

NOTICE OF DECISION



FENCE HEIGHT DEVIATION NOTICE OF DECISION May 1, 2017

I. PROJECT SUMMARY

- File Number:** DEV17-001
- Property Owner:** Gautam Velamoor
- Location of Property:** 6753 West Mercer Way, Mercer Island, WA, 98040;
Identified by King County Assessor's Parcel Number: 22510-0002
- Zoning District:** R-15
- Description of Application:** The applicant has requested approval of a fence height deviation to increase the maximum allowed fence and gate height from 42 inches to 72 inches, in the following locations: 1) a fence and gate located in the front yard setback within 20 feet of the West Mercer Way right-of-way; 2) a wood fence along a private access road to the south of the property line; and 3) a wood fence and gate in the northwest corner of the property near an access easement. The proposed gate along West Mercer Way is 69 inches high with side pillars that are 72 inches in height; the gate in the northwest corner is 60 inches. The proposed fence has a height of 72 inches.
- Applicant Contact:** Gautam Velamoor
- Decision:** The request for a fence height deviation to increase the maximum allowed gate and fence height from 42 inches to 72 inches is **Approved with Conditions**.
- Exhibits:**
1. Final Site Plan of subject fence and gate received April 24, 2017.
 2. Development Application received January 3, 2017.
 3. Landscape Plan received by the city on February 13, 2017.
 4. Letter from the property owner received by the City on January 3, 2017.

5. Public Notice of Application put in the weekly bulletin, posted on-site and mailed 300 feet on February 6, 2017.
6. City's review letter sent to the applicant on February 23, 2017.
7. Applicant's review letter response received by the City on February 28, 2017.
8. Public Comments received by the City between February 6, 2017 until 5pm on February 20, 2017.
9. Applicant's response to each Public Comment received by the City on March 10, 2017.
10. Applicant's photos of nearby fences and gates along West Mercer Way received by the City on March 10, 2017.
11. Request for a Traffic Survey by the City's Civil Engineer dated March 3, 2017.
12. Sight distance evaluation prepared by William E. Popp, Jr, a Transportation Engineer/Planner, submitted by the applicant received by the City on April 7, 2017.
13. The Civil Engineer's review notes of the Traffic Survey dated April 24, 2017.
14. Lot calculations provided to the City on January 3, 2017.
15. Staff site visit photos dated January 27, 2017.
16. Comprehensive Plan Arterial Map.

II. **FINDINGS OF FACT**

1. Application Description:

The request is generally for approval of a fence height deviation to increase the maximum allowed fence and gate heights from 42 inches to 72 inches. The proposed fence and gate will be located on the subject property. The wood fence and gate in the southeast corner of the property, on either side of the driveway, along West Mercer Way is set back a distance of 12 feet from the property line. North of the driveway, along West Mercer Way, the fence is set back a distance of 2 inches from the property line. A new fence of 72 inches is proposed along the south property line adjacent to a private access road. A new fence of 72 inches is also proposed along the north property line; portions of the fence within 20 feet of West Mercer Way and within 20 feet of a private access easement in the northwest corner require a fence height deviation; the remaining fence along the north property line does not require a deviation. An existing fence (not subject to deviation) is present on the west property line. The proposed gate fronting West Mercer Way is 69 inches in height and the gate pillars and wood fence is 72 inches in height. The gate swings inward towards the residence (Exhibit 1).

2. Zoning:

The existing zoning of the subject site is Single Family Residential R-15 (15,000 square foot minimum lot area). The lot is approximately 20,000 square feet. The fence and gate within 20 feet of West Mercer Way is located on generally sloping down westward from West Mercer Way with approximately 16.15% lot slope (Exhibit 14). Please refer to Exhibit 15, site visit photos from January 27, 2017 to see the lot slope and site conditions. In addition, West Mercer Way is a collector arterial (refer to Exhibit 16 the Comprehensive Plan arterial map, 77:197).

3. **Adjacent Land Use:**
The surrounding land uses consist of residences to the north, east, south, and west. The subject property is bounded by West Mercer Way to the east. The subject site has a normal rectangular shape. A site visit on January 27, 2017, confirmed that that other properties within the vicinity are fenced, have gates, or have a vegetative screening, such as hedges. In addition, refer to the applicant's photographs of fences located along West Mercer Way (Exhibit 10).
4. **Consistency with Land Use Code/Zoning Requirements:**
Mercer Island City Code (MICC) MICC 19.02.050(E)(1) limits fences and gates within that portion of any required yard which lies within 20 feet of any improved street to a maximum height of 42 inches, except when a fence height deviation is granted per MICC 19.02.050(F). As stated above, a street is defined by the Mercer Island City Code (MICC) as "a public or private right-of-way or easement which affords or could be capable of affording vehicular access to property." The subject gate is along the East property line and is within 20 feet of the West Mercer Way right-of-way. The subject fence along the East property line is within 20 feet of the West Mercer Way right-of-way. The fence also runs along the South property line and is within 20 feet of the neighbor's shared driveway. There is an access easement in the northwest corner of the property, which part of the fence and a small wood gate is located within 20 feet of the easement.
5. **State Environmental Policy Act (SEPA):**
The proposal is categorically exempt from SEPA pursuant to WAC 197-11-800(6)(b).
6. **Public Comments:**
There is no public hearing requirement for a fence height deviation (an administrative action) per MICC 19.15.010(E) and 19.15.020(F)(1). Public notice of the deviation request was mailed to all residents within 300 feet of the subject property, published in the City Bulletin, and posted on the property on February 6, 2017 as required by MICC 19.15.020(D)(4), and 19.15.020(E)(4)(a). Per MICC 19.15.020(D), a 14-day comment period was provided from February 6, 2017 through February 21, 2017. The City received the following letters of comment during the comment period:

Public Comment #1:

Bernard and Emer Hensey February 15, 2017 generally opposed the deviation to the 6-foot-high fence for concern that it may be an obstruction to the view of the road onto West Mercer Way and can be a hazard. They also stated that it would be out of character for Eden Lane and the area.

Public Comment #2:

Chris Jack and Petra Jennings February 13, 2017 generally opposed the proposed fence and gate and live across the street from the subject property. They expressed concern that it would impact neighborhood character and would be materially detrimental and injurious to their property east of the subject site.

Public Comment #3:

Dave Smith-Bronstein February 18, 2017 generally opposed the proposed fence and gate and that it would make the neighborhood less friendly and inviting. He suggested a 42-inch fence with green vegetation as a buffer would be better.

Public Comment #4:

James and Kathleen Harnisch February 17, 2017 generally opposed the fence height deviation and that it is out of character with the neighborhood and would establish an unfortunate precedent for thither homes in the area. They requested that the City Arborist provide guidance as to the location of fence posts along their mutual property line to avoid root damage to existing trees.

Public Comment #5:

Susan and Jeffrey Cook February 13 2017 generally opposed the proposed fence and gate. They stated concern about current traffic visibility issues with construction vehicles being parked along the public right-of-way along West Mercer Way.

Public Comment #6:

Rosanne Lapan February 18, 2017 generally concurred with the Harnisch's and Cook's stated in their objection to the fence height deviation. Rosanne is worried about neighborhood character, visibility, and root damage.

Public Comment #7:

Doug and Mae Brado February 21, 2017 generally opposed the fence height deviation and agreed with the Harnisch's, Cook's and Rosanne Lapan's comments.

Public comment #8:

Bill and Erin Ellis February 16, 2017 generally opposed the fence height deviation and indicated that in the neighborhood there are relatively few fences and gates and most of them are set-back from the road. They suggested a hedge instead of a fence to reduce the visual impact.

***Please refer to Exhibit 8 for the complete text of all public comment.**

Staff Analysis:

The applicant addressed each public comment (Exhibit 9).

Traffic and visibility concerns: The applicant has provided a Traffic Visibility Survey prepared by a professional transportation engineer William Popp Jr. from William Popp Associates. The site line analysis indicated that the proposed fence and gate location will not impact traffic visibility (Exhibit 12).

Neighborhood character concerns: Following a site visit, staff has confirmed that due to the lot slope, the fence and gate will be situated in a location that will appear lower than 6 feet above West Mercer Way when viewed from the street. Staff also observed that properties fronting West Mercer Way are characterized by a combination of large trees or shrubs, and in some cases fences of 72 inches. Further, the proposed fence will be approximately 18 feet from the edge of the existing street pavement, just outside the public street right-of way. The applicant has proposed the addition of vegetative screen along the fence to "soften" the look of the fence and screen it (Exhibit 3).

Tree root protection: As approved with conditions, fence posts will be located such that they will not impact the existing trees and roots (Exhibit 7).

III. CONCLUSIONS OF LAW

Recognizing the decision criteria specified in the Mercer Island City Code for a fence height deviation, staff has made the following conclusions:

1. MICC 19.01.070 states the guidelines for the granting of variances and deviations.
 - A. *Per MICC 19.01.070(B)(1), an applicant may request a deviation only from those numeric standards that have been specifically designated as being subject to a deviation.*

Staff Analysis:

Fence height deviations are authorized under MICC 19.02.050 (F), thus the applicant may request a fence height deviation, and is in compliance with MICC 19.01.070(B)(1).

- B. *A deviation may be granted if the applicant demonstrates that the criteria set out in MICC 19.15.020(G)(5), and any additional deviation criteria set out in the code section under which the permit would be issued, are satisfied.*

Staff Analysis:

MICC 19.15.020(G) requires compliance with the deviation criteria established in MICC 19.02.050. Upon reviewing the application for compliance with the deviation criteria in MICC 19.02.050(F)(1), planning staff find that the criteria are met; additional analysis is provided below.

2. MICC 19.02.050(F)(1) provides the procedure for reviewing fence height deviations.

- a. *MICC 19.02.050(F)(1)(a) specifies that “the applicant shall submit to the code official two copies of plot plans and elevations, drawn to scale, showing size and construction of the proposed fence, the location of all existing structures, streets, driveways, and landscaping.”*

Staff Analysis:

The materials and information required by MICC 19.02.050(F)(1)(a) were provided to the City at the time the permit application was submitted.

- b. *MICC 19.02.050(F)(1)(b) states that “the code official shall review the submitted plans with the city engineer and shall base the decision to approve or disapprove the requested deviation on factors of traffic visibility and other public and private safety considerations, lot shape, location and topography, and the nature, location and extent of adjoining public and private structures.”*

Staff Analysis:

- i. Traffic visibility: The Code Official and engineering staff reviewed the proposal in accordance with MICC 19.02.050(F)(1)(b) including traffic visibility and have concluded the proposed gate and fence will not negatively affect traffic visibility. The gate swings open toward the residence, and is located 12 feet away from the property line. The fence is situated 12 feet and then bumps put to be 2 inches from the property line. The civil engineer, in an email on April 24, 2017 (Exhibit 13), has indicated that a 6-foot-high gate and fence in the proposed location does not create a traffic visibility or engineering concern after reviewing the Sight Distance Analysis prepared by William Popp Associates dated April 7, 2017.
- ii. Other public and private safety considerations: The proposed gate and fence is situated on private property, outside of any easement or City right-of-way. Public or private safety would not be impacted by the installation of the proposed gate on the applicant’s property.

- iii. Lot shape: The subject lot has a rectangular lot shape. The lot shape will not affect the installation of the gate and fence nor will the gate and fence create a safety hazard as a result of the lot shape.
 - iv. Location and topography: There are no significant issues regarding location or topography in regards to the placement of the gate and fence. The subject lot is not a corner lot and from a traffic point of view, there will be no visibility issues. In addition, the lot has a slope of approximately 16.15% (Exhibit 14) and slopes downward from West Mercer Way, thus making the appearance of the fence less impactful from West Mercer Way due to it being on a downward slope.
 - v. Nature, location and extent of adjoining public and private structures: The structures in the vicinity of the gate and fence include the applicant's residence, adjacent residences, and fences. None of the nearby public and/or private structures would be adversely impacted by the proposed gate height. As noted above, (finding #3) during the staff site visit on January 27, 2017 and Exhibit 10, staff observed the neighbors had fences and vegetative screening, such as hedges. Based upon these field observations, staff concludes that the proposed fence and gate would be consistent with other improvements in the area, and not be an aesthetic impact to the neighborhood, as there are existing fences and vegetative barriers along West Mercer Way.
3. MICC 19.15.020(G)(5) is applied when there is no criteria specified in other sections of the code. Section MICC 19.02.020(F)(1) states the procedure, not criteria, and the procedures are an addition for how to review the criteria set out in MICC 19.15.020(G)(5). The MICC 19.15.020(G)(5) criteria is as follows:
- a. *No use deviation shall be allowed;*
 - b. *The granting of the deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;*
 - c. *The granting of the deviation will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property; and*
 - d. *The deviation is consistent with the policies and provisions of the comprehensive plan and the development code.*

Staff Analysis:

- a. The deviation will not result in a change of use, the property will remain a single-family residence.
- b. Please see Conclusion 2.b. above.
- c. The subject gate and fence will not alter the character of the neighborhood, nor impair the appropriate use or development of adjunct property. Following the site visit (Exhibit 15) on January 27, 2017, and following review of the applicant's photographs of fences along West Mercer Way (Exhibit 10), staff determined that the proposed gate and fence blends into the neighborhood due to there being existing fences and gates nearby. The applicant has proposed to plant vegetation in front of the fence (refer to Exhibit 3) to screen it from West Mercer Way.
- d. The deviation is consistent with the policies and provisions of the comprehensive plan and the development code. The Comprehensive Plan states that the goal for neighborhood quality is to:

“ensure that single family and multi-family neighborhoods provide safe and attractive living environments, and are compatible in quality, design and intensity with surrounding land uses, traffic patterns, public facilities and sensitive environmental features.” (Comprehensive Plan, Housing: Neighborhood Quality, page 51:197)

The fence and gate meets this goal, with attractive design, increase in safety for the resident, doesn't have a negative impact on public and private visibility or traffic safety (refer to Exhibit 12), provides vegetation near and possibly in the Right-of-Way, and is not out of character due to there being multiple gates and fences along West Mercer Way and near the subject site. In addition, the fence and gate is setback 12 feet from the east property line near the neighbor's shared driveway and the sight distance survey provided by the applicant by a professional transportation engineer shows that the proposed location will not have an impact on the safety and visibility for the neighbors.

4. *MICC 19.15.020(K) states: Except for building permits or unless otherwise conditioned in the approval process, permits shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised. Responsibility for knowledge of the expiration date shall be with the applicant.*

Staff Analysis:

The applicant will be required to comply with 19.15.020(K) as a condition of approval.

IV. DECISION


Based upon the above noted Findings of Fact and Conclusions of Law, Fence Height Deviation application DEV17-001, as depicted by Exhibit 1, is hereby **APPROVED WITH CONDITIONS**. This decision is final unless appealed in writing consistent with adopted appeal procedures.

V. CONDITIONS OF APPROVAL

The following conditions shall be binding on the “Applicant”, which shall include the owner or owners of the property, heirs, assigns, and successors:

1. The fence and gate shall be in the location shown in the site plan received April 24, 2017 (Exhibit 1). The fence and gate shall not exceed 72” in height, as shown on elevations received April 24, 2017 (Exhibit 1).
2. Per MICC 19.15.020(K), this permit (DEV17-001) shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised. Responsibility for knowledge of the expiration date shall be with the applicant.
3. This approval does not authorize the construction of private improvements (encroachments) in the public right of way. Such improvements require prior approval from the City Engineer. The proposed planting in the Right-of-Way requires a Right-of-Way (ROW) Encroachment Agreement.
4. The applicant shall obtain all permits required to construct the proposed gate. A right-of-way permit shall be required if any of the work activities impact the West Mercer Way right-of-way.
5. The vegetation between the gate and fence to the property line needs to be well maintained.
6. The applicant shall locate the fence posts in locations that will not impact the existing tree roots and driplines, any that will have an impact must be moved.

Approved this 1st day of May, 2017.

A handwritten signature in black ink that reads "Lauren Anderson". The signature is written in a cursive style. To the right of the signature is a vertical yellow line.

**Lauren Anderson, Assistant Planner
Development Services Group
City of Mercer Island**

Parties of record have the right to appeal this decision. If you desire to file an appeal, you must submit the appropriate form, available from the Development Services Group, and file it with the City Clerk within fourteen (14) days from the date this decision is signed. 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.