

From: [John Galt](#)
To: [Bio Park](#); [Andrea Larson](#)
Cc: [Eileen Keiffer](#); [Mary Swan](#); [Jeff Thomas](#); [Alison Van Gorp](#); "[Courtney Kaylor](#)"; "[Rich Hill](#)"; "[Bill Summers](#)"
Subject: RE: CAO15-001/ VAR18-002 - MI Treehouse
Date: Wednesday, September 22, 2021 7:52:22 PM

Dear Mr. Park et al.:

My apologies: I have done so many appeal hearings for Mercer Island recently that when Ms. Larson sent her e-mail to me, I jumped to the conclusion that MI Treehouse had been an appeal case which I had remanded. Had I taken the time before responding to her e-mail to bring up a copy of my Decision on my computer, I would have realized that it had been an original jurisdiction case, not an appellate case.

You are absolutely correct: The remand will come back to me.

However, while the code may be silent on this, I believe that another pre-decision, open record hearing must be held. Subsection 3.40.080(A) MICC says that "Before rendering a decision on any application or appeal, the hearing examiner shall hold at least one open, or closed, record hearing as applicable thereon." I grant you I have held one hearing. But I presume the new materials include new information and (probably) new plans which have never been the subject of an open record hearing. Were I to take this new material and render a decision without allowing the public to testify and/or comment, without allowing the applicant to explain its work, and without having the opportunity to ask questions of the participants, I believe that I would be derelict in my duty and be subject to challenge for failure to provide due process. An open record, pre-decision hearing is needed to consider the new materials.

A hearing date needs to be selected and noticed and the public needs to be able to review the new materials before the hearing, just as was the case for the initial hearing.

I will await communication from Ms. Larson suggesting/requesting a new hearing date.

Respectfully,

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (425) 259-3144

From: Bio Park [mailto:Bio.Park@mercergov.org]
Sent: Wednesday, September 22, 2021 4:36 PM
To: John Galt; Andrea Larson
Cc: Eileen Keiffer; Mary Swan; Jeff Thomas; Alison Van Gorp; 'Courtney Kaylor'; 'Rich Hill'; 'Bill Summers'
Subject: RE: CAO15-001/ VAR18-002 - MI Treehouse

Mr. Examiner,

The administrative decisions required on remand are for a Reasonable Use Exception and Variance, both of which are Type IV reviews under MICC 19.15.030 (Table A. Land Use Review Type). Decisions on Type IV reviews are issued by the Hearing Examiner under MICC 19.15.030 (Table B. Review Processing Procedures). No administrative appeal of the Hearing Examiner is afforded under the code. Recommendations from staff on both Reasonable Use Exception and Variance are included in the Staff Report on Remand being submitted to you.

If you find that a conference with the City and the Applicant would be beneficial to discuss and resolve any procedural issues, please let us know.

I have conferred with Applicant's attorney, and this email is being respectfully submitted jointly by the City and the Applicant. Thank you very much.

Bio Park

City Attorney

City of Mercer Island

206-275-7652 | mercerisland.gov

Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).

From: John Galt <jegalt755@gmail.com>

Sent: Monday, September 20, 2021 4:28 PM

To: Andrea Larson <Andrea.Larson@mercergov.org>

Cc: Bio Park <Bio.Park@mercergov.org>; Eileen Keiffer <Eileen@madronalaw.com>; Mary Swan <Mary.Swan@mercergov.org>; Jeff Thomas <jeff.thomas@mercerisland.gov>; Alison Van Gorp <alison.vangorp@mercergov.org>; 'Courtney Kaylor' <courtney@mhseattle.com>; 'Rich Hill' <rich@mhseattle.com>; 'Bill Summers' <bill@summersdevelopment.com>

Subject: RE: CAO15-001/ VAR18-002 - MI Treehouse

Dear Ms. Larson:

A remand sends the application back to the staff for it to re-do its decision. Staff would follow whatever standard procedures it uses to issue administrative decisions. Only if that staff, administrative decision were appealed would the case return to me.

Because it is premature for the case to again be before me, I have not opened any of the attachments to your e-mail.

Respectfully,

John E. Galt
Hearing Examiner/Officer

Mediator
Voice: (425) 259-3144

From: Andrea Larson [<mailto:Andrea.Larson@mercergov.org>]
Sent: Monday, September 20, 2021 12:23 PM
To: John Galt
Cc: Bio Park; Eileen Keiffer; Mary Swan; Jeff Thomas; Alison Van Gorp; 'Courtney Kaylor'; 'Rich Hill'; 'Bill Summers'
Subject: CAO15-001/ VAR18-002 - MI Treehouse

Hello Mr. Galt,

On August 7, 2020, you issued Findings of Fact, Conclusions of Law, and Decision, remanding the RUE and Variance for CAO15-001 & VAR18-002, MI Treehouse, for further action by the applicant and review by the City.

Upon the remand staff asked the applicant to do/ provide clarification on the following:

- Stream B: The building should be at least 10 feet back from Stream B and the location of the stream be verified.
- Geotechnical Evaluation: To consider off-site conditions and impacts. To provide information to evaluate potential impacts, including, but not limited to the geologic makeup of the steep slopes and information about off-site conditions.
- Site Plan Errors/Omissions: The Hearing Examiner outlined a number of errors in the plans stating that the Site Plan did not comply with the City's requirements for RUE site plans.

The applicant has responded with updated application materials and staff have reviewed them. We are now providing you with these materials, along with the staff report and recommendation, for your review and decision.

Please use the following links to access the project files:

- Resubmitted materials:
<https://mieplan.mercergov.org/public/CAO15-001%20SEP15-001%20VAR18-002/Staff%20Recommendation%20and%20Exhibits/2021%20Staff%20Report%20and%20Exhibits/>
- Last year's hearing file:
<https://mieplan.mercergov.org/public/CAO15-001%20SEP15-001%20VAR18-002/Staff%20Recommendation%20and%20Exhibits/>
- Entire project file:
<https://mieplan.mercergov.org/public/CAO15-001%20SEP15-001%20VAR18-002/>

Bcc- Parties of record.

Kind Regards,

[Andrea Larson](#)

Senior Administrative Assistant

City of Mercer Island – Community Planning & Development

206.275.7791 | mercerisland.gov/cpd

Due to the COVID-19 outbreak, Community Planning and Development has modified our operations. City Hall and the Permit Center are closed to the public. There is no "walk in" permit service; staff are working remotely and services are being continued via remote operations. More information is available on the City's website: mercerisland.gov/cpd. Please contact us by phone for general customer support at 206-275-7626.

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