# CITY OF MERCER ISLAND

**COMMUNITY PLANNING & DEVELOPMENT**
9611 SE 36TH STREET | MERCER ISLAND, WA 98040
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# STAFF REPORT

## CRITICAL AREA REVIEW 2 PERMIT

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| **Project No.:** | CAO23-005 |
| **Description:** | A request for a Critical Area Review 2 Permit for the construction of a 611 square foot main floor addition and a 1,112 square foot upper-level addition to an existing single-family residence on a site containing geologically hazardous areas. |
| **Applicant / Owner:** | Bethany Cole (Yen Design, Inc.) / Avneet Atwal |
| **Site Address:** | 4029 97th Ave SE, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number 545600-0020. |
| **Zoning District:** | Single Family Residential (R-8.4) |
| **Staff Contact:** | Molly McGuire, Planner<br>molly.mcguire@mercerisland.gov / (206) 275-7712 |
| **Exhibits:** | 1. Development Application, received by the City of Mercer Island on March 1, 2023<br>2. Development Plan Set, received March 1, 2023<br>3. Project Narrative, received March 1, 2023<br>4. Geotechnical Engineering Evaluation prepared by Nelson Geotechnical Associates, Inc., dated November 29, 2023 and received March 1, 2023<br>5. Geotechnical Plan Review Letter Addendum prepared by Nelson Geotechnical Associates, Inc., dated June 29, 2023 and received July 12, 2023<br>6. Determination of Complete Application, dated March 21, 2023 |

## INTRODUCTION

### I. Project Description

The applicant requested approval of a Critical Area Review 2 Permit for the construction of a 611 square foot main floor addition and a 1,112 square foot upper-level addition to an existing single-family residence on a site mapped with geologically hazardous areas.

The proposed development consists of the following components:

1. A request to construct an addition to an existing single-family residence subject to the standards of Mercer Island City Code (MICC) 19.07.160, Geologically hazardous areas.

## II. Site Description and Context

1. The proposed development will occur at 4029 97th Ave SE, Mercer Island, WA 98040. The subject property is designated Single Family Residential (zoned R-8.4). Adjacent properties are within the R-8.4 zone and contain residential uses. The subject property contains mapped erosion, seismic, and potential slide geologically hazardous areas.

**Findings of Fact & Conclusions of Law**

## III. Application Procedure

1. The application for a Critical Area Review 2 Permit was received by the City of Mercer Island on March 1, 2023 **(Exhibit 1)**. The application was determined to be complete on March 21, 2023 **(Exhibit 6)**.
2. Under MICC 19.15.030, Table A, applications for Critical Area Review 2 Permits must undergo Type III review. Type III reviews require notice of application (discussed below). A notice of decision is issued once the project review is complete.
3. The City of Mercer Island provided public notice of application for this Critical Area Review 2 Permit, as set forth in MICC 19.15.090. The comment period for the public notice period lasted for 30 days, from March 27, 2203 to April 26, 2023 **(Exhibit 6)**. The following methods were used for the public notice of application:
    1) A mailing sent to neighboring property owners within 300 feet of the subject parcel.
    2) A sign posted on the subject parcel.
    3) A posting in the City of Mercer Island's weekly permit bulletin.

## IV. State Environmental Policy Act (SEPA)

The proposal is categorically exempt from SEPA pursuant to WAC 197-11-800(1)(b)(i).

## V. Consistency with the Critical Areas Code and Land Development Code

1. MICC 19.07.090 describes the purpose and procedures by which the city will review and authorize development and verify consistency with this chapter.
    a. Critical Area Review 2. The purpose of a critical area review 2 is to review critical area studies and mitigation plans in support of proposed buffer averaging and reduction of wetland and watercourse buffers.
    b. Review timing and sequence.
        A. When development and/or activity within a wetland, watercourse, fish and wildlife habitat conservation area or buffer associated with these critical area types is proposed, a critical area review 2 is required to be reviewed and approved prior to construction authorization.
        B. When development and/or activity is proposed on a site containing only geologically hazardous areas, an application has the option of either:
            i. Applying for a critical area review 2 in advance of construction permits, using the procedures required for a Type III land use review; or
            ii. Requesting consolidation of the review of geologically hazardous areas together with construction permit review.

C. When development and/or activity is proposed on a site containing geologically hazardous areas and on or more of the critical area types listed in subsection (B)(2)(a) of this section or the associated buffer of one of those critical areas, a critical area review 2 reviewing all critical areas is required to be reviewed and approved prior to construction authorization, using the procedures required for a Type III land use review.

**Staff Analysis:** The subject property contains geologically hazardous areas. The applicant is applying for the critical area review 2 in advance of construction permits; therefore, the review timing and sequence requirements of this section are met.

2. MICC 19.07.110 lists requirements for a critical area study. A critical area study is required when a development proposal will result in an alteration to one or more critical area buffers or when required to determine the potential impact to a critical area. The critical area study may be waived or modified if the applicant demonstrates that the development proposal will not have an impact on the critical area or its buffer in a manner contrary to the purposes and requirements of this chapter.

   **Staff Analysis:** The applicant has demonstrated that the subject property does not contain landslide or seismic hazard areas **(Exhibits 4 & 5)**; therefore, the critical area study requirement has been waived.

3. MICC 19.07.160 lists standards for development on sites containing geologically hazardous areas.

   A. Geologically hazardous areas are lands that are susceptible to erosion, landslides, seismic events, or other factors as identified by WAC 365-190-120. These areas may not be suited for development activities because they may pose a threat to public health and safety. Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas: landslide hazard areas, seismic hazard areas, and erosion hazard areas.

      **Staff Analysis:** The subject property is mapped as containing areas susceptible to landslide, seismic and erosion hazard areas; therefore, compliance with the standards below is required.

   B. Alteration within geologically hazardous areas or associated buffers is required to meet the standards in this section, unless the scope of work is exempt pursuant to section 19.07.120, exemptions, or a critical area review 1 approval has been obtained pursuant to section 19.07.090(A).

      1. When an alteration within a landslide hazard area, seismic hazard area or buffer associated with those hazards is proposed, the applicant must submit a critical area study concluding that the proposal can effectively mitigate risks of the hazard. The study shall recommend appropriate design and development measures to mitigate such hazards. The code official may waive the requirement for a critical area study and the requirements of subsections (B)(2) and (B)(3) of this section when he or she determines that the proposed development is minor in nature and will not increase the risk of landslide, erosion, or harm from seismic activity, or that the development site does not meet the definition of a geologically hazardous area.

         **Staff Analysis:** The applicant submitted a Geotechnical Engineering Evaluation and Addendum **(Exhibits 4 & 5)**. The study determined that the subject property does not contain a landslide hazard area or seismic hazard area; therefore, requirements on the critical area study have been waived as stated above.

2. Alteration of landslide hazard areas and seismic hazard areas and associated buffers may occur if the critical area study documents find that the proposed alteration:

    a. Will not adversely impact other critical areas;

    b. Will not adversely impact the subject property or adjacent properties;

    c. Will mitigate impacts to the geologically hazardous area consistent with best available science to the maximum extent reasonably possible such that the site is determined to be safe; and

    d. Includes the landscaping of all disturbed areas outside of building footprints and installation of hardscape prior to final inspection.

    **Staff Analysis:** The Geotechnical Engineering Evaluation and Addendum **(Exhibits 4 & 5)** state that the development site does not contain a landslide hazard area or seismic hazard area; therefore, these requirements do not apply.

3. Alteration of landslide hazard areas, seismic hazard areas and associated buffers may occur if the conditions listed in subsection (B)(2) of this section are satisfied and the geotechnical professional provides a statement of risk matching one of the following:

    a. An evaluation of site-specific subsurface conditions demonstrates that the proposed development is not located in a landslide hazard area or seismic hazard area;

    b. The landslide hazard area or seismic hazard area will be modified or the development has been designed so that the risk to the site and adjacent property is eliminated or mitigated such that the site is determined to be safe;

    c. Construction practices are proposed for the alteration that would render the development as safe as if it were not located in a geologically hazardous area and do not adversely impact adjacent properties; or

    d. The development is so minor as not to pose a threat to the public health, safety and welfare.

    **Staff Analysis:** Nelson Geotechnical Associates, Inc., a geotechnical professional provided a statement of risk reading, “Based on our site-specific subsurface evaluation the proposed development is not within a landslide hazard area or seismic hazard area meeting the requirements stated in Mercer Island City Code 19.07.160.B.3.a” **(Exhibit 5)**; therefore, this requirement is met.

C. Development is allowed within landslide hazard areas and associated buffers, when the following standards are met:

1. A critical area study shall be required for any alteration of a landslide hazard area or associated buffer;

2. Buffers shall be applied as follows. When more than one condition applies to a site, the largest buffer shall be applied:

    a. Buffer widths shall be equal to the height of a steep slope, but not more than 75 feet, and applied to the top and toe of slopes;

    b. Shallow landslide hazard areas shall have minimum 25-foot buffers applied in all directions; and

c. Deep-seated landslide hazard areas shall have 75-foot buffers applied in all directions.

**Staff Analysis:** The Geotechnical Engineering Evaluation and Addendum **(Exhibits 4 & 5)** determined that the proposed development is not located within a landslide hazard area; therefore, these standards do not apply.

D. When development is proposed within a seismic hazard area:

1. A critical area study shall be required and shall include an evaluation by a qualified professional for seismic engineering and design, a determination of the magnitude of seismic settling that could occur during a seismic event, and a demonstration that the risk associated with the proposed alteration is within acceptable limits or that appropriate construction methods are provided to mitigate the risk of seismic settlement such that there will be no significant impact to life, health, safety, and property.

2. Seismic hazard areas shall be identified by a qualified professional who references and interprets information in the U.S. Geological Survey Active Faults Database, performs on-site evaluations, or applies other techniques according to best available science.

3. When development is proposed on a site with an active fault, the follow provisions shall apply:

a. A 50-foot minimum buffer shall be applied from latest Quaternary, Holocene, or historical fault rupture traces as identified by the United States Geological Survey or Washington Geological Survey map databases or by site investigations by licensed geologic professionals with specialized knowledge of fault trenching studies; or

b. Mitigation sequencing shall be incorporated into the development proposal as recommended based on geotechnical analysis by a qualified professional to prevent increased risk of harm to life and/or property.

**Staff Analysis:** The Geotechnical Engineering Evaluation and Addendum **(Exhibit 4 & 5)** determined that the proposed development is not located within a seismic hazard area; therefore, these standards do not apply.

E. When development is proposed within an erosion hazard area:

1. All development proposals shall demonstrate compliance with chapter 15.09, storm water management program.

2. No development or activity within an erosion hazard area may create a net increase in geological instability on or off site.

**Staff Analysis:** The Geotechnical Engineering Report Addendum **(Exhibit 5)** states that the proposed development should not adversely impact existing slope stability conditions within the subject property and neighboring properties. Compliance with Chapter 15.09 MICC, storm water management program is being reviewed under the associated building permit. The proposed development is required to comply with all applicable local, state, and federal governmental regulations as conditioned; therefore, these requirements will be met.

## CONDITIONS OF APPROVAL

1. The proposed development shall be in substantial conformance with **Exhibit 2** and all applicable development standards contained within Mercer Island City Code (MICC) Chapter 19.07.

2. The applicant is responsible for documenting any required changes in the proposed development due to conditions imposed by any applicable local, state and federal government agencies.
3. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within three years after the approval of the permit or the permit shall terminate. The code official shall determine is substantial progress has been made.

**DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE**

1. The applicant is responsible for obtaining any required permits or approvals from the appropriate Local, State, and Federal Agencies.
2. All required permits must be obtained prior to the commencement of construction.

**DECISION**

Based upon the above noted Findings of Fact and Conclusions of Law, Critical Area Review 2 Permit application CAO23-005, as depicted in **Exhibit 2**, is hereby **APPROVED**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.130(A), and all other applicable appeal regulations.

**Approved this 7th day of August, 2023**

Molly McGuire

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***Molly McGuire***
***Planner***
**Community Planning & Development**
**City of Mercer Island**

*If you desire to file an appeal, you must submit the appropriate form, available from the department of Community Planning and Development, and file it with the City Clerk within fourteen (14) days from the date after the notice of decision is made available to the public and Applicant pursuant to MICC 19.15.130. Upon receipt of a timely complete appeal application and appeal fee, an appeal hearing will be scheduled. To reverse, modify or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.*

*Please note that the City will provide notice of this decision to the King County Department of Assessment, as required by State Law (RCW 36.70B.130). Pursuant to RCW 84.41.030(1), affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation by contacting the King County Department of Assessment at (206) 296-7300.*