



April 30, 2019

Via Email: epermit.tech@mercergov.org

City of Mercer Island
Community Planning & Development
9611 SE 36th Street
Mercer Island, WA 98040

Re: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Williams Kastner represents Chris and Nicole Niederman in connection with their neighbors' pending building permit application, MI Project Number 1902-005. Mr. and Mrs. Niederman's property is located at 6800 96th Ave. SE, Mercer Island, WA 98040. A Public Notice of Application posted near Mr. and Mrs. Niederman's home states their neighbors to the north, Mr. and Mrs. Yang, have submitted a permit application with the City of Mercer Island requesting a Type 3 building permit. Approval of this application would result in demolishing the current home located at 6660 East Mercer Way, and constructing a new 4,538 square foot home with a 484 square foot garage in its place. The Public Notice of Application is attached hereto at **Tab A**.

The Niedermans, the Yangs, and the four abutting property owners to the west all utilize a substandard private access road/utility easement located between SE 68th St. and SE 67th St. for ingress and egress to their properties. *See Tab B, Aerial Shot of Properties and Private Access Road.* A building permit for constructing a new residence must be conditioned on improving the access road to comply with current Mercer Island City Code access road requirements.

MICC Section 19.09.040 requires that "[a]ll private access roads serving three or more single-family dwellings shall be at least 20 feet in width." As provided in MICC Section 17.07.010, Mercer Island has expressly adopted and incorporated by reference the 2015 edition of the International Fire Code. Appendix D to the IFC, titled "Fire Apparatus Access Roads," also requires that dead-end private access roads less than 500 feet in length must be at least 20 feet in width to ensure the fire department can reach and render services to the homes located along the road. The importance of the road width requirement cannot be overstated as it serves to protect Mercer Island residents' health and welfare by ensuring that fire trucks and other emergency response vehicles have adequate access to render emergency services. This requirement applies whenever a new home is constructed.

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Current measurement of the private access road shows a width of 10 feet or less. While the existing homes and associated use of the access road enjoy legal nonconforming use status, demolishing a resident results in loss of legal nonconforming use status. Approval of a building permit to construct a new residence must comply with current City Codes, including MICC Section 19.09.040. As a result, a building permit issued for the Yangs' project should be expressly conditioned on their widening the access road to 20 feet in order to bring the road into compliance with MICC Section 19.09.040(B). Any widening of the access road will also require City engineering approval of a grading permit for this work. Absent such an update, the new home would constitute an illegal nonconforming use.

A second issue of importance is that the Yangs' construction plans alter the shared access road at the southwestern corner of their property to no longer align with the Niedermans' existing driveway. A rendering from the Yangs' construction plans depicting their proposed modification of the access road relative to the Niedermans' existing driveway is attached hereto at **Tab C**. If the requested building permit is issued, the Niedermans will be forced to spend considerable time and money to reposition their existing driveway to align with the revised access road proposed in the Yangs' construction plans.

Fundamental notions of fairness and due process dictate that a property owner has no right to develop his property in a manner that is to the immediate and obvious detriment of his neighbor. Stated simply, the Yangs do not have the right to force a neighboring property owner to modify their property in order to accommodate the Yangs' proposed redevelopment. This is particularly true here, where the Niedermans' right to access their property via the existing access road/easement is expressly stated on the face of City subdivision approval. *See Tab D*. Unlawfully impairing the Niedermans' use of the long-established access easement location, which has been regularly used in its current location for over 15 years, is separate grounds for denying this permit application.

In addition, relocating the driveway pursuant to the Yangs' construction plans is simply not possible at this time. The Niedermans have already received approval from Puget Sound Energy and commenced installation of a power transformer in the same area that the Yangs' construction plans designate for relocating the driveway. *See Tab E*, Puget Sound Energy Site Plans. The transformer will serve both the Niedermans' property and the abutting homeowner to the south. To this end, the Niedermans have already granted the property owners to the south an easement to facilitate their use of the transformer. They have also spent approximately \$17,000 to install conduit and lines for the transformer. Approval of the Yangs' building permit application would force Puget Sound Energy, the Niedermans, and their neighbor to the south to abandon and undo, at considerable expense, the project that is already underway and determine a new suitable site for the power transformer. Issuance of the building permit would also render the time, energy, and capital spent selecting the current location of the transformer, planning for its installation, and commencing installation a complete waste.

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In summary, given that the current width of the access road is noncompliant with MICC Section 19.09.040(B), and provides inadequate access for fire trucks and other emergency response vehicles, Mr. and Mrs. Yang should be required to improve the access road as a condition for issuance of any building permit for their project. If they do not update the access road, we view that their new home will be an illegal nonconforming use. Additionally, the current building permit application should be denied because the proposed construction would improperly alter the current path of the access road, thereby violating the right of access expressly stated on the face of the City subdivision approval and forcing the Niedermans to relocate their driveway. This driveway cannot be relocated to the area designated in the Yangs' construction plans because, pursuant to Puget Sound Energy's approval and existing site plan, a power transformer is currently being installed in that location.

For the foregoing reasons, the requested building permit application should be denied.

Kind regards,



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