

From: [Dan Grove](#)
To: [Molly McGuire](#)
Subject: 2207-019 SUB4 Supplemental Retaining Wall comments
Date: Wednesday, July 12, 2023 4:51:18 AM
Attachments: [SUB4 Retaining Wall \(2\).pdf](#)

Hello Molly-

Please find attached some additional data on the "Existing Rockery Memo" recently submitted as part of 2207-019/SUB4.

Thank you,
Dan Grove

Ms. Molly McGuire
City of Mercer Island
RE: Response to 2207-019/"SUB4 - ADDITIONAL DOCUMENTS" - Retaining Wall
7/12/2023

Ms. McGuire:

The document provides data relevant to the [recent submission](#) on the legality of the existing retaining wall in Building Permit 2207-019.

In this submission, the Applicant reaches several conclusions, including:

1. "during the period at which this rockery was installed that rockeries would have been considered part of landscaping and not 'structure'"
2. "With the rockery being installed in 1961 the code in place at the time would have been the City of Mercer Island Zoning code of 1960. This zoning code does not provide requirements for the construction of retaining walls."

There are several problems with these conclusions, which I address in turn below:

Section 1: The Rockery was considered a retaining wall from the time of its construction

We agree that the rockery was constructed in the 1960's. During the 1960's, different versions of the Uniform Building Code were used by Mercer Island and King County. The Uniform Building Codes of [1946](#), [1955](#), [1958](#), and all use the same definition of Retaining Wall:

Retaining Wall is any wall used to resist the lateral displacement of any material.

King County used the 1946 Uniform Building Code starting in 1950, and Mercer Island used the 1958 Uniform Building Code from the moment of the City's incorporation - see Mercer Island [Ordinance 5](#) from July 20, 1960.

There can be no doubt that this rockery was considered a retaining wall from the date of its construction.

Section 2: The rockery was installed illegally, regardless of when in the 1960's it was installed

The Rockery illegally encroaches on the SE Maker Street Right-of-Way

While we have presented convincing evidence that the rockery was built after 1963, it would have been illegal even if it were built in 1960, under King County Code.

King County Resolution 18877 (Section 2802), passed in September 1958, makes it clear that any increase in grade by adding fill had to be done completely within the Lot where the fill was being installed:

protected against settlement.
When the owner of any lot shall raise or lower the level of such lot by a fill or excavation, he shall at his own expense protect all adjoining property from encroachment by such fill or from danger of collapse due to such excavation either by the erection of a retaining wall or by sloping the sides of such fill or excavation entirely within the confines of said lot.

That wasn't done here - there is no disagreement that the rockery and fill encroach onto the SE Maker Street right-of-way. This installation would have been illegal if performed prior to the City's incorporation.

If the rockery was installed after the City's incorporation, an encroachment agreement would have been required. No encroachment agreement was reached with the City. As such, the rockery and the site that was built behind it are Illegal Nonconforming Structures under MICC 19.01.050(A)(3).

Mercer Island Zoning Code in 1960 Provides Requirements for the Construction of Retaining Walls

[1960 Mercer Island Zoning Code](#) Section 16.01(4) is titled "Fences or Retaining Walls", and restricts fill retaining walls in the Required Front Yard to 42 inches, and to 72 inches in the Required Side Yard. The Rockery violates both of these regulations.

Conclusion

There is broad agreement that the rockery was built in the 1960's. The rockery was considered a retaining wall at the time, and illegally encroached on the SE Maker Street right-of-way. The rockery also violated Mercer Island's 1960 Zoning code when it was built.

As such, the rockery is an illegal nonconforming structure, and the site that was built behind the rockery is an illegal nonconforming site. MICC 19.01.050(A)(3).