

**From:** [Dan Grove](#)  
**To:** [Molly McGuire](#)  
**Subject:** APL23-009 impact on building permit 2207-019  
**Date:** Wednesday, January 17, 2024 8:25:00 PM  
**Attachments:** [APL23-009"s Impact on Permit 2207-019.pdf](#)

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Hello Molly-

Attached, please find a letter describing the impact of the Hearing Examiner's recent ruling in APL23-009 on Building Permit 2207-019.

Thank you,  
Dan Grove

To: Molly McGuire  
RE: Effect of Hearing Examiner's APL23-009 ruling on Building Permit 2207-019  
January 18, 2024

Dear Ms McGuire:

In Appeal APL23-009, the Hearing Examiner made [rulings](#) that implicate Building Permit 2207-019. The City did not appeal the Hearing Examiner's Findings of Fact or Conclusions of Law. This letter demonstrates the impact of two of these rulings on Building Permit 2207-019.

## 1. There is no retaining wall on the property

The Hearing Examiner made several rulings in his summary dismissal of APL23-009 which concern the existing rockery on the perimeter of the fill slope in 6950 SE Maker Street's western yard: "[T]he rocks covering the western slope were placed on the slope as it existed in 1955. The rocks may well be protecting the slope from erosion, but they are not retaining the slope in the normal sense of a typical, near-vertical retaining wall; they are not a wall." (Summary Dismissal, p. 5). There are several results from this:

1. The western yard of 6950 is a "fill slope" - the Hearing Examiner concludes that "The western fill slope has a total maximum height (from toe to top) of about 14.5 feet."
2. As the Hearing Examiner concluded, "The rocks may well be protecting the slope from erosion, but they are not retaining the slope in the normal sense of a typical, near-vertical retaining wall; they are not a wall." As a result, "ordinary repairs and maintenance" (MICC 19.16) may not be used to convert this non-retaining rockery to a retaining wall or a combination of retaining walls and rockeries.
3. The Hearing Examiner states that the "rocks covering the western slope were placed on the slope as it existed in 1955." As such, they do not constitute a "structure that lawfully existed prior to September 26, 1960". (MICC 19.01.050), and are therefore not grandfathered as a previously-existing structure.
4. The permitted structural alteration provision of MICC 19.01.050(D)(1)(b)(ii) defines permitted alterations of a "structure" in terms of "wall length". Because the Hearing Examiner found that there was "no wall", a "wall length" of 0 feet must be used in MICC 19.01.050(D)(1)(b)(ii)'s calculation for determining whether the 40 percent structural alteration threshold has been exceeded. As a result, a new retaining wall is not permitted to be installed as an "exterior alteration or enlargement of nonconforming structures" under MICC 19.01.050(D)(1)(b)(ii).

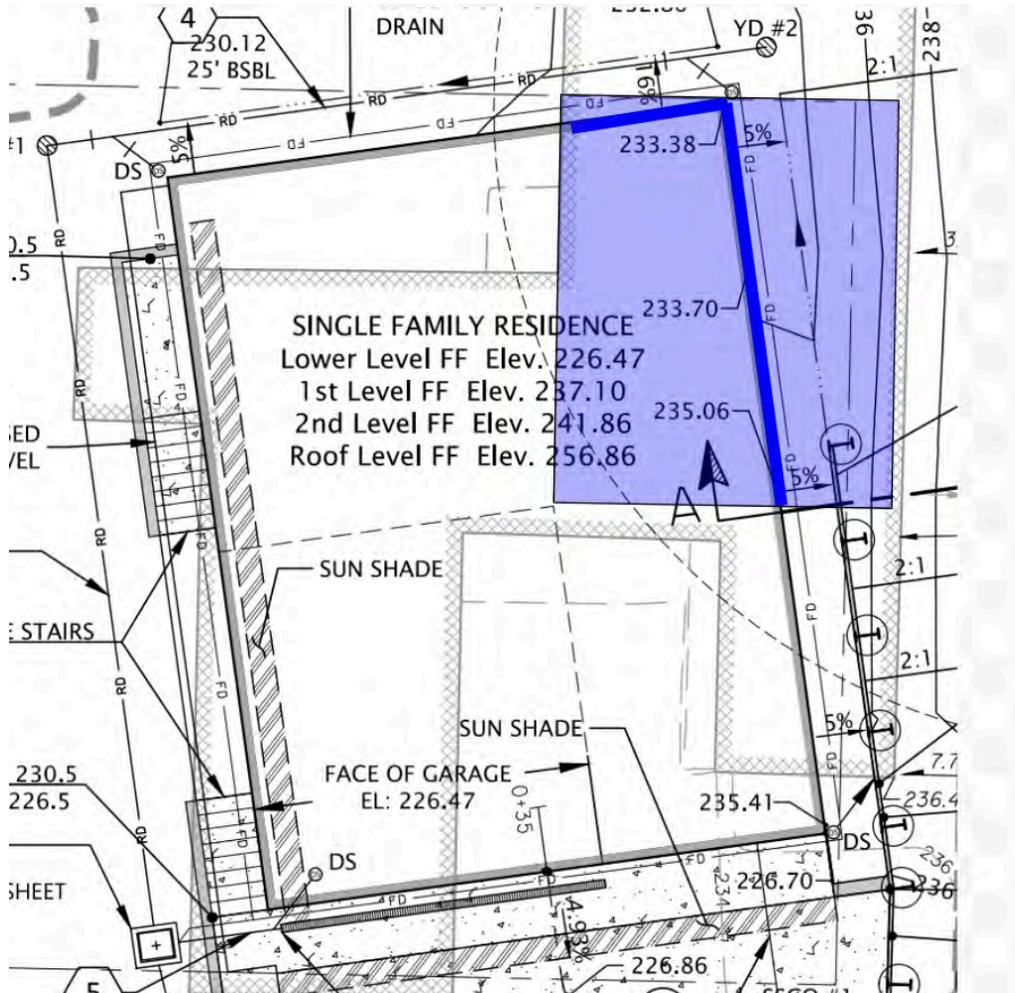
Because no structure is in place around this fill slope, any new retaining wall must comply with MICC 19.02.050(D)(5)'s limitations on retaining wall height. The current submission (SUB5) does not comply with MICC 19.02.050(D)(5)'s limitations on retaining wall height for fill slopes in the Required Front Yard, Required western Side Yard, and Required Rear Yard.

## 2. “Existing grade” for the proposal is the current grade

In APL23-009’s Summary Dismissal, the Hearing Examiner relied on Mercer Island Administrative Interpretations 04-04 and 12-04 to determine that “The existing grade is the grade to be used.” (Summary Dismissal, p. 5). Administrative Interpretation 12-04 determines that:

1. “The existing grade underlying the existing structure will be used as the elevation for the proposed development.”
2. “Existing grade, for the purpose of calculating basement area exclusion without a survey of the pre-development conditions, shall be interpreted as the elevation of a point on the surface of the earth immediately adjacent to or touching a point on the exterior wall of a proposed structure.”

In the northeast quadrant of the proposed house, the grade underlying the existing structure is significantly different from the grade used by the Applicant in SUB5. I pointed this out in a letter to CPD on March 7, 2023. The diagram below (taken from that letter) shows the approximate location where the grade beneath the existing structure varies dramatically from the grade proposed as the “existing grade” in SUB5. The grade underneath the existing structure is approximately 228.4’ in the blue area, rather than the 223.4-235.1 feet identified in SUB5.



## Summary

These 2 rulings impact the retaining wall which may be built in the site's required yard and the height, size and location permitted for the proposed house. Thank you for your attention to these important issues.