

April 14, 2020

Nicole Gaudette, Senior Planner
City of Mercer Island
Community Planning and Development

RE: CAO19-015

Dear Ms. Gaudette,

Thank you for answering many questions by phone yesterday. I learned quite a lot about the stages of review of an application for a building permit for a single family residence. I was impressed by what I learned in regards to the professional expertise of the many individuals at the City who will play a part in the review. I was glad to learn that the referenced permit is an early stage review in a lengthy process to approve a building permit. It is good to know that there will be additional opportunities to comment but that, comments offered now, that may or may not pertain to the request for a steep slope alteration, are useful. I was very glad to learn that an Arborist Report will be required including the details of species for tree replacement, timing of planting, and commitment to five years maintenance of replacement trees.

My comments are extensive. I apologize if, in presenting any particular comment, that I err in pointing out a deficiency. I did my best to find what the code requires and believed that some elements were missing.

The following are my comments and questions:

1. It appears that the applicant is trying to preserve tree #49. I appreciate it. This is one of the largest trees on the north end of Mercer Island. It is a Douglas fir with diameter nearing 5'. It is in a public right of way that is not likely to ever be extended to 76th AVE SE. Therefore, the loss of this tree would only be for access to Mr. Klein's property. The loss should be prevented. Eagles nest in this area, moving from one large Douglas fir to another, staying for some years in one tree and then, sometimes returning to that tree. This tree is suitable for their nesting, though it is not the tree currently used. The applicant seems to be reaching out for guidance from the City on how to save the tree (Plan Set, Project Narrative – Off Site, paragraph 5). I strongly advocate that all of the City reviewers who will ultimately review this application work together to save that tree. It would not be sufficient for the preservation of this remarkable public asset for each reviewer to consult her or her code and make a decision in a vacuum of knowledge about the need to save this tree. For example, there are already geotechnical concerns about the area in which the road gives way to the driveway and structural fill has been suggested by the geotechnical engineer to bear weight. The Notice of Incompleteness dated August 21, 2019, in item 4, requests a turnaround at the base of the driveway to accommodate fire access. The structural fill and a turnaround would probably doom the tree. Thankfully, the possibility of a code modification or a code alternate is noted for the turnaround in the letter. Still, the preservation of this tree may be challenging. Simply paving so near the tree will

seriously compromise it. What alternatives can be considered by Mr. Klein and City reviewers (arborist, Fire Marshall, building official, etc.) to allow Mr. Klein appropriate access to his property and fire protection without taking out the public tree? Is permeable pavement an option? Must the road be paved at all?

2. It was difficult for me to understand the nature of this Notice and, therefore, to prepare comments. It would be more accurate and make it easier for a person wishing to comment if the Notice made it clear that:
 - a. This permit requires a Critical Area Review 2;
 - b. The reason for the CAR2 is that the site is Landslide Hazard Area and a Seismic Hazard Area. I can't find where the code requires a CAR2 on the basis of alteration of a steep slope. The only place I could find the term "steep slope" in Chapter 19.07 Environment was in 19.07.160.C.2.a, in regards to buffer widths. What is the actual permit applied for here? Is it called "alteration of a steep slope"? Is it a permit to build in a LHA or SMA? Since the presence of a steep slope is not spelled out as requiring a CAR2 study, I don't quite understand what I am looking at and would like to so I could better or, at least, more easily figure out what comments to offer.
 - c. The document available for review is the Critical Area Review 2. I understand from our conversation that it is the geotechnical report dated 3/5/19. The report should, first and foremost, be called a CAR2, if that is the regulation requiring it.
3. If the geotechnical report is the CAR2 study, what I didn't see in it that is required by 19.07.110 include:
 - a. Critical areas off site within the distance equal to the largest potential required buffer applicable;
 - b. A topographic and boundary survey;
 - c. Photographic records of the site prior to alteration (or verification of availability);
 - d. Impacts of the alteration to other properties and critical areas and buffers located on them;
 - e. A description of mitigation sequencing including steps taken to avoid impacts to critical areas to greatest extent feasible;
 - f. Assurance of a post-development memorandum confirming compliance with design.
4. If the geotechnical report is the CAR2 study, what I didn't see in it that is specifically required by 19.07.060 C. Landslide Hazard Areas and D. Seismic Hazard Areas include:
 - a. Discussion of mitigation sequencing;
 - b. Reference to buffers including from the steep slope, which is stated to 44 to 60% on the southeast portion of the property;
 - c. Reference to best available science for critical areas; and
 - d. Reference to and discussion of the significance of the U.S. Geological Survey Active Faults Database and other information about seismic risk.
5. By virtue of the property incorporating at least four critical areas, the entire lot is a critical tree area as described in 19.10.090.B. The location of this code requirement in the Tree Code seems a bit odd and it is easy to miss for developers I would think. In any case, the project is subject to seasonal development limits for purposes of protection of critical areas including protection of

species habitat. The applicant has to provide “compelling justification” to cut trees between October 1 and April 1. The engineer seems to be saying, however, that construction should not be limited seasonally as required by 19.07.160.F.2. The critical tree area requirement is however, separate and subject to specific criteria.

6. The proposed road improvement is distressing. Does the code require the removal of the natural area hillside to the north? Is there code *allowing* the applicant the right or option to take the hillside down? What is driving this rough treatment of a small but delightful native plant natural area in the public right of way, kindly planted and tended by a long-time knowledgeable resident with City permission? Access needs are very limited and the road will never need to be pushed through to 76th AVE SE. What can the City do to minimize the disruption?
7. I see that City code 19.02.020.B. states that residential development fronting on a street must meet City specifications. However, Section 19.09.030.C allows porous pavement in some situations and low impact development in shoulders to manage runoff. Both should be considered carefully. While general soil information, so far, does not encourage low impact development, it could be that a more localized examination of the soil where shoulders are located would tell a different story. Section 19.09.030.E allows for pavement width exceptions in some situations. This should be considered. In short, just like for the preservation of the large tree, City reviewers should get their heads together to try to save this wonderful lane, even though it is a public right of way. It would be most appreciated.
8. I understand the Fire Marshall has stated that a road 20’ to 26’ is necessary for fire access. Would fire protection from the existing hydrant at the bottom of 73rd AVE SE be sufficient?
9. Plan Set, Project Narrative – Off Site states in paragraphs 7,8, and 9 that, essentially, natural drainage is to the south, but will be directed to the east. I can’t figure out what this could mean. At the outfall, gravity is going to take the drainage in a natural direction. How can “pointing” it to the east change the direction of flow? Is this allowed? What is impact on neighboring properties?
10. The sewer line is installed through the Merceddale open space to reach 76th AVE SE. The pipe will be installed through a wetland. The application does not provide a map of the wetland nor discuss issues associated with installing a sewer line through it. Is a critical area study for the wetland required? The briefest mention of the wetland is in the Wetland Report, 2nd to last sentence.
11. I see no justification for removal of public tree #35. It is viable and is in the right of way. It is an exceptional tree and, as such, is valuable for wildlife.
12. I see no justification for removal of tree #66. This is on the south side of the road and does not appear to interfere with the proposed road improvements. The tree is viable and large.
13. An active bald eagle nest is immediately to the north of the subject property in the Merceddale open space, likely within 50 feet. The nest is active and has fledged eaglets in the previous three years. There are other eagle nest sites in trees nearby, some, but not all shown in the Wetland Report. The referenced nest places the subject property in a Fish and Wildlife Habitat Conservation Area. City Code 19.07.170 requires a critical area study. The findings of the study to protect bald eagles or other priority species are to be implemented. It should be noted that

removal of trees on the subject property will isolate the nesting tree and perhaps cause it to fail. Though the purpose of my comments is not to try to see the applicant denied a permit to develop, I have recommended before, and will recommend again, that the City use its portion of taxpayer-funded Conservation Futures funds disbursed by King County to purchase this property which adds considerable value to the open space, if the owner is willing.

Thank you for considering these comments. I look forward to learning more about the project and offering additional comments in the future.

Sincerely,
Carolyn Boatsman