



memorandum

date June 29, 2022

to Andrew Leon, City of Mercer Island

from Emily Heim & Aaron Ellig, ESA

subject Review of 5637 East Mercer Way - Reasonable Use Exception and Variance Applications (CAO15-001 and VAR18-002)

On behalf of the City of Mercer Island (City), Environmental Science Associates (ESA) reviewed the application materials for the proposed development located at 5637 East Mercer Way, in the City of Mercer Island, Washington (King County Parcel #1924059312). This review is to determine if the proposed project complies with Mercer Island City Code (MICC) Chapter 19.07 (Environment) and Conditions of Approval outlined in the Hearing Examiner Decision following the most recent Remand Hearing.

The recommendations described below are based on our review of the following materials (listed chronologically):

- *Letter RE: Intake Screening 2204-1075637 East Mercer Way* prepared by William C. Summers dated May 2, 2022.
- *Updated Site Plan* prepared by The Healey Alliance Architects dated April 13, 2022.
- *Response Letter Re: MI Treehouse- Cao15-001/VAR18-002 addressed to Robin Proebsting from Core Design* dated May 17, 2021.
- *Revised Tree Report at 5637 E Mercer Way* prepared by Gilles Consulting dated April 7, 2021
- *Remand Decision (CAO15-001 & VAR18-002)* issued by the City of Mercer Island December 15, 2021.
- *Letter addressed to Robin Proebsting from Courtney A. Kaylor* and dated January 27, 2021.
- *Revised Critical Area Report* prepared by Sewall Wetland Consulting Inc. and dated January 26, 2021.
- *Revised Mitigation Bank Use Plan* prepared by Sewall Wetland Consulting Inc. and dated December 28, 2020.
- *Critical Area Enhancement Plan* prepared by Sewall Wetland Consulting Inc. and revised December 2, 2020.
- *Site Plan for 5637 Mercer Way* prepared by Core Design dated June 2018 and stamped by Michael A. Moody November 16, 2020.
- *Remand Decision* issued by the City of Mercer Island August 7, 2020.
- *Mitigated Determination of Non-Significance (MDNS) for Application No. SEP15-001, VAR18-002, CAO15-001* issued January 13, 2020 by Responsible Official Evan Maxim

Summary of Application Materials

The proposed project is a two story single-family residence on an irregular shaped 0.88 acre parcel located at 5637 East Mercer Way (King County Parcel #1924059312). The applicant proposed to construct a 2,117 square foot (SF) home with an associated access driveway. The project will result in 3,075 SF of permanent wetland impact and 3,078 SF of buffer impacts to accommodate the development. It was demonstrated without question in the 2020 Remand Decision that a Reasonable Use Exemption (RUE) is appropriate for this site. No reasonable use of the parcel can be made without some degree of relief from MICC critical area regulations based on a wetland and its required buffer, two streams and their required buffers, and steep slopes and their required buffers that are located on the property.

Hearing Examiner Findings

The Hearing Examiner determined in the 2021 Remand Decision that the plan set submitted July 29th, 2021, presented as Exhibit 87b had “corrected virtually all of the errors presented during the 2020 Hearing with the only short-falls described as *de minimis*”. Updates to the plan set included the correction of the western boundary; the addition of the 2007 Stormwater/Utility/Trail easement which runs along the north edge of the parcel, and the correction of errors identified in the legend. An updated Site Plan prepared by The Healey Alliance Architects dated April 13, 2022 has since been submitted.

The following changes were made in the application materials to ensure 2020 deficiencies were corrected and carried through to the most recent plan set:

- A land survey on September 9, 2020 confirmed there is no 1978 side sewer easement on the property.
- The *Revised Tree Report* dated April 7, 2021 was written by Gilles Consulting. The 1977 short subdivision requires preservation of tree #986 identified to be a 40.7-inch diameter Douglas Fir tree in Fair condition. Gilles Consulting determined that it is reasonable to conclude “placing some stormwater facilities under the new driveway addition can be done with minimal impact on the tree” based on its adaptation to the existing driveway of the adjacent house at 5645 East Mercer Way.
- The Hearing Examiner requested additional details pertaining to Stream B. In response, Sewall Wetland Consulting Inc. (Sewell) conducted a site visit in August 2020 to flag the ordinary high water mark (OHWM) of Stream B, which was surveyed and depicted on revised site drawings. A 10-foot building setback was applied from the stream boundary and the proposed building footprint was modified and shifted to the south and east so that the structure is located outside of the setback, as requested by the Hearing Examiner. To account for the revised building footprint and location, the critical areas report, mitigation bank use plan, and critical areas mitigation plan were updated.
- The Hearing Examiner also requested the applicant update the wetland rating form to be consistent with the 2014 Department of Ecology Wetland Rating System. In response, Sewell updated the wetland rating for Wetland A using Ecology’s 2014 rating form; however, the form was not included in the critical areas report for review. While no form was included, the wetland rating scores are consistent with Ecology’s translating category and functions scores. Wetland A rates as a Category III wetland with a standard 60-foot buffer, which is the same as the previous rating.

- Reducing the building footprint and shifting the location of the structure results in 3,075 SF of direct wetland impact: 1,833 SF from the building, 664 SF from a 5-foot structure offset, and 578 SF from temporary construction access. To offset wetland impacts, the applicant proposes to purchase an appropriate number of credits from the King County Mitigation Reserves Program.
- According to the Critical Area Enhancement Plan, proposed mitigation “exceeds that which would be required to mitigate buffer impacts and temporary construction impacts.” MICC allows for the use of mitigation bank credits, which will be purchased at a 1:1 ratio prior to construction activities and as a condition of the applicant’s permit issuance.

In addition to the purchase of credits, onsite mitigation is proposed. Wetland buffer impacts now total 3,078 SF, comprised of 1,979 SF from the structure and driveway, 123 SF from the 5-foot structure offset, and 976 SF from temporary construction access. To mitigate temporary construction impacts to the wetland and buffer, the applicant proposes to install 13 twinberry honeysuckle, 52 salmonberry, and 25 red-osier dogwood shrubs within the temporary construction access areas of both the wetland and buffer located around the development. To offset the 1,979 SF of buffer impact associated with the structure and the 123 SF from the 5-foot structure offset, the applicant proposes to install 30 cedar trees along the Stream A riparian corridor and on the southern steep slope.

Comments and Recommendations

Based on the documents reviewed, ESA has the following comments and recommendations:

1. ESA recommends the following submittal documents be updated to reflect the correct parcel number:
 - a. Revise the *Mitigation Bank Use Plan* prepared by Sewall Wetland Consulting, Inc. dated December 28, 2020 to correct the parcel number to 192405-9312 instead of 192405-0312.
 - b. Revise the *Revised Critical Areas* dated January 26, 2021 to correct the parcel number to 192405-9312 instead of 192405-0312.
2. The Site Plan does not show a split rail fence around the north, west, and south extent of the clearing limits. ESA recommends the Site Plan be updated to include the split rail fence as described in the Conditions of Approval determined by the Hearing Examiner December 15, 2021.
3. The MDNS requires consultation with a hydrologist to determine any impacts related to the final design of the drainage system. ESA recommends documentation of hydrologist review be added to the submittal documents. If potential impacts are identified by a hydrologist, the mitigation plans should be updated accordingly.
4. The Conditions of Approval determined by the Hearing Examiner December 15, 2021 require the applicant to conduct a wetland delineation during Year 5 of monitoring to verify the boundaries and ensure no net loss of wetland area or function. ESA recommends the wetland delineation and functional assessment be added to the performance standards of the Critical Areas Enhancement Plan.

If you have any questions, please call us at (206) 204-6980 or email eheim@esassoc.com.

Sincerely,
ESA

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