island, and Yeshiva High School (collectively, the “Community Organizations”) appeal the Interpretation of the Director No. 22-004 (the “Decision”). The Decision results in the Community Organizations, many of which are in aging buildings in dire need of repair and remodel, being unable to rebuild even a single square foot beyond their existing exterior walls. The Decision fails to acknowledge the Mercer Island Comprehensive Plan, which recognizes the special nature of the Community

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1 Organizations on the Island, and how fundamental they are to the Island’s identity. Indeed, the
2 Vision Statement¹ of the Comprehensive Plan states:

3 Civic, recreation, education and religious organizations are important and integral
4 elements of the community character and fabric. Their contribution and importance to
5 the established community character should be reflected and respected in land use permit
6 processes.

6 (emphasis added) *Mercer Island Comprehensive Plan, Sec. II, Vision Statement.*

7 The Decision ignores several provisions of the Mercer Island Comprehensive Plan that
8 direct the City to use its land use policies to retain viable and healthy Community Organizations.
9 The Decision ignores the legislative history surrounding the ordinance’s passage that the City
10 Council intended only to prohibit the construction of mega single-family houses, and intended to
11 limit variances related to single family permits. The Decision fails to consider that the City
12 Council never intended the draconian result that will occur due to this interpretation. There is
13 zero evidence in the legislative record that reflects any legislative intent for Community
14 Organizations to be faced with the terrible decision of either remaining in obsolete buildings
15 without the ability to rebuild, or leaving the Island. The Decision ignores that throughout the
16 Island’s history, Community Organizations have routinely sought and obtained variances from
17 single family zoning standards. The Decision creates an absurd result within the code where
18 Community Organizations 1) are permitted in single family zones, but could never be built
19 within the single family square footage limitations, 2) could seek a variance for a surface parking
20 lot over 60% of their lots, but could not build a building beyond the square footage limitation of
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25 ¹ The Vision Statement “is an essential ingredient in successful comprehensive community policy planning.
26 Essentially, the statement should reaffirm time-tested policies or values that are generally held as positive
27 “community trademarks” and identify others deemed relevant. Moreover, a Vision Statement should be a
28 reflection of community aspirations. Through periodic review and refinement, it is intended to set parameters for
future community activities.”

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1 a single family house, and 3) could not exercise rights under the Code’s nonconforming
2 provisions.¹

3 The Interpretation is not supported by the Development Code. It should be reversed by
4 the Hearing Examiner, and an alternative interpretation should be made that allows for
5 Community Organizations to seek variances from regulations that were intended to apply to
6 single family houses, such that Community Organizations can continue to meet their missions,
7 serve the Mercer Island community, and honor the character of the neighborhoods in which they
8 reside.
9

10 II. APPELLANT INFORMATION

11 A. Appellants

12 Appellants are:

- 13 • Stroum Jewish Community Center (“SJCC”), a Washington nonprofit
14 corporation. Appellant’s address is 3801 East Mercer Way, Mercer Island,
15 Washington, 98040.
- 16 • Island Synagogue, a religious organization. Appellant’s address is 8685 SE 47th
17 Street, Mercer Island, WA 98040.
- 18 • French American School of Puget Sound. Appellant’s address is 3795 East
19 Mercer Way, Mercer Island, WA 98040.
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25 ¹ As just one example of the absurdity created by the Decision, the SJCC is located on an approximately 8-acre lot
26 (appx. 348,480 square feet). The Decision would allow the SJCC to seek a variance to build a 209,088 square foot
27 parking lot, but if rebuilt the SJCC would be limited to a structure no larger than 8,500 square feet (the single-family
house size limitation). Most of the Community Organizations on the Island now face the same absurdity or a similar
magnitude.

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- 1 • Northwest Yeshiva High School. Appellant’s address is 5017 90th Avenue SE,
2 Mercer Island, WA 98040.
- 3 • Congregational Church of Mercer Island. Appellant’s address is 4545 Island
4 Crest Way, Mercer Island, WA 98040.

5 Appellants’ authorized representative is Jessica Clawson, McCullough Hill Leary P.S.,
6 701 Fifth Avenue, Suite 6600, Seattle, WA 98104, 206-812-3388 (telephone),
7 jessie@mhseattle.com.

8 **III. DECISION BEING APPEALED**

9 The decision being appealed is Development Code Interpretation 22-004 (“Interpretation
10 Decision,” or “Decision”) by the City of Mercer Island (“City”) Community Planning &
11 Development Department (the “Department”). The interpretation was made by the Department
12 and was not requested by an applicant, and was not applied to any one Community Organization,
13 but applies to all 21 Community Organizations within single family zones on the Island.¹ A
14 copy of the Interpretation Decision is attached as Exhibit A.

15 **IV. APPEAL INFORMATION**

16 **A. Appellants’ Interest in the Interpretation Decision.**

17 The SJCC, a nonprofit corporation, is the only Jewish Community Center in Washington
18 State. It has been located on Mercer Island in its location since 1969. The SJCC serves over
19 2500 Mercer Island households, runs an Early Childhood School that currently serves 196
20 children. It offers recreation, intellectual, and cultural entertainment to people of all ages,
21 capabilities, races, religions, genders, etc. Everyone is welcome at the SJCC. As the only
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23 ¹ A list of the Community Organizations located in single family zones that would be impacted by this Decision is
24 attached to this appeal as Exhibit B. The list includes the City’s own Community and Events Center.
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1 independent performing arts theatre on Mercer Island, SJCC provides a home for Youth Theatre
2 Northwest productions, Children’s Dance Conservatory/Island Youth Ballet, public and private
3 celebrations/events, and more. Seniors exercise and swim together daily, hundreds of children
4 learn to swim at the SJCC every year, and thousands of children attend camp at the SJCC every
5 summer and during school breaks. During the summers of 2021 and 2022, SJCC operated the
6 City’s Parks & Recreation Day Camp program and the SJCC also serves as a partner to the
7 Mercer Island School District. The SJCC’s building was built in 1969 and expanded in 1980. It
8 is a legally nonconforming structure and legally nonconforms to several single-family
9 development standards, including but not limited to the maximum square footage of the facility
10 (the single-family code now limits any structure on the property to 8,500 square feet). As a 53-
11 year old community resource, SJCC faces regular challenges with the swimming pool
12 infrastructure, aged heating and electrical systems, and properly serving those with physical
13 disabilities. Modern earthquake construction standards and environmental sustainability are both
14 virtually unattainable in the current structure. The SJCC has plans to build a new building to
15 serve the community. The new SJCC would be a modern, appropriately-scaled facility that
16 addresses nearby neighbors’ interests with wider landscape and noise buffers than currently
17 exist, downshielded lighting, and better traffic and parking management. The SJCC and its
18 members will be adversely impacted by the Decision because they will be unable to build the
19 new SJCC, and they will be forced to continue to spend hundreds of thousands of dollars per
20 year on a failing building that cannot be effectively remodeled. As a non-profit and the only
21 Jewish Community Center in the state of Washington, the SJCC may be forced to relocate off the
22 Island, because the Decision prohibits the legal use and enjoyment of the Property.
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1 The French American School of Puget Sound (“FASPS”) owns and controls property that
2 is zoned single-family. FASPS is a bilingual school for children age 2 through grade 8. Students
3 benefit from a bilingual rigorous academic program, arts and technology curriculum, social and
4 emotional learning, and a wide selection of extracurricular activities. The Decision harms
5 FASPA because it creates a situation where the FASPS could not construct a facility that would
6 serve its students and community on its property.
7

8 Island Synagogue is located in a single-family zone. The building on-site is
9 nonconforming to the City’s current single-family codes and significantly exceeds the maximum
10 square footage that could be built on its lot if it were built today. Island Synagogue is a Modern
11 Orthodox congregation that welcomes Jewish people of all backgrounds and levels of
12 observance, and it offers community, events, and education. Island Synagogue has investigated
13 expansions and remodels as its building is aged and needs to be updated. The Decision would
14 significantly impact the ability of Island Synagogue to remodel, rebuild, or expand its facilities to
15 serve its membership.
16

17 Northwest Yeshiva High School (“NYHS”) serves the educational needs of Jewish teens
18 from Mercer Island and the greater Seattle metro area. It is located on property that is zoned
19 single-family. NYHS has always been committed to being exceptional neighbors to its
20 surrounding community. Wherever possible, NYHS opens its campus for the wider community
21 use. For example, recently, NYHS partnered with the King County Department of Health to
22 serve as the location for a vaccination clinic where over 100 Mercer Island families were able to
23 conveniently receive COVID booster shots. The NYHS facilities are over 60 years old and there
24 have been minimal improvements over the years. The Decision would severely limit NYHS’s
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1 ability to update and properly maintain its facilities and serve the future educational and other
2 community-serving needs of students, families, and neighbors.

3 The Congregational Church on Mercer Island (“CCMI”) is a welcoming and open
4 community inspired by inclusive beliefs and progressive values on a journey of compassion and
5 justice. In addition to its congregation, it hosts weddings and other community events or
6 meetings like Scouts meetings. CCMI lives its values and serves low-income and homeless
7 populations through a variety of outreach and support activities such as fundraising, toy drives,
8 and missions. CCMI is zoned single-family and its structure is nonconforming to the current
9 single-family code. CCMI’s building is aging and needs to be rebuilt, remodeled, and
10 reconfigured to meet the needs of its congregation. The Decision would prevent any
11 reconfiguration or expansion of its structure.
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15 **B. Objections to the Interpretation Decision.**

16 **1. The Department Erroneously Failed to Consider the Applicable Purpose and**
17 **Intent Sections of the Code, Which Requires the Intent of The**
18 **Comprehensive Plan to Be Followed, and the Code to be Read As A Whole.**

19 1.1. MICC 19.15.060.A.2 requires the Department to consider the “purpose and intent
20 statement of the chapters in question.” The Department erred by not considering the purposes
21 and intent sections of the various sections of the Code that apply to Community Organizations in
22 single family zones.

23 1.2. The Development Code as a whole includes a purpose statement:

24
25 The general purpose of this Code is to protect and promote health, safety and the general
26 welfare through the regulation of development within the city of Mercer Island...This
27 Code is to be interpreted as a whole, in view of the purpose set out in this section.

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1 (emphasis added) MICC 19.01.010. The Department erred when it failed to consider this purpose
2 statement in its Decision and to consider the code as a whole, considering that Community
3 Organizations promote the health, safety, and welfare of the Island, and considering the
4 absurdities that arise in the Code as a whole as a result of the Decision

5
6 1.3. The nonconforming chapter of the Code includes a purpose statement:

7 *Purpose.* The purpose of this section is to allow for the continuance and maintenance of
8 legally established nonconforming structures...and to provide standards delineating the
9 circumstances in which nonconforming structures...must be brought into conformance
with the provisions of all applicable code requirements. (emphasis added)

10 MICC 19.01.050.A.1. The Community Organizations reside in structures that are considered
11 nonconforming to the single-family code. The Department erred when it failed to consider the
12 purpose statement requiring the continuance and maintenance of nonconforming Community
13 Organizations, and failed to read the Code as a whole.

14
15 1.4. The residential code, which includes the maximum size of use standards that limit
16 structures to single family houses in single family zones, includes a purpose statement:

17 *Purpose:* The purpose of the residential chapter is to identify land uses and to establish
18 development standards that are appropriate within the residential zoning designations. The
19 development standards provide a framework for a site to be developed consistent with the
policy direction of the adopted Mercer Island Comprehensive Plan.

20 (emphasis added) MICC 19.02.005.A. The Community Organizations—many of which pre-
21 dated the Mercer Island Development Code--were adopted into and have remained in single-
22 family zones. The purpose of the single-family development standards is to allow development
23 consistent with the policy direction of the Comprehensive Plan. The Comprehensive Plan clearly
24 supports land use policies that allow for Community Organizations to continue to exist in single-
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1 family zones, and rebuild, as stated below. The Department erred when it failed to consider this
2 purpose statement, that was passed by the City Council at the same time as the variance section.

3 1.5. The Department failed to consider the purpose of the variance section, which
4 states: "An applicant or property owner may request a variance from any numeric standard,
5 except for the standards contained within chapter 19.07 MICC." (emphasis added) MICC
6 19.06.110.B.1. The Department's finding that Community Organizations can only obtain
7 variances from the impervious surface standard does not conform to this purpose statement,
8 which clearly intends for all standards to be open to variance. The legislative history surrounding
9 this purpose statement also shows a clear intent of the City Council to allow all development
10 standards to be able to obtain a variance.
11

12
13 1.6. Finally, the Department failed to consider the fact that the purpose statement of
14 the variance criteria does not include any purpose or intent language that states Community
15 Organizations are limited to seeking only one type of variance. This is again consistent with the
16 broad purpose language cited above. The Department's failure to consider this point is an error.
17

18 **2. The Department Erred when it Concluded that The City Council Intended to Render**
19 **Community Organizations Obsolete by Passing Mega-House Regulations Intended to**
20 **Apply to Single-Family Structures.**

21 2.1. The Decision concluded that the intent of the City Council was clear to limit
22 variances to "only those situations where a variance is necessary to permit the construction of a
23 single-family house." *Interpretation*, 3.iv. The Decision fails to consider the fact that the City
24 Council intended to implement the Comprehensive Plan, which is protective of Community
25 Organizations. It also fails to consider the fact that the City Council did not once discuss or
26 consider the impact of the single-family square footage limitations on Community Organizations.
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1 It fails to consider the fact that the intent of the mega-house regulations were solely to prevent
2 mega-houses, which were proliferating on the Island in 2017, from impacting single-family
3 neighbors. It fails to consider that when the City hired Makers Consulting to review the
4 “impacts” of the mega-house ordinance, Makers reviewed only the impacts on single family
5 home building on the Island, not the impacts on Community Organizations. The Decision fails to
6 consider that all the public comments received by both the Planning Commission and the City
7 Council pertained to the regulations applied to single family houses, not to Community
8 Organizations. Indeed, nonresidential structures were never mentioned in any of the many
9 Planning Commission and City Council meetings held regarding this topic. The City Council
10 never intended to essentially zone Community Organizations out of existence on the Island. The
11 Decision is in error because it failed to consider the totality of the legislative intent regarding the
12 mega-house regulations.
13
14

15 **3. The Department Erred When It Focused Mainly on “Single Family” Policies in the**
16 **Comprehensive Plan and Ignored the Several Policies, Including the City’s Vision**
17 **Statement, That Support Land Use Policies that Would Allow Community**
18 **Organizations to Rebuild.**

19 3.1 The following are Comprehensive Plan policies that the Department failed to cite or consider
20 when it issued the Decision. This failure to do so ignores the clear intent of the Comprehensive
21 Plan to maintain and encourage Community Organizations within single-family zones:

- 22 • Residential Community. Mercer Island is principally a single-family residential
23 community, supported by healthy schools, religious institutions, and recreational clubs.
24 (*Comp. Plan, Sec. 1.II, Vision Statement/Community Values*).
- 25 • Education. The community and its public and private institutions are committed to
26 provide excellence in education. (*Id.*)
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- 1 • Sustainable Community. Mercer Island strives to be a sustainable community: Meeting
2 the needs of the present while preserving the ability of future generations to meet their
3 own needs. We consider the relationship between the decision we make as a community
4 and their long-term impacts before committing to them. We understand that our strength
5 is dependent on an open and transparent decision-making process that takes into account
6 the economic, environmental, and social well-being of our community. (*Id.*)
- 8 • Civic, recreation, education and religious organizations are important and integral
9 elements of the community character and fabric. Their contribution and importance to
10 the established community character should be reflected in land use permit processes
11 (*Comprehensive Plan, Sec. 1.III, Vision Statement/How Values are Manifested*).
- 13 • Single family residential zoning accounts for 88% of the Island’s land use...Many of the
14 remaining public buildings, schools, recreational facilities and places of religious
15 worship are located in residential or public zones. (*Comp. Plan., Sec 2.I, Land Use*
16 *Element, Introduction*).
- 18 • Goal 15.4: As a primarily single family residential community...the community cannot
19 provide for all types of land uses. Certain activities will be considered incompatible with
20 present uses...including landfills, correctional facilities, zoos and airports. Compatible
21 permitted uses such as education, recreation, open space, government social services and
22 religious activities will be encouraged. (*Comp Plan, Sec. 2.V, Land Use Policies*)
- 24 • Goal 17: With the exception of allowing residential development, commercial
25 designations and permitted uses under current zoning will not change. (*Id.*)

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- 1 • Goal 17.4: Social and recreation clubs, schools, and religious institutions are
2 predominantly located in single family residential areas of the island. Development
3 regulation should reflect the desire to retain viable and healthy social, recreational,
4 educations, and religious organizations as community assets which are essential for the
5 mental, physical, and spiritual health of Mercer Island. (*Id.*)
6
- 7 • Goal 20: Continue to maintain the Island’s unique quality of life through open space
8 preservation, park and trail development and well-designed public facilities. (*Id.*)
9
- 10 • Goal 20.4: Future land use decisions should encourage the retention of private club
11 recreational facilities as important community assets. (*Id.*)
- 12 • Goal 20.5: Provide recreation and leisure time programs and facilities that afford equal
13 opportunities for use by all Mercer Island residents while considering the needs of non-
14 Mercer Island residents. (*Id.*)
- 15 • Single Family Residential Code Designation: The single-family residential land use
16 designation (R) represents areas within Mercer Island where development will be
17 predominantly single-family residential neighborhoods. Complementary land uses (e.g.,
18 private recreation areas, schools, home businesses, public parks, etc.) are generally
19 supported within this land use designation (*Comp Plan, Sec. 2.VII., Land Use*
20 *Designations*)
21
22

23 **4. The Department Erred When It Failed To Disclose the True Impact of the** 24 **Interpretation.**

25 The Department characterizes the impact of the interpretation as only “clarifying” the MICC
26 to the effect that nonresidential structures in single family zones cannot obtain variances other
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1 than from impervious surface calculations. This characterization ignores the devastating effect of
2 this interpretation on Community Organizations and ultimately the essence of Mercer Island
3 community which will dissolve without healthy support for the organizations that bind Mercer
4 Island residents as an extremely close-knit community. Following this interpretation,
5 Community Organizations, most of which are contained within aging buildings constructed 50-
6 60 years ago, are limited to remodels within their walls. These remodels will trigger required
7 building, ADA, seismic, and energy code upgrades, many of which cannot be accomplished
8 without expansions and excessively expensive adaptations, again to the misfortune of non-profit
9 organizations. Because most Community Organizations in single family zones exceed the
10 maximum square footage limit (that was intended to apply to single family houses), no
11 expansions of structures can occur. The interpretation leaves Community Organizations in a
12 Catch-22 that cannot be avoided without the ability to obtain a variance from maximum square
13 footage limitations. Community Organizations must grow, rebuild, and reinvent themselves to
14 adjust to changing needs, and the Decision prevents this. The Decision fails to acknowledge that
15 an inability to remodel buildings will lead to buildings becoming obsolete, Community
16 Organizations leaving the Island, and ultimately Islanders spending more time off-island, where
17 stronger relationships will deepen other communities, while diluting that on Mercer Island. The
18 true impact of this Decision is a destabilization of the community fabric of Mercer Island,
19 undermining one of the things that makes the Island special. The Department failed to disclose
20 this impact within its Decision.

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25 **5. The Department Erred When It Failed to Consider the Longstanding Practice of**
26 **Community Organizations Seeking Variances on Mercer Island.**

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1 The Department states that it is unaware of any organization that has obtained a variance
2 since the single-family code was amended in 2017. We believe this is a true statement.
3 However, this limited statement ignores the longstanding history of Community Organizations
4 seeking variances from the single-family zoning criteria on Mercer Island. Every single
5 Community Organization located in a single-family zone that was built after the City’s
6 incorporation/Development Code obtained a variance from the single-family code standards.
7 There is no evidence that the intent of the City Council was to change this longstanding practice.
8 The Decision erred when it failed to consider variances as a longstanding practice applied to
9 Community Organizations on Mercer Island.
10

11 **6. The Department Erred When It Ignores Well-Established Canons of Statutory**
12 **Construction and Case Law Regarding Statutory Construction.**
13

14 6.1 The Department cites several pieces of case law referring to canons of statutory
15 construction in defense of the Decision. However, the Department selectively cites to case law
16 and canons. This is an error. Specifically, statutes are read together whenever possible “to
17 achieve a harmonious total statutory scheme...which maintains the integrity of the respective
18 statutes.” *City of Seattle v. Kopperdahl*, 22 Wn. App. 2d 708, 712, 513 P.3d 319 (2022). In the
19 past, there was an “inflexible rule” that this court could not “read into a statute that which it may
20 believe the legislature has omitted, be it an intentional or an inadvertent omission.” *State v.*
21 *Taylor*, 97 Wn.2d 724, 728, 649 P.2d 633 (1982) (quoting *Jenkins v. Bellingham Mun. Court*, 95
22 Wn.2d 574, 579, 627 P.2d 1316 (1981)). But application of this rule sometimes
23 allowed absurd results that violated another basic tenet
24 of statutory construction avoid absurd results. *See State v. Burke*, 92 Wn.2d 474, 478, 598 P.2d
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1 395 (1979) (ruling that “[i]t is an established rule
2 of statutory construction that absurd results should be avoided”). Our Supreme Court thus
3 created a narrow exception regarding deficient legislation. In *Taylor*, our Supreme Court
4 recognized three categories of cases involving deficient legislation. 97 Wn.2d at 729, 649 P.2d
5 633. In the first, the statute contains an omission or mistake, but the court can discern a rational
6 basis for the literal language. *Taylor*, 97 Wn.2d at 729, 649 P.2d 633. In the second, a legislative
7 omission creates inconsistencies curtailing the statute's effectiveness but the omitted language is
8 not necessary to read the statute rationally. *Taylor*, 97 Wn.2d at 729, 649 P.2d 633. In the third,
9 the legislature's error renders the plain reading of the statute absurd or undermines its
10 purposes. *Taylor*, 97 Wash.2d at 730, 649 P.2d 633. Our Supreme Court ruled that courts may
11 modify a statute only in cases falling within the third category and only if doing so is
12 “imperatively required to make [the statute] rational.” *Taylor*, 97 Wn.2d at 729, 649 P.2d 633
13 (quoting *McKay v. Dep't of Labor & Indus.*, 180 Wn. 191, 194, 39 P.2d 997 (1934)).

16 6.2. The Department erred when it stated to ignore the single-family house hardship criterion
17 would render language “superfluous.” However, we do not suggest that this language be
18 ignored; quite the opposite. We believe this language was intended to apply to only the
19 structures it was intended by the City Council to apply—single family mega-homes. Applying
20 the single-family hardship criterion to only these types of structures does not render the language
21 superfluous.

24 6.3 The Department erred when it ignored case law precedent that favors the continuation of
25 nonconforming uses. Community Organizations being able to remodel and rebuild and
26 rearrange is exactly the type of reasonable property enhancement encouraged by the

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1 Comprehensive Plan Policies and authorized by Washington law on nonconforming uses. *Keller*
2 *v. City of Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979) (citing *Jahnigen v. Staley*, 245
3 Md.2d 130, 137, 225 A.2d 227 (1967)). The Decision ignores this important court-set
4 precedent.

5
6 6.4 The Department erred when it did not cite to the findings and purposes section of
7 Ordinance 17C-15, which passed the mega-house regulations. This section states: “WHEREAS,
8 the Mercer Island City Council determined that amendments to the development regulations
9 were necessary to ensure that residential development was occurring consistent with the
10 provisions of the Mercer Island Comprehensive Plan; and...” *Ordinance 17C-15, p. 1., See*
11 *Exhibit C*. The plain language of the purpose statement of the Ordinance clearly only applies to
12 residential development, not nonresidential development. Further bolstering this statement of
13 legislative intent is Section 4 of the Ordinance, which states in part: “This section shall apply to
14 all building and other construction permits associated with single family development received
15 on or after the effective date of this ordinance.” *Id., p. 2*. The clear intent of the ordinance is
16 stated by the drafters (CITE). The Department’s finding regarding statutory construction is in
17 error.
18
19

20 V. RELIEF REQUESTED

21 Appellant requests that the Hearing Examiner: (1) reverse the Interpretation Decision;
22 and (2) determine that nonresidential structures in single family zones can meet the hardship
23 criterion for all development standards due to the fact that the hardship provision was intended
24 only to apply to single family structures; and (3) and grant such other relief as the Hearing
25 Examiner deems just and proper.
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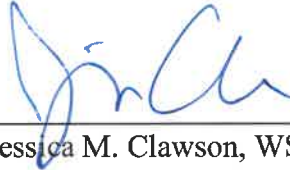
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1 DATED this 5th day of December, 2022

2 MCCULLOUGH HILL LEARY, P.S.

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4 By:



5 _____
6 Jessica M. Clawson, WSBA #36901
7 Attorneys for Appellant
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EXHIBIT A

**Development Code Interpretation
22-004**

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

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TO: CPD Staff

FROM: Jeff Thomas, Interim CPD Director

DATE: November 21, 2022

RE: Variances for Non-Residential Structures in Residential Zones

A. MICC SECTION(S) INTERPRETED

MICC 19.06.110(B)

B. AUTHORITY

This development code interpretation is issued under the authority of sections 19.15.030 and 19.15.160 of the Mercer Island City Code (MICC).

C. ISSUE

MICC 19.06.110(B), *Variances*, imposes a hardship criterion that requires applicants requesting variances in residential zones to demonstrate that strict enforcement of Title 19 MICC will prevent the construction of a single-family dwelling on a legally created residentially zoned lot. MICC 19.06.110(B)(2)(a).

Can the City grant a variance from numeric standards for a non-residential structure sited in a residential zone, if under MICC 19.06.110(B)(1), all criteria in subsection(B)(2)(a) through (B)(2)(h) must be met, and that for a variance to lot coverage standards, the criteria in subsection (B)(2)(a) through (B)(2)(i) must be met?

D. BACKGROUND

The hardship criterion contained in MICC 19.06.110(B)(2)(a) was adopted by Ordinance No. 17C-15 on September 19, 2017. The criterion contained in MICC 19.06.110(B)(2)(i), relating to variances as to lot coverage for specific non-residential structures, existed in the MICC prior to the adoption of Ordinance No. 17C-15. However, that language was moved to MICC 19.06.110(B)(2)(i) within Ordinance No. 17C-15 to consolidate criteria relating to variances.

E. FINDINGS

1. Per MICC 19.15.160, the Code Official may issue a written interpretation of the meaning or application of provisions of the development code.¹
2. This written interpretation is intended to interpret the scope of the hardship criteria as applied to non-residential structures in residential zones.
3. MICC 19.06.110(B)(1)(a) could be read to foreclose variances from numeric standards for non-residential structures in residential zones because the hardship criterion limits the application of variances to instances where strict application of Title 19 would prohibit construction of one single family residence on a legally created residential lot. The applicant or property owner of a non-residential structure would not be able to demonstrate an unnecessary hardship because there are no circumstances where the adopted standards of Title 19 MICC are preventing construction of a single-family dwelling; rather the applicant or property owner is seeking a variance for a non-residential structure. It is not Title 19 that would preclude the construction of a residential structure, but rather the choice of the applicant or property owner. However, MICC 19.06.110(B)(2)(i) explicitly affords the applicant or property owner of a non-residential structure the opportunity for a variance from impervious surface standards for particular types of non-residential structures.
4. This apparent conflict within MICC 19.06.110(B) requires interpretation to administer.
5. A plain reading of MICC 19.06.110(B), giving meaning to all of the text within that section, results in the following conclusions:
 - a. Non-residential structures in residential zones are generally precluded from receiving variances from numeric standards of Title 19, because they cannot meet the hardship criterion—to wit, they cannot demonstrate that Title 19 prevents the construction of a single-family dwelling on a legally created residential lot.
 - b. The one exception is that certain enumerated non-residential structures (public and private schools, religious institutions, private clubs, and public facilities) within residential zones with slopes of less than 15 percent *can* receive a variance to increase impervious surface to a maximum of 60 percent if the Hearing Examiner determines the applicant has demonstrated satisfaction of the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv).
 - c. Further, an applicant or property owner would also be required to demonstrate the other criteria outlined in subsection (B)(2)(a) through (B)(2)(i), with the exception of being able to demonstrate inability to construct a single-family residence on a legally created residential lot. The applicant or property owner would still have to demonstrate an unnecessary hardship to the property owner, because the first sentence of MICC 19.06.110(B)(2)(a) requires proof that “[t]he strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner.”
6. As discussed further below, the legislative history relating to Ordinance No. 17C-15 supports this conclusion. During the process of adopting Ordinance No. 17C-15, discussion between the City Council and the City’s then Community Planning and Development (CPD) Director reflected an intent to greatly reduce the number of variances granted, which was the impetus behind adding the hardship criterion now contained in MICC 19.06.110(B)(2)(a).
7. In issuing an interpretation, the Code Official is directed to consider eight factors specified in MICC 19.15.160(A). These factors are:

(1.) The plain language of the code section in question;

Analysis: A reading of the plain language of MICC 19.06.110 results in the following findings:

¹ Under the MICC, variances are granted by the Hearing Examiner. MICC 19.15.030 and Tables A-B.

- i. MICC 19.06.110(B), *Variances*, imposes a hardship criterion; an applicant or owner applying for variance must show that strict enforcement of Title 19 will create an unnecessary hardship to the property owner. MICC 19.06.110(B)(2)(a). For properties in residential zones, “unnecessary hardship” is limited to those circumstances where the adopted standards of Title 19 MICC prevent the construction of a single-family dwelling on a legally created residential zoned lot. *Id.*
- ii. However, MICC 19.06.110(B)(2) also includes a criterion for variances to impervious surface standards for “[p]ublic and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent.” MICC 19.06.110(B)(2)(i).
- iii. MICC 19.06.110(B)(1) further provides: “[a] variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(2)(a) through (B)(2)(h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (B)(2)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (B)(2)(a) through (B)(2)(i) of this section.”

(2.) Purpose and intent statement of the chapters in question;

Analysis: Chapter 19.06 MICC does not contain a general purpose statement; however, MICC 19.06.110(B)(1) provides a purpose statement for the MICC section in question: “*Purpose.* An applicant or property owner may request a variance from any numeric standard, except for the standards contained within chapter 19.07 MICC. A variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(2)(a) through (B)(2)(h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (B)(2)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (B)(2)(a) through (B)(2)(i) of this section.”

(3.) Legislative intent of the city council provided with the adoption of the code sections in question;

Analysis: Review of the legislative history of MICC 19.06.110(B) results in the following findings:

- i. On September 19, 2017, the Mercer Island City Council adopted Ordinance No. 17C-15, adding the unnecessary hardship criterion currently contained in MICC 19.06.110(B)(2)(a).
- ii. The minutes from the relevant City Council meetings indicate the following:

The July 5, 2017 minutes contains the following discussion:

Variance Criteria:

- Planning Commission Recommendation: prohibit / limit variances to GFA, minimum lot size, height, fence height and staff does not recommend adopting this amendment
- Alternative: Limit variance approvals to those circumstances where a house could not otherwise be built on a legal, residential lot and remove ambiguous language regarding groundcover, trees, physical condition of the lot from “d.”

Council Direction: Staff propose a solution for “flag lots.” Support alternative to limit variance approvals to those circumstances where a house could not otherwise be built on a legal, residential lot and remove ambiguous language regarding groundcover, trees, physical condition of the lot from “d.”

iii. The packet from the July 5, 2017, reading of the later adopted ordinance included the following discussion of the options before City Council with respect to the hardship criterion ultimately added to MICC 19.06.110(B)(2)(a):

Variance Criteria				
Draft Page #	Planning Commission Recommendation	Proposed Amendment	Source	Staff Recommendation / Rationale
17 Page 71 – Variances	Allow for an application for a variance to any numeric standard, except for the standards in Chapter 19.07.	Prohibit the application for a variance to minimum lot area requirements, gross floor area, building height, or lot coverage.	Dan Grausz	Staff does not recommend adopting this amendment. There are some circumstances where allowing for a variance to these standards is appropriate to avoid a regulatory takings. The variance criteria have been revised to limit variances to only those circumstances where a variance is warranted.
		Alternatively, limit variance approvals to those situations where a property owner cannot both comply with existing standards and build a home on a legally created residential lot.		Staff recommends further revising the criteria for approval. In particular, staff recommends limiting variances to situations where a property owner cannot comply with all of the development standards and build a new single family home. This item was discussed by the Planning Commission.

- iv. The discussion between the then CPD Director and City Council regarding the hardship criterion further indicates the intent of restricting variances in residential zones only to those instances where a variance is necessary to permit the construction of a single-family residence on a legally created residential lot.
- v. The Code Official is unaware of any discussion by City Council or other materials regarding the resulting conflict between the language in MICC 19.06.110(B)(2)(a) and the language in MICC 19.06.110(B)(2)(i).

(4.) Policy direction provided by the Mercer Island comprehensive plan;

Analysis: Review of the Comprehensive Plan results in the following findings:

- (1) The Comprehensive Plan envisions Mercer Island as a residential community:
 - (a) “Mercer Island prides itself on being a residential community. As such, most of the Island’s approximately 6.2 square miles of land area is developed with single family homes.” [Land Use Element, Introduction]
 - (b) “Single family residential zoning accounts for 88 percent of the Island’s land use. There are 3,534 acres zoned for single family residential development. This compares to 77 acres in the Town Center zones, 19 acres for Commercial Office zone, and 103 acres in multi-family zones (Table 2). City Hall is located in a Commercial Office zone, while other key civic buildings such as the Post Office and the Main Fire Station are located in the Town Center and City Hall. Many of the remaining public buildings, schools, recreational facilities and places of religious worship are located in residential or public zones.” [Land Use Element, II Existing Conditions and Trends, Areas outside the Town Center]
 - (c) “OUTSIDE THE TOWN CENTER (1) The community needs to accommodate two important planning values — maintaining the existing single family residential character of the Island, while at the same time planning for

population and housing growth.” [Land Use Element, IV. Land Use Issues, Outside the Town Center (1)]

(2) A primary component of the housing element is the City’s desire to protect single-family residential neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. City code provisions were specifically designed to protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character. This includes limiting the size and scope of nonresidential uses to be consistent with existing neighborhood character.

(a) “Housing Element

III. Neighborhood Quality

Mercer Island single family neighborhoods pride themselves on their narrow, quiet streets and dense plantings. The City protects these neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. Parks, open spaces and trails also contribute to the neighborhood quality.” [Housing Element, III. Neighborhood Quality]

(b) “GOAL 1: -

Ensure that single family and multi-family neighborhoods provide safe and attractive living environments, and are compatible in quality, design and intensity with surrounding land uses, traffic patterns, public facilities and sensitive environmental features.

1.1 Ensure that zoning and City code provisions protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character.” [Housing Element, III. Neighborhood Quality, Goal 1.1]

(3) The Comprehensive Plan evidences an intent to retain certain non-residential structures located in residential zones. However, the Comprehensive Plan is silent on whether such structures would be eligible for variances from otherwise applicable numerical standards.

(a) “GOAL 17: -

With the exception of allowing residential development, commercial designations and permitted uses under current zoning will not change.

17.4 Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect the desire to retain viable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island.” [Land Use Elements, IV Land Use Issues Outside the Town Center]

(4) The Comprehensive Plan also evidences an intent to preserve existing conditions and to generally permit changes only through amendments to the development code, rather than through granting numerous of variances to that development code. At the same

time, there is also recognition that some non-residential structures and uses are compatible with residential zones.

(a) "GOAL 15: -

Mercer Island should remain principally a low density, single family residential community.

15.1 Existing land use policies, which strongly support the preservation of existing conditions in the single family residential zones, will continue to apply. Changes to the zoning code or development standards will be accomplished through code amendments.

15.2 Residential densities in single family areas will generally continue to occur at three to five units per acre, commensurate with current zoning. However, some adjustments may be made to allow the development of innovative housing types, such as accessory dwelling units and compact courtyard homes at slightly higher densities as outlined in the Housing Element.

...

15.4 As a primarily single family residential community with a high percentage of developed land, the community cannot provide for all types of land uses. Certain activities will be considered incompatible with present uses. Incompatible uses include landfills, correctional facilities, zoos and airports. Compatible permitted uses such as education, recreation, open spaces, government social services and religious activities will be encouraged." [Land Use Elements, IV Land Use Issues Outside the Town Center].

(5.) Relevant judicial decisions;

Analysis: The Code Official is unaware of any relevant judicial decisions related to this issue. However, the Code Official is aware of several cases regarding code interpretation. Municipal ordinances are subject to the same rules of statutory interpretation as are statutory enactments. *Hassan v. GCA Production Services, Inc.*, 17 Wn.App. 625, 637, 487 P.3d 203 (2021). Additionally, the goal of code interpretation is to give effect to the intentions of the drafters. *Jametsky v. Olsen*, 179 Wash. 2d 756, 762, 317 P.3d 1003, 1006 (2014). Absurd results are to be avoided in construing ambiguous language, although the principle is to be used sparingly. *Seattle Hous. Auth. v. City of Seattle*, 3 Wash. App. 2d 532, 538–39, 416 P.3d 1280, 1283 (2018); *Samish Indian Nation v. Wash. Dep't of Licensing*, 14 Wash.App.2d 437, 444, 471 P.3d 261 (2020). Further, when possible, legislation must be construed so that no clause, sentence, or word is rendered superfluous, void, or insignificant. *Coates v. City of Tacoma*, 11 Wash. App. 2d 688, 695, 457 P.3d 1160, 1164 (2019).

(6.) Consistency with other regulatory requirements governing the same or similar situation;

Analysis: The Code Official is unaware of other regulatory requirements governing the same or similar situations.

(7.) The expected result or effect of the interpretation; and

Analysis: The interpretation will result in clarifying the position of the Code Official in that the MICC prohibits variances from numerical standards for non-residential structures in residential zones, with the sole exception of the specific types of non-residential structures enumerated in MICC 19.06.110(B)(2)(i) from impervious surface standards.

(8.) Previous implementation of the regulatory requirements governing the situation.

Analysis: The Code Official is unaware of any previous implementation of regulatory requirements relating to variances for non-residential structures within residential zones since the addition of the hardship criterion in September 2017.

F. CONCLUSIONS

1. MICC 19.06.110(B) contains conflicting language as to variances for non-residential structures in residential zones. Reconciling this conflict, the Code Official makes the following interpretations:
 - a. The specifically enumerated non-residential structures listed in MICC 19.06.110 (B)(2)(i) are eligible to receive a variance from impervious surface standards if:
 - i. The Hearing Examiner finds that the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv) have been satisfied, and
 - ii. The Hearing Examiner finds compliance with the other criteria enumerated in subsection (B)(2)(a) through (i), including demonstrating an unnecessary hardship, per subsection (B)(2)(a), but disregarding the second sentence of (B)(2)(a) due to the conflict with subsection (B)(2)(i).
 - b. The MICC prohibits other variances from numerical standards for non-residential structures in residential zones.
2. Both conclusions enumerated above are based upon the following:
 - a. It is apparent from the relevant legislative history that City Council’s stated intent was to restrict variances in residential zones only to those circumstances in which construction of a single-family residence upon a legally created residential lot would be prohibited. The Code Official did not find any evidence that City Council was aware of the conflict between MICC 19.06.110(B)(2)(a) and (B)(2)(i).

Because the language regarding variances from impervious surface standards for certain specified non-residential structures in residential zones was also reorganized by City Council to MICC 19.06.110(B) contemporaneously with the creation of the hardship criterion, it is the position of the Code Official that the language in MICC 19.06.110(B)(2)(i) must be also given effect as a narrow exception to the prohibition against variances for non-residential structures in residential zones as put forth in MICC 19.06.110(B)(2)(a). This conclusion is necessary in order to give the fullest effect to the legislative enactment of the City Council.

- b. Utilizing statutory interpretation principles, the Code Official is required to construe the MICC to give the fullest effect to the legislative intent of the City Council, to utilize the principles of avoiding absurd results (but in a sparing manner), and to avoid making code language superfluous, void, or insignificant. Other than variances from impervious surface standards, no other variances for non-residential structures within residential zones are listed in MICC 19.06.110(B)(2).
 - c. There is nothing in the City’s Comprehensive Plan to contradict the conclusions of the Code Official. The Comprehensive Plan prioritizes residential uses while also recognizing certain non-residential uses within residential zones. The interpretation of the Code Official does not prohibit the siting of non-residential structures in residential zones where otherwise permitted, but it does limit the type of variances available for such structures.

G. INTERPRETATION

The specifically enumerated non-residential structures listed in MICC 19.06.110 (B)(2)(i) are eligible to receive a variance from impervious surface standards if the Hearing Examiner determines the application has demonstrated satisfaction of the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv) and the applicant or property owner demonstrates compliance with the other criteria enumerated in subsection (B)(2)(a) through (i), including demonstrating an unnecessary hardship, per subsection (B)(2)(a), but disregarding the conflicting second sentence of (B)(2)(a).

Having not been expressly included in MICC 19.06.110(B)(2), the position of the Code Official is that all other variances from numerical standards for non-residential structures in residential zones are prohibited by MICC 19.06.110(B)(2)(a).

EXHIBIT B

Zoning	Organization	
R-15	1.	New Hope Church
R-8.4	2.	MI Beach Club
R-8.4	3.	Island Synagogue
R-8.4	4.	Mercer Island Craft Guild
R-8.4	5.	JCC
R-8.4	6.	FASPS Land
R-9.6	7.	MSC
R-9.6	8.	MICC
R-9.6	9.	MI Presbyterian Church
R-9.6	10.	Saint Monica's
R-9.6	11.	Holy Trinity Lutheran Church
R-9.6	12.	Mercer Island United Methodist Church
R-9.6	13.	Emmanuel Episcopal
R-9.6	14.	Congregational Church
R-9.6	15.	Redeemer Lutheran Church
R-9.6	16.	Church of JCLDS
R-9.6, B	17.	Herzl
R-9.6	18.	Sunnybeam (Land trusted now?)
R-9.6	19.	Funny Farm (Private farm, Ellisons)
R-15	20.	MI Community & Events Center
R-8.4	21.	NW Yeshiva High School

EXHIBIT C

**CITY OF MERCER ISLAND
ORDINANCE NO. 17C-15**

AN ORDINANCE OF THE CITY OF MERCER ISLAND AMENDING MERCER ISLAND CITY CODE TITLES 8, 17, AND 19 MICC ON RESIDENTIAL DEVELOPMENT STANDARDS; PERMITTING CORRECTION OF SCRIVENER'S ERRORS DURING CODIFICATION; AUTHORIZING ISSUANCE OF INTERPRETATIONS AND RULES TO ADMINISTER THE AMENDED CODE; PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Mercer Island City Code (MICC) establishes development regulations that are intended to result in the implementation of the Mercer Island Comprehensive Plan pursuant to RCW 36.70A.040; and,

WHEREAS, the Mercer Island City Council determined that amendments to the development regulations were necessary to ensure that residential development was occurring consistent with the provisions of the Mercer Island Comprehensive Plan; and,

WHEREAS, the Mercer Island City Council directed the Planning Commission to review the residential development standards and provide a recommendation to the City Council; and,

WHEREAS, the Mercer Island Planning Commission engaged in a thorough review of the residential development standards, hosted three community meetings, held public hearings on April 5, 2017 and June 12, 2017, reviewed myriad written comments from the public, and held 14 public meetings to consider amendments to the residential development standards; and,

WHEREAS, the Mercer Island Planning Commission has unanimously recommended adoption of the proposed amendments to the residential development standards; and,

WHEREAS, the Mercer Island Comprehensive Plan Land Use Element and Housing Element establish numerous goals and policies that are implemented through the adoption of revised residential development standards; and,

WHEREAS, a SEPA Determination of Non Significance was issued by the City on March 20, 2017; and,

WHEREAS, the Washington Department of Commerce granted expedited review of the proposed amendments to the development regulations on April 20, 2017;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: **Adoption of Amendments to Titles 8, 17, and 19 of the Mercer Island City Code.**
The amendments to the Mercer Island City Code as set forth in Attachment "A" to this ordinance are hereby adopted.

Section 2: **Codification and Effective Date of the Regulations.** The City Council authorizes the Development Services Group Director and the City Clerk to correct errors in Attachment A, codify the regulatory provisions of the amendments into Titles 8, 17, and 19 of the Mercer Island City Code, and publish the amended code. Notwithstanding the effective

date of this Ordinance set forth in Section 7, the effective date of the regulatory provisions in Attachment A shall be on and after November 1, 2017.

- Section 3:** **Excluding Residential Building and Construction Permits from Consolidated Review.** Pursuant to the Revised Code of Washington (RCW) 36.70B.140, the City Council hereby excludes building and other construction permits associated with single family development of a preliminary short subdivision or preliminary long subdivision from consolidated permit review. This section shall apply to all building and other construction permits associated with single family development of a preliminary short subdivision or preliminary long subdivision received on or after the effective date of this ordinance.
- Section 4:** **Land Use Approval Required.** An existing lot shall be a condition precedent for determination of complete application for a building and other construction permit associated with single family home development. This section shall apply to all building and other construction permits associated with single family development received on or after the effective date of this ordinance.
- Section 5:** **Interpretation.** The City Council authorizes the Development Services Group Director to adopt administrative rules, interpret, and administer the amended code as necessary to implement the legislative intent of the City Council.
- Section 6:** **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.
- Section 7:** **Publication and Effective Date.** A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall take effect and be in full force five days after the date of publication.

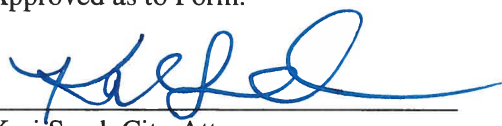
PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 19th day of September 2017 and signed in authentication of its passage.

CITY OF MERCER ISLAND



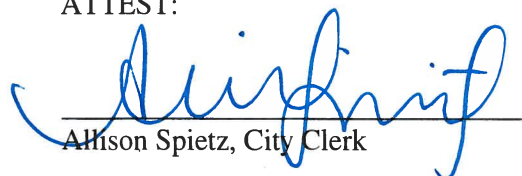
Bruce Bassett, Mayor

Approved as to Form:



Kari Sand, City Attorney

ATTEST:



Allison Spietz, City Clerk

Date of Publication: 9/27/2017

**CITY COUNCIL REVIEW DRAFT
City Council Adopted Version
Zoning Text Amendments
Residential Development Standards**

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NUISANCE CONTROL CODE

8.24.020 Types of nuisances

CONSTRUCTION ADMINISTRATIVE CODE

17.14.010 Adoption

GENERAL PROVISIONS

19.01.050 Nonconforming structures, sites, lots and uses.

19.01.070 Variance and deviation procedures.

RESIDENTIAL

19.02.010 Single-family.

19.02.020 Lot requirements.

19.02.030 Accessory dwelling units.

19.02.040 Garages and other accessory buildings.

19.02.050 Fences, retaining walls and rockeries.

SUBDIVISIONS

19.08.020 Application procedures and requirements.

19.08.030 Design standards.

19.08.040 Plat improvements.

19.08.050 Final plats.

PROPERTY DEVELOPMENT

19.09.090 Building pad.

19.09.100 Preferred practices.

TREES

19.10.005 Purpose.

19.10.010 Tree code – overview.

19.10.020 Applicability and permit required.

19.10.030 Exemptions.

19.10.040 General provisions.

19.10.050 Tree removal – Not associated with development proposal.

19.10.060 Tree retention associated with development proposal.

19.10.070 Tree replacement.

19.10.080 Tree protection standards.

19.10.090 Application requirements.

19.10.100 Trees on public property.

- 1 19.10.110 Seasonal development limitations
- 2 19.10.120 Rounding.
- 3 19.10.130 Bald eagles and other federal and state requirements.
- 4 19.10.140 Nuisance abatement.
- 5 19.10.150 Appeals.
- 6 19.10.160 Enforcement.

7
8 ADMINISTRATION

- 9 19.15.010 General procedures.
- 10 19.15.020 Permit review procedures.

11
12 DEFINITIONS

- 13 19.16.010 Definitions.

14
15 "Normal Text" is existing code language
16 "~~Strikethrough Text~~" is existing code language that will be deleted
17 "Underline Text" is new code language that will be added
18 "... " represents that existing code language is omitted and will not be amended
19
20

1 Chapter 8.24
2 NUISANCE CONTROL CODE
3

4 **8.24.020 Types of nuisances.**

5 Each of the following conditions, actions or activities, unless otherwise permitted by law, is declared to
6 constitute a public nuisance, and is subject to criminal enforcement and penalties as provided in this
7 chapter. In addition, or in the alternative, whenever the enforcement officer determines that any of
8 these conditions, actions or activities exist upon any premises or in any lake, river, stream, drainage way
9 or wetlands, the officer may require or provide for the abatement thereof pursuant to this chapter:

10 ...

11 ~~Q. Production of any of the following sounds or noises between the hours of 10 pm to 7 am on Mondays~~
12 ~~through Fridays, excluding legal holidays, and between the hours of 10 pm and 9 am on Saturdays and~~
13 ~~Sundays and legal holidays, except in the cases of bona fide emergency or under permit from the city~~
14 ~~building department in case of demonstrated necessity:~~

- 15 ~~1. Sounds caused by the construction or repair of any building or structure,~~
- 16 ~~2. Sounds caused by construction, maintenance, repair, clearing or landscaping,~~
- 17 ~~3. Sounds created by the installation or repair of utility services,~~
- 18 ~~4. Sounds created by construction equipment including special construction vehicles.~~

19 ~~It is intended that the sounds described in this subsection refer to sounds heard beyond the property~~
20 ~~line of the source;~~

21 Q. Sounds.

22 A. Sounds regulated by this section:

- 23 1. The intent of this section is to regulate sounds heard beyond the property line of
24 the source;
- 25 2. The following sounds are explicitly regulated by this section:
 - 26 a. Sounds caused by the construction or repair of any building or structure;
 - 27 b. Sounds caused by construction, maintenance, repair, clearing or
28 landscaping;
 - 29 c. Sounds created by the installation or repair of utility services; and
 - 30 d. Sounds created by construction equipment including special construction
31 vehicles.

32 B. Sounds related to activity authorized by a permit from the City of Mercer Island are limited
33 as follows:

- 34 1. Sounds shall only be allowed between the hours of 7am to 7pm on Mondays
35 through Fridays, and between the hours of 9am and 6pm on Saturdays.
- 36 2. Sounds shall be prohibited at any time of day on Sunday and legal holidays.

37 C. Sounds related to activity that does not require a permit from the City of Mercer Island shall
38 only be allowed between the hours of 7am to 8pm on Mondays through Fridays, and
39 between the hours of 9am and 8pm on Saturdays, Sundays, and legal holidays.

40 D. The enforcement officer may authorize a variance to this section pursuant to Chapter 173-
41 60 of the Washington Administrative Code (WAC).

1 Chapter 17.14
2 CONSTRUCTION ADMINISTRATIVE CODE

3
4 **17.14.010 Adoption.**

5 The Construction Administrative Code is hereby adopted as follows:

6 ...

7 105.5 Expiration.

8
9 1. Every permit issued shall expire two years from the date of issuance. For non-residential or
10 mixed use construction, ~~the~~ building official may approve a request for an extended expiration
11 date where a construction schedule is provided by the applicant and approved prior to permit
12 issuance.

13
14 2. The building official may approve a request to renew a permit if an additional fee has been
15 paid, a construction schedule and management plan is provided and approved, and no changes
16 have been made to the originally approved plans by the applicant. Every permit that has been
17 expired for one year or less may be renewed for a period of one year for an additional fee as
18 long as no changes have been made to the originally approved plans. Requests for permit
19 renewals shall be submitted prior to permit expiration. When determining whether to approve
20 a building permit renewal, the building official may consider whether a previously approved
21 construction schedule for the building permit has been adhered to by the applicant. In cases
22 where a construction schedule has not been adhered to, due to reasonably unforeseeable
23 delays, the building official may authorize renewal of the permit. Renewed permits shall expire
24 3 years from the date of issuance of the original permit. The building official shall not authorize
25 a permit renewal if the construction schedule supplied with the renewal request will not result
26 in the completion of work within the time period authorized under the permit renewal. For
27 permits that have been expired for longer than one year, a new permit must be obtained and
28 new fees paid. No permit shall be renewed more than once.

29
30 3. Electrical, mechanical and plumbing permits shall expire at the same time as the associated
31 building permit except that if no associated building permit is issued, the electrical, mechanical
32 and/or plumbing permit shall expire 180 days from issuance.

33
34 4. The building official may authorize a 30-day extension to an expired permit for the purpose of
35 performing a final inspection and closing out the permit as long as not more than 180 days has
36 passed since the permit expired. The 30-day extension would commence on the date of written
37 approval. If work required under a final inspection is not completed within the 30-day extension
38 period, the permit shall expire. However, the building official may authorize an additional 30-
39 day extension if conditions outside of the applicant's control exist and the applicant is making a
40 good faith effort to complete the permitted work.

41
42 ...

43 105.6 Construction management plan and construction schedule.

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1. Every permit issued for the construction of a new single family home with a gross floor area of more than 6,000 square feet, or as required for a permit renewal under section 105, shall provide a construction management plan and a construction schedule for approval by the building official.
2. Every permit issued for the remodel or addition to a single family home that will result in the modification of more than 6,000 square feet gross floor area, or the addition of more than 3,000 square feet gross floor area, or as required for a permit renewal under section 105, shall provide a construction management plan and a construction schedule for approval by the building official.
3. The construction management plan shall include measures to mitigate impacts resulting from construction noise, deliveries and trucking, dust / dirt, use of the street for construction related staging and parking, off-site parking, and haul routes. The building official may require additional information as needed to identify and establish appropriate mitigation measures for construction related impacts.
4. The construction schedule shall identify major milestones, anticipated future phases, and anticipated completion dates. The construction schedule shall establish a timeline for completion of exterior and interior building related construction activity and site work. The construction schedule shall incorporate appropriate measures to address unforeseeable delays and shall provide for contingencies. The building official may require additional information or revisions to the construction schedule.
5. The building official is authorized to take corrective measures as needed to ensure adherence to the approved construction management plan and construction schedule.

1 Chapter 19.01
2 GENERAL PROVISIONS

3
4 ...

5
6 **19.01.050 Nonconforming structures, sites, lots and uses.**

7
8 A. General.

9
10 ...

11
12 7. Deviations. Existing structures and sites resulting from the approval of a previous deviation shall be considered "conforming" structures or sites, provided the structure or site complies with the deviation approval. Structures and sites resulting from a prior deviation approval are not subject to the provisions of Chapter 19.01 MICC

13
14
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16
17
18 B. Repairs and Maintenance.

19
20 1. Ordinary Repairs and Maintenance. Ordinary repairs and maintenance of a legally
21 nonconforming structure are permitted. In no event may any repair or maintenance result in the
22 expansion of any existing nonconformity or the creation of any new nonconformity.

23
24 2. Decks. Repair and maintenance of a legally nonconforming deck, including total replacement,
25 is allowed, as long as there is no increase in the legal nonconformity and no new
26 nonconformances are created; provided, ~~in the R-8.4 zone,~~ any portion of a nonconforming deck
27 that is in a side yard and less than five feet from an interior lot line may be replaced only if the
28 deck is reconstructed to comply with current minimum side yard requirements.

29
30 ...

31
32 F. Nonconforming Sites.

33
34 1. Impervious Surface Coverage Limitation. A structure on a site that is legally nonconforming
35 because the maximum allowable surface coverage has been exceeded can be increased in
36 height and gross floor area (up to the maximum ~~height~~ permitted). No new impervious surfaces
37 are permitted outside the footprint of an existing structure unless the site is either brought into
38 conformance with all applicable impervious surface limitations or two square feet of legally
39 existing impervious surface is removed for every one square foot of new impervious surface.

40
41 2. Parking Requirements. These parking requirements apply to subsections (F)(2)(a) and (c) of
42 this section in the event of an intentional exterior alteration or enlargement, but do not apply in
43 the event of reconstruction following a catastrophic loss. In the event of catastrophic loss,
44 nonconforming parking may be restored to its previous legally nonconforming configuration.

1
2 a. Detached Single-family Dwelling Site. A proposed addition of more than 500 square
3 feet of gross floor area to a detached single-family dwelling site, which ~~that~~ is legally
4 nonconforming because it does not provide the number and type of parking spaces
5 required by current code provisions, shall provide parking spaces as provided by MICC
6 19.02.020(GE)(1).

7
8 b. Town Center. A structure in the Town Center that is legally nonconforming because it
9 does not provide the number and type of parking spaces required by current code
10 provisions shall provide parking spaces as required by MICC 19.11.130(B)(1)(a) and
11 subsections (1)(1) and (2) of this section, as applicable.

12
13 c. Sites Other Than for a Detached Single-Family Dwelling or in Town Center.

14
15 i. New Development and Remodels. A site other than those identified in
16 subsections (F)(2)(a) and (b) of this section that is legally nonconforming
17 because it does not provide the number or type of parking spaces required by
18 current code provisions shall provide parking spaces as required by the current
19 code provisions for the zone where the site is situated for all new development
20 and remodels greater than 10 percent of the existing gross floor area.

21
22 ii. Change of Use. A site other than those identified in subsection (F)(2)(a) and
23 (b) of this section that is legally nonconforming because it does not provide the
24 number or type of parking spaces required by current code provisions shall
25 provide parking spaces as required by the current code provisions for the zone
26 where the site is situated whenever there is a change of use.

27
28 3. Landscaping, Open Space and Buffer Requirements.

29 a. Regulated improvements. A site developed with a regulated improvement shall be
30 brought into conformance with current code requirements for landscaping, open space
31 and buffers. A site's landscaping, open space and buffers shall be brought into
32 conformance with current code requirements whenever a structure or use on the site
33 loses its legal nonconforming status. Landscaping, open spaces and buffers should be
34 brought into conformance with current code requirements as much as is feasible
35 whenever any changes are made to a legal nonconforming structure.

36 b. Lot Coverage – Single Family Dwellings. A site developed with a single family dwelling
37 that is legally nonconforming because the required landscaping area pursuant to
38 Chapter 19.02 MICC has not been provided, or because maximum allowable hardscape
39 has been exceeded, can be increased in height and gross floor area (up to the maximum
40 height and gross floor area permitted). No new hardscape or further reduction in
41 landscaping area is permitted unless:

42 i) The site is either brought into conformance with all applicable lot coverage
43 requirements of MICC 19.02.020; or,

1 ii) For lots where the minimum hardscape is exceeded, two square feet of
2 legally existing hardscape is removed for every one square foot of new
3 hardscape; or,

4 iii) For lots where the maximum lot coverage is exceeded, two square feet of
5 landscaping area is provided for every one square feet of additional non-
6 landscaping area.

7
8 ...

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10
11 **~~19.01.070 Variance and deviation procedures.~~**

12 ~~An applicant for a permit under this development code may request a variance or deviation from those~~
13 ~~numeric standards set out in the code that are applicable to the permit. The applicant shall make such a~~
14 ~~request to the official or body designated in MICC 19.15.010 (E).~~

15
16 **~~A. Variance.~~**

17
18 ~~1. An applicant may request a variance from any numeric standard applicable to the permit or~~
19 ~~from any other standard that has been specifically designated as being subject to a variance.~~

20
21 ~~2. A variance may be granted if the applicant demonstrates that the criteria set out in MICC~~
22 ~~19.15.020(G)(4), and any additional variance criteria set out in the code section under which the~~
23 ~~permit would be issued, are satisfied.~~

24
25 **~~B. Deviation.~~**

26 ~~1. An applicant may request a deviation only from those numeric standards that have been~~
27 ~~specifically designated as being subject to a deviation.~~

28 ~~2. A deviation may be granted if the applicant demonstrates that the criteria set out in MICC~~
29 ~~19.15.020(G)(5), and any additional deviation criteria set out in the code section under which~~
30 ~~the permit would be issued, are satisfied.~~

1 Chapter 19.02
2 RESIDENTIAL

3
4 **19.02.005 Purpose and applicability.**

5 A. Purpose. The purpose of the residential chapter is to identify land uses and to establish development
6 standards that are appropriate within the residential zoning designations. The development standards
7 provide a framework for a site to be developed consistent with the policy direction of the adopted
8 Mercer Island Comprehensive Plan.

9
10 **B. Applicability.**

- 11 1. The provisions of this chapter shall apply to all development proposals in the R-8.4, R-9.6, R-
12 12, and R-15 zoning designations.
- 13 2. Unless otherwise indicated in this chapter, the applicant shall be responsible for the
14 initiation, preparation, and submission of all required plans or other documents prepared in
15 support of or necessary to obtain a permit and to determine compliance with this chapter.

16
17 **19.02.010 Single-family.**

18
19 ...

20
21 ~~D. Building Height Limit. No building shall exceed 30 feet in height above the average building elevation~~
22 ~~to the top of the structure except that on the downhill side of a sloping lot the building may extend to a~~
23 ~~height of 35 feet measured from existing grade to the top of the exterior wall facade supporting the roof~~
24 ~~framing, rafters, trusses, etc.; provided, the roof ridge does not exceed 30 feet in height above the~~
25 ~~average building elevation. Antennas, lightning rods, plumbing stacks, flagpoles, electrical service leads,~~
26 ~~chimneys and fireplaces and other similar appurtenances may extend to a maximum of five feet above~~
27 ~~the height allowed for the main structure.~~

28
29 The formula for calculating average building elevation is as follows:

30
31 **Formula:**

32
33 ~~Average Building Elevation = (Mid-point Elevation of Individual Wall Segment) x (Length of Individual~~
34 ~~Wall Segment) ÷ (Total Length of Wall Segments)~~

35
36 ~~See Appendix G, Calculating Average Building Elevation.~~

37
38 **E. Gross Floor Area.**

- 39
40 1. The gross floor area of a single-family structure shall not exceed 45 percent of the lot
41 area.

1 ~~2. Lots created in a subdivision through MICC 19.08.030(G), Optional Standards for~~
2 ~~Development, may apply the square footage from the open space tract to the lot area not to~~
3 ~~exceed the minimum square footage of the zone in which the lot is located.~~

4
5
6 **19.02.020 Lot requirementsDevelopment Standards.**

7 A. Minimum Net Lot Area.

8
9 R-8.4: The net lot area shall be at least 8,400 square feet. Lot
10 width shall be at least 60 feet and lot depth shall be at
11 least 80 feet.

12
13 R-9.6: The net lot area shall be at least 9,600 square feet. Lot
14 width shall be at least 75 feet and lot depth shall be at
15 least 80 feet.

16
17 R-12: The net lot area shall be at least 12,000 square feet. Lot
18 width shall be at least 75 feet and lot depth shall be at
19 least 80 feet.

20
21 R-15: The net lot area shall be at least 15,000 square feet. Lot
22 width shall be at least 90 feet and lot depth shall be at
23 least 80 feet.

24
25 1. Minimum net lot area requirements do not apply to any lot that came into existence before
26 September 28, 1960; ~~however structures may be erected on the lot only if those structures~~
27 ~~comply with all other restrictions governing the zone in which the lot is located.~~ In order to be
28 used as a building site, lots that do not meet minimum net lot area requirements shall comply
29 with MICC 19.01.050(G)(3).

30
31 2. In determining whether a lot complies with the minimum net lot area requirements, the
32 following shall be excluded: the area between lateral lines of any such lot and any part of such
33 lot which is part of a street.

34
35 B. Street Frontage. No building will be permitted on a lot that does not front onto a street acceptable to
36 the city as substantially complying with the standards established for streets.

37
38 C. Yard Requirements.

39
40 1. Minimum. Except as otherwise provided in this section, each lot shall have front, rear, and
41 side yards not less than the depths or widths following:

42
43 a. Front yard depth: 20 feet or more.
44

1 b. Rear yard depth: 25 feet or more.
2

3 c. Side yards shall be provided as follows:

4 i. Total depth:

5 (1) For lots with a lot width of 90 feet or less, the sum of the side yards
6 depth shall be at least 15 feet.

7 (2) For lots with a lot width of more than 90 feet, the sum of the side
8 yards depth shall be a width that is equal to at least 17 percent of the
9 lot width.

10 ii. Minimum side yard depth:

11 (1) The minimum side yard depth abutting an interior lot line is 5 feet
12 or 33% of the aggregate side yard total depth, whichever is greater.

13 (2) The minimum side yard depth abutting a street is 5 feet.

14 iii. Variable side yard depth requirement: For lots with an area of 6,000 square
15 feet or more, the minimum side yard depth abutting an interior lot line shall be
16 the greater of the minimum side yard depth required under subsection "ii."
17 above, or as follows:

18 (1) Single family dwellings shall provide a minimum side yard depth of
19 7.5 feet if the building:

20 a. For non-gabled roof end buildings, the height is more than
21 15 feet measured from existing or finished grade, whichever
22 is lower, to the top of the exterior wall facade adjoining the
23 side yard, or;

24 b. For gabled roof end buildings, the height is more than 18
25 feet measured from existing or finished grade, whichever is
26 lower, to the top of the gabled roof end adjoining the side
27 yard.

28 (2) Single family dwellings with a height of more than 25 feet measured
29 from the finished grade to the top of the exterior wall facade
30 adjoining the side yard, shall provide a minimum side yard depth of
31 10 feet.

32
33 ~~depth: The sum of the side yards shall be at least 15 feet; provided, no side yard~~
34 ~~abutting an interior lot line shall be less than five feet, and no side yard abutting a street~~
35 ~~shall be less than 10 feet.~~

36
37 2. Yard Determination.

38
39 a. Front Yard. The front yard is the yard abutting an improved street from which the lot
40 gains primary access or the yard abutting the entrance to a building and extending the
41 full width of the lot. If this definition does not establish a front yard setback, the code
42 official shall establish the front yard based upon orientation of the lot to surrounding
43 lots and the means of access to the lot.
44

1 i. Waterfront Lot. On a waterfront lot, regardless of the location of access to the
2 lot, the front yard may be measured from the property line opposite and
3 generally parallel to the ordinary high water line.
4

5 b. Rear Yard. The rear yard is the yard opposite the front yard. The rear yard shall
6 extend across the full width of the rear of the lot, and shall be measured between the
7 rear line of the lot and the nearest point of the main building including an enclosed or
8 covered porch. If this definition does not establish a rear yard setback for irregular
9 shaped lots, the code official may establish the rear yard based on the following
10 method: The rear yard shall be measured from a line or lines drawn from side lot line(s)
11 to side lot line(s), at least 10 feet in length, parallel to and at a maximum distance from
12 the front lot line.
13

14 c. Corner Lots. On corner lots the front yard shall be measured from the narrowest
15 dimension of the lot abutting a street. The yard adjacent to the widest dimension of the
16 lot abutting a street shall be a side yard. If a setback equivalent to or greater than
17 required for a front yard is provided along the property lines abutting both streets, then
18 only one of the remaining setbacks must be a rear yard. This code section shall apply
19 except as provided for in MICC 19.08.030(F)(1).
20

21 d. Side Yard. Any yards not designated as a front or rear yard shall be defined as a side
22 yard.
23

24 3. Intrusions into Required Yards.

25 a. Minor Building Elements.

26 i. Except as provided in subsection "ii." below, Porches, chimney(s) and
27 fireplace extensions, window wells, and unroofed, unenclosed outside stairways
28 and decks shall not project more than three feet into any required yard. Eaves
29 shall not protrude more than 18 inches into any required yard; provided,
30 ii. No penetration shall be allowed into the minimum five-foot side yard
31 setback abutting an interior lot line except where an existing flat roofed house
32 has been built to the interior side yard setback line and the roof is changed to a
33 pitched roof with a minimum pitch of 4:12, the eaves may penetrate up to 18
34 inches into the side yard setback.
35
36

37 b. Platforms, Walks, and Driveways. Platforms, walks, stairs, and driveways not more
38 than 30 inches above existing grade or finished grade, whichever is lower, may be
39 located in any required yard.
40

41 c. Fences, Retaining Walls and Rockeries. Fences, retaining walls and rockeries are
42 allowed in required yards as provided in MICC 19.02.050.
43

1 d. Garages and Other Accessory Buildings. Garages and other accessory buildings are not
2 allowed in required yards, except as provided in MICC 19.02.040.

3
4 e. Heat Pumps, Air Compressors, Air Conditioning Units, and Other Similar Mechanical
5 Equipment. Heat pumps, air compressors, air conditioning units, and other similar
6 mechanical equipment may be located within any required yard provided they will not
7 exceed the maximum permissible noise levels set forth in WAC 173-60-040, which is
8 hereby incorporated as though fully set forth herein. Any such equipment shall not be
9 located within three feet of any lot line.

10
11 f. Architectural Features. Detached, Freestanding architectural features such as
12 columns or pedestals that designate an entrance to a walkway or driveway and do not
13 exceed 42 inches in height are allowed in required yards.

14
15 g. Other Structures. Except as otherwise allowed in this subsection (C)(3), structures
16 over 30 inches in height from existing grade or finished grade, whichever is lower, may
17 not be constructed in or otherwise intrude into a required yard.

18
19 4. Setback Deviation. The Code Official may approve a deviation to front, side, and rear setbacks
20 pursuant to MICC 19.15.020.

21 ~~4. Setback Deviation. On any lot with a critical area that makes it impractical to locate a building~~
22 ~~pad on the lot except by intruding into required yards, the code official shall have discretion to~~
23 ~~grant a deviation from yard setbacks for single lots, subdivisions and lot line revisions.~~

24
25 ~~a. The city shall provide notice of the proposed action as required by MICC 19.15.020(D)~~
26 ~~and (E).~~

27
28 ~~b. The decision to grant the deviation shall be pursuant to procedures contained in MICC~~
29 ~~19.15.010(E) and 19.15.020(G)(5).~~

30
31 ~~c. In granting any such deviation, the code official may require the submission of any~~
32 ~~reasonably necessary information.~~

33
34 ~~d. Yard setbacks shall not be reduced below the following minimums:~~

35
36 ~~i. Front and rear setbacks may not be reduced to less than 10 feet each;~~

37
38 ~~ii. Side setbacks may not be reduced to less than five feet.~~

39
40 D. Gross Floor Area.

41
42 1. Except as provided in subsection "3." below, the gross floor area shall not exceed:

43 a. R-8.4: 5,000 square feet or 40% of the lot area, whichever is less.

44 b. R-9.6: 8,000 square feet or 40% of the lot area, whichever is less.

1 c. R-12: 10,000 square feet or 40% of the lot area, whichever is less.

2 d. R-15: 12,000 square feet or 40% of the lot area, whichever is less.

3
4 2. Gross floor area calculation. The gross floor area is the sum of the floor area(s) bounded by
5 the exterior faces of each building on a residential lot, provided:

6 a. The gross floor area shall be 150% of the floor area of that portion of a room(s) with
7 a ceiling height of 12 feet to 16 feet, measured from the floor surface to the ceiling.

8 b. The gross floor area shall be 200% of the floor area of that portion of a room(s) with
9 a ceiling height of more than 16 feet, measured from the floor surface to the ceiling.

10 c. Stair cases shall be counted as a single floor for the first two stories accessed by the
11 stair case. For each additional story above two stories, the stair case shall count as a
12 single floor area. For example, a stair case with a 10 foot by 10 foot dimension that
13 accesses three stories shall be accounted as 200 square feet (100 square feet for the
14 first two stories, and 100 square feet for the third story).

15 d. For the purposes of calculating allowable gross floor area, lots created in a
16 subdivision through MICC 19.08.030(G), Optional Standards for Development, may
17 apply the square footage from the open space tract to the lot area not to exceed the
18 minimum square footage of the zone in which the lot is located.

19
20 3. Allowances.

21 a. The gross floor area for lots with an area of 7,500 square feet or less may be the
22 lesser of 3,000 square feet or 45 percent of the lot area; and,

23
24 b. If an accessory dwelling unit is proposed, the 40 percent allowed gross floor area
25 may be increased by the lesser of 5 percentile points or the actual floor area of the
26 proposed accessory dwelling unit, provided:

27
28 i. The allowed gross floor area of accessory buildings that are not partially or
29 entirely used for an accessory dwelling unit shall not be increased through the
30 use of this provision;

31
32 ii. The lot will contains an accessory dwelling unit associated with the
33 application for a new or remodeled single family home; and

34
35 iii. The total gross floor area shall not exceed 4,500 square feet or 45% of the
36 lot area, whichever is less.

37
38 E. Building Height Limit.

39
40 1. Maximum building height. No building shall exceed 30 feet in height above the average
41 building elevation to the highest point of the roof.

42
43 2. Maximum building height on downhill building façade. The maximum building façade height
44 on the downhill side of a sloping lot shall not exceed 30 feet in height. The building façade

1 height shall be measured from the existing grade or finished grade, whichever is lower, at
2 the furthest downhill extent of the proposed building, to the top of the exterior wall façade
3 supporting the roof framing, rafters, trusses, etc.

4
5 3. Antennas, lightning rods, plumbing stacks, flagpoles, electrical service leads, chimneys and
6 fireplaces and other similar appurtenances may extend to a maximum of five feet above the
7 height allowed for the main structure in subsections "1." and "2." above.

8
9 4. The formula for calculating average building elevation is as follows:

10
11 Formula: Average Building Elevation = (Weighted Sum of the Mid-point
12 Elevations) ÷ (Total Length of Wall Segments)

13
14 Where: Weighted Sum of the Mid-point Elevations = The sum of: ((Mid-point
15 Elevation of Each Individual Wall Segment) x (Length of Each Individual
16 Wall Segment))

17
18 For example for a house with 10 wall segments:

19 (Axa) + (Bxb) + (Cxc) + (Dxd) + (Exe) + (Fxf) + (Gxg) + (Hxh) + (Ixi) + (Jxj)
20 -----
21 a + b + c + d + e + f + g + h + i + j

22 Where: A, B, C, D... = The existing or finished ground elevation, whichever is
23 lower, at midpoint of wall segment.

24 And: a, b, c, d... = The length of wall segment measured on outside of wall.

25
26 F. Lot Coverage – Single family dwellings.

27 1. Applicability. This section shall apply to the development of single family dwellings including,
28 but not limited to, the remodeling of existing single family dwellings and construction of new
29 single family dwellings. This section does not apply to regulated improvements.

30
31 2. Landscaping objective.

32 a. To ensure that landscape design reinforces the natural and wooded character of
33 Mercer Island, complements the site, the architecture of site structures and paved
34 areas, while maintaining the visual appearance of the neighborhood.

35
36 b. To ensure that landscape design is based on a strong, unified, coherent, and
37 aesthetically pleasing landscape concept.

38
39 c. To ensure that landscape plantings, earth forms, and outdoor spaces are designed to
40 provide a transition between each other and between the built and natural
41 environment.

1 d. To ensure suitable natural vegetation and landforms, particularly mature trees and
2 topography, are preserved where feasible and integrated into the overall landscape
3 design. Large trees and tree stands should be maintained in lieu of using new plantings.

4
5 e. To ensure planting designs include a suitable combination of trees, shrubs,
6 groundcovers, vines, and herbaceous material; include a combination of deciduous and
7 evergreen plant material; emphasize native plant material; provide drought tolerant
8 species; and exclude invasive species.

9
10 3. Lot coverage - landscaping required.

11 a. Minimum area required. Development proposals for single family dwellings shall
12 comply with the following standards based on the net lot area:

<u>Lot Slope</u>	<u>Maximum Lot Coverage (house, driving surfaces, and accessory buildings)</u>	<u>Required Landscaping Area</u>
<u>Less than 15%</u>	<u>40%</u>	<u>60%</u>
<u>15% to less than 30%</u>	<u>35%</u>	<u>65%</u>
<u>30% to 50%</u>	<u>30%</u>	<u>70%</u>
<u>Greater than 50% slope</u>	<u>20%</u>	<u>80%</u>

13 b. Hardscape.

14 i. A maximum of 9 percent of the net lot area may consist of hardscape
15 improvements including, but not limited to, walkways, decks, etc, and provided:

16 (1) The hardscape for lots with a net lot area of 8,400 square feet or less
17 may be the lesser of 755 square feet or 12 percent of the net lot
18 area.

19 ii. Hardscape improvements are also permitted in the maximum lot coverage
20 area established in subsection "a." above.

21 c. Softscape and driveways.

22 i. The required landscaping area in subsection "a." above, shall consist of
23 softscape improvements, except where used for hardscape improvements
24 pursuant to section "b.", above.

25 ii. Driveways and other driving surfaces are prohibited within the landscaping
26 area.

27 For example, a flat lot with a net area of 10,000 square feet shall provide a
28 minimum 6,000 square feet of landscaped area. Up to 900 square feet of the
29 landscaped area may be used for a walkway, patio, or deck or other hardscape
30 area. The remainder of the area shall be used for softscape improvements, such
31 as landscaping, tree retention, etc.

32 d. Development proposals for a new single family home shall remove Japanese
33 Knotweed (Polygonum cuspidatum) and Regulated Class A, Regulated Class B, and
34 Regulated Class C weeds identified on the King County Noxious Weed list, as
35 amended, from required landscaping areas established pursuant to section "a."
36 above. New landscaping associated with new single family home shall not
37 incorporate any weeds identified on the King County Noxious Weed list, as

1 amended. Provided that removal shall not be required if the removal will result in
2 the increased slope instability or risk of landslide or erosion.

3 e. Allowed adjustments. A one-time reduction in required landscaping area and an
4 increase in the maximum lot coverage is allowed, provided:

5 i. The total reduction in the required landscaping area shall not exceed five (5)
6 percentile points, and the total increase in the maximum lot coverage shall
7 not exceed five (5) percentile points; and

8 ii. The reduction in required landscaping area and increase in maximum lot
9 coverage is associated with:

10 1. A development proposal that will result in a single-story single
11 family dwelling with a wheelchair accessible entry path, and may
12 also include a single-story accessory building; or,

13 2. A development proposal on a flag lot that, after optimizing driveway
14 routing and minimizing driveway width, requires a driveway that
15 occupies more than 25% of the otherwise allowed lot coverage
16 area. The allowed reduction in the required landscaping area and
17 increase in maximum lot coverage shall not exceed 5%, or the area
18 of the driveway in excess of 25% of the lot coverage, whichever is
19 less.

20 For example, a development proposal with a driveway that occupies
21 27% of the otherwise allowed lot coverage, may increase the total
22 lot coverage by 2%; and

23 iii. A recorded notice on title, covenant, easement, or other documentation in
24 a form approved by the city, shall be required. The notice on title or other
25 documentation shall describe the basis for the reduced landscaping area
26 and increased lot coverage.

27
28 3. Deviation. The code official may grant a deviation, allowing an additional five percent of lot
29 coverage over the maximum requirements; provided, the applicant demonstrates through the
30 submission of an application and supporting documentation that the proposal meets one of the
31 following criteria:

32
33 a. The proposal uses preferred practices, outlined in MICC 19.09.100, which are
34 appropriate for the lot; or

35
36 b. The lot has a unique shape or proportions (i.e., a flag lot, with a circuitous driveway
37 corridor); or

38
39 c. The proposal minimizes impacts to critical areas and provides the minimum extent
40 possible for the additional impervious surfaces.

41
42 The city shall provide notice for the proposed action as required by MICC 19.15.020(D) and (E),
43 Administration.

1 4. Variance. Public and private schools, religious institutions, private clubs and public facilities in
2 single family zones with slopes of less than 15 percent may request a variance to increase the
3 impervious surface to a maximum 60 percent impervious surface and such variance application
4 will be granted if the hearing examiner determines that the applicant has demonstrated that the
5 following criteria are satisfied:

6
7 a. There will be no net loss of pervious surface from the existing pervious surface. No net loss
8 will be determined by the code official and may be achieved by off-site mitigation and/or by
9 reconstructing existing parking areas to allow stormwater penetration. This replacement will be
10 an exception to subsection (D)(2)(b) of this section prohibiting parking areas from being
11 considered as pervious surfaces;

12
13 b. All stormwater discharged shall be mitigated consistent with the most recent Washington
14 State Department of Ecology Stormwater Management Manual for Western Washington,
15 including attenuation of flow and duration. Mitigation will be required for any and all new and
16 replaced impervious surfaces. In designing such mitigation, the use of a continuous simulation
17 hydrologic model such as KCRTS or WWHM shall be required; event based models will not be
18 allowed. In addition, mitigation designs shall utilize flow control best management practices
19 (BMPs) and low impact development (LID) techniques to infiltrate, disperse and retain
20 stormwater on site to mitigate the increased volume, flow and pollutant loading to the
21 maximum extent feasible;

22
23 c. The director must approve a storm drainage report submitted by the applicant and prepared
24 by a licensed civil engineer assuring the city that city infrastructure, in concert with the project
25 design, is adequate to accommodate storm drainage from the project site, or identifying
26 appropriate improvements to public and/or private infrastructure to assure this condition is
27 met, at the applicant's expense;

28
29 d. A deviation under subsection (D)(3) of this section may not be combined to exceed this
30 maximum 60 percent impervious surface coverage;

31
32 e. The hearing procedures and public notice requirements set forth in MICC 19.15.020 shall be
33 followed in connection with this variance proceeding.

34
35 GE. Parking.

36
37 1. Applicability. Subsection "2." below shall apply to all new construction and remodels where
38 more than 40 percent of the length of the structure's external walls have been intentionally
39 structurally altered.

40 2. Parking required.

41 a. Each single-family dwelling with a gross floor area of 3,000 square feet or more shall
42 have at least three parking spaces sufficient in size to park a passenger automobile;
43 provided, at least two of the stalls shall be covered stalls.

1 b. Each single-family dwelling with a gross floor area of less than 3,000 square feet
2 shall have at least ~~three-two~~ parking spaces sufficient in size to park a passenger
3 automobile; provided, at least ~~two-one~~ of the stalls shall be a covered stalls.
4 ~~This provision shall apply to all new construction and remodels where more than 40~~
5 ~~percent of the length of the structure's external walls have been intentionally~~
6 ~~structurally altered;~~

7 3. ~~however, a~~ No construction or remodel shall reduce the number of parking spaces on the lot
8 below the number existing prior to the project unless the reduced parking still satisfies the
9 requirements set out above.

10
11 4. ~~2.~~ Except as otherwise provided in this chapter, each lot shall provide parking deemed
12 sufficient by the code official for the use occurring on the lot; provided, any lot that contains
13 10 or more parking spaces shall also meet the parking lot requirements set out in Appendix
14 A of this development code.

15
16 HF. Easements. Easements shall remain unobstructed.

17
18 1. Vehicular Access Easements. No structures shall be constructed on or over any vehicular
19 access easement. A minimum ~~510~~-foot yard setback from the edge of any easement that affords
20 or could afford vehicular access to a property is required for all structures; provided, that
21 improvements such as gates, fences, rockeries, retaining walls and landscaping may be installed
22 within the ~~105~~-foot yard setback so long as such improvements do not interfere with emergency
23 vehicle access or sight distance for vehicles and pedestrians.

24
25 2. Utility and Other Easements. No structure shall be constructed on or over any easement for
26 water, sewer, storm drainage, utilities, trail or other public purposes unless it is permitted within
27 the language of the easement or is mutually agreed in writing between the grantee and grantor
28 of the easement.

29
30 I. Large lots. The intent of this section is to ensure that the construction of a single family dwelling on a
31 large lot does not preclude compliance with applicable standards related to subdivision or short
32 subdivision of the large lot. Prior to approval of a new single family dwellings and associated site
33 improvements, accessory buildings, and accessory structures on large lots, the applicant shall complete
34 one of the following:

35
36 1. Design for future subdivision. The proposed site design that shall accommodate potential
37 future subdivision of the lot as follows:

38
39 a. The proposed site design shall comply with the applicable design requirements of
40 Chapters 19.08 Subdivision, 19.09 Development, and 19.10 Trees MICC.

41
42 b. The proposed site design shall not result in a circumstance that would require the
43 removal of trees identified for retention, as part of a future subdivision.
44

1 c. The proposed site design shall not result in a circumstance that would require
2 modifications to wetlands, watercourses, and associated buffers as part of a future
3 subdivision.

4
5 d. Approval of a site design that could accommodate a potential future subdivision does
6 not guarantee approval of such future subdivision, nor does it confer or vest any rights
7 to a future subdivision.

8
9 2. Subdivide. Prior to application for a new single family dwelling, the property is subdivided or
10 short platted to create all potential lots and building pads permitted by zoning. The proposed
11 single family dwelling shall be located on a lot and within a building pad resulting from a
12 recorded final plat.

13
14 3. Limit subdivision. Record a notice on title, or execute a covenant, easement, or other
15 documentation approved by the city, prohibiting further subdivision of the large lot for a period
16 of five (5) years from the date of final inspection or certificate of occupancy.

17
18 J. Building Pad. New buildings shall be located within a building pad established pursuant to Chapter
19 19.09 MICC. Intrusions into yard setbacks authorized pursuant to MICC 19.02.020(C)(3) may be located
20 outside of the boundaries of the building pad.

21
22 ...

23
24 **19.02.040 Garages, ~~and~~ other accessory buildings, and accessory structures.**

25 A. Accessory buildings, including garages, are not allowed in required yards except as herein provided.

26
27 B. Attached Accessory Building. An attached accessory building shall comply with the requirements of
28 this code applicable to the main building.

29
30 C. Detached Accessory Buildings and Accessory Structures.

31 1. Gross Floor Area.

32 a. The combined total gross floor area for one or more accessory building(s) shall not
33 exceed 25 percent of the total gross floor area allowed on a lot within applicable zoning
34 designations pursuant to MICC 19.02.020. For example, on a lot where the total
35 allowed gross floor area is 4,000 square feet, the combined total gross floor area for all
36 accessory buildings is 1,000 square feet.

37
38 b. The gross floor area for a detached accessory building that is entirely or partially used
39 for an accessory dwelling unit, may be increased by the additional floor area authorized
40 pursuant to MICC 19.02.020(D)(3)(b).

41
42 2. Height.

43 a. Detached accessory buildings, except for buildings that contain an accessory dwelling
44 unit, are limited to a single story and shall not exceed 17 feet in height above the

1 average building elevation computed from existing grade or finished grade, whichever is
2 lower, to the highest point of the roof. Average building elevation is calculated using
3 the methodology established in MICC 19.02.020(E)(4).
4

5 b. Detached accessory buildings that are entirely or partially used for an accessory
6 dwelling unit, shall meet the height limits established for the primary building.
7

8 3. Detached A accessory buildings are not allowed in required yard setbacks; provided, one
9 detached accessory building with a gross floor area of 200 square feet or less and a height of 12
10 feet or less may be erected in the rear yard setback. If such an accessory building is to be
11 located less than five feet from any property line, a joint agreement with the adjoining property
12 owner(s) must be executed and recorded with the King County Department of Records and
13 thereafter filed with the city.
14

15 4. Accessory structures. The maximum height of an accessory structure that is not also an
16 accessory building, shall not exceed 17 feet. The height of an accessory structure is measured
17 from the top of the structure, to the existing grade or finished grade, whichever is lower,
18 directly below the section of the structure being measured.
19

20 D. Garages and Carports. Garages and carports may be built to within 10 feet of the front property line if
21 the front yard of the lot, measured at the midpoint of the wall of the garage closest to the front yard
22 property line, is more than four feet above or below the existing grade or finished grade, whichever is
23 lower, at the point on the front property line closest to the midpoint of the wall of the garage at its
24 proposed location. The height of such garage shall not exceed 12 feet from existing grade for that
25 portion built within the front yard.
26

27 E. Pedestrian Walkways. Enclosed or covered pedestrian walkways may be used to connect the main
28 building to a garage or carport. Enclosed pedestrian walkways shall not exceed six feet in width and 12
29 feet in height calculated from finished grade or 30 feet above average building elevation, whichever is
30 less. (Ord. 08C-01 § 1; Ord. 01C-06 § 1; Ord. 99C-13 § 1).
31
32

33 **19.02.050 Fences, retaining walls and rockeries.**

34 A. Location in Required Yard. Fences, retaining walls and rockeries may be located within any required
35 yard as specified below.
36

37 B. Location in Street.
38

39 1. Fences. No fence shall be located in any improved street. Fences may be allowed in
40 unimproved public streets subject to approval of the city engineer and the granting of an
41 encroachment agreement as required by MICC 19.06.060.
42

1 2. Retaining Walls and Rockeries. Retaining walls and rockeries may be allowed in any street
2 subject to the approval of the city engineer and the granting of an encroachment agreement
3 covering any public street as required by MICC 19.06.060.
4

5 C. Height Measurement.
6

7 1. Fences / gates. The height of a fence or gate is measured from the top of the fence or gate,
8 including posts, to the existing grade or finished grade, whichever is lower, directly below the
9 section of the fence or gate being measured.
10

11 2. Retaining Walls and Rockeries. The height of a retaining wall or rockery is measured from the
12 top of the retaining wall or rockery to the existing grade or finished grade, whichever is lower,
13 directly below the retaining wall or rockery.
14

15 D. Retaining Walls and Rockeries – Requirements.
16

17 1. Building Permit. A building permit is required for retaining walls or rockeries not exempted
18 from permit by Section 105.2 of the Construction Administrative Code, Chapter 17.14 MICC.
19

20 2. Engineer. Any rockery requiring a building permit shall be designed and inspected by a
21 licensed geotechnical engineer.
22

23 3. Drainage Control. Drainage control of the area behind the rockery shall be provided for all
24 rockeries.
25

26 4. Maximum Height in Required Yard – Cut Slopes.
27

28 a. No retaining walls or rockeries, or any combination of retaining walls or rockeries, to
29 the extent used to protect a cut or cuts into existing grade within any required yard,
30 shall exceed a total of 144 inches in height.

31 b. All retaining walls and/or rockeries within a required yard shall be included in
32 calculating the maximum height of 144 inches. ~~Such retaining walls or rockeries, or~~
~~combination of retaining walls or rockeries, may~~

33 c. ~~Retaining walls or rockeries may~~ be topped by a fence ~~up to 72 inches in height as~~
34 ~~provided in MICC 19.02.050(E).~~ or, if within that portion of any required yard that
35 lies within 20 feet of any improved street, by a fence up to 42 inches in height.
36

37 5. Maximum Height in Required Yard – Fill Slopes.
38

39 a. No retaining walls or rockeries, or any combination of retaining walls or rockeries, to
40 the extent used to raise grade and protect a fill slope, ~~shall exceed a total of 72~~
41 ~~inches in height within any required yard shall result in an increase in the finished~~
42 ~~grade by more than 72 inches at any point.~~

43 b. All retaining walls and/or rockeries within a required yard shall be included in
calculating the maximum height of 72 inches.

1 c. Retaining walls or rockeries may be topped by a fence as provided in MICC
2 19.02.050(E).

3
4 A fence or guardrail may be placed on top of such retaining wall or rockery, but in no
5 event shall the combined height of the fence and any retaining wall or rockery
6 exceed 72 inches; provided, rockeries, retaining walls, fences, or any combination
7 thereof, are limited to a maximum height of 42 inches within that portion of any
8 required yard which lies within 20 feet of any improved street.

9
10 E. Fences and gates.

11
12 1. Maximum Height in Fences or gates in Required Yard.

13 a. Height limits.

14 i. Fences, gates, or any combination of retaining walls, rockeries and fences are
15 allowed to a maximum height of 72 inches within the required side or rear
16 yards, except as provided in subsection (D)(4) of this section.

17 ii. Fences, gates, or any combination of retaining walls, rockeries and fences are
18 allowed to a maximum height of 42 inches within required front yards.

19 b. Exceptions to height limits.

20 i. Fences within front yards may be designed to incorporate an open
21 latticework or similar architectural feature at the entrance of a
22 walkway, provided the total height of the entryway feature shall not
23 exceed 90 inches. The open latticework or architectural feature shall be
24 designed such that at least 50 percent of its total surface area consists
25 of evenly distributed open spaces.

26 ii. Fences or gates located within the front yard may have a maximum
27 height of 72 inches, provided:

- 28 1. The proposed fence or gate is located along a property line
29 contiguous to either: Island Crest Way north of SE 53rd Place, or SE
30 40th Street between 92nd Avenue SE and 78th Avenue SE; and
- 31 2. The proposed fence or gate is located a minimum of 5 feet from the
32 street property line and will be screened by landscaping designed to
33 soften the presence of the fence; and,
- 34 3. The proposed fence or gate will not create a traffic, pedestrian, or
35 public safety hazard.

36 All fences, retaining walls and/or rockeries within a required yard shall be included
37 in calculating the maximum height of 72 inches; provided, fences, rockeries or
38 retaining walls used to protect a fill, or any combination thereof, are limited to a
39 maximum height of 42 inches within that portion of any required yard which lies
40 within 20 feet of any improved street.

41
42 a. Exception. Open latticework or a similar architectural feature up to 18 inches above
43 the maximum 72 inch height allowed may be constructed, provided it is of open work
44 design with at least 50 percent of its total surface area consisting of evenly distributed

1 open spaces. This exception does not apply to any fence, rockery or retaining wall, or
2 any combination thereof, limited to a maximum height of 42 inches; however, where
3 the height of any fence, rockery, retaining wall, or any combination thereof is limited to
4 42 inches, an architectural feature of open work design as described above that is
5 limited to the entrance of a walkway may be allowed if its total height is no greater than
6 90 inches.

7
8 2. Fill/Berms. No person shall place fill upon which to build a fence unless the total height of the
9 fill plus the fence does not exceed the maximum height allowable for the fence without the fill.

10
11 3. Shorelines. Fence, rockeries and retaining walls located within any shoreland shall also
12 comply with Chapter 19.07 MICC.

13
14 ~~F. Fence Height Deviations. Deviations from the 42-inch height limitation set out in subsections (E)(1)~~
15 ~~and (D)(5) of this section shall be reviewed in the manner set out below:~~

16
17 ~~1. For nonregulated improvements, a request for a deviation up to 72 inches shall be reviewed~~
18 ~~by the code official under the following procedure:~~

19
20 ~~a. The applicant shall submit to the code official two copies of plot plans and elevations,~~
21 ~~drawn to scale, showing size and construction of the proposed fence, the location of all~~
22 ~~existing structures, streets, driveways, and landscaping.~~

23
24 ~~b. The code official shall review the submitted plans with the city engineer and shall~~
25 ~~base the decision to approve or disapprove the requested deviation on factors of traffic~~
26 ~~visibility and other public and private safety considerations, lot shape, location and~~
27 ~~topography, and the nature, location and extent of adjoining public and private~~
28 ~~structures.~~

29
30 ~~2. For regulated improvements, deviations shall be reviewed by the design commission under~~
31 ~~the procedures and criteria set forth in MICC 19.15.040.~~

32
33 ~~GF. Electric and Barbed Wire Fences. Electric fences, and barbed wire fences, or similar fences that could~~
34 ~~pose a safety risk, are not allowed.~~

35
36 ~~HG. Exceptions. These provisions do not apply to fences required by state law to enclose public utilities,~~
37 ~~or to chain link fences enclosing school grounds or public playgrounds, or to screens used for safety~~
38 ~~measures in public recreation areas such as ballfields.~~

39 ~~...~~

40 **19.02.060 Lot Coverage – Regulated improvements.**

41
42 A. Applicability. This section shall only apply to regulated improvements (for example, schools or
43 religious buildings) in the residential zoning designations of R-8.4, R-9.6, R-12, and R-15.

1 **B1.** Maximum Impervious Surface Limits for Lots. The total percentage of a lot that can be covered by
2 impervious surfaces (including buildings) is limited by the slope of the lot for all single-family zones as
3 follows:
4

Lot Slope	Lot Coverage (limit for impervious surfaces)
Less than 15%	40%*
15% to less than 30%	35%
30% to 50%	30%
Greater than 50% slope	20%

5
6
7 *Public and private schools, religious institutions, private clubs and public facilities (excluding public parks or
8 designated open space) in single-family zones with slopes of less than 15 percent may be covered by the percentage
9 of legally existing impervious surface that existed on May 1, 2006, as determined by the code official.

10
11 **C2.** Exemptions. The following improvements will be exempt from the calculation of the maximum
12 impervious surface limits set forth in subsection ~~"(D)(1B.)"~~ of this section:
13

14 **a1.** Decks/Platforms. Decks and platforms constructed with gaps measuring one-eighth inch or
15 greater between the boards which provide free drainage between the boards as determined by
16 the code official shall be exempt from the calculation of maximum impervious surface limits so
17 long as the surface below the deck or platform is not impervious.
18

19 **2b.** Pavers. Pavers installed with a slope of five percent or less and covering no more than 10
20 percent of the total lot area will be calculated as only 75 percent impervious. Provided,
21 however, that all pavers placed in driveways, private streets, access easements, parking areas
22 and critical areas shall be considered 100 percent impervious.
23

24 ~~**c.** Patios/Terraces. Uncovered patios/ terraces constructed of pavers shall be exempt
25 from the maximum impervious surface limits.~~
26

27 **d3.** Pedestrian-Oriented Walkways. Uncovered pedestrian walkways constructed with gravel or
28 pavers not to exceed 60 inches in width shall be exempt from the maximum impervious surface
29 limits.
30

31 **e4.** Public Improvements. Open storm water retention/detention facilities, public rights-of-way
32 and public pedestrian trails shall be exempt from the maximum impervious surface limits.
33

1 5f. Rockeries/Retaining Walls. Rockeries and retaining walls shall be exempt from the maximum
2 impervious surface limits.

3
4 6g. Residences for religious leaders located on properties use by places of worship.

5
6 a.i. A structure primarily used as a residence for a religious leader provided by its
7 congregation and located on the same lot or lots as the improvements for a church,
8 synagogue, mosque, or other place of worship, shall be exempt from the maximum
9 impervious surface limits, subject to the limitations under subsection "b.ii." below. All
10 impervious surface areas directly and commonly associated with the residence such as,
11 but not limited to, the footprint of the residence, an attached or detached garage, a
12 patio and/or deck not otherwise exempted by MICC 19.02.0260(DC)(21)(a) and (e3), and
13 a driveway not otherwise used for general access to the place of worship, shall be
14 exempt.

15
16 b.ii. A residence and its associated impervious improvements, as described above, may
17 only be exempted if 4,999 square feet or less or up to 20% of lot area, whichever is less.
18 For these purposes, lot area means the lot or lots on which the place of worship is
19 located.

20
21 c.iii. Impervious surface ~~lot~~ coverage exceeding 60% shall not be allowed whether by
22 variance ~~pursuant to~~ MICC 19.02.0620(D) or by this exemption.

23
24 D. Variance. Regulated improvements in the R-8.4, R-9.6, R-12, and R-15 zoning designations may
25 request a variance to increase impervious surface pursuant to MICC 19.15.020(G).
26

1 Chapter 19.07
2 ENVIRONMENT

3

4 ...

5 **19.07.040 Review and construction requirements.**

6 ...

7 C. Setback Deviation. An applicant may seek a deviation from required front, side, and back yard
8 setbacks pursuant to MICC- ~~19.15.02~~19.02.020(C)(4).

9

10 D. Variances. Variances ~~pursuant to MICC 19.01.070~~ are not available to reduce any numeric
11 requirement of this chapter. However, the allowed alterations and the reasonable use exception
12 allowed pursuant to MICC 19.07.030 may result in city approvals with reduced numeric requirements.

13 ...

14

15

1 Chapter 19.08
2 SUBDIVISIONS

3
4 ...

5
6 **19.08.020 Application procedures and requirements.**

7 A. Applications for short subdivisions or alterations or vacation thereof, and lot line revisions shall be
8 reviewed by the code official. Applications for long subdivisions or alteration or vacation thereof shall
9 ~~before~~ be reviewed by the hearing examiner who shall make recommendations to the city council.

10
11 B. The code official may grant a variance, with restrictions if deemed necessary, from the four-acre
12 limitation for purpose of permitting short subdivision of property containing more than four acres into
13 four or less lots when all of the following circumstances shall be found to apply:

- 14
15 1. That there are special circumstances applicable to the particular lot, such as type of
16 ownership, restrictive covenants, physiographic conditions, location or surroundings, or other
17 factors;
18
19 2. That the granting of the variance will not result in future uncoordinated development nor
20 alter the character of the neighborhood; and
21
22 3. That granting the variance will not conflict with the general purposes and objectives of the
23 comprehensive plan or the development code.

24
25 C. Applicants shall prepare a concept sketch of the proposal for the preapplication meeting required
26 under MICC 19.09.010(A).

27
28 D. Preliminary Application Contents. In addition to any documents, information, or studies required
29 under Chapter 19.07 MICC, Critical Areas Environment, Chapter 19.10, Trees, or any other Chapter of
30 Title 19 MICC, an application for a long subdivision, short subdivision, or a lot line revision shall include
31 the documents set forth below and any other document or information deemed necessary by the code
32 official upon notice to the applicant. All documents shall be in the form specified by the code official and
33 shall contain such information as deemed necessary by the code official. The applicant shall submit the
34 number of copies of each document specified by the code official.

35
36 1. Development Application Cover Form. The development application cover form shall be
37 signed by all current property owners listed on the plat certificate, and shall list the legal parcel
38 numbers of all property involved in the project.

39
40 2. Long Subdivision, Short Subdivision, or Lot Line Revision Plan. The applicant shall provide
41 copies of fully dimensioned plans of the project prepared by a Washington registered civil
42 engineer or land surveyor, meeting the requirements of Chapter 19.07 MICC, Environment, and
43 containing any other information deemed necessary by the code official. The city engineer may
44 waive the requirement that an engineer or surveyor prepare the plans for a short subdivision or

1 lot line revision. The submitted plans shall ~~demonstrate that a~~ identify the proposed building
2 pad ~~has been designated location~~ for each proposed lot ~~per~~ pursuant to MICC 19.09.090. ~~No~~
3 ~~cross-section dimension of a designated building pad shall be less than 20 feet in width.~~
4

5 3. Plat Certificate. Applicant shall provide a plat certificate issued by a qualified title insurance
6 company not more than 30 days before filing of the application showing the ownership and title
7 of all parties interested in the plat. If the plat certificate references any recorded documents (i.e.
8 easements, dedications, covenants, etc.) copies of those documents shall also be provided.
9

10 4. Legal Documents. Applicants shall provide copies of each of the following documents (if
11 applicable):
12

13 a. Proposed restrictive covenants.

14 b. Draft deeds to the city for any land to be dedicated.

15 c. Proposed easements.
16
17
18

19 5. Project Narrative. Applicants shall provide a clear and concise written description and
20 summary of the proposed project.
21

22 6. Neighborhood Detail Map. Applicants shall provide copies of a map drawn at a scale specified
23 by the code official showing the location of the subject site relative to the property boundaries
24 of the surrounding parcels within approximately 1,000 feet, or approximately 2,500 feet for
25 properties over four acres. The map shall identify the subject site with a darker perimeter line
26 than that of the surrounding properties.
27

28 7. Topography Map. The applicant shall provide copies of a topographical map showing the
29 existing land contours using vertical intervals of not more than two feet, completed and signed
30 by a Washington licensed surveyor. For any existing buildings, the map shall show the finished
31 floor elevations of each floor of the building. Critical slopes exceeding 30 percent must be
32 labeled and delineated by a clearly visible hatching.
33

34 8. Detailed Grading Plan. If the grade differential on the site of the proposed project will exceed
35 24 inches and/or if the amount of earth to be disturbed exceeds 50 cubic yards, the applicant
36 shall provide copies of a detailed grading plan drawn by a Washington licensed engineer.
37

38 9. Street Profiles. The applicant shall provide copies of a street profile showing the profiles and
39 grades of each street, together with typical cross sections indicating:
40

41 a. Width of pavement;

42
43 b. Location and width of sidewalks, trails, bike lanes, ditches, swales, etc.; and
44

1 c. Location of any utility mains.
2

3 10. Geotechnical Report. The applicant shall provide a geotechnical report meeting the
4 requirements of Chapter 19.07 MICC, Critical Lands. This requirement may be waived by the city
5 Engineer under the criteria set out in MICC 19.07.010.
6

7 11. Utility Plan. Conceptual plan showing the locations of existing and proposed utilities.
8

9 ~~E. Notice.~~

10
11 ~~1. Short Subdivisions and Lot Line Revisions. Public notice of an application for a short~~
12 ~~subdivision or a lot line revision shall be made in accordance with the procedures set forth in~~
13 ~~MICC 19.15.020.~~

14
15 ~~2. Long Subdivisions.~~

16
17 ~~a. Public notice of a long subdivision application shall be made at least 10 days prior to~~
18 ~~the open record hearing on the application in accordance with the procedures set forth~~
19 ~~in MICC 19.15.020 for an administrative or discretionary act; provided, notice shall also~~
20 ~~be published at least 10 days prior to the hearing in a newspaper of general circulation~~
21 ~~within the city.~~

22
23 ~~b. If the owner of a proposed long subdivision owns land adjacent to the proposed long~~
24 ~~subdivision, that adjacent land shall be treated as part of the long subdivision for notice~~
25 ~~purposes, and notice of the application shall be given to all owners of lots located within~~
26 ~~300 feet of the proposed long subdivision or the applicant's adjacent land.~~

27
28 ~~3. The city shall provide written notice to the Department of Transportation of an application for~~
29 ~~a long subdivision or short subdivision that is located adjacent to the right-of-way of a state~~
30 ~~highway. The notice shall include a legal description of the long subdivision or short subdivision~~
31 ~~and a location map.~~

32
33 ~~E.F. Preliminary Application Procedure.~~

34
35 1. Findings of Fact. All preliminary approvals or denials of long subdivisions or short subdivisions
36 shall be accompanied by written findings of fact demonstrating that:

37
38 a. The project does or does not make appropriate provisions for the public health,
39 safety, and general welfare and for such open spaces, drainage ways, streets or roads,
40 alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks
41 and recreation, playgrounds, schools and schoolgrounds and all other relevant facts,
42 including sidewalks and other planning features that assure safe walking conditions for
43 students who only walk to and from school;
44

1 b. The public use and interest will or will not be served by approval of the project; and

2
3 c. The project does or does not conform to applicable zoning and land use regulations.

4
5 2. Short Subdivisions and Lot Line Revisions. The code official shall grant preliminary approval
6 for a short subdivision or lot line revision if the application is in proper form and the project
7 complies with the design standards set out in MICC 19.08.030, the comprehensive plan, and
8 other applicable development standards.

9
10 3. Long Subdivisions.

11
12 a. At an open record hearing the ~~planning commission~~ hearing examiner shall review the
13 proposed long subdivision for its conformance with the requirements of MICC
14 19.08.030, the comprehensive plan, and other applicable development standards.

15
16 b. The ~~planning commission~~ hearing examiner shall make a written recommendation on
17 the long subdivision, containing findings of fact and conclusions, to the city council not
18 later than 14 days following action by the ~~planning commission~~ hearing examiner.

19
20 c. Upon receipt of the ~~planning commission~~ hearing examiner's recommendation, the
21 city council shall at its next public meeting set the date for the public hearing where it
22 may adopt or reject the ~~planning commission~~ hearing examiner's recommendations.

23
24 d. Preliminary approval of long subdivision applications shall be governed by the time
25 limits and conditions set out in MICC 19.15.020(E); except the deadline for preliminary
26 plat approval is 90 days, unless the applicant consents to an extension of the time
27 period.

28
29 4. Conditions for Preliminary Approval. As a condition of preliminary approval of a project, the
30 city council in the case of a long subdivision, or the code official in the case of a short subdivision
31 ~~or lot line revision~~, may require the installation of plat improvements as provided in MICC
32 19.08.040 which shall be conditions precedent to final approval of the ~~long subdivision, short~~
33 ~~subdivision, or lot line revision~~.

34
35 ~~5. Expiration of Approval.~~

36
37 ~~a. Once the preliminary plat for a long subdivision has been approved by the city, the~~
38 ~~applicant has five years to submit a final plat meeting all requirements of this chapter to~~
39 ~~the city council for approval.~~

40
41 ~~b. Once the preliminary plat for a short subdivision has been approved by the city, the~~
42 ~~applicant has one year to submit a final plat meeting all requirements of this chapter. A~~
43 ~~plat that has not been recorded within one year after its preliminary approval shall~~
44 ~~expire, becoming null and void. The city may grant a single one-year extension, if the~~

1 applicant submits the request in writing before the expiration of the preliminary
2 approval.

3
4 e. ~~In order to revitalize an expired preliminary plat, a new application must be~~
5 ~~submitted.~~
6

7 **56. No Construction Before Application Approval.** No construction of structures, utilities, storm
8 drainage, grading, excavation, filling, or land clearing on any land within the proposed long
9 subdivision, short subdivision, or lot line revision shall be allowed prior to preliminary approval
10 of the application and until the applicant has secured the permits required under the Mercer
11 Island City Code.
12

13 **19.08.030 Design standards.**

14 A. Compliance with Other Laws and Regulations. The proposed subdivision shall comply ~~with with~~
15 ~~arterial, capital facility, and land use elements of the comprehensive plan;~~ all other chapters of ~~the~~
16 ~~development code~~ Title 19 MICC; the Shoreline Management Act; and other applicable city, state, and
17 federal legislation.
18

19 B. Public Improvements.

20
21 1. The subdivision shall be reconciled as far as possible with current official plans for acquisition
22 and development of arterial or other public streets, trails, public buildings, utilities, parks,
23 playgrounds, and other public improvements.
24

25 2. If the preliminary plat includes a dedication of a public park with an area of less than two
26 acres and the donor has designated that the park be named in honor of a deceased individual of
27 good character, the city shall adopt the designated name.
28

29 C. Control of Hazards.

30
31 1. Where the project may adversely impact the health, safety, and welfare of, or inflict expense
32 or damage upon, residents or property owners within or adjoining the project, other members
33 of the public, the state, the city, or other municipal corporations due to flooding, drainage
34 problems, critical slopes, unstable soils, traffic access, public safety problems, or other causes,
35 the city council in the case of a long subdivision, or the code official in the case of a short
36 subdivision ~~or lot line revision~~, shall require the applicant to adequately control such hazards or
37 give adequate security for damages that may result from the project, or both.
38

39 2. If there are soils or drainage problems, the city engineer may require that a Washington
40 registered civil engineer perform a geotechnical investigation of each lot in the project. The
41 report shall recommend the corrective action likely to prevent damage to the areas where such
42 soils or drainage problems exist. Storm water shall be managed in accordance ~~with the criteria~~
43 ~~set out in MICC 15.09.030~~ Chapter 15.09 MICC and shall not increase likely damage to
44 downstream or upstream facilities or properties.

1
2 3. Alternative tightline storm drains to Lake Washington shall not cause added impact to the
3 properties, and the applicant shall submit supportive calculations for storm drainage detention.
4

5 D. Streets, Roads and Rights-of-Way.
6

7 1. The width and location of rights-of-way for major, secondary, and collector arterial streets
8 shall be as set forth in the comprehensive arterial plan.
9

10 2. Public rights-of-way shall comply with the requirements set out in MICC 19.09.030.
11

12 3. Private access roads shall meet the criteria set out in MICC 19.09.040.
13

14 4. Streets of the proposed subdivision shall connect with existing improved public streets, or
15 with existing improved private access roads subject to easements of way in favor of the land to
16 be subdivided.
17

18 E. Residential Lots.
19

20 1. The area, width, and depth of each residential lot shall conform to the requirements for the
21 zone in which the lot is located. Any lot which is located in two or more zones shall conform to
22 the zoning requirements determined by the criteria set out in MICC 19.01.040(G)(2).
23

24 2. Each side line of a lot shall be approximately perpendicular or radial to the center line of the
25 street on which the lot fronts.
26

27 3. The proposed subdivision shall identify the location of building pads for each proposed lot per
28 MICC 19.09.090. No cross-section dimension of a designated building pad shall be less than 20
29 feet in width.
30

31 4. The proposed subdivision shall incorporate preferred development practices pursuant to
32 MICC 19.09.100 where feasible.
33

34 5. The proposed subdivision shall be designed to comply with the provisions of Chapter 19.10
35 MICC.
36

37
38 F. Design Standards for Special Conditions.
39

40 1. Subdivisions abutting an arterial street as shown on the comprehensive arterial plan shall be
41 oriented to require the rear or side portion of the lots to abut the arterial and provide for
42 internal access streets.
43

1 2. Where critical areas meeting the criteria set out in Chapter 19.07 MICC are present within the
2 subdivision, the code official or city council may:

3
4 a. Require that certain portions of the long subdivision or short subdivision remain
5 undeveloped with such restrictions shown on the official documents;

6
7 b. Increase the usual building set-back requirements; and/or

8
9 c. Require appropriate building techniques to reduce the impact of site development.

10
11 G. Optional Standards for Development. In situations where designing a ~~long subdivision or short~~
12 subdivision to the requirements of subsections A through F of this section would substantially hinder the
13 permanent retention ~~of trees; interfere with the protection critical areas of wooded or steep areas or~~
14 ~~other natural features~~; preclude the provision of parks, playgrounds, or other noncommercial
15 recreational areas for neighborhood use and enjoyment; or ~~would~~ negatively impact the physiographic
16 features and/or existing ground cover of the subject area, the applicant may request that the project be
17 evaluated under the following standards:

18
19 1. The use of the land in the long subdivision or short subdivision shall be one permitted in the
20 zone in which the long subdivision or short subdivision is located.

21
22 2. The number of lots shall not exceed the number that would otherwise be permitted within
23 the area being subdivided, excluding the shorelands part of any such lot and any part of such lot
24 that is ~~part of~~ located in a street.

25
26 3. An area suitable for a private or public open space tract shall be set aside for such use.

27
28 4. The lots may be of different areas, but the minimum lot area, minimum lot width, and
29 minimum lot depth shall each be at least 75 percent of that otherwise required in the zone in
30 which the long subdivision or short subdivision is located. In no case shall the lot area be less
31 than 75 percent of that otherwise required in the zone. Lot size averaging must be incorporated
32 if lot width or depth requirements are 75 percent of the minimum that would otherwise be
33 required for the zone without utilizing the optional development standards. Any designated
34 open space or recreational tract shall not be considered a lot.

35
36 5. The ownership and use of any designated open space or recreational tract, if private, shall be
37 shared by all property owners within the long subdivision or short subdivision. In addition, a
38 right of entry shall be conveyed to the public to be exercised at the sole option of the city
39 council if such area shall cease to be an open space or recreational tract.

40
41 6. The open space or recreational tract must remain in its approved configuration and be
42 maintained in accordance with approved plans. Any deviation from the foregoing conditions
43 must receive expressed approval from the ~~planning commission~~ Hearing Examiner.

1
2 **19.08.040 Plat improvements.**

3 A. Streets, Utilities and Storm Drainage. ~~The long subdivision, short A subdivision, or lot line revision~~
4 shall include provisions for streets, water, sanitary sewers, storm drainage, utilities and any easements
5 or facilities necessary to provide these services. All utilities shall be placed underground unless waived
6 by the city engineer. Detailed plans for these provisions shall not be required until after the approval of
7 the preliminary plat and shall be a condition precedent to the official approval of the subdivision.

8
9 B. Performance Bond. The owner(s) of a project shall deposit with the city a performance bond or funds
10 for a set-aside account in an amount equal to 150 percent of the cost of the required improvements, as
11 established by the city engineer. Such security shall list the exact work that shall be performed by the
12 owner(s) and shall specify that all of the deferred improvements shall be completed within the time
13 specified by the city engineer, and if no time is so specified, then not later than one year. The city may
14 also require a bond or set-aside account securing the successful operation of improvements or survival
15 of required landscaping for up to two years after final approval.

16
17 C. Site Supervision. Any and all services performed by city employees in field inspection of construction
18 of plat improvements, clearing, and/or grading processes, shall be charged to the developer at 100
19 percent of direct salary cost, plus 35 percent of such cost for overhead. Any outside consultants retained
20 by the city to evaluate any phase of plat design or construction shall be charged at actual cost, plus any
21 additional administrative costs. Billings tendered to the owner(s) shall be payable within 30 days.

22
23 D. Construction Seasons. Either the city engineer or the building official may:

- 24
25 1. Limit the construction project to a specific seasonal time period.
26
27 2. Prevent land clearing, grading, filling, and foundation work on lots with critical slopes or
28 geologic hazard areas between October 1 and April 1, as set out in MICC 19.07.020; and
29
30 3. Require short term soil and drainage control measures such as, but not limited to: hemping,
31 seeding, gravel or light asphalt base roads, temporary siltation and detention ponds. (Ord. 99C-
32 13 § 1).

33
34
35 **19.08.050 Final plats.**

36
37 ...

38
39 C. Contents of the Final Plat. All final plats submitted to the city shall meet the requirements set out in
40 Chapter 58.09 RCW, Chapter 332-130 WAC, and those requirements set out below.

41
42 Final plat documents submitted to the city shall ~~consist of one mylar and one copy~~ containing the
43 information set out below. The ~~mylar and copy~~ final plat documents shall be drawn on a 18 inches by 24
44 inches in-sheet size, allowing one-half inch for borders. ~~If more than one sheet is required for the mylar~~

1 ~~and copy, each sheet, including the index sheet, shall be the specified size.~~ The index sheet must show
2 the entire subdivision, with street and highway names and block numbers.

3
4 1. Identification and Description.

5
6 a. Name of the long subdivision, short subdivision or lot line revision.

7
8 b. A statement that the long subdivision or short subdivision has been made with the
9 free consent and in accordance with the desires of the owner or owners.

10
11 c. Location by section, township and range, or by other legal description.

12
13 d. The name and seal of the registered engineer or the registered land surveyor.

14
15 e. Scale shown graphically, date and north point. The scale of the final plat shall be such
16 that all distances and bearings can be clearly and legibly shown thereon in their proper
17 proportions. Where there is a difference between the legal and actual field distances
18 and bearings, both distances and bearings shall be shown with the field distances and
19 bearings shown in brackets.

20
21 f. A description of property platted which shall be the same as that recorded in
22 preceding transfer of said property or that portion of said transfer covered by plat.
23 Should this description be cumbersome and not technically correct, a true and exact
24 description shall be shown upon the plat, together with original description. The correct
25 description follow the words: "The intent of the above description is to embrace all the
26 following described property."

27
28 g. A vicinity map showing the location of the plat relative to the surrounding area.

29
30 2. Delineation.

31
32 a. Boundary plat, based on an accurate traverse, with angular and lineal dimensions.

33
34 b. Exact location, width, and name of all streets within and adjoining the plat, and the
35 exact location and widths of all roadways, driveways, trail easements. The name of a
36 street shall not duplicate that of any existing street in the city, unless the platted street
37 be a new section or continuation of the existing street.

38
39 c. True courses and distances to the nearest established street lines or official
40 monuments which shall accurately describe the location of the plat.

41
42 d. Municipal, township, county or section lines accurately tied to the lines of the
43 subdivision by courses and distances.
44

1 e. Radii, internal angles, points of curvature, tangent bearings and lengths of all arcs.

2
3 f. All easements for rights-of-way provided for public services or utilities. Utility
4 easements shall be designated as public or private.

5
6 g. All lot and block numbers and lines, with accurate dimensions in feet and hundredths.
7 Blocks in numbered additions to subdivisions bearing the same name may be numbered
8 or lettered consecutively through the several additions. The square footage for each lot
9 less vehicular easements shall be shown.

10
11 h. Accurate location of all monuments, which shall be concrete commercial monuments
12 four inches by four inches at top, six inches by six inches at bottom, and 16 inches long.
13 One such monument shall be placed at each street intersection and at locations to
14 complete a continuous line of sight and at such other locations as are required by the
15 engineer.

16
17 i. All plat meander lines or reference lines along bodies of water shall be established
18 above the ordinary high water line of such water.

19
20 j. Accurate outlines and legal description of any areas to be dedicated or reserved for
21 public use, with the purpose indicated thereon and in the dedication; and of any area to
22 be reserved by deed covenant for common uses of all property owners.

23
24 k. Critical areas as identified under Chapter 19.07 MICC.

25
26 l. Corner pins made of rebar with caps.

27
28 m. Designated building pads pursuant to MICC 19.09.090.

29
30 3. Other Marginal Data on Final Plat.

31
32 a. If the plat is subject to dedications to the city or any other party, the dedications shall
33 be shown and shall be duly acknowledged. The plat shall also contain a waiver of all
34 claims for damages against the city which may be occasioned to the adjacent land by
35 the established construction, drainage and maintenance of any streets dedicated to the
36 city.

37
38 b. A copy of the protective covenants, if any.

39
40 c. Certification by Washington registered civil engineer or land surveyor to the effect
41 that the plat represents a survey made by that person and that the monuments shown
42 thereon exist as located and that all dimensional and geodetic details are correct.
43

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d. Proper forms for the approvals of the city engineer and the mayor, on behalf of the city council, in the case of a long subdivision; or the city engineer and the code official in the case of short subdivisions or lot line revisions, with space for signatures.

e. Certificates by the county assessor showing that the taxes and assessments on the land to be submitted have been paid in accordance with law, including a deposit for the taxes for the following year.

f. Approval by the county department of records.

g. Conditions of approval created at preliminary subdivision approval that affect individual lots or tracts.

...

1 Chapter 19.09
2 PROPERTY DEVELOPMENT

3
4 **19.09.040 Private access roads and driveways.**

5 A. The following are the minimum requirements for private access roads. To accommodate fire
6 suppression and rescue activities, the Mercer Island fire chief may require that the widths of private
7 access roads or driveways or the size of turn-arounds be increased or that turn-arounds be provided
8 when not otherwise required by this section.

9
10 B. All private access roads serving three or more single-family dwellings shall be at least 20 feet in width.
11 All private access roads serving less than two three single-family dwellings shall be at least 16 feet in
12 width, with at least 12 feet of that width consisting of pavement and the balance consisting of well
13 compacted shoulders.

14
15 C. All corners shall have a minimum inside turning radius of 28 feet.

16
17 D. All private access roads in excess of 150 feet in length, measured along the centerline of the access
18 road from the edge of city street to the end of the access road, shall have a turn-around with an inside
19 turning radius of 28 feet.

20
21 E. All cul-de-sacs shall be at least 70 feet in diameter; provided, cul-de-sacs providing access to three or
22 more single-family dwellings shall be at least 90 feet in diameter.

23
24 F. Driveways serving one single family dwelling shall be at least 8 feet in width. Driveways providing
25 vehicle access to parking for regulated improvements shall comply with the parking lot dimension
26 requirements of Appendix A.

27
28 ~~FG.~~ Gradient.

29
30 1. No access road or driveway shall have a gradient of greater than 20 percent.

31
32 2. For all access roads and driveways with a gradient exceeding 15 percent, the road surface
33 shall be cement concrete pavement with a brushed surface for traction. Access roads and
34 driveways with gradients of 15 percent or less may have asphalt concrete surface.

35
36 ...

37
38 **19.09.090 Building pad.**

39 A. Designation. New subdivisions ~~must~~ shall designate a building pad for each lot as follows:

- 40
41 1. The ~~applicant must determine the~~ building pad shall be located to minimize or prevent
42 impacts as indicated in the following: location of a building pad by considering
43 a. Removal of trees and vegetation required for retention pursuant to Chapter 19.10
44 MICC shall be prevented;

1 b. -Disturbance of the existing, natural topography as a result of anticipated
2 development within the building pad shall be minimized;
3 c. Impacts to critical areas and critical area buffers shall be minimized, consistent with
4 the provisions of Chapter 19.07 MICC; and,
5 the relationship of the proposed building pad to existing/proposed homes.
6 a. Access to the building pad must shall be consistent with the standards for driveway
7 access contained in MICC 19.09.040.

8
9 2. Building pads shall not be located within:

- 10 a. Required front, rear, or side yard setbacks;
11 b. Streets or rights of way; and; yard setbacks, rights of way and
12 c. Critical areas or its buffers; provided, however, building pads may be located within
13 landslide-geohazard hazard areas when all of the following are met: {
14 i. a) A qualified professional determines that the criteria of MICC 19.07.060(D),
15 Site Development, is satisfied; (b)
16 ii. b) Building pads are sited to minimize impacts to the extent reasonably
17 feasible; and
18 ii. (c) b) Building pads are not located in steep slopes or within 10 feet from the
19 top of a steep slope, unless such slopes, as determined by a qualified
20 professional, consist of soil types determined not to be landslide prone.

21
22 3. No cross-section dimension of a building pad shall be less than 20 feet in width.

23
24 B. No Designated Building Pad Area.

- 25
26 1. New development proposals on a lot On lots without a previously designated building pad area,
27 development shall be located shall establish a building pad outside of critical areas unless
28 otherwise allowed by Chapter 19.07 MICC, consistent with the provisions of MICC 19.09.090(A)
29 above.
30
31 2. A building pad on a large lot shall also comply with the provisions of 19.02.020(I).

32
33 C. New buildings shall be located within the building pad established by subsection "A." or "B." above.

34
35
36 **19.09.100 Preferred practices.**

37 The applicant must use reasonable best efforts to comply with Proposed development shall incorporate
38 all of the following preferred development practices where feasible:

39
40 A. Use common access drives and utility corridors.

41
42 B. Development, including roads, walkways and parking areas in critical areas, should be avoided, or if
43 not avoided, adverse impacts to critical areas will be mitigated to the greatest extent reasonably
44 feasible.

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5

C. Retaining walls should be designed to minimize grading, including the placement of fill, on or near an existing natural slope ~~used to maintain existing natural slopes in place of graded artificial slopes.~~

1 Chapter 19.10
2 TREES

3
4 **19.10.005 Purpose.**

5 Protecting, enhancing, and maintaining trees are key community values expressed in the Mercer Island
6 Comprehensive Plan. The purpose of this chapter is to encourage building and site design to minimize
7 tree removal, and to establish standards and procedures that will result in the retention of trees on
8 Mercer Island.

9
10 The city recognizes that trees:

- 11 A. Contribute to the residential character on Mercer Island;
- 12 B. Provide a public health benefit;
- 13 C. Provide wind protection, ecological benefits to wetlands and watercourses, and aid in the
14 stabilization of geologically hazardous areas;
- 15 D. Improve surface water quality and control and benefit Lake Washington; and,
- 16 E. Reduce noise and air pollution.

17
18 The city further acknowledges that the value of protecting, enhancing, and maintaining trees should be
19 balanced with the other community goals of:

- 20 F. Reasonable enjoyment and use of private property by the property owner; and,
- 21 G. Providing delivery of reliable utility service.

22
23 **19.10.010 Tree Code – Overview.**

24 This section is intended to provide an overview of the tree regulations contained in this Chapter 19.10
25 MICC.

- 26 A. Generally, a permit is required to remove any tree with a diameter of greater than 10 inches (see
27 sections 19.10.020 and 19.10.030 for details).
- 28 B. Non-development tree removal. If the tree is being removed for reasons other than development
29 (for example, if the tree is coming out because a property owner is landscaping their yard), then:
 - 30 1. A simple application is required. The application shows the location of trees on the
31 property, the tree(s) to be removed, and where re-planting will occur (see section
32 19.10.090(A) – General Information, for details).
 - 33 2. Replacement trees are required for the tree(s) removed; typically between October 1
34 and April 1 following removal (see section 19.10.070 for details).
- 35 C. Development tree removal. If the tree is being removed as part of a development (for example, to
36 allow for construction of a new home), then:
 - 37 1. A full application is required. The application provides details on the trees on site, the
38 removed trees, and the proposed protection measures for trees that will remain (see
39 section 19.10.090 for details).
 - 40 2. Retention of some trees is required. At a minimum, 30% of the trees will need to be
41 retained. Trees that are exceptional, are large, and have a high likelihood for long term
42 survival are prioritized for retention (see section 19.10.060 for details).
 - 43 3. Replacement trees are required for the tree(s) removed; typically between October 1
44 and April 1 following removal (see section 19.10.070 for details).

1
2
3 **19.10.020 Applicability and Permit required.**

4 A. Applicability. The provisions of this chapter shall apply to all property and public rights-of-way in the
5 City.

6 B. Permit required. A permit approval is required prior to removing any tree, except for trees that are
7 exempt pursuant to MICC 19.10.030.

8 1. Permit approval to remove one or more non-hazardous trees may take the form of a tree
9 removal permit or other construction permit approval.

10 2. Permit approval to remove one or more trees that pose an imminent threat to life or property,
11 such as tree limbs or trunks that are demonstrably cracked, leaning toward overhead utility lines
12 or structures, or are uprooted by flooding, heavy winds or storm events, in which event the
13 permit must be applied for within fourteen (14) days of the removal. Permit applications shall
14 be accompanied by documentation of the imminent threat to life or property, ideally in the
15 form of a report by a qualified arborist, but at least in the form of photographs that clearly
16 depict the threat. Prior notice of the impending tree removal should be provided to the City.

17 3. For the purposes of this section, tree removal includes the cutting or removing directly or
18 indirectly through site grading of any tree, or root destruction that will result in a tree ultimately
19 becoming a hazardous tree.

20
21 **19.10.030 Exemptions.**

22 Except where undertaken within critical areas and associated buffers, or on public property, the
23 following activities are exempt from the permitting, replacement, retention, and protection provisions
24 of this chapter:

25 A. Small tree removal. Removal of trees with a diameter of less than ten (10) inches that meet the
26 definition of small trees, except if the small tree is an exceptional tree, as defined, or was previously
27 planted as a replacement tree.

28 B. Removal of species identified in the weeds of concern, noxious, or invasive weed lists established by
29 Washington State or King County, as amended.

30 C. Tree pruning. Tree pruning, as defined in MICC 19.16.010, on private property.

31
32 **19.10.040 General Provisions.**

33 A. Relationship with Other Mercer Island Codes and Ordinances. In addition to any requirements
34 under this Chapter 19.10, the removal or pruning of any tree located within a critical area, critical
35 area buffer or the shoreline jurisdiction shall comply with the requirements of Chapter 19.07 MICC.
36 The City arborist may require additional information in order to confirm compliance with those
37 requirements.

38 B. Public property.

39 1. A private property owner may apply for a tree permit to prune or cut trees on any city street,
40 pursuant to MICC 19.10.100.

41 2. Pruning or cutting of trees within a public park by a private property owner is prohibited.

42 C. Private utility companies. A tree permit will be issued to private utility companies to cut trees
43 located on public or private property if necessary for public safety, removal of hazardous trees,
44 removal of diseased or dead trees, as part of any private utility tree maintenance program approved

1 by the city, or for construction work. Regardless of whether or not a permit is required, all cutting
2 or pruning of trees by private utility companies shall be performed under the supervision of a
3 certified arborist and at the sole cost and expense of the utility company.

4
5 **19.10.050 Tree removal – Not associated with a development proposal.**

6 A. Tree removal that is not associated with a development proposal shall provide replacement trees
7 (MICC 19.10.070), but is exempt from tree retention (MICC 19.10.060).

8 B. An application for tree removal that is not associated with a development proposal, shall provide
9 the application information described under 19.10.090(A) – General Information.

10 C. This section shall not be construed as an exemption to the tree retention and replacement
11 requirements of Chapter 19.07 MICC.

12
13 **19.10.060 Tree removal - Associated with a development proposal.**

14 A. Single family zoning designations.

15 1. In the R-8.4, R-9.6, R-12, and R-15 zoning designations, tree retention is required for the
16 following development proposals:

17 a. An addition or remodel to an existing single family dwelling that will result in the
18 addition of more than 500 square feet of gross floor area on a lot with a net lot area
19 of 6,000 square feet or more;

20 b. A new single family dwelling on a lot with a net lot area of 6,000 square feet or
21 more;

22 c. A subdivision or short subdivision.

23 2. Retention requirement. Development proposals specified under subsection “1.” above, shall
24 retain trees as follows:

25 a. A minimum of thirty percent (30%) of trees with a diameter of ten (10) inches or
26 greater, or that otherwise meet the definition of large tree, shall be retained over a
27 rolling five year period.

28 b. In addition to the retention required in subsection “a.” above, the development
29 proposal shall be designed to further minimize the removal of large trees and
30 maximize onsite tree retention as follows:

31 i. Site improvements, including but not limited to, new single family homes,
32 additions to a single family home, appurtenances, accessory structures,
33 utilities, and driveways shall be designed and located to minimize tree
34 removal during and following construction.

35 ii. The following trees shall be prioritized for retention:

36 (1) Exceptional trees;

37 (2) Trees with a diameter of more than 24 inches;

38 (3) Trees that have a greater likelihood of longevity; and,

39 (4) Trees that are part of a healthy grove

40 iii. Tree shall not be removed outside the area of land disturbance except
41 where necessary to install site improvements (e.g. driveways, utilities, etc.).

42 iv. Tree removal for the purposes of site landscaping should be limited to
43 those trees that will pose a future safety hazard to existing or proposed site
44 improvements.

1 c. Provide tree replacement pursuant to MICC 19.10.070.

2 3. Retention of exceptional trees. Development proposals specified under subsection "1."
3 above, shall retain exceptional trees with a diameter of 24 inches or more. Exceptional
4 trees with a diameter of 24 inches or more that are retained shall be credited towards
5 compliance with the retention requirements of subsection "2." above. Removal of
6 exceptional trees with a diameter of 24 inches or more, shall be limited to the following
7 circumstances:

8 a. Retention of an exceptional tree(s) with a diameter of 24 inches or more will result
9 in an unavoidable hazardous situation; or,

10 b. Retention of an exceptional tree(s) with a diameter of 24 inches or more will limit
11 the constructable gross floor area to less than 85% of the maximum gross floor area
12 allowed under Chapter 19.02 MICC; or,

13 c. Retention of an exceptional tree(s) with a diameter of 24 inches or more will
14 prevent creation of a residential lot through a subdivision or short subdivision that is
15 otherwise allowed by Title 19 MICC.

16 4. Calculation of rolling five year period. For the purposes of this section, the rolling five year
17 period begins five years prior to the date of application for a development approval that is
18 subject to tree retention.

19 5. Compliance required. Development proposals on lots that have removed more than 70% of
20 large trees within the rolling five year period, such that the 30% tree retention requirement
21 under subsection "2." above cannot be met, shall not receive approval unless and until
22 compliance has been achieved. For example, a lot that has removed all of the trees in year
23 "one", may not receive a preliminary subdivision approval in year "four". However, the
24 preliminary subdivision approval may be granted in year "six", such that the rolling five year
25 period does not include the tree removal in year "one".

26
27 B. Commercial or multifamily zoning designations - Tree removal.

28 1. In the P, B, C-0, PBZ, TC, MF-2, MF-2L, and MF-3 zoning designations a tree permit is
29 required and will be granted if it meets any of the following criteria:

30 a. It is necessary for public safety, removal of hazardous trees, or removal of diseased
31 or dead trees;

32 b. It is necessary to enable construction work on the property to proceed and the
33 owner has used reasonable best efforts to design and locate any improvements and
34 perform the construction work in a manner consistent with the purposes set forth in
35 MICC 19.10.005;

36 c. It is necessary to enable any person to satisfy the terms and conditions of any
37 covenant, condition, view easement or other easement, or other restriction
38 encumbering the lot that was recorded on or before July 31, 2001; and subject to
39 MICC 19.10.090(B);

40 d. It is part of the city's forest management program or regular tree maintenance
41 program and the city is the applicant;

42 e. It is desirable for the enhancement of the ecosystem or slope stability based upon
43 professional reports in form and content acceptable to the city arborist.

1 2. Design Commission review required in commercial zones. A tree permit for a development
2 proposal, resulting in regulated improvements located in a commercial zone, that has previously
3 received design commission approval, must first be reviewed, and approved by the city's design
4 commission prior to permit issuance by the city.

5
6
7 **19.10.070 Tree replacement.**

8 Trees that are cut pursuant to a tree permit shall be replaced as specified in subsections "A" and "B."
9 below, or a fee in lieu shall be paid as specified in subsection "C."

10
11 A. Tree replacement ratio. Removed trees pursuant, shall have the following base replacement ratio:

<u>Diameter of removed tree</u>	<u>Number of replacement trees required</u>
<u>Less than 10 inches</u>	<u>1</u>
<u>10 inches up to 24 inches</u>	<u>2</u>
<u>24 inches up to 36 inches</u>	<u>3</u>
<u>More than 36 inches and any exceptional tree(s)</u>	<u>6</u>

12
13 B. Replacement Trees.

14 1. Location. Replacement trees shall be located in the following order of priority from most
15 important to least important:

- 16 a. On-site replacement adjacent to or within critical tree areas as defined in Chapter
17 19.16 MICC;
18 b. On-site replacement outside of critical tree areas adjacent to other retained trees
19 making up a grove or stand of trees;
20 c. On-site replacement outside of critical tree areas; and,
21 d. Off-site in adjacent public right-of-way where explicitly authorized by the city.

22
23 2. Species. Replacement trees shall primarily be those species native to the Pacific Northwest.
24 In making a determination regarding the species of replacement trees, the city arborist shall
25 defer to the species selected by the property owner unless the city arborist determines that the
26 species selected is unlikely to survive for a period of at least 10 years, represents a danger or
27 nuisance, would threaten overhead or underground utilities or would fail to provide adequate
28 protection to any critical tree area.

29
30 3. Size.

- 31 a. Coniferous trees shall be at least 6 feet tall; and
32 b. Deciduous trees shall be at least 1.5 inches in caliper.

33 The city arborist may authorize the planting of smaller-sized replacement trees if the applicant
34 can demonstrate that smaller trees are more suited to the species, the site conditions,
35 neighborhood character, and the purposes of this section, and that such replacement trees will
36 be planted in sufficient quantities to meet the intent of this section. The city arborist shall not
37 authorize the planting of shrubs or bushes in lieu of required replacement trees.
38

1 4. Reduction. The city arborist may reduce the number of replacement trees as follows, where
2 other measures designed to mitigate the tree loss by restoring the tree canopy coverage and its
3 associated benefits are considered to be effective and consistent with the purposes of this
4 chapter. The city arborist may consider, but is not limited to, the following measures:

- 5 a. Replacement of hazardous, undesired, or short-lived trees with healthy new trees
6 that have a greater chance of long-term survival;
- 7 b. Restoration of critical tree areas with native vegetation; and,
- 8 c. Protection of small trees to provide for successional stages of tree canopy.

9
10 5. Timing. Replacement trees shall be planted in the wet season (October 1 through April 1),
11 following the applicable tree removal or, in the case of a development proposal, completion of
12 the development work, provided the city arborist may authorize an extension to ensure optimal
13 planting conditions for tree survival.

14
15 C. Fee-in-lieu. If the city arborist determines there is insufficient area to replant on the site or within the
16 adjacent public right-of-way, the city arborist may authorize payment of a fee-in-lieu provided:

- 17 1. There is insufficient area on the lot or adjacent right-of-way for proposed on-site tree
18 replacement to meet the tree replacement requirements of this chapter; or
- 19 2. Tree replacement or management provided within public right-of-way or a city park in the
20 vicinity will be of greater benefit to the community.
- 21 3. Fees provided in lieu of on-site tree replacement shall be determined based upon:
 - 22 a. The expected tree replacement cost including labor, materials, and maintenance for
23 each replacement tree; and,
 - 24 b. The most current Council of Tree and Landscaper Appraisers Guide for Plant
25 Appraisal.
- 26 4. Any fee in lieu is also optional for the applicant and requires an explicit written agreement.

27
28 D. Maintenance of Replacement Trees. The applicant shall maintain all replacement trees in a healthy
29 condition for a period of five years after planting. The applicant shall be obligated to replant any
30 replacement tree that dies, becomes diseased, or is removed during this five-year time period.

31
32 E. Private Utility Company. If the permit is granted to a private utility company and the property owner
33 is unwilling to place any replacement trees on the owner's property, the private utility company shall
34 pay to the city the amount necessary to purchase and plant replacement trees on public property
35 necessary to mitigate the impact of the removed trees based upon arborist industry standards. Monies
36 paid to the city for replacement trees shall be used for that purpose.

37
38 **19.10.080 Tree protection standards.**

39 A. To ensure long-term viability of trees identified for protection, permit plans and construction
40 activities shall comply with the then-existing Best Management Practices (BMP) – Managing Trees
41 During Construction, published by the International Society of Arboriculture, adopted by reference.
42 The tree protection plan shall be prepared by a qualified arborist and the plan shall be reviewed for
43 adequacy by the City arborist. All minimum required tree protection measures shall be shown on
44 the development plan set and tree re-planting / restoration / protection plan.

1
2 B. Alternative Methods. The city arborist may approve construction related activity or work within the
3 tree protection barriers if the city arborist concludes:

- 4 1. That such activity or work will not threaten the long term health of the retained tree(s); and,
- 5 2. That such activity or work complies with the protective methods and best building practices
6 established by the International Society of Arboriculture.

7
8 **19.10.090 Application requirements.**

9 The city shall establish and maintain a tree removal permit application form to allow property owners to
10 request city review of tree removal for compliance with applicable city regulations. The application shall
11 include at a minimum, the following:

12 A. General Information.

- 13 1. The name, address, telephone number of the applicant, the name, address, telephone
14 number of the property owner, and the street address of the property.
- 15 2. The proposed location, species, diameter, and number of trees proposed to be cut or public
16 tree proposed to be pruned.
- 17 3. The proposed location and number of any required replacement trees.
- 18 4. A site plan reflecting the location of large trees and the relative location of structures,
19 driveways, and buildings.
- 20 5. Additional information required by the City to confirm compliance with this Chapter or
21 Chapter 19.07 MICC.

22
23 B. Critical Tree Area. An application covering a tree located in a critical tree area, as defined in Chapter
24 19.16 MICC, shall include a proposed time schedule for the cutting, land restoration, implementation of
25 erosion control and other measures that will be taken in order to prevent damage to the critical tree
26 area.

27
28 C. Development plan set. An application for a development proposal that requires tree retention, and
29 that will result in the removal of one or more trees and as a result of construction work, shall include the
30 following:

- 31 1. Detailed site plan. The site plan shall include the following information at a minimum:
 - 32 a. Location of all proposed improvements, including building footprint, access, utilities,
33 applicable setbacks, buffers, and required landscaped areas clearly identified. If a short
34 plat or subdivision is being proposed and the location of all proposed improvements
35 cannot be established, a phased tree retention plan review is required as described
36 below;
 - 37 b. Accurate location of large trees on the subject property (surveyed locations may be
38 required). The site plan must also include the trunk location and critical root zone of
39 large trees that are on adjacent property with driplines extending over the subject
40 property line;
 - 41 c. Trees labeled corresponding to the tree inventory numbering system;
 - 42 d. Location of tree protection measures;

- e. Indicate limits of disturbance (LOD) drawn to scale around all trees potentially impacted by site disturbances resulting from grading, demolition, or construction activities (including approximate LOD of off-site trees with overhanging driplines);
- f. Proposed tree status (trees to be removed or retained) noted by an 'X' or by ghosting out;
- g. Proposed locations of any required replacement trees.

2. A Tree Retention Plan and Arborist Report. The tree retention plan shall contain the following information:

a. A tree inventory containing the following:

- i. A numbering system of all existing large trees on the subject property (with corresponding tags on trees); the inventory shall also include large trees on adjacent property with driplines or critical root zones extending into the development proposal site;
- ii. Size (diameter);
- iii. Proposed tree status (retained or removed);
- iv. Tree type or species;
- v. Brief general health or condition rating of these trees (i.e. poor, fair, good, etc.)

b. An arborist report, prepared by a qualified arborist, containing the following:

- i. A complete description of each tree's diameter, species, critical root zone, limits of allowable disturbance, health, condition, and viability;
- ii. A description of the method(s) used to determine the limits of allowable disturbance (i.e., critical root zone, root plate diameter, or a case-by-case basis description for individual trees);
- iii. Any special instructions specifically outlining any work proposed within the limits of the disturbance protection area (i.e., hand-digging, air spade, tunneling, root pruning, any grade changes, clearing, monitoring, and aftercare);
- iv. For trees not viable for retention, a description of the reason(s) for removal based on poor health, high risk of failure due to structure, defects, unavoidable isolation (windfirmness), or unsuitability of species, etc., and for which no reasonable alternative action is possible must be given (pruning, cabling, etc.);
- v. Describe the impact of necessary tree removal to the remaining trees, including those in a grove or on adjacent properties;
- vi. For development applications, a discussion of timing and installation of tree protection measures. Such measures must include fencing and be in accordance with the tree protection standards as outlined in MICC 19.10; and
- vii. The suggested location and species of supplemental trees to be used when required. The report shall include planting and maintenance specifications to ensure long term survival.

3. Additional Information. The city arborist or code official may require additional documentation, plans, or information as needed to ensure compliance with applicable city regulations.

E. Peer review and conflict of interest.

1 1. The city may require peer review of the tree permit application by a qualified arborist to
2 verify the adequacy of the information and analysis. The applicant shall bear the cost of the peer
3 review.

4 2. The code official may require the applicant retain a replacement qualified arborist or may
5 require a peer review where the code official believes a conflict of interest exists. For example, if
6 an otherwise qualified arborist is employed by a tree removal company and prepares the
7 arborist report for a development proposal, a replacement qualified arborist or a peer review
8 may be required.

9
10
11 **19.10.100 Trees on public property.**

12 An application for a tree permit to cut a tree on public property or a request to have the city prune a
13 public tree located on a city street shall be reviewed by the city arborist based upon the following
14 conditions and criteria:

15
16 A. By the city. An annual tree permit will be issued to the city to cut any public trees necessary for public
17 safety, removal of hazardous trees, removal of diseased or dead trees, as part of the city's forest
18 management program or regular tree maintenance program or for construction work on public
19 property.

20
21 B. By private property owners in city street. A private property owner may apply for a tree permit to cut
22 or prune a public tree located on any city street if the owner demonstrates in the following order that all
23 of the criteria are satisfied:

24 1. The owner establishes that the tree is located on a city street;

25 2. The city arborist determines that the proposed pruning or cutting can be performed without
26 adversely affecting any critical tree areas;

27 3. Tree cutting. The city arborist determines that proposed tree removal is:

28 i. Necessary for access to private property;

29 ii. Necessary for installation of required public improvements (e.g. sidewalk, public
30 utilities, etc);

31 4. Tree pruning. The city arborist determines that proposed tree pruning is:

32 i. Required to resolve a possible hazard to public or private health or safety; or,

33 ii. Requested by a valid petition executed by at least 60 percent of the property owners
34 located within a 300-foot radius of the subject tree in favor of the proposed pruning of
35 the tree; and

36 5. Additional information prepared by a qualified arborist, if required by the city arborist, is
37 provided to ensure the long term health and viability of trees that will remain following pruning
38 or removal;

39 6. In the case of tree cutting, the private property owner provides tree replacement consistent
40 with MICC 19.10.070;

41 7. The owner pays a fee to cover all costs associated with reviewing the pruning or cutting
42 request;

43 8. The pruning or cutting is performed at the sole cost and expense of the private property
44 owner; and,

1 9. Tree topping is prohibited.

2
3 C. Pruning or cutting of trees within a public park by a private property owner is prohibited.

4
5 **19.10.110 Seasonal development limitations.**

6 No cutting of trees located in geologic hazard areas or protected slope areas is allowed between
7 October 1 and April 1 unless: (i) a tree permit with explicit authorization for removal between October 1
8 and April 1 has been granted; or (ii) removal is required due to an emergency situation involving
9 immediate danger to life or property. The city arborist may authorize tree removal between October 1
10 and April 1 if the city arborist determines that such environmentally critical areas will not be adversely
11 impacted by the proposed cutting and the applicant demonstrates compelling justification based on a
12 geotechnical evaluation of the site. The city arborist may require hydrology, soils and storm water
13 studies, erosion control measures, restoration plans, and/or an indemnification/release agreement.

14
15 **19.10.120 Rounding.**

16 When the retention or replacement calculations results in a fraction, the fraction shall be rounded to the
17 nearest whole number as follows:

18 A. Fractions of 0.50 or above shall be rounded up to the closest whole number; and

19 B. Fractions below 0.50 shall be rounded down to the closest whole number.

20
21 **19.10.130 Bald eagle and other federal and state requirements.**

22 In addition to any requirement of this chapter, persons must comply with all applicable federal and state
23 laws, rules and regulations including without limitation the Endangered Species Act, the Bald Eagle
24 Protection Act and the Migratory Bird Treaty Act, as now existing or hereinafter adopted or amended.

25
26 **19.10.140 Nuisance abatement.**

27 A. In addition to the requirements of this Chapter 19.10 MICC, trees and vegetation which meet the
28 definition of a nuisance shall be subject to the provisions of Chapter 8.24 MICC, Nuisance Control Code.

29
30 B. In addition to the provisions of Chapter 8.24 MICC, Nuisance Control Code, the following
31 requirements shall apply to trees and vegetation:

32
33 1. Branches over roads shall be trimmed to a minimum of 12 feet above the road surface. (see
34 Figure 1).

35
36 2. Branches over sidewalks shall be trimmed to a minimum of eight feet above the sidewalk and
37 one foot behind the sidewalk (see Figure 1).

38
39 3. Street trees and other vegetation will be spaced according to the following spacing
40 requirements to facilitate the safe flow of traffic (see Figure 2):

41
42 a. No tree plantings are allowed within a 30-foot sight triangle at any street intersection.

43
44 b. Shrubs shall not exceed 36 inches in height above the street level within this triangle.

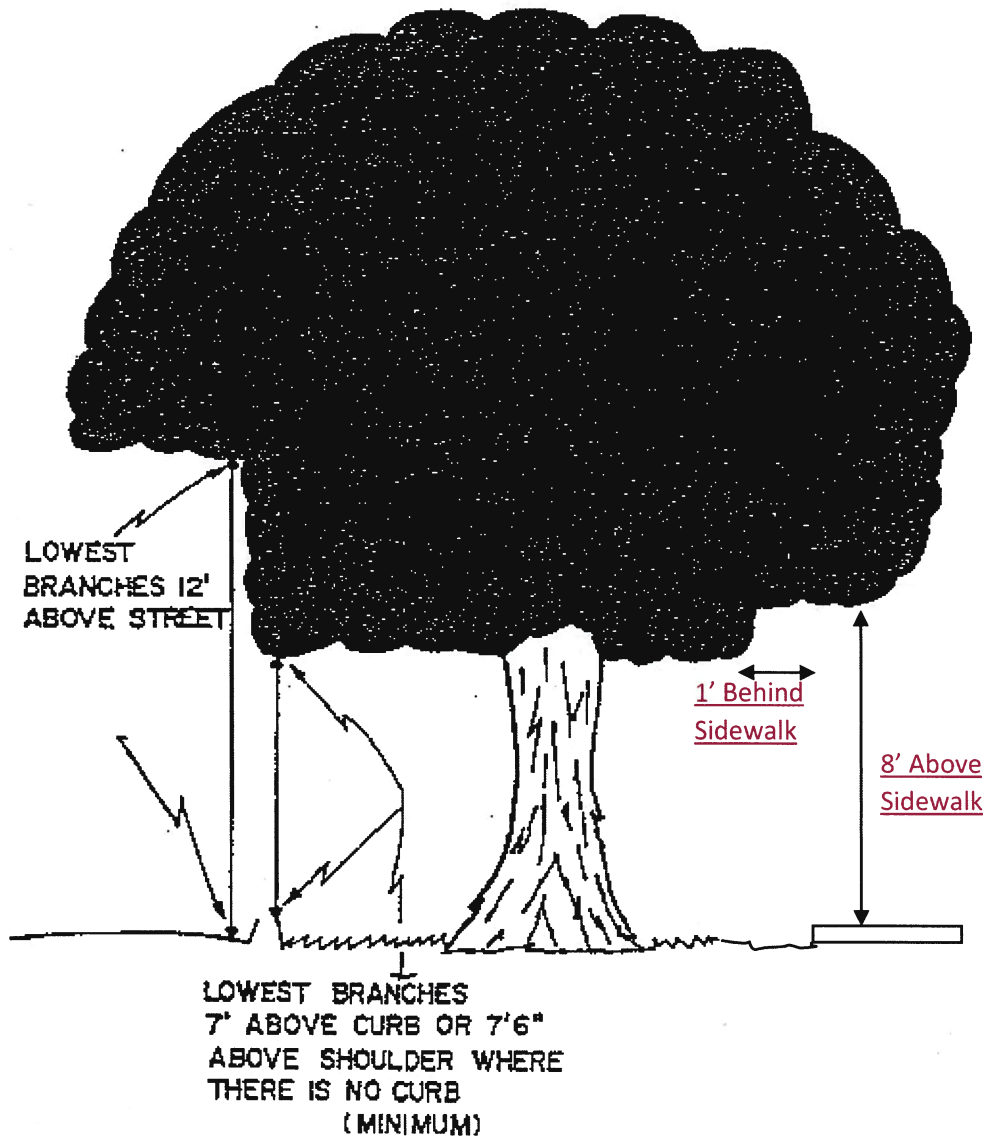
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c. Ten-foot minimum spacing shall be observed for small trees.

d. Hedges are not allowed between the sidewalk and the curb, and must be planted at least five feet behind the sidewalk.

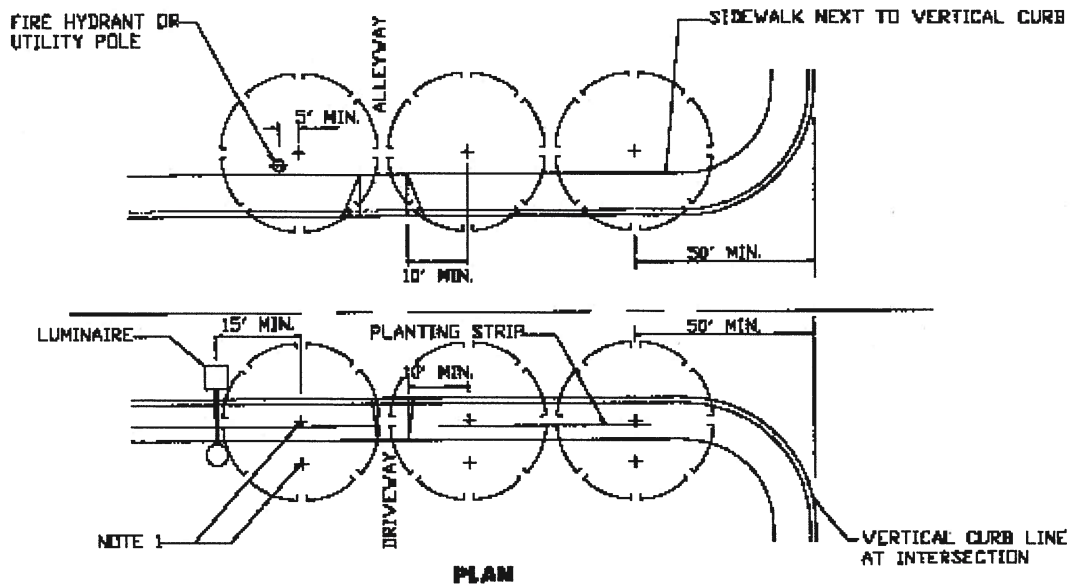
e. Hedges must be trimmed at least three feet behind the sidewalk.

f. Plantings of trees, shrubs or hedges are not allowed between the street/road edge and a ditch.




11
12
13

Figure 1



NOTES:

1. TREES SHALL GENERALLY BE PLANTED BACK OF THE SIDEWALK. PLANTING STRIPS WILL BE APPROVED ONLY AS PART OF A LANDSCAPING PLAN IN WHICH PLANT MAINTENANCE, LANDSCAPING PLAN IN COMPATIBILITY WITH UTILITIES, AND TRAFFIC SAFETY ARE DULY CONSIDERED.
2. IF PLANTING STRIPS ARE APPROVED:
 - A. MIN. DISTANCE FROM CENTER OF ANY TREE TO NEAREST EDGE OF VERTICAL CURB SHALL BE 4 FEET.
 - B. TREES SHALL BE STAKED IN A MANNER NOT TO OBSTRUCT SIDEWALK TRAFFIC.
 - C. IN CASE OF BLOCK-OUTS, MIN. CLEAR SIDEWALK WIDTH SHALL BE 5 FEET IN RESIDENTIAL OR 8 FEET IN BUSINESS DISTRICTS.
3. ON BUS ROUTES, PLANS SHALL BE COORDINATED WITH METRO SERVICE PLANNING.

	CITY OF MERCER ISLAND STANDARD DETAILS URBAN FORESTRY	
	STREET TREE STANDARDS	
1-1-2008	NO SCALE	

1
2
3
4
5

Figure 2

19.10.150 Appeals.

1 Any person or persons aggrieved by any action or decision of city staff made pursuant to any section of
2 this chapter, may appeal such action or decision in accordance with the appeal procedure set forth in
3 Chapter 19.15 MICC.

4
5 **19.10.160 Enforcement.**

6 A. Violation. It is a violation of this chapter for any person to fail to comply with the requirements of this
7 chapter.

8
9 **B. Civil Penalty and Remediation.**

10 1. Civil Penalty. The penalty for violating this chapter shall be a fine equal to up to three times
11 the value of the damaged or cut tree or removed vegetative cover, plus the cost of reasonable
12 remediation. Trees and other vegetation shall be appraised according to the method specified
13 by the Council of Landscape and Tree Appraisers, most current edition.

14 2. Remediation. Remediation for tree removed in violation of this chapter shall include, but is
15 not limited to, the following:

- 16 a. Removal of the remaining plant parts or debris;
- 17 b. Preparation of a re-planting plan in a form approved by the code official for re-
18 planting the area where trees were removed in violation of this chapter;
- 19 c. Payment of the costs to review, approve, and administer the remediation process;
- 20 d. Installation of the required re-plantings as reflected on the re-planting plan; and,
- 21 e. Maintenance of the required re-plantings for a period of five years.

22
23 C. Tree retention enforcement. Trees identified for retention through the approval of development
24 proposal that are subsequently removed, or are damaged to the extent that removal is required, with
25 prior written approval by the City arborist, whether the removal or damage is intentional or
26 unintentional, shall result in a civil penalty pursuant to section "B." above, in addition to required
27 replanting and remediation. The code official may waive the civil penalty if the code official determines
28 that appropriate tree protection standards were in place and maintained and natural disaster or events
29 entirely outside the knowledge and control of the property owner, resulted in the tree loss.

30
31
32 **19.10.010 Purpose.**

33 ~~— These regulations are adopted to promote the public health, safety and general welfare of the~~
34 ~~citizens of Mercer Island, including minimizing erosion, siltation and water pollution in Lake~~
35 ~~Washington, surface water and ground-water runoff, risks of slides, and the need for additional~~
36 ~~storm drainage facilities; preserving trees for the reduction of noise, wind protection, slope~~
37 ~~stabilization, animal habitat, and reduction in air pollution; removing diseased or hazardous trees;~~
38 ~~implementing the city's comprehensive plan; designating and preserving historical trees; and~~
39 ~~providing for the delivery of reliable utility service, reasonable development of property and~~
40 ~~reasonable preservation or enhancement of property views.~~

41
42 **19.10.020 Permit requirements.**

43 ~~approximate—approximate~~

1 ~~A. No Permit Required. Except as otherwise provided in subsection B of this section, no tree permit is~~
2 ~~required for an owner or an owner's agent to cut or prune trees located on the owner's property as~~
3 ~~follows:~~

4
5 ~~1. Outside Critical Tree Area. No tree permit is required to cut any tree located outside a critical~~
6 ~~tree area;~~

7
8 ~~2. Pruning. No tree permit is required to perform pruning of any tree; and~~

9
10 ~~3. Size of Tree. No tree permit is required to cut any small tree.~~

11
12 ~~B. Permit Required. A tree permit is required to cut a tree as follows:~~

13
14 ~~1. Construction Work. A tree permit is required to cut any large tree as a result of construction~~
15 ~~work;~~

16
17 ~~2. Landmark Tree/Grove. A tree permit is required to cut a landmark tree or any tree located in~~
18 ~~a landmark grove;~~

19
20 ~~3. Critical Tree Area. A tree permit is required to cut any large tree located in a critical tree area;~~

21
22 ~~4. Commercial Zone. A tree permit is required to cut any large tree located in a commercial~~
23 ~~zone;~~

24
25 ~~5. Emergency. A tree on private property may be cut without a tree permit in an emergency~~
26 ~~situation involving immediate danger to life or property so long as the city arborist is notified~~
27 ~~within seven days of the tree having been cut, is provided such additional information as the city~~
28 ~~arborist requests in order to verify the emergency, and a tree permit is obtained within 20 days~~
29 ~~following the cutting of the tree if a tree permit is required under this section;~~

30
31 ~~6. Public Tree.~~

32
33 ~~a. By the City. The city is obligated to comply with the permit requirements as set forth~~
34 ~~in this chapter;~~

35
36 ~~b. By Private Property Owners. No private property owner may cut or prune a public~~
37 ~~tree. A private property owner can request the city to prune a tree located on any city~~
38 ~~street subject to the conditions set forth in MICC 19.10.040(A)(2);~~

39
40 ~~7. Private Utility Company. A tree permit is required for a private utility company to cut any tree.~~

41
42
43 **19.10.030 Seasonal development limitations.**

1 ~~No cutting of trees located in geologic hazard areas or protected slope areas is allowed between~~
2 ~~October 1 and April 1 unless: (i) an administrative waiver has been granted; or (ii) it is required due to an~~
3 ~~emergency situation involving immediate danger to life or property. The city arborist may grant an~~
4 ~~administrative waiver to this seasonal development limitation if the city arborist determines that such~~
5 ~~environmentally sensitive areas will not be adversely impacted by the proposed cutting and the~~
6 ~~applicant demonstrates compelling justification by a geotechnical evaluation of the site. The city arborist~~
7 ~~may require hydrology, soils and storm water retention studies, erosion control measures, restoration~~
8 ~~plans, and/or an indemnification/release agreement.~~

9
10
11 **19.10.040 Criteria.**

12 ~~A. Trees on Public Property. An application for a tree permit to cut a tree on public property or a request~~
13 ~~to have the city prune a public tree located on a city street shall be reviewed by the city arborist based~~
14 ~~upon the following conditions and criteria:~~

15
16 ~~1. By the City. An annual tree permit will be issued to the city to cut any public trees necessary for public~~
17 ~~safety, removal of hazardous trees, removal of diseased or dead trees, as part of the city's forest~~
18 ~~management program or regular tree maintenance program or for construction work on public~~
19 ~~property.~~

20
21 ~~2. By Private Property Owners. A private property owner may request the pruning of a public tree~~
22 ~~located on any city street if the owner demonstrates in the following order that all of the criteria are~~
23 ~~satisfied:~~

24
25 ~~a. The owner establishes that the tree is located on a city street;~~

26
27 ~~b. The owner submits a valid petition executed by at least 60 percent of the property owners~~
28 ~~located within a 300-foot radius of the subject tree in favor of the proposed pruning of the tree;~~

29
30 ~~c. The city arborist determines that the proposed pruning can be performed without adversely~~
31 ~~affecting any critical tree areas;~~

32
33 ~~d. The owner pays a fee to cover all costs associated with reviewing the pruning request; and~~

34
35 ~~e. The pruning is performed by the city but at the sole cost and expense of the private property owner.~~

36 ~~**B. Trees on Private Property.** When a tree permit is required to cut a tree on private property, the tree~~
37 ~~permit will be granted if it meets any of the following criteria:~~

38
39 ~~1. It is necessary for public safety, removal of hazardous trees, or removal of diseased or dead trees;~~

40
41 ~~2. It is necessary to enable construction work on the property to proceed and the owner has used~~
42 ~~reasonable best efforts to design and locate any improvements and perform the construction work in a~~
43 ~~manner consistent with the purposes set forth in MICC 19.10.010;~~

1 ~~3. It is necessary to enable any person to satisfy the terms and conditions of any covenant, condition,~~
2 ~~view easement or other easement, or other restriction encumbering the lot that was recorded on or~~
3 ~~before July 31, 2001; and subject to MICC 19.10.080(A)(2);~~
4

5 ~~4. It is part of the city's forest management program or regular tree maintenance program and the city is~~
6 ~~the applicant;~~
7

8 ~~5. The permit seeks to cut one of the following common, short lived "weedy" tree species: Alder, Bitter~~
9 ~~Cherry, or Black Cottonwood; or~~
10

11 ~~6. It is desirable for the enhancement of the ecosystem or slope stability based upon professional~~
12 ~~reports in form and content acceptable to the city arborist.~~
13

14 ~~**C. Trees Cut/Pruned by Private Utility Companies.** A tree permit will be issued to private utility~~
15 ~~companies to cut trees located on public or private property if necessary for public safety, removal of~~
16 ~~hazardous trees, removal of diseased or dead trees, as part of any private utility tree maintenance~~
17 ~~program approved by the city, or for construction work. Regardless of whether or not a permit is~~
18 ~~required, all cutting or pruning of trees by private utility companies shall be performed under the~~
19 ~~supervision of a certified arborist and at the sole cost and expense of the utility company.~~
20 ~~retention~~
21

22 ~~**19.10.050 Commission review required in commercial zones.**~~

23 ~~A tree permit covering regulated improvements located in a commercial zone, that have previously~~
24 ~~received design commission approval, must first be reviewed and approved by the city's design~~
25 ~~commission prior to permit issuance by the city.~~
26

27 ~~**19.10.060 Tree replacement.**~~

28 ~~Any trees that are cut pursuant to a tree permit shall be replaced on the subject property as specified in~~
29 ~~this section.~~
30

31 ~~A. Private Utility Company. If the permit is granted to a private utility company and the property owner~~
32 ~~is unwilling to place any replacement trees on the owner's property, the private utility company shall~~
33 ~~pay to the city the amount necessary to purchase and plant replacement trees on public property~~
34 ~~necessary to mitigate the impact of the removed trees based upon arborist industry standards. Monies~~
35 ~~paid to the city for replacement trees shall be used for that purpose.~~
36

37 ~~B. Species. In making a determination regarding the species of replacement trees, the city arborist shall~~
38 ~~defer to the species selected by the property owner unless the city arborist determines that the species~~
39 ~~selected is unlikely to survive for a period of at least 10 years, represents a danger or nuisance, would~~
40 ~~threaten overhead or underground utilities or would fail to provide adequate protection to any critical~~
41 ~~tree area.~~
42

43 ~~C. Size. All replacement trees shall be at least six feet tall, unless a smaller size tree or shrub is approved~~
44 ~~by the city arborist.~~

1
2 ~~D. Replacement Trees – Number. In making a determination regarding the number of replacement~~
3 ~~trees required, the city arborist shall apply a replacement ratio based on a sliding scale of 0:1 up to 4:1,~~
4 ~~depending upon the criteria in the following priority order:~~

5
6 ~~1. Percentage of slope, slope stability, topography and general soil conditions;~~

7
8 ~~2. Trunk size and canopy of tree to be cut and trunk size and canopy of replacement tree;~~

9
10 ~~3. Size and shape of lot and area available to be replanted; and~~

11
12 ~~4. Proximity to any critical tree area and/or the existence and retention of vegetative cover in any critical~~
13 ~~tree area.~~

14
15 ~~E. Maintenance of Replacement Trees. The applicant shall maintain all replacement trees in a healthy~~
16 ~~condition for a period of two years after planting. The applicant shall be obligated to replant any~~
17 ~~replacement tree that dies, becomes diseased or is removed during this two-year time period.~~

18
19
20 ~~**19.10.070 Bald eagle and other federal and state requirements.**~~

21 ~~In addition to any requirement of this chapter, persons must comply with all applicable federal and state~~
22 ~~laws, rules and regulations including without limitation the Endangered Species Act, the Bald Eagle~~
23 ~~Protection Act and the Migratory Bird Treaty Act, as now existing or hereinafter adopted or amended.~~

24
25
26 ~~**19.10.080 Permit applications.**~~

27 ~~A. Form. An application for a tree permit shall be submitted on a form provided by the city and shall~~
28 ~~include the following information:~~

29
30 ~~1. General Information.~~

31
32 ~~a. The applicant shall give the name, address and telephone number of the applicant~~
33 ~~and owner of the property and the street address.~~

34
35 ~~b. The applicant must provide information on the proposed location, species, diameter~~
36 ~~and number of trees proposed to be cut or public tree proposed to be pruned.~~

37
38 ~~c. The applicant must agree to pay all costs of cutting, pruning, removing debris,~~
39 ~~cleaning, purchasing and planting replacement trees and any traffic control needed.~~

40
41 ~~2. Critical Tree Area. An application covering a tree located in a critical tree area shall include a~~
42 ~~proposed time schedule for the cutting, land restoration, implementation of erosion control and~~
43 ~~other measures that will be taken in order to prevent damage to the critical tree area.~~

1 3. Construction Work. An application covering a tree to be cut as a result of construction work
2 shall include the following:

3
4 a. Plot Plan. Two prints of the plot plan at a scale of one inch equals 10 feet (1" = 10') or
5 larger. The scale and north indicator shall be given on the plan. The plot plan shall:

6
7 i. Indicate topography by contours at a minimum of five-foot intervals, and the
8 grading by dashed contour lines for existing grades and by solid contour lines for
9 existing grades to be changed. The entire area to be cut and/or filled shall be
10 indicated, and temporary storage of any excavated or fill material also
11 indicated;

12
13 ii. Indicate the location of existing and proposed improvements including, but
14 not limited to, structures, driveways, ponds, the location of building (zoning)
15 setbacks and grade changes; and

16
17 iii. Indicate the location, diameter and/or size, and species of all large trees.
18 Trees proposed to be cut shall be identified and differentiated from those trees
19 not being cut. For a permit involving any critical tree area, the applicant shall
20 also identify vegetative cover that will be retained or removed.

21
22 b. Restoration/Protection Plan. An applicant shall provide a plan for protecting trees
23 that are not intended to be cut, a plan for conducting all construction work in
24 accordance with best construction practices and a plan for erosion control and
25 restoration of land during and immediately following the construction period.

26
27 4. Public Trees. An application for a permit by a private utility company to cut a public tree
28 pursuant to MICC 19.10.040(C) or by a private property owner to prune a public tree on any city
29 street pursuant to MICC 19.10.040 (A)(2), shall include all such information as the city arborist
30 may require in order to verify that all conditions of those sections have been satisfied. If there is
31 a dispute as to whether a tree is located on public property or private property, the city arborist
32 may require a survey, at the applicant's expense, that is not more than one year old indicating
33 the boundaries of the private property and the public property.

34
35 B. City Review. The city arborist shall complete a review and make a decision within 30 days from the
36 date a complete application is submitted unless an extension, not to exceed 20 days, is authorized by
37 the city manager or designee.

38
39 C. Permit Expiration. Any permit granted hereunder shall expire one year from the date of issuance.
40 Upon a showing of good cause, a permit may be extended for one year. Any material change in plans or
41 information from that presented with the permit application that occurs prior to the cutting requires
42 submittal of an amended application for review and approval by the city arborist. The permit may be
43 suspended or revoked by the city arborist because of incorrect material information supplied or any
44 violation of the provisions of this chapter.

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19.10.090 Nuisance abatement.

A. Trees and vegetation which meet the definition of a nuisance shall be subject to the provisions of Chapter 8.24 MICC, Nuisance Control Code.

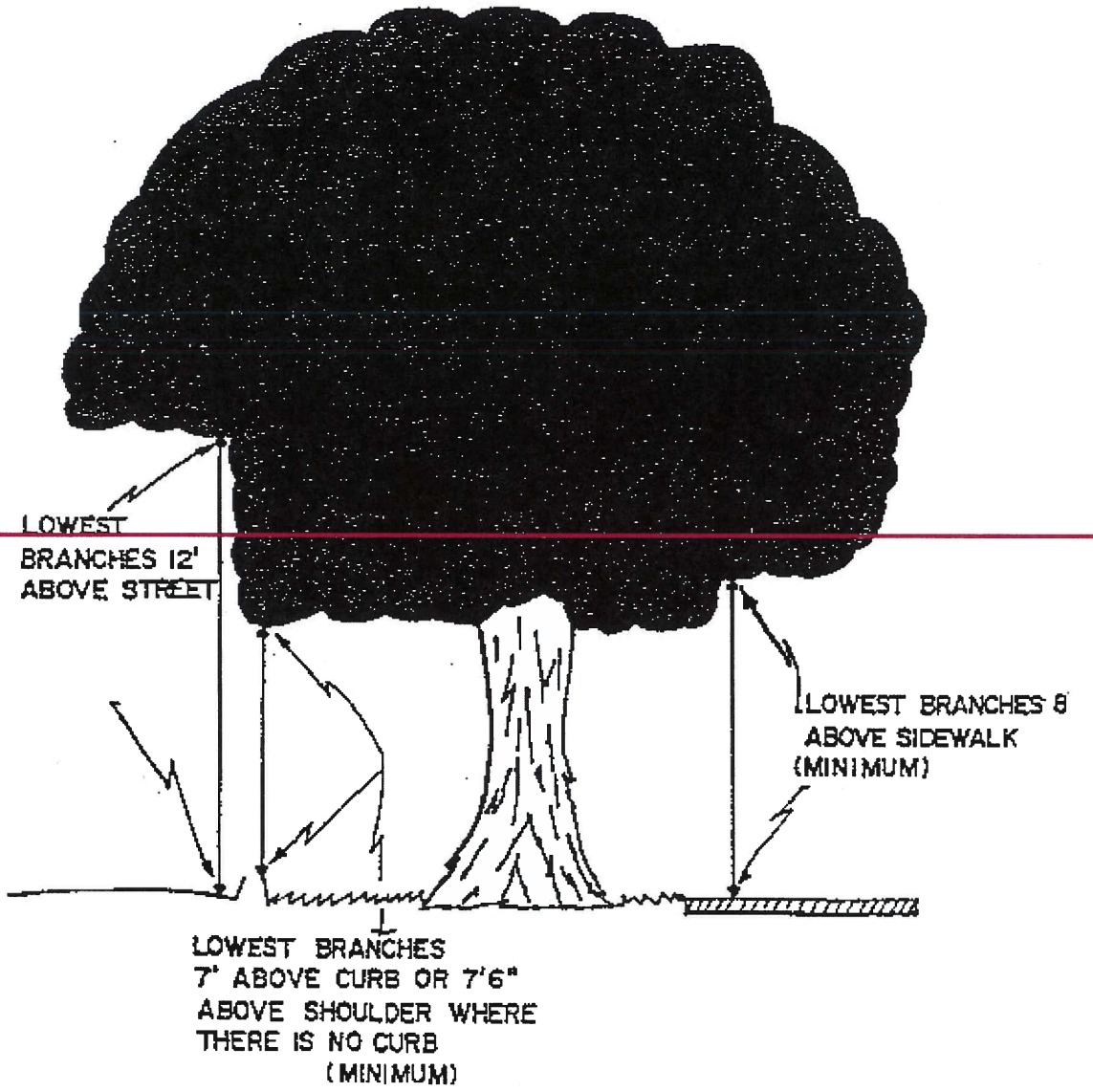
B. In addition to the provisions of Chapter 8.24 MICC, Nuisance Control Code, the following requirements shall apply to trees and vegetation:

1. Branches over roads shall be trimmed to a minimum of 12 feet above the road surface. (see Figure 1).

2. Branches over sidewalks shall be trimmed to a minimum of eight feet above the sidewalk and one foot behind the sidewalk (see Figure 1).

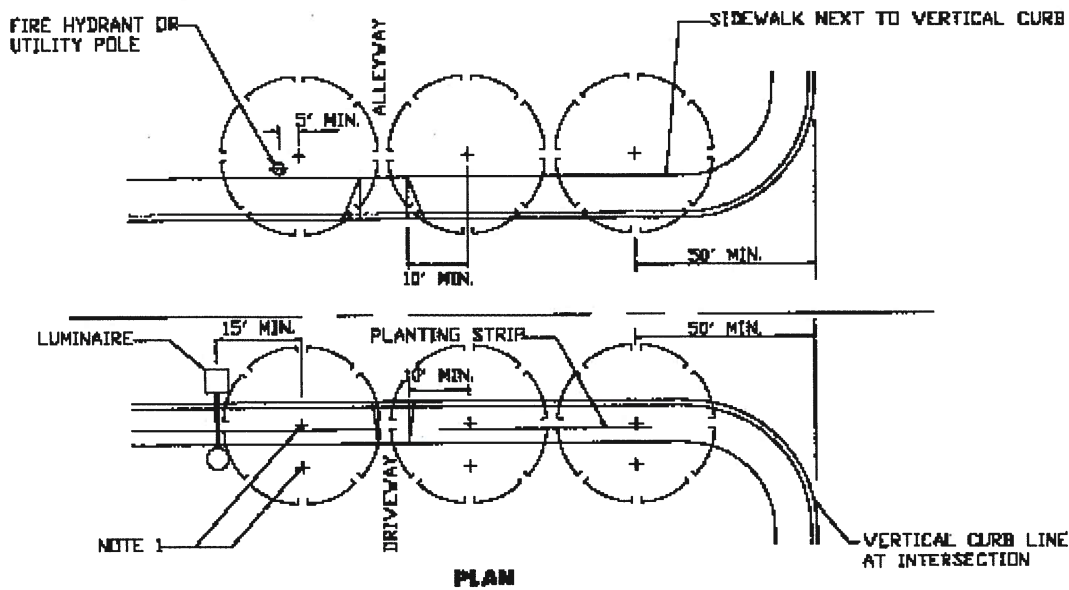
3. Street trees and other vegetation will be spaced according to the following spacing requirements to facilitate the safe flow of traffic (see Figure 2):

- a. No tree plantings are allowed within a 30-foot sight triangle at any street intersection.
- b. Shrubs shall not exceed 36 inches in height above the street level within this triangle.
- c. Ten-foot minimum spacing shall be observed for small trees.
- d. Hedges are not allowed between the sidewalk and the curb, and must be planted at least five feet behind the sidewalk.
- e. Hedges must be trimmed at least three feet behind the sidewalk.
- f. Plantings of trees, shrubs or hedges are not allowed between the street/road edge and a ditch.




- 1
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Figure 1



NOTES:

1. TREES SHALL GENERALLY BE PLANTED BACK OF THE SIDEWALK. PLANTING STRIPS WILL BE APPROVED ONLY AS PART OF A LANDSCAPING PLAN IN WHICH PLANT MAINTENANCE, LANDSCAPING PLAN IN COMPATIBILITY WITH UTILITIES, AND TRAFFIC SAFETY ARE DULY CONSIDERED.
2. IF PLANTING STRIPS ARE APPROVED:
 - A. MIN. DISTANCE FROM CENTER OF ANY TREE TO NEAREST EDGE OF VERTICAL CURB SHALL BE 4 FEET.
 - B. TREES SHALL BE STAKED ON A MANNER NOT TO OBSTRUCT SIDEWALK TRAFFIC.
 - C. IN CASE OF BLOCK-OUTS, MIN. CLEAR SIDEWALK WIDTH SHALL BE 5 FEET IN RESIDENTIAL OR 8 FEET IN BUSINESS DISTRICTS.
3. ON BUS ROUTES, PLANS SHALL BE COORDINATED WITH METRO SERVICE PLANNING.

	CITY OF MERCER ISLAND STANDARD DETAILS URBAN FORESTRY	
	STREET TREE STANDARDS	
1-1-2000	NO SCALE	

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Figure 2

19.10.100 Appeals.

1 Any person or persons aggrieved by any action or decision of city staff made pursuant to any section of
2 this chapter, may appeal such action or decision to the planning commission in accordance with the
3 appeal procedure set forth in MICC 19.15.020(J).
4
5

6 **19.10.110 Fees.**

7 Fees shall be set forth in a schedule adopted by the city council by resolution with any modifications,
8 which will be made from time to time by the city council. Fees shall be based on the time required to
9 review and inspect applications subject to the provisions of this chapter.
10

11
12 **19.10.120 Enforcement.**

13 A. Violation. It is a violation of this chapter for any person to fail to comply with the requirements of this
14 chapter.
15

16 B. Civil Penalty. The penalty for violating this chapter shall be a fine equal to up to three
17 times the value of the damaged or cut tree or removed vegetative cover, plus the cost
18 of reasonable remediation. Trees and other vegetation shall be appraised according to
19 the method specified by the Council of Landscape and Tree Appraisers, most current
20 edition. Reasonable remediation is the cost to develop a plan of remediation and
21 remove the remaining plant parts or debris, the cost to clean up the area, the cost to
22 replant the area, and the cost to administer the remediation process.
23

24
25 **19.10.130 Best pruning practices.**

26 The city arborist shall prepare and distribute educational materials describing the best practices,
27 policies, techniques, methods and procedures for pruning trees.
28

29
30 **19.10.140 Landmark trees.**

31 A. Designation of Landmark Trees and Landmark Groves.
32

33 1. The city shall maintain a register of landmark trees and landmark groves.
34

35 2. A property owner may propose to the city that a tree or grove of trees located on his or her
36 private property be designated as a landmark tree or landmark grove. Any city resident may
37 propose to the city that a tree or grove of trees located on public property be designated as a
38 landmark tree or landmark grove. No tree or grove of trees may be designated without the
39 approval of the property owner(s) on which the tree or grove, or any portion of the tree's
40 branches or canopy, is located. Once such approval is given, however, it may not subsequently
41 be withdrawn by the property owner or by a subsequent property owner.
42

1 ~~3. Upon receipt of a proposed designation and the approval of the property owner, the city~~
2 ~~arborist shall determine whether the tree or grove satisfies the definition of landmark tree or~~
3 ~~landmark grove.~~

4
5 ~~4. If the city arborist approves the proposed designation, it shall be memorialized in a covenant~~
6 ~~signed by the city and the property owner(s) and in form acceptable to the city attorney. The~~
7 ~~covenant shall require that the tree(s) or grove be maintained in a manner that is consistent~~
8 ~~with the provisions of this section. The covenant shall be recorded by the county auditor. The~~
9 ~~city shall pay recording fees. The covenant and designation shall be effective from the date of~~
10 ~~recording until such time as a tree permit has been issued for the cutting of the tree or grove of~~
11 ~~trees.~~

12
13 ~~5. Upon request of a property owner, the city arborist shall provide reasonable advice and~~
14 ~~consultation on maintenance of any landmark tree or landmark grove without charge to the~~
15 ~~property owner.~~

16
17 ~~B. Tree Permit Requirements.~~

18
19 ~~1. A tree permit to cut a landmark tree or a tree that is in a landmark grove as a result of~~
20 ~~construction work will only be granted if the applicant has used reasonable best efforts to~~
21 ~~design and locate the project so as to avoid having to cut the landmark tree or any trees in the~~
22 ~~landmark grove.~~

23
24 ~~2. A tree permit to cut a landmark tree or a tree in a landmark grove other than as a result of~~
25 ~~construction work will only be granted if the applicant demonstrates that the tree removal is~~
26 ~~necessary for safety, removal of hazardous trees, removal of diseased or dead branches or trees,~~
27 ~~or if retention of the tree or grove will have a material, adverse and unavoidable impact on the~~
28 ~~use of the property the use of the property.~~

1 Chapter 19.15
2 ADMINISTRATION

3
4
5 **19.15.010 General procedures.**

6
7 ...
8
9 D. Actions. There are four categories of actions or permits that are reviewed under the provisions of the
10 development code.

11
12 1. Ministerial Actions. Ministerial actions are based on clear, objective and nondiscretionary
13 standards or standards that require the application of professional expertise on technical issues.

14
15 2. Administrative Actions. Administrative actions are based on objective and subjective
16 standards that require the exercise of limited discretion about nontechnical issues.

17
18 3. Discretionary Actions. Discretionary actions are based on standards that require substantial
19 discretion and may be actions of broad public interest. Discretionary actions are only taken after
20 an open record hearing.

21
22 4. Legislative Actions. Legislative actions involve the creation, amendment or implementation of
23 policy or law by ordinance. In contrast to the other types of actions, legislative actions apply to
24 large geographic areas and are of interest to many property owners and citizens. Legislative
25 actions are only taken after an open record hearing.

26
27 E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city
28 may take under the development code, the criteria upon which those decisions are to be based, and
29 which boards, commissions, elected officials, or city staff have authority to make the decisions and to
30 hear appeals of those decisions.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Ministerial Actions			
Tree Removal Permit	Code official	Chapter 19.10 MICC	Hearing examiner¹
Right-of-Way Permit	City engineer	Chapter 19.09 MICC	Hearing examiner
Home Business Permit	Code official	MICC 19.02.010	Hearing examiner
Special Needs Group Housing Safety Determination	Police chief	MICC 19.06.080(A)	Hearing examiner

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Lot Line Revision	Code official	Chapter 19.08 MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC 19.15.040 , Chapters 19.11 and 19.12 MICC	Design commission
Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) Less Than \$100,000	Code official	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Design commission
Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC 17.14.010) \$100,000 or Greater	Design commission	Chapters 19.11 and 19.12 MICC, MICC 19.15.040	Hearing examiner
Final Short Plat Approval	Code official	Chapter 19.08 MICC	Superior court
Seasonal Development Limitation Waiver	Building official or city arborist	MICC 19.10.030 , 19.07.060 (D)(4)	Hearing examiner
Shoreline Exemption	Code official	MICC 19.07.110 and 19.15.020 (G)(6)(c)(i)	Hearing examiner ²³
Major Single-Family Dwelling Building Permit	Code official	Chapter 19.02 MICC but not MICC Title 15 or 17	Hearing Examiner
Administrative Actions			
Accessory Dwelling Unit Permit	Code official	MICC 19.02.030	Hearing examiner
Preliminary Short Plat	Code official	Chapter 19.08 MICC	Hearing examiner
Deviation	Code official	MICC 19.15.020 (G), 19.01.070 , 19.02.050(F) , 19.02.020(C)(4) and (D)(3)	Hearing examiner
Critical Areas Determination	Code official	Chapter 19.07 MICC	Hearing Examiner

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Shoreline – Substantial Development Permit	Code official	MICC 19.07.110 and 19.15.020(G)(6)	Shoreline hearings board
SEPA Threshold Determination	Code official	MICC 19.07.120	Hearing Examiner
Short Plat Alteration and Vacations	Code official	MICC 19.08.010(G)	Hearing examiner
Long Plat Alteration and Vacations	City council via hearing examiner	MICC 19.08.010(F)	Superior court
Temporary Encampment	Code official	MICC 19.06.090	Superior court
Wireless Communications Facility	Code official	MICC 19.06.040	Hearing examiner
Wireless Communications Facility Height Variance	Code official	MICC 19.01.070 , 19.06.040(H) and 19.15.020(G)	Hearing examiner
Minimum Parking Requirement Variances for MF, PBZ, C-O, B and P Zones	Code official via design commission and city engineer	MICC 19.01.070 , 19.03.020(B)(4) , 19.04.040(B)(9) , 19.05.020(B)(9) and 19.15.020(G)	Hearing examiner
Development Code Interpretations	Code official	MICC 19.15.020(L)	Hearing Examiner ²
Discretionary Actions			
Conditional Use Permit	Hearing examiner	MICC 19.11.150(B) , 19.15.020(G)	Superior Court
Reclassification (Rezone)	City council via hearing examiner ^{2a}	MICC 19.15.020(G)	Superior court
<u>Formal</u> Design Review – Major New Construction	Design commission	MICC 19.15.040 , Chapters 19.11 and 19.12 MICC	Hearing examiner
Preliminary Long Plat Approval	City council via hearing examiner ^{2a}	Chapter 19.08 MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter 19.08 MICC	Superior court
Variance	Hearing examiner	MICC 19.15.020(G) , 19.01.070	Superior court

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Variance from Short Plat Acreage Limitation	Code official	MICC 19.08.020	Hearing examiner
Critical Areas Reasonable Use Exception	Hearing examiner	MICC 19.07.030(B)	Superior court
Street Vacation	City council via planning commission ^{3a}	MICC 19.09.070	Superior court
Shoreline Conditional Use Permit	Code official and Department of Ecology ^{3a}	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Shoreline Variance	Code official and Department of Ecology ^{3a}	MICC 19.15.020(G)(6)	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC 19.02.0520(D)(4)	Superior court
Legislative Actions			
Code Amendment	City council via planning commission ^{3a}	MICC 19.15.020(G)	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission ²	MICC 19.15.020(G)	Growth management hearings board
<p><u>¹ Tree removal associated with a development proposal and authorized through the issuance of a tree removal permit, shall not commence until the later of the end of the appeal period associated with the tree removal permit, or a decision is issued on an administrative appeal of the tree removal permit.</u></p>			
<p>^{2a}Final rulings granting or denying an exemption under MICC 19.15.020(G)(6) are not appealable to the shoreline hearings board (SHB No. 98-60).</p>			
<p>^{3a}The original action is by the planning commission or hearing examiner which holds a public hearing and makes recommendations to the city council which holds a public meeting and makes the final decision.</p>			

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
<p>⁴Must be approved by the city of Mercer Island prior to review by DOE per WAC 173-27-200 and RCW 90.58.140(10).</p>			
<p>⁵<u>The development code interpretation may be appealed as applied to a project review as part of an appeal of the land use action.</u></p>			

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19.15.020 Permit review procedures.

The following are general requirements for processing a permit application under the development code. Additional or alternative requirements may exist for actions under specific code sections (see MICC 19.07.080, 19.07.110, and 19.08.020).

A. Preapplication. Applicants for development permits are encouraged to participate in informal meetings with city staff and property owners in the neighborhood of the project site. Meetings with the staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood serve the purpose of informing the neighborhood of the project proposal prior to the formal notice provided by the city.

B. Application.

1. All applications for permits or actions by the city shall be submitted on forms provided by the development services group. An application shall contain all information deemed necessary by the code official to determine if the proposed permit or action will comply with the requirements of the applicable development regulations. The applicant for a development proposal shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria.

2. All applications for permits or actions by the city shall be accompanied by a filing fee in an amount established by city ordinance.

C. Determination of Completeness.

1. The city will not accept an incomplete application. An application is complete only when all information required on the application form and all submittal items required by code have been provided to the satisfaction of the code official.

2. Within 28 days after receiving a development permit application, the city shall mail or provide in person a written determination to the applicant, stating either that the application is complete or that the application is incomplete and what is necessary to make the application

1 complete. An application shall be deemed complete if the city does not provide a written
2 determination to the applicant stating that the application is incomplete.

3
4 3. Within 14 days after an applicant has submitted all additional information identified as being
5 necessary for a complete application, the city shall notify the applicant whether the application
6 is complete or what additional information is necessary.

7
8 4. If the applicant fails to provide the required information within 90 days of the determination
9 of incompleteness, the application shall lapse. The applicant may request a refund of the
10 application fee minus the city's cost of determining the completeness of the application.

11
12 D. Notice of Application.

13
14 1. Within 14 days of the determination of completeness, the city shall issue a notice of
15 application for all administrative, discretionary, and legislative actions listed in MICC
16 19.15.010(E) and major single-family dwelling building permits.

17
18 2. The notice of application shall include the following information:

19
20 a. The dates of the application, the determination of completeness, and the notice of
21 application;

22
23 b. The name of the applicant;

24
25 c. The location and description of the project;

26
27 d. The requested actions and/or required studies;

28
29 e. The date, time, and place of the open record hearing, if one has been scheduled;

30
31 f. Identification of environmental documents, if any;

32
33 g. A statement of the public comment period, which shall be not less than 30 days
34 following the date of notice of application; and a statement of the rights of individuals
35 to comment on the application, receive notice and participate in any hearings, request a
36 copy of the decision once made and any appeal rights. The City shall accept public
37 comments at any time prior to the closing of the record of an open record predecision
38 hearing, if any, or if no open record predecision hearing is provided, prior to the
39 decision on the project permit;

40
41 h. The city staff contact and contact information;

42
43 i. The identification of other permits not included in the application to the extent known
44 by the city;

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j. A description of those development regulations used in determining consistency of the project with the city's comprehensive plan;

k. A link to a website where additional information about the project can be found; and

l. Any other information that the city determines appropriate.

3. Open Record Hearing. If an open record hearing is required on the permit, the city shall:

a. Provide the notice of application at least 30 days prior to the hearing; and

b. Issue any threshold determination required under MICC 19.07.110 at least 30 days prior to the hearing.

4. Notice shall be provided in the bi-weekly DSG bulletin, posted at City Hall and made available to the general public upon request.

5. All comments received on the notice of application must be received by the development services group by 5 pm on the last day of the comment period.

6. Except for a determination of significance, the city shall not issue a threshold determination under MICC 19.07.110 or issue a decision on an application until the expiration of the public comment period on the notice of application.

7. A notice of application is not required for the following actions; provided, the action is either categorically exempt from SEPA or an environmental review of the action in accordance with SEPA has been completed:

a. Building permit other than a major single-family dwelling building permit;

b. Lot line revision;

c. Right-of-way permit;

d. Storm drainage permit;

e. Home occupation permit;

f. Design review – minor new construction;

g. Final plat approval;

h. Shoreline exemption permit; and

1
2 i. Seasonal development limitation waiver; and,

3
4 k. Tree removal permit-

5
6 E. Public Notice and Information Availability.

7
8 1. In addition to the notice of application, a public notice is required for all administrative,
9 discretionary, and legislative actions listed in MICC 19.15.010(E) and major single-family
10 dwelling building permits.

11
12 2. Public notice shall be provided at least 30 days prior to any required open record hearing. If
13 no such hearing is required, public notice shall be provided 14 days prior to the decision on the
14 application.

15
16 3. The public notice shall include the following:

17
18 a. A general description of the proposed project and the action to be taken by the city;

19
20 b. A nonlegal description of the property, vicinity map or sketch;

21
22 c. The time, date and location of any required open record hearing;

23
24 d. A contact name and number where additional information may be obtained;

25
26 e. A statement that only those persons who submit written comments or testify at the
27 open record hearing will be parties of record; and only parties of record will receive a
28 notice of the decision and have the right to appeal;

29
30 f. A description of the deadline for submitting public comments;

31
32 g. A link to a website where additional information about the project can be found.

33
34 4. Public notice shall be provided in the following manner:

35
36 a. Administrative and Discretionary Actions and Major Single-Family Dwelling Building
37 Permits. Notice shall be mailed to parties of record, all property owners within 300 feet
38 of the property and posted on the site in a location that is visible to the public right-of-
39 way.

40 i. Long Subdivisions. Additional notice for long subdivisions shall be provided as
41 follows:

42 (A) Public notice of an application for a long subdivision shall also be
43 published at least 30 days prior to the open record hearing on the
44 application in a newspaper of general circulation within the city.

1
2 (B) If the owner of a proposed long subdivision owns land contiguous to
3 the proposed long subdivision, that contiguous land shall be treated as
4 part of the long subdivision for notice purposes, and notice of the
5 application shall be given to all owners of lots located within 300 feet of
6 the proposed long subdivision and the applicant's contiguous land.
7

8 (C) The city shall provide written notice to the Department of
9 Transportation of an application for a long subdivision or short
10 subdivision that is located adjacent to the right-of-way of a state
11 highway. The notice shall include a legal description of the long
12 subdivision or short subdivision and a location map.
13

14 b. Legislative Action. Notice shall be published in a newspaper of general circulation
15 within the city.

16 5. Every complete development permit application for which notice is to be provided under
17 subsection (D)(1) of this section together with all information provided by the applicant for
18 consideration by the decision authority shall be posted by the city to a website accessible
19 without charge to the public. Information shall be posted at the time the city issues the notice of
20 application under subsection (D)(1) of this section and shall be updated as needed and in any
21 event within seven days after additional information is received from the applicant. The
22 provisions of this subsection (E)(5) shall only apply to development permit applications filed on
23 or after May 29, 2017.
24

25 F. Open Record Hearing.

26
27 1. Only one open record hearing shall be required prior to action on all discretionary and
28 legislative actions except design review and street vacations.
29

30 2. Open record hearings shall be conducted in accordance with the hearing body's rules of
31 procedures. In conducting an open record hearing, the hearing body's chair shall, in general,
32 observe the following sequence:
33

34 a. Staff presentation, including the submittal of any additional information or
35 correspondence. Members of the hearing body may ask questions of staff.
36

37 b. Applicant and/or applicant representative's presentation. Members of the hearing
38 body may ask questions of the applicant.
39

40 c. Testimony by the public. Questions directed to the staff, the applicant or members of
41 the hearing body shall be posed by the chairperson at his/her discretion.
42

43 d. Rebuttal, response or clarifying statements by the applicant and/or the staff.
44

1 e. The public comment portion of the hearing is closed and the hearing body shall
2 deliberate on the action before it.

3
4 3. Following the hearing procedure described above, the hearing body shall:

5
6 a. Approve;

7
8 b. Conditionally approve;

9
10 c. Continue the hearing; or

11
12 d. Deny the application.
13

14 G. Decision Criteria. Decisions shall be based on the criteria specified in the Mercer Island City Code for
15 the specific action. An applicant for a development proposal shall have the burden of demonstrating
16 that the proposed development complies with the applicable regulations and decision criteria. A
17 reference to the code sections that set out the criteria and standards for decisions appears in MICC
18 19.15.010(E). For those actions that do not otherwise have criteria specified in other sections of the
19 code, the following are the required criteria for decision:
20

21 1. Comprehensive Plan Amendment.

22
23 a. The amendment is consistent with the Growth Management Act, the county-wide
24 planning policies, and the other provisions of the comprehensive plan and city policies;
25 and:

26
27 i. There exists obvious technical error in the information contained in the
28 comprehensive plan; or

29
30 ii. The amendment addresses changing circumstances of the city as a whole.

31
32 b. If the amendment is directed at a specific property, the following additional
33 findings shall be determined:

34
35 i. The amendment is compatible with the adjacent land use and development
36 pattern;

37
38 ii. The property is suitable for development in conformance with the standards
39 under the potential zoning; and

40
41 iii. The amendment will benefit the community as a whole and will not adversely
42 affect community facilities or the public health, safety, and general welfare.
43

44 2. Reclassification of Property (Rezoning).

- 1
2 a. The proposed reclassification is consistent with the policies and provisions of the
3 Mercer Island comprehensive plan;
4
5 b. The proposed reclassification is consistent with the purpose of the Mercer Island
6 development code as set forth in MICC 19.01.010;
7
8 c. The proposed reclassification is an extension of an existing zone, or a logical transition
9 between zones;
10
11 d. The proposed reclassification does not constitute a “spot” zone;
12
13 e. The proposed reclassification is compatible with surrounding zones and land uses;
14 and
15
16 f. The proposed reclassification does not adversely affect public health, safety and
17 welfare.
18

19 3. Conditional Use Permit.

- 20
21 a. The permit is consistent with the regulations applicable to the zone in which the lot is
22 located;
23
24 b. The proposed use is determined to be acceptable in terms of size and location of site,
25 nature of the proposed uses, character of surrounding development, traffic capacities of
26 adjacent streets, environmental factors, size of proposed buildings, and density;
27
28 c. The use is consistent with policies and provisions of the comprehensive plan; and
29
30 d. Conditions shall be attached to the permit assuring that the use is compatible with
31 other existing and potential uses within the same general area and that the use shall not
32 constitute a nuisance.
33

34 4. Variances. An applicant or property owner may request a variance from any numeric
35 standard, except for the standards contained within Chapter 19.07 MICC. A variance shall be
36 granted by the city only if the applicant can meet all criteria in (a.) through (h.). A variance for
37 increased lot coverage for a regulated improvement pursuant to subsection (i.) shall be granted
38 by the city only if the applicant can meet criteria (a.) through (i.):
39

- 40 a. The strict enforcement of the provisions of Title 19 MICC will create an unnecessary
41 hardship to the property owner. For the purposes of this criterion, in the R-8.4, R-9.6, R-
42 12, and R-15 zoning designations, an “unnecessary hardship” is limited to those
43 circumstances where the adopted standards of Title 19 MICC prevent the construction
44 of a single family dwelling on a legally created, residentially zoned lot;

1
2 b. The variance is the minimum necessary to grant relief to the property owner;

3
4 ca. No use variance shall be allowed;

5
6 db. There are special circumstances applicable to the particular lot such as the size,
7 shape, topography, or location of the lot; ~~the trees, groundcover, or other physical~~
8 conditions of the lot and its surroundings; or factors necessary for the successful
9 installation of a solar energy system such as a particular orientation of a building for the
10 purposes of providing solar access;

11
12 ee. The granting of the variance will not be materially detrimental to the public welfare
13 or injurious to the property or improvements in the vicinity and zone in which the
14 property is situated;

15
16 ef. The granting of the variance will not alter the character of the neighborhood, nor
17 impair the appropriate use or development of adjacent property; and

18
19 eg. The variance is consistent with the policies and provisions of the comprehensive plan
20 and the development code.

21
22 h. The basis for requesting the variance is not the direct result of a past action by the
23 current or prior property owner.

24
25 i. Public and private schools, religious institutions, private clubs and public facilities in
26 single-family zones with slopes of less than 15 percent may request a variance to
27 increase the impervious surface to a maximum 60 percent impervious surface and such
28 variance application will be granted if the hearing examiner determines that the
29 applicant has demonstrated that the following criteria are satisfied:

30
31 i. There will be no net loss of permeable surface from the existing permeable
32 surface. No net loss will be determined by the code official and may be achieved
33 by off-site mitigation and/or by reconstructing existing parking areas to allow
34 stormwater penetration. This replacement will be an exception to subsection
35 (D)(2)(b) of this section prohibiting parking areas from being considered as
36 permeable surfaces;

37
38 ii. All stormwater discharged shall be mitigated consistent with the most recent
39 Washington State Department of Ecology Stormwater Management Manual for
40 Western Washington, including attenuation of flow and duration. Mitigation will
41 be required for any and all new and replaced impervious surfaces. In designing
42 such mitigation, the use of a continuous simulation hydrologic model such as
43 KCRTS or WWHM shall be required; event based models will not be allowed. In
44 addition, mitigation designs shall utilize flow control best management practices

1 (BMPs) and low impact development (LID) techniques to infiltrate, disperse and
2 retain stormwater on site to mitigate the increased volume, flow and pollutant
3 loading to the maximum extent feasible;

4
5 iii. The director must approve a storm drainage report submitted by the
6 applicant and prepared by a licensed civil engineer assuring the city that city
7 infrastructure, in concert with the project design, is adequate to accommodate
8 storm drainage from the project site, or identifying appropriate improvements
9 to public and/or private infrastructure to assure this condition is met, at the
10 applicant's expense; and,

11
12 iv. The variance may not be used with other provisions to exceed this maximum
13 60 percent impervious surface coverage.

14
15 5. Setback Deviation. A setback deviation shall be granted by the city only if the applicant
16 demonstrates all of the following:

17
18 a. Setback deviation criteria. Setback deviations shall be subject to the following
19 criteria:

20
21 ia. No use deviation shall be allowed;

22
23 bii. The granting of the deviation will not be materially detrimental to the public
24 welfare or injurious to the property or improvements in the vicinity and zone in
25 which the property is situated;

26
27 ciii. The granting of the deviation will not alter the character of the
28 neighborhood, nor impair the appropriate use or development of adjacent
29 property; and

30
31 d. The deviation is consistent with the policies and provisions of the
32 comprehensive plan and the development code.

33
34 v. The basis for requesting the deviation is not the direct result of a past action
35 by the current or prior property owner.

36
37 vi. The setback deviation is associated with the approval of development of a
38 single lot or subdivision that is constrained by critical areas or critical area
39 buffers.

40
41 vii. The building pad resulting from the proposed deviation will result in less
42 impact to critical areas or critical areas buffers.

43
44 viii. Yard setbacks shall not be reduced below the following minimums:

1
2 (A) . Front and rear setbacks may not be reduced to less than 10 feet
3 each;
4

5 (B) . Side setbacks may not be reduced to less than five feet.
6

7 ...

8
9 J. Administrative Appeals.

10 1. Any party of record on a decision that may be administratively appealed may file a letter of
11 appeal on the decision. Administrative appeals shall be filed with the city clerk within 14 days
12 after the notice of decision, if a notice of decision is required, or after the effective date of the
13 decision subject to appeal if no notice of decision is required. The term “party of record,” for the
14 purposes of this chapter, shall mean any of the following:

- 15
- 16 a. The applicant and/or property owner;
 - 17
 - 18 b. Any person who testified at the open record public hearing on the application;
 - 19
 - 20 c. Any person who individually submits written comments concerning the application for
21 the open record public hearing, or to the code official prior to a decision on the project
22 permit if there is no open record public hearing. Persons who have only signed petitions
23 are not parties of record;
 - 24
 - 25 d. The city of Mercer Island.
- 26

27 2. Appeals shall include the following information:

- 28 a. The decision being appealed;
- 29
- 30 b. The development code interpretation, if any, associated with the proposed appeal;
- 31
- 32 c. The name and address of the appellant and his/her interest in the matter;
- 33
- 34 d. The specific reasons why the appellant believes the decision to be wrong. The burden of
35 proof is on the appellant to demonstrate that there has been substantial error, or the
36 proceedings were materially affected by irregularities in procedure, or the decision was
37 unsupported by evidence in the record, or that the decision is in conflict with the standards for
38 review of the particular action;
- 39
- 40 e. The desired outcome or changes to the decision; and
- 41
- 42 f. The appeals fee, if required.
- 43
- 44 ...

1
2 K. Expiration of Approvals.

3 1. General. Except for long and short subdivisions, building permits or ~~unless as~~ otherwise
4 conditioned in the approval process, permits shall expire one year from the date of notice of
5 decision if the activity approved by the permit is not exercised. ~~Responsibility for knowledge of~~
6 ~~the expiration date shall be with the applicant.~~

7 2. Long and short subdivision.

8
9 a. Once the preliminary plat for a long subdivision has been approved by the city, the
10 applicant has five years to submit a final plat meeting all requirements of this chapter to
11 the city council for approval.

12
13 b. Once the preliminary plat for a short subdivision has been approved by the city, the
14 applicant has one year to submit a final plat meeting all requirements of this chapter. A
15 plat that has not been recorded within one year after its preliminary approval shall
16 expire, becoming null and void. The city may grant a single one-year extension, if the
17 applicant submits the request in writing before the expiration of the preliminary
18 approval.

19
20 c. In order to renew an expired preliminary plat, a new application must be submitted.

21
22 3. Responsibility for knowledge of the expiration date shall be with the applicant.

23
24 L. Code Interpretations.

25 1. Upon ~~request-formal application~~ or as determined necessary, the code official ~~shall~~ may issue
26 a written interpretation of ~~interpret~~ the meaning or application of provisions of the
27 development code. In issuing the interpretation, the code official shall consider the following:

28 a. The plain language of the code section in question;

29 b. Purpose and intent statement of the chapters in question;

30 c. Legislative intent of the City Council provided with the adoption of the code sections
31 in question;

32 d. Policy direction provided by the Mercer Island Comprehensive Plan;

33 e. Relevant judicial decisions;

34 f. Consistency with other regulatory requirements governing the same or similar
35 situation;

36 g. The expected result or effect of the interpretation; and,

37 h. Previous implementation of the regulatory requirements governing the situation.

38 2. The code official may also bring any issue of interpretation before the planning commission
39 for determination. Anyone in disagreement with an interpretation by the code official may also
40 ~~request a review-appeal of~~ the code official's interpretation ~~by to~~ the planning
41 ~~commission~~ hearing examiner.

1 Chapter 19.16
2 DEFINITIONS

3
4 Accessory Buildings: A separate building or a portion of the main building, the use of which is related to
5 and supports that of the main building on the same lot.

6 1. Attached Accessory Building: An accessory building that shares a portion of one of its walls
7 with the main building, is separated from the main building by less than five feet, or is attached
8 to the main building by a structure other than a fence.

9 2. Detached Accessory Building: An accessory building that does not share a portion of any of its
10 walls with the main building and is separated from the main building by more than five feet and
11 is not attached to the main building by a structure other than a fence or a pedestrian walkway.

12 For example, detached accessory buildings may include, but are not limited to, garages,
13 cabanas, guest rooms, and other similar buildings.

14 ...

15
16 Accessory Structure: A separate structure that is not an accessory building, but is accessory and
17 subordinate or incidental to the main building on the same lot including, but not limited to, the
18 following: decks, porches, fences, trellises, and similar structures.

19
20 ...

21
22 "Applicant" means a property owner or a public agency or private utility or any person or entity
23 designated or named in writing by the property or easement owner to be the applicant, in an
24 application for a development permit, land use application, or other city approval.

25
26 ...

27
28 Average Building Elevation: The reference point on the surface topography of a lot from which building
29 height is measured. The Elevation in the R-8.4, R-9.6, R-12, and R-15 zoning designations is established
30 by averaging the elevation at existing grade or finished grade, whichever is lower. The elevation in the P
31 zoning designation is established by averaging the elevation at existing grade. The elevation points to be
32 averaged shall be located at the center of all exterior walls of the completed building; provided:

33
34 1. Roof overhangs and eaves, chimneys and fireplaces, unenclosed projecting wall elements
35 (columns and fin walls), unenclosed and unroofed stairs, and porches, decks and terraces may
36 project outside exterior walls and are not to be considered as walls.

37
38 2. If the building is circular in shape, four points, 90 degrees apart, at the exterior walls, shall be
39 used to calculate the average building elevation.

40
41 ~~3. For Properties within the Town Center: If a new sidewalk is to be installed as the result of a~~
42 ~~new development, the midpoint elevation for those walls adjacent to the new sidewalk shall be~~
43 ~~measured from the new sidewalk elevation, rather than existing grade prior to development~~
44 ~~activity. The city engineer shall determine the final elevation of the sidewalk.~~

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Formula: Average Building Elevation = (Weighted Sum of the Mid-point Elevations) ÷ (Total Length of Wall Segments)

Where: Weighted Sum of the Mid-point Elevations = The sum of: ((Mid-point Elevation of Each Individual Wall Segment) x (Length of Each Individual Wall Segment))

For example for a house with 10 wall segments:

$$\frac{(Axa) + (Bxb) + (Cxc) + (Dxd) + (Exe) + (Fxf) + (Gxg) + (Hxh) + (Ixi) + (Jxj)}{a + b + c + d + e + f + g + h + i + j}$$

Where: A, B, C, D... = The existing or finished ground elevation, whichever is lower, at midpoint of wall segment.

And: a, b, c, d... = The length of wall segment measured on outside of wall.

Average Building Elevation = (Mid-point Elevation of Individual Wall Segment) x (Length of Individual Wall Segment) ÷ (Total Length of Wall Segments)

...

Construction Work: Any construction or reconstruction creating more than 500 square feet of new gross floor area or impervious surface. Trees are considered cut as a result of construction work if done during the construction work, two-five years prior to commencement of the work or two-five years following completion of the work. For these purposes, commencement of the work shall be the date the initial permit for the work is issued by the city, and completion of the work shall be the date the city final a building permit.

...

Development proposal: The application for a permit or other approval from the City of Mercer Island relative to the use or development of land.

...

Development proposal site: The boundaries of the lot or lots for which an applicant has or should have applied for approval from the City of Mercer Island to carry out a development proposal.

...

Driveway: The vehicular access on to a lot containing one single family dwelling, or the required vehicular access to, or through, an area designed for parking.

...

1
2 Feasible ~~(SMP)~~: An action that is required to achieve project approval, such as a design requirement,
3 development project condition, mitigation, or preservation requirement, and that meets all of the
4 following conditions:

- 5 ~~(1)~~ 1. The action can be accomplished with technologies and methods that have been used in
6 the past in similar circumstances, or studies or tests have demonstrated in similar circumstances
7 that such approaches are currently available and likely to achieve the intended results; ~~(2)~~
8 2. The action provides a reasonable likelihood of achieving its intended purpose; and
9 3. The action does not physically preclude achieving the project's primary intended legal
10 use. In cases where these guidelines require certain actions unless they are infeasible, the
11 burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the
12 reviewing agency may weigh the action's relative public costs and public benefits, considered in
13 the short- and long-term time frames.

14
15 ...

16
17 Floor: The continuous, supporting surface extending horizontally through a building or structure that
18 serves as the level base of a room upon which a person stands or travels.

19
20 ...

21
22 Formal design review: Design review conducted by the Design Commission.

23
24 ...

25
26 Gross Floor Area: The total square footage of floor area bounded by the exterior faces of the building.

- 27 1. The gross floor area of a single-family dwelling shall include:
28 a. The main building, including but not limited to attached accessory buildings.
29 b. All garages and covered parking areas, and detached accessory buildings with a gross
30 floor area over 120 square feet.
31 c. That portion of a basement which projects above the lower of existing grade or
32 finished grade as defined and calculated in Appendix B of this development code.
33 d. Stair cases.
34 e. Decks that are attached to the second or third story of a single family dwelling and
35 are covered by a roof. For the purposes of calculating the gross floor area of covered
36 decks, the entire deck area covered by the roof shall be accounted for as floor area,
37 provided an 18" eave extending beyond the edge of the deck shall not be included in
38 the gross floor area.
39 f. Space under stairways or stairwells that is used, for example, as a closet or storage
40 space if that space meets the definition of "Floor".

41 2. The gross floor area of a single family dwelling does not include:

- 42 a. Second- or third-story uncovered decks, or uncovered rooftop decks.

43 3. In the Town Center, gross floor area is the area included within the surrounding exterior
44 finish wall surface of a building, excluding courtyards and parking surfaces.

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Tree, Exceptional: A tree or group of trees that because of its unique historical, ecological, or aesthetic value constitutes an important community resource. An exceptional tree is a tree that is rare or exceptional by virtue of its size, species, condition, cultural / historic importance, age, and / or contribution as part of a tree grove. Trees with a diameter of more than 36 inches, or with a diameter that is equal to or greater than the diameter listed in the Exceptional Tree Table are considered exceptional trees:

Exceptional Tree Table

<u>Species</u>	<u>Threshold Diameter</u>
<u>Native Species</u>	
<u>Oregon ASH – <i>Fraxinus latifolia</i></u>	<u>2 ft</u>
<u>Quaking ASPEN – <i>Populus tremuloides</i></u>	<u>1 ft</u>
<u>Paper BIRCH – <i>Betula papyrifera</i></u>	<u>1 ft 8 in</u>
<u>CASCARA – <i>Rhamnus purshiana</i></u>	<u>8 in</u>
<u>Western Red CEDAR – <i>Thuja plicata</i></u>	<u>2 ft 6 in</u>
<u>Pacific CRABAPPLE – <i>Malus fusca</i></u>	<u>1 ft</u>
<u>Pacific DOGWOOD – <i>Cornus nuttallii</i></u>	<u>6 in</u>
<u>Douglas FIR – <i>Pseudotsuga menziesii</i></u>	<u>2’6 in</u>
<u>Grand FIR – <i>Abies grandis</i></u>	<u>2 ft</u>
<u>Black HAWTHORN – <i>Crataegus douglasii</i></u>	<u>6 in</u>
<u>Western HEMLOCK – <i>Tsuga heterophylla</i></u>	<u>2 ft</u>
<u>MADRONA – <i>Arbutus menziesii</i></u>	<u>6 in</u>
<u>Bigleaf MAPLE – <i>Acer macrophyllum</i></u>	<u>2 ft 6 in</u>
<u>Dwarf or Rocky Mountain MAPLE – <i>Acer glabrum</i> var. <i>Douglasii</i></u>	<u>6 in</u>
<u>Vine MAPLE – <i>Acer circinatum</i></u>	<u>8 in</u>
<u>Oregon White or Garry OAK – <i>Quercus garryana</i></u>	<u>6 in</u>
<u>Lodgepole PINE – <i>Pinus contorta</i></u>	<u>6 in</u>
<u>Shore PINE – <i>Pinus contorta</i> ‘contorta’</u>	<u>1 ft</u>
<u>Western White PINE – <i>Pinus monticola</i></u>	<u>2 ft</u>
<u>Western SERVICEBERRY – <i>Amelanchier alnifolia</i></u>	<u>6 in</u>
<u>Sitka SPRUCE – <i>Picea sitchensis</i></u>	<u>6 in</u>
<u>WILLOW (All native species) – <i>Salix</i> sp. (<i>Geyeriana</i> ver <i>meleina</i>, <i>eriocephala</i> ssp. <i>mackenzieana</i>, <i>Hookeriana</i>, <i>Piperi</i>, <i>Scouleriana</i>, <i>sitchensis</i>)</u>	<u>8 in</u>
<u>Pacific YEW – <i>Taxus brevifolia</i></u>	<u>6 in</u>
<u>Non-native Species</u>	
<u>Orchard (Common) APPLE – <i>Malus</i> sp.</u>	<u>1 ft 8 in</u>
<u>European ASH – <i>Fraxinus excelsior</i></u>	<u>1 ft 10 in</u>
<u>Green ASH – <i>Fraxinus pennsylvanica</i></u>	<u>2 ft 6 in</u>
<u>Raywood ASH – <i>Fraxinus oxycarpa</i></u>	<u>2 ft</u>
<u>European BEECH – <i>Fagus sylvatica</i></u>	<u>2 ft 6 in</u>

<u>European White BIRCH – <i>Betula pendula</i></u>	<u>2 ft</u>
<u>Atlas CEDAR – <i>Cedrus atlantica</i></u>	<u>2 ft 6 in</u>
<u>Deodor CEDAR – <i>Cedrus deodara</i></u>	<u>2 ft 6 in</u>
<u>Incense CEDAR – <i>Calocedrus decurrens</i></u>	<u>2 ft 6 in</u>
<u>Flowering CHERRY – <i>Prunus sp. (serrula, serrulata, sargentii, subhirtella, vedoensis)</i></u>	<u>1 ft 11 in</u>
<u>Lawson CYPRESS – <i>Chamaecyparis lawsoniana</i></u>	<u>2 ft 6 in</u>
<u>Kousa DOGWOOD – <i>Cornus kousa</i></u>	<u>1 ft</u>
<u>Eastern DOGWOOD – <i>Cornus florida</i></u>	<u>1 ft</u>
<u>American ELM – <i>Ulmus americana</i></u>	<u>2 ft 6 in</u>
<u>English ELM – <i>Ulmus procera</i></u>	<u>2 ft 6 in</u>
<u>GINGKO – <i>Ginkgo biloba</i></u>	<u>2 ft</u>
<u>Common HAWTHORN <i>Crataegus laevigata</i></u>	<u>1 ft 4 in</u>
<u>Washington HAWTHORN – <i>Crataegus phaenopyrum</i></u>	<u>9 in</u>
<u>European HORNBEAM – <i>Carpinus betulus</i></u>	<u>1 ft 4 in</u>
<u>KATSURA – <i>Cercidiphyllum japonicum</i></u>	<u>2 ft 6 in</u>
<u>Littleleaf LINDEN – <i>Tilia cordata</i></u>	<u>2 ft 6 in</u>
<u>Honey LOCUST – <i>Gleditsia triacanthos</i></u>	<u>1 ft 8 in</u>
<u>Southern MAGNOLIA – <i>Magnolia grandiflora</i></u>	<u>1 ft 4 in</u>
<u>Paperbark MAPLE – <i>Acer griseum</i></u>	<u>1 ft</u>
<u>Japanese MAPLE – <i>Acer palmatum</i></u>	<u>1 ft</u>
<u>Red MAPLE – <i>Acer rubrum</i></u>	<u>2 ft 1 in</u>
<u>Sugar MAPLE – <i>Acer saccharum</i></u>	<u>2 ft 6 in</u>
<u>Sycamore MAPLE – <i>Acer pseudoplatanus</i></u>	<u>2 ft</u>
<u>MONKEY PUZZLE TREE – <i>Araucaria araucana</i></u>	<u>1 ft 10 in</u>
<u>MOUNTAIN-ASH – <i>Sorbus aucuparia</i></u>	<u>2 ft 5 in</u>
<u>Pin OAK – <i>Quercus palustris</i></u>	<u>2 ft 6 in</u>
<u>Red OAK – <i>Quercus rubra</i></u>	<u>2 ft 6 in</u>
<u>Callery PEAR – <i>Pyrus calleryana</i></u>	<u>1 ft 1 in</u>
<u>Austrian Black PINE – <i>Pinus nigra</i></u>	<u>2 ft</u>
<u>Ponderosa PINE – <i>Pinus ponderosa</i></u>	<u>2 ft 6 in</u>
<u>Scot's PINE – <i>Pinus sylvestris</i></u>	<u>2 ft</u>
<u>London PLANE – <i>Platanus acerifolia</i></u>	<u>2 ft 6 in</u>
<u>Flowering PLUM – <i>Prunus cerasifera</i></u>	<u>1 ft 9 in</u>
<u>Coastal REDWOOD – <i>Sequoia sempervirens</i></u>	<u>2 ft 6 in</u>
<u>Giant SEQUOIA – <i>Sequoiadendron giganteum</i></u>	<u>2 ft 6 in</u>
<u>Japanese SNOWBELL – <i>Styrax japonica</i></u>	<u>1 ft</u>
<u>American SWEETGUM – <i>Liquidambar styraciflua</i></u>	<u>2 ft 3 in</u>
<u>TULIP TREE – <i>Liriodendron tulipifera</i></u>	<u>2 ft 6 in</u>
<u>WILLOW (All non-native species)</u>	<u>2 ft</u>

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...

1 Tree, Grove: A grove means a group of 8 or more trees each 10 inches or more in diameter that form a
2 continuous canopy. Trees that are part of a grove shall also be considered exceptional trees, unless they
3 also meet the definition of a hazardous tree.

4
5 ...

6
7 ~~Large (Regulated) Tree, Large (Regulated): Any conifer tree that is six feet tall with a diameter of 10~~
8 ~~inches or more, and any tree that meets the definition of an exceptional tree, or any deciduous tree~~
9 ~~with a diameter of more than six inches.~~

10
11 ...

12
13 ~~Small Tree, Small: Any conifer tree that is less than six feet tall with a diameter of less than 10 inches or~~
14 ~~any deciduous tree with a diameter of six inches or less. Small trees do not include any tree that meets~~
15 ~~the definition of an exceptional tree.~~

16
17 ...

18
19 ~~Hazardous Tree, Hazardous: Any tree that receives an 11 or 12 rating under the International Society of~~
20 ~~Arboricultural rating method set forth in Hazard Tree Analysis for Urban Areas (copies of this manual are~~
21 ~~available ~~form~~ from the city arborist) and may also mean any tree that receives a 9 or 10 rating, at the~~
22 ~~discretion of the city arborist.~~

23
24 ...

25
26 Hardscape: The solid, hard, elements or structures that are incorporated into landscaping. The
27 hardscape includes, but is not limited to, structures other than buildings, paved areas other than driving
28 surfaces, stairs, walkways, decks, patios, and similar constructed elements. The hardscape within
29 landscaping is usually made up of materials that include, but are not limited to wood, stone, concrete,
30 gravel, and permeable pavements or pavers, and similar materials. Hardscape does not include solid,
31 hard elements or structures that are covered by a minimum of two feet of soil intended for softscape
32 (for example, a septic tank covered with at least two feet of soil and planted shrubs is not hardscape).
33 Hardscape areas do not include driving surfaces or buildings.

34
35 ...

36
37 Landscaping: The arrangement and planting of softscape elements (e.g. trees, grass, shrubs and
38 flowers), and the installation of hardscape elements (e.g. placement of fountains, patios, street furniture
39 and ornamental concrete or stonework).

40
41 ...

42 Lot, Large: A lot that contains sufficient area, and is of sufficient dimension, to be subdivided. Large lots
43 shall contain a minimum net lot area as follows:

- 44 1. R-8.4: 16,800 square feet.
- 45 2. R-9.6: 19,200 square feet.

1 3. R-12: 24,000 square feet.

2 4. R-15: 30,000 square feet.

3 ...

4
5 Lot area: The area contained within the established boundaries of a lot. The lot area includes, but is not
6 limited to, areas encumbered by critical areas, shorelines, and public or private easements.

7
8 ...

9 Lot area, net: The area contained within the established boundaries of a lot, less any area used for public
10 or private vehicular access easements, excluding that portion of the easement used for a driveway
11 access to the encumbered lot.

12 For example, the net lot area of a lot encumbered by a private vehicle access easement with an area of
13 1,000 square feet and of which, 400 square feet of the vehicle access easement is used for a driveway to
14 a home on the encumbered lot, is the area within the established boundaries of the lot less 600 square
15 feet.

16
17 ...

18
19 Lot coverage, maximum: The maximum area of a residentially zoned lot that may be covered by a
20 combination of buildings and vehicular driving surfaces.

21
22 ...

23
24 Reasonable Best Efforts: In cases where the code requires “reasonable best efforts” to comply with
25 standards, the burden of proving that reasonable best efforts have been taken, and compliance is
26 infeasible, is on the applicant. In determining whether reasonable best efforts have been taken the Code
27 Official may weigh the applicant’s actions to comply with the applicable standard and the action’s
28 relative costs to the applicant and public benefits, considered in the short- and long-term time frames.
29 The Code Official may also evaluate whether an applicant’s prior actions have contributed to the
30 applicant’s inability to comply with the applicable standard.

31 ...

32
33 Qualified Arborist: means an individual with relevant education and training in arboriculture or urban
34 forestry, having the International Society of Arboriculture (ISA) Tree Risk Assessment Qualification and
35 one (1) of the following credentials:

36
37 1. ISA Certified Arborist;

38 2. ISA Certified Arborist Municipal Specialist;

39 3. ISA Board Certified Master Arborist;

40 4. American Society of Consulting Arborists (ASCA) registered Consulting Arborist;

41 5. Society of American Foresters (SAF) Certified Forester for Forest Management Plans;

42
43 For tree retention reviews associated with a development proposal, a qualified arborist must have, in
44 addition to the above credentials, a minimum of three (3) years’ experience working directly with the

1 protection of trees during construction and have experience with the likelihood of tree survival after
2 construction. A qualified arborist must also be able to prescribe appropriate measures for the
3 preservation of trees during land development. Any provision in Title 19 of the Mercer Island City Code
4 referring to using an arborist shall be interpreted to require using a Qualified Arborist.

5
6 ...

7
8 Softscape: The living or unhardened elements that are incorporated into landscaping. The softscape
9 generally includes plants, flower beds, tree retention areas, uncovered dirt, compost or mulched areas,
10 wetlands, and wetland or watercourse buffers.

11
12 ...

13
14 Street: An improved or unimproved public or private right-of-way or easement which affords or could be
15 capable of affording vehicular access to property.

16 1. Collector Arterial: A street designed to collect and distribute traffic from major arterials to the
17 local access streets. The collector arterial is similar to a local access street except for stop and
18 yield privileges over a local access street and restrictions for on street parking.

19 2. Local Access Street: A street designated for direct access to properties, and which is tributary
20 to the arterial system.

21 3. Major Arterial Street: A street designed to collect and distribute large volumes of traffic from
22 the freeway, Town Center and less important arterial streets. This type of arterial normally is
23 designed to expedite through traffic.

24 4. Second Arterial Street: A street designed to collect and distribute traffic from the freeway or
25 major arterials and less important streets.

26 6. Driveways are not streets.

**APPENDIX B
BASEMENT FLOOR AREA CALCULATION**

The Mercer Island Development Code excludes that portion of the basement floor area from the Gross Floor Area which is below the existing or finished grade, whichever is lower. That portion of the basement which will be excluded is calculated as shown.

Portion of Excluded Basement Floor Area =

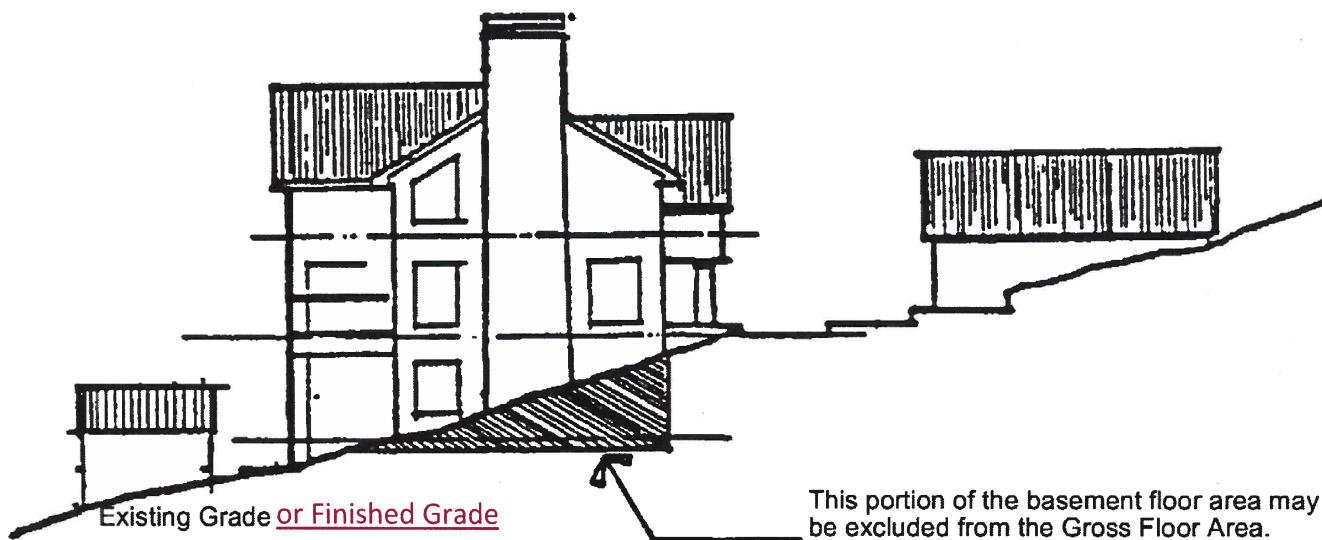
$$\frac{\text{Total Basement Area} \times \sum(\text{Wall Segment Coverage} \times \text{Wall Segment Length})}{\text{Total of all Wall Segment lengths}}$$

Where the terms are defined as follows:

TOTAL BASEMENT AREA is the total amount of all basement floor area.

WALL SEGMENT COVERAGE is the portion of an exterior wall below existing or finished grade, whichever is lower. It is expressed as a percentage. (Refer to example.)

WALL SEGMENT LENGTH is the horizontal length of each exterior wall in feet.



EXAMPLE OF BASEMENT FLOOR AREA CALCULATION

This example illustrates how a portion of the basement floor area may be excluded from the Gross Floor Area. In order to complete this example, the following information is needed.

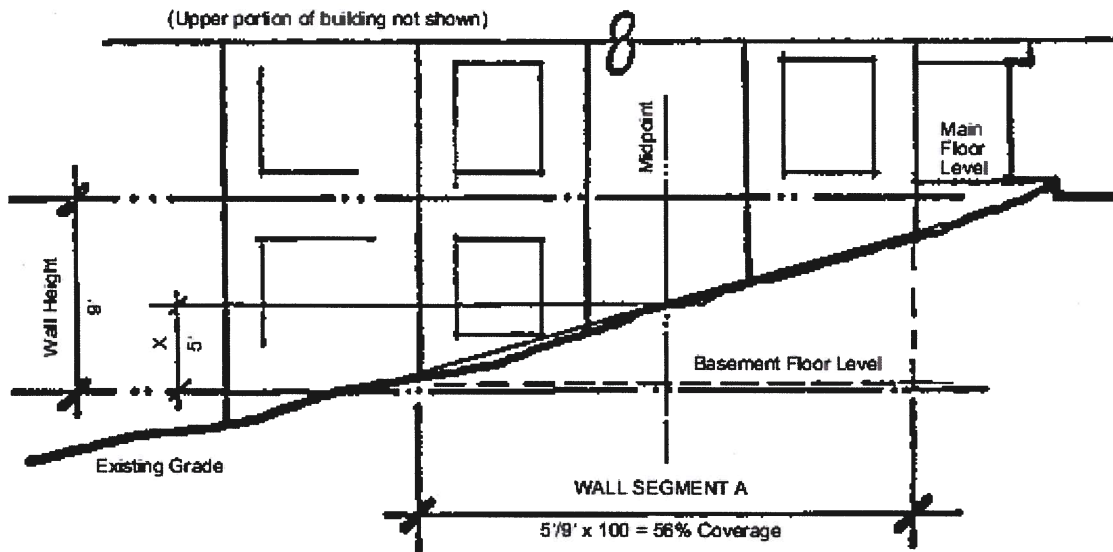
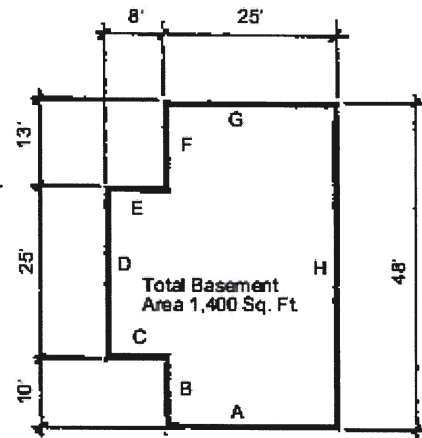
- A. A topographic map of the existing grades and the proposed finished grades.
- B. Building plans showing dimensions of all exterior wall segments and floor areas.
- C. Building elevations showing the location of existing grades and proposed finished in relation to basement level.

Step One

1 Determine the number and lengths of the Wall Segments.

2 Step Two

3 Determine the Wall Segment Coverage (in %) for each Wall Segment.
 4 In most cases this will be readily apparent, for example a downhill
 5 elevation which is entirely above existing grade or will be entirely
 6 above finished grade. In other cases where the existing or finished
 7 grade contours are complex, an averaging system shall be used.
 8 (Refer to illustration.)



9

10 Step Three

11 Multiply each Wall Segment Length by the percentage of each Wall Segment Coverage and add these results
 12 together. Divide that number by the sum of all Wall Segment Lengths. This calculation will result in a
 13 percentage of basement wall which is below grade. (This calculation is most easily completed by compiling a
 14 table of the information as illustrated below.)

15 Table of Wall Lengths and Coverage

Wall Segment	Length	Coverage	Result
A	25x	56%	14x%
B	10x	0%	0x%
C	8x	0%	0x%
D	25x	0%	0x%

E	8x	0%	0x%
F	13x	0%	0x%
G	25x	60%	15x%
H	48x	100%	48x%
Totals	162x	NA	77x%

1 Step Four

2 Multiply the Total Basement Floor Area by the above percentage to determine the Excluded Basement Floor
3 Area.

Portion of Excluded Basement Floor Area =

$$=1,400 \text{ Sq. Ft. x } \frac{(25x \times 56\% + 10x \times 0\% + 25x \times 60\% + 48x \times 100\%)}{162x}$$

$$=1,400 \text{ Sq. Ft. x } 47.53\%$$

$$=665.42 \text{ Sq. Ft. Excluded from the Gross Floor Area}$$

4

5

6

|

| 1
| 2

~~APPENDIX G~~
~~CALCULATING AVERAGE BUILDING ELEVATION (ABE)~~

CITY OF MERCER ISLAND

9611 S. E. 36th Street, Mercer Island, Washington 98040 206.236.5300

CALCULATING AVERAGE BUILDING ELEVATION (ABE)

NOTE:
INCOMPLETE
AVERAGE
BUILDING
ELEVATION
INFORMATION
COULD
SUBSTANTIALLY
DELAY THE
PROCESSING OF
YOUR
APPLICATION

No part of a structure may exceed 30 feet in height above the "Average Building Elevation" to the top of the structure, except that on the downhill side of a sloping lot the structure shall not extend to a height greater than 35 feet measured from existing grade to the top plate of the roof; provided the roof ridge does not exceed 30 feet in height above the "Average Building Elevation." ABE is defined as: The elevation established by averaging the elevation of the existing grade, prior to any development activity, at the center of all exterior walls of a building or structure.

AVERAGE BUILDING ELEVATION FORMULA

$$= \frac{\text{(Midpoint Elevations)} \times \text{(Length of Wall Segments)}}{\text{(Total Length of Wall Segments)}}$$

-OR-

$$= \frac{(Aa) + (Bb) + (Cc) + (Dd) + (Ee) + (Ff) + (Gg) + (Hh)}{a + b + c + d + e + f + g + h}$$

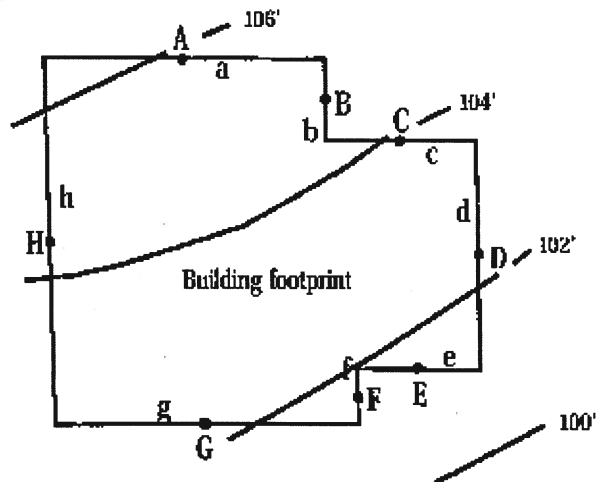
WHERE: A,B,C,D... = Existing Ground Elevation at Midpoint of Wall Segment
AND: a,b,c,d... = Length of Wall Segment Measured on Outside of Wall

MIDPOINT ELEVATION

A = 105.9'
B = 104.7'
C = 103.7'
D = 102.2'
E = 101.6'
F = 101.7'
G = 102.2'
H = 104.5'

WALL SEGMENT LENGTH

a = 30'
b = 9'
c = 17'
d = 25'
e = 13'
f = 6'
g = 34'
h = 40'



NOTE: This example is not to scale. Site plans submitted to the building department must be to scale.

CALCULATION:

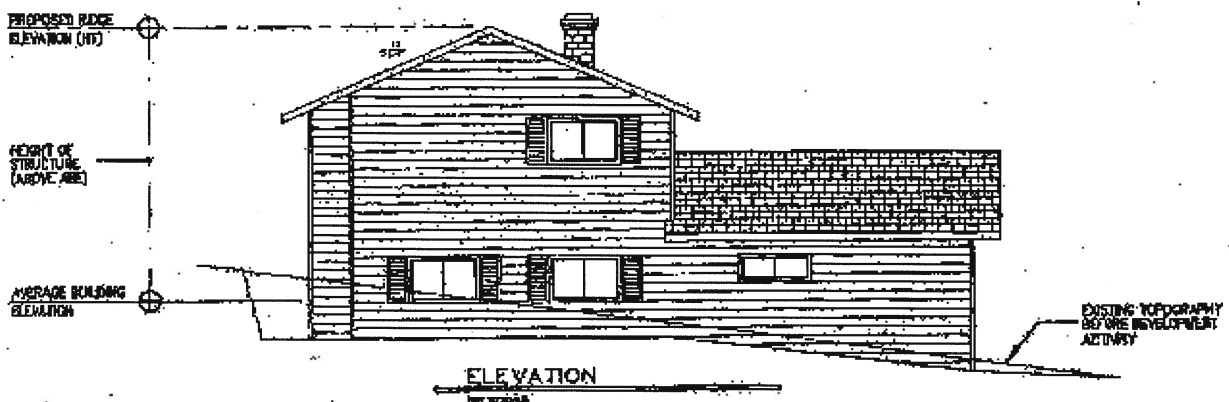
$$\frac{(105.9)(30) + (104.7)(9) + (103.7)(17) + (102.2)(25) + (101.6)(13) + (101.7)(6) + (102.2)(34) + (104.5)(40)}{30 + 9 + 17 + 25 + 13 + 6 + 34 + 40} =$$

$$\frac{18023}{174} = 103.6' = \text{Average Building Elevation (ABE)}$$

BEFORE SUBMITTING YOUR CONSTRUCTION DRAWINGS, CHECK TO SEE THAT YOU HAVE PROVIDED THE INFORMATION BELOW.

- The site plan and the elevation drawings must be drawn to scale, for example 1"=20', and based on a survey.
- Clearly show existing topography on your site plan. Topography should be shown in 2' increments.
- Submit (with the site plan) your average building elevation calculations using the formula provided on the front side of this page.
- Indicate on an elevation drawing where the average building elevation strikes the building and the proposed ridge elevation (see below for example).
- Indicate on the site plan the elevation of the finished floor or garage slab.
- Indicate the elevation and location of a fixed point (benchmark) within the ADJACENT RIGHT-OF-WAY or other point approved by the Building Official. The benchmark elevation and location must be provided and cannot be a part of the proposed structure. Note: Benchmark must be established, verified by a licensed surveyor and remain during construction so height can be verified when completed.
- Sections of the structure that are below the existing grade and do not have a wall that extends above the existing grade, are not used in the ABE calculation.
- ~~For additions, you must provide an average building elevation calculation for the entire structure.~~

CROSS-SECTION REPRESENTATION OF ABE



1
2