

McCULLOUGH HILL LEARY, PS

December 18, 2017

VIA EMAIL

Evan Maxim
Planning Manager
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Re: RUE CAO 15-001
5637 East Mercer Way

Dear Evan:

This follows up on our recent meeting about Bill Summers' application for a reasonable use exception for property ("Property") at 5637 East Mercer Way ("Initial Proposal"). The purpose of the meeting was to see if there was an opportunity to modify the Proposal ("Modified Proposal") such that the City could (a) support the Proposal as modified, and (b) withdraw the Determination of Significance issued for the Initial Proposal and issue a Mitigated Determination of Nonsignificance ("MDNS") as to the Modified Proposal.

Following that meeting, Kari Sand, Mercer Island City Attorney, sent me an email. In the email, dated October 16, 2017, Ms. Sand summarized some of the options we had discussed, and identified information that the City would consider as a basis to achieve these two objectives. The purpose of this letter, and its attachments, is to provide the information identified in Ms. Sand's email.

Ms. Sand indicated that Mr. Summers might consider modifying the footprint of the Initial Proposal closer to the zoning code setback limit required by the existing access easement that burdens the Property. This would minimize wetland impacts. Ms. Sand also pointed out that wetland impacts could be mitigated even further if the footprint of the proposal was moved even closer to the edge of the easement. She recognized that a variance would need to be granted by the Hearing Examiner for this to be accomplished. Evan, you had suggested at the meeting that the City would consider approving a variance request to accomplish that objective.

Mr. Summers has looked at this option, and is willing, upon the terms set forth in this letter, to pursue it. Attached as Exhibit A are architectural plans provided by Ron Healy that move the footprint of the Proposal as close as reasonably possible to the access easement boundary. It does include a 2' setback for the eaves. It is not exactly parallel to the easement boundary due to grade and stream considerations, but is as close to the boundary as the architect was reasonably able to place it.

As we have discussed, this modification of the Proposal would require a variance, because it sets the footprint of the home closer than 5' to the easement line. We understand that City staff would recommend approval of this variance. We also understand that, in the event the Hearing Examiner does not approve the variance, City staff would still support the Modified Proposal and the MDNS with a 5' setback to the easement line.

As to other footprint options, we have met with Dr. Stivelman, the beneficiary of the access easement, and his attorney, Darrell Mitsunaga. They have made it clear to us that they would not accept locating the footprint of the home at any location within the access easement, and have indicated an intention to actively support the current proposal.

We have also asked William Chang, P.E., Principal of GEO Group Northwest, Inc. to review the slope stability impacts associated with relocating the footprint of the Modified Proposal. Attached as Exhibit B is his December 12, 2017 letter. He notes that he had addressed potential adverse impacts to adjacent and downhill properties in his Report Addendum dated May 3, 2017 (copy attached as Exhibit C). He then reports on his investigation of the impacts of locating the house closer to East Mercer Way (this is the proposal described on Exhibit A), and a second alternative closer to and intruding into the steep slope to the south (this was the proposal conceptually drawn by Mr. Healy and discussed at our recent meeting). Mr. Chang confirms that the Modified Proposal will not intrude into any portion of the steep slope. Therefore, it does not appear that a steep slope determination will be required.

He observes that the second alternative is undesirable from a geotechnical engineering perspective, due to its intrusion into the steep slope area, which would unnecessarily disturb a well-established hillside, and the associated requirement of the addition of a \$100,000 steel soldier pile shoring wall to retain the excavation (the basis for this estimate is set forth in Mr. Chang's email attached as Exhibit D). Furthermore, the house would not have any windows at the west side, due to the shoring wall and associated catchment wall.

Finally, he offers his opinion that the use of pin piles to support the house should not have any adverse impact to Dr. Stivelman's property, due to the fact that the pin piles will be installed with a low energy impact hammer, and also due to the fact that Dr. Stivelman's house and property are located on dense Advance Outwash sands.

As for the issue of wetland mitigation, Ed Sewall, Senior Wetlands Ecologist, has submitted his letter, attached as Exhibit E, confirming that he has investigated the availability of both on and off-site mitigation possibilities within the same sub-basin and has found there are no such possibilities. Both the City's peer reviewer and the US Army Corps of Engineers' Daniel Krenz (a copy of his email is attached as Exhibit F) have confirmed that it is preferable wetland mitigation for the permittee to pay in-lieu fees rather than to perform the mitigation on a permittee-initiated basis. This is therefore the best and preferred method of mitigating the Modified Proposal's site wetland impacts, especially because we have no reasonable basis for demonstrating that alternative mitigation measures are more environmentally effective.

As stated above, Mr. Summers is willing to modify his Initial Proposal as described in this letter on the express understanding that this modification will result in the following:

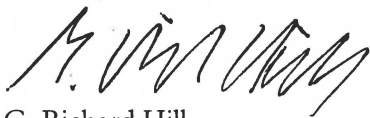
- (1) The City will withdraw the DS and expeditiously issue an MDNS;
- (2) The City will recommend approval of a RUE for the Modified Proposal;
- (3) The City will agree to approve a variance allowing the Modified Proposal to intrude into the 5' easement setback area;
- (4) In the event the Hearing Examiner disapproves the variance request, the City will support placing the Modified Proposal at a location 5' set back from the easement boundary; and
- (5) Due to the delays associated with processing the application over the past three years, combined with the seasonal restrictions on construction, the City will agree to expedite processing of all permits required for construction.

In addition, Mr. Summers understands that the City will process the RUE, any appeal of the variance, and any appeal of the MDNS, in one appeal hearing before the City Hearing Examiner. Mr. Summers also proposes that the City agree to an expedited processing schedule for the administrative review of the Modified Proposal.

In the event the City approves these terms, Mr. Summers will promptly amend his RUE application to reflect the Modified Proposal and submit a variance application.

We appreciate your good faith consideration of this Modified Proposal.

Sincerely,



G. Richard Hill

GRH:lav

cc: Bill Summers
Kari Sand
Adam Rosenberg

Enclosures