

**CITY OF MERCER ISLAND
HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Michael Boyle

File No: VAR16-004 & VAR16-005

Application: Variances from minimum front yard setback and building height requirements to relocate a garage outside the street right-of-way

Staff Recommendation: Approve with conditions

Public Hearing: The Hearing Examiner held a public hearing on the application on October 24, 2016 in Mercer Island City Hall, 9611 SE 36th Street, Mercer Island, Washington. The applicant, Michael Boyle, represented himself at the hearing, and the City's Development Services Group ("DSG") was represented by Nicole Gaudette, Senior Planner. No members of the public attended the hearing. A verbatim recording of the hearing is available at the City Clerk's office.

For purposes of this decision, all section numbers refer to the Mercer Island Municipal Code ("MIMC" or "Code"). Having considered the evidence in the record and viewed the site, the Hearing Examiner enters the following findings of fact, conclusions and decision on the application.

Findings of Fact

1. The subject property is addressed as 3603 West Mercer Way. It is zoned R-15, Single-Family Residential, with a minimum lot area of 15,000 square feet, but is just 8,078 square feet in size. The lot is bounded on the north by the SE 36th Street Landing, on the south by other single-family residential lots, on the west by Lake Washington, and on the east by an undeveloped public right-of-way that contains a driveway leading to the SE 36th Street Landing, the subject property, and two neighboring residential properties to the south.
2. The west half of the property is relatively flat with a gentle slope toward Lake Washington. The east half slopes steeply from east to west at 65 percent to 80 percent. It levels across the driveway and then slopes up at approximately 80 percent to 100 percent to a level gravel parking area on which a nonconforming detached garage is located. The slope is vegetated with deciduous trees and some conifers, a large amount of ivy, and some ferns. The residence is accessed via wooden stairs and concrete steps.

3. The proposed detached garage would be located on the east slope, which makes up most of the lot's front yard,¹ with access from the existing driveway. An elevator would provide access from the garage to an accessory dwelling unit to be constructed below the garage and to the existing residence on the property. There would be space to park two vehicles inside the garage and one vehicle adjacent to it.

4. The applicant seeks two variances for the project: 1) a variance to reduce the front yard setback from the 20 feet required by Code² to five feet from the structure's roof overhang, in order to allow construction of the garage as high on the slope as possible to reduce its overall height; and 2) a variance from the maximum height limit of MICC 19.02.010(D)³ to increase the height to 40 feet on the west side to accommodate the height of the slope. From the front property line, this would result in a garage that appeared to extend just 12 feet, 8 inches above grade.

5. Notices of the application and the public hearing were mailed to surrounding property owners, posted and published in accordance with Code requirements. Exhibits 4 and 6. During the 14-day public comment period, DSG received just one public comment, which asked to review the project plans and to receive notice of the decision on the project. Exhibit 5.

6. The analysis contained in Section II of the Staff Report on the variance application includes additional facts that are accurate and based on the record, and they are therefore adopted by the Examiner as additional findings of fact.

Conclusions

1. The Hearing Examiner has jurisdiction over these applications pursuant to MICC 19.15.010(E).
2. The analysis contained in Section II of the Staff Report on the variance applications sets forth conclusions (denominated "findings") that analyze how the application meets each variance criterion of MICC 19.15.020(G)(4). The conclusions are complete and correct, and they are therefore adopted as the Examiner's conclusions.
3. The applications meet all variance criteria and therefore, should be approved.

Decision

Variance applications VAR16-004 and VAR16-005 are approved subject to the following conditions:


¹ See MICC 19.02.020(C)(2)(a)(i).

² MICC 19.02.020(C)(1)(a).

³ "No building shall 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 building may extend to a height of 35 feet measured from existing grade to the top of the exterior wall facade supporting the roof framing, rafters, trusses, etc."

1. The applicant shall obtain all required permits for construction.
2. All recommendations of the geotechnical engineer must be observed during the construction and the earthwork portions of the project.
3. The existing garage located in the right-of-way shall be demolished, and the site shall be stabilized to prevent stormwater runoff and erosion.
4. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years after the approval of the permit, or the permit shall expire. The code official shall determine if substantial progress has been made.

Entered this 26th day of October, 2016.


Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

MICC 19.15.020(J)(5)(g) provides as follows:

The city's final decision on a development proposal may be appealed by a party of record with standing to file a land use petition in King County superior court. Such petition must be filed within 21 days of the issuance of the decision.

Testimony: The following people testified at the public hearing:

City of Mercer Island: Nicole Gaudette, DSG
Applicant: Michael Boyle

Exhibits: The following exhibits were entered into the record:

1. Staff Report
2. Variance application received April 29, 2016
3. Plan set received April 29, 2016

4. Notice of application
5. Public comment
6. Notice of hearing
7. Applicant's response to variance criteria received April 29, 2016
8. Topographic Survey received April 29, 2016
9. Preliminary Geotechnical Engineering Report dated March 3, 2016
10. Photographs of project site received April 29, 2016
11. Statement of property ownership received April 29, 2016

**BEFORE THE HEARING EXAMINER
CITY OF MERCER ISLAND**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Michael Boyle**, Hearing Examiner file: **VAR16-004, -005** in the manner indicated.

| Party | Method of Service |
|--|--|
| City of Mercer Island Development Services 9611 SE 36 th Street Mercer Island, WA 98040 Nicole Gaudette nicole.gaudette@mercergov.org | <input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger |
| Michael Boyle 3603 W Mercer Way Mercer Island, WA 98040 | <input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger |
| Greg and Janet Tadlock 7006 SE Maker Street Mercer Island, WA 98040 | <input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger |

Dated: October 26, 2016



Tiffany Ku

Legal Assistant