
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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STAFF REPORT & RECOMMENDATION TO HEARING EXAMINER REASONABLE USE EXCEPTION AND ZONING VARIANCE

Project No.:	CAO15-001 & VAR18-002
Description:	<p>The Applicant has revised a reasonable use exception (CAO15-001) and has applied for a zoning variance (VAR18-002), to construct a proposed house and associated improvements at 5637 East Mercer Way.</p> <p>The proposed house and improvements will be located within a wetland, and wetland and watercourse buffer areas, which is the basis for the reasonable use exception application. The proposed house is located within a required setback from an easement to reduce impacts to critical areas, which is the basis for the proposed zoning variance.</p>
Recommendation:	Reasonable Use Exception – Approve with Conditions Zoning Variance - Approve
Applicant/ Owner:	MI Treehouse, LLC (c/o Bill Summers)
Site Address:	5637 East Mercer Way, Mercer Island, WA, 98040; Identified by King County Assessor tax parcel number 1924059312
Zoning Designation:	R-15
Staff Contact:	Evan Maxim, Director of Community Planning & Development

INTRODUCTION

1. Project Summary.

In January of 2015, the applicant filed an application for a Reasonable Use Exception (RUE) to build a new single-family home on a lot constrained by geologically hazardous areas, a wetland, watercourse, and associated buffers. A RUE was required because the applicant could not meet the then-applicable protection standards for the wetland, watercourse, and associated buffers. Following review in February of 2017, staff recommended that the Hearing Examiner deny the Reasonable Use Exception based upon the then proposed design, file contents, and applicable regulations. The Hearing Examiner remanded the application back to the staff for further review in March 2017, directing staff to issue a SEPA determination and to include geotechnical analysis of the proposed home in the staff recommendation on the RUE. Following discussion with staff, the applicant has significantly revised their application and the proposed location of the single family dwelling and site improvements, and applied for a zoning

variance (May 2018) to required setbacks from an easement, with the goal of further minimizing impacts to the wetland, watercourse, and associated buffers on the site.

In January of 2020, the City issued a SEPA Mitigated Determination of NonSignificance (MDNS) on the proposed zoning variance. Staff is recommending that the Hearing Examiner conditionally approve the proposed RUE and approve the zoning variance.

FINDINGS OF FACT

Hearing Examiner History and Remand

2. On February 13, 2017 the then-Hearing Examiner (Ryan Vancil, City of Seattle) conducted a public hearing and received a staff report and recommendation (Exhibit 1) on the proposed RUE.
3. On March 8, 2017 the then-Hearing Examiner issued Findings of Fact, Conclusions of Law, and Decision (Exhibit 36), remanding the RUE to the City for further review and action.
4. Previously filed exhibits 1 through 35 are incorporated into the City's exhibit list for this staff report and recommendation.
5. The applicant has significantly revised the application since the drafting of the original (Exhibit 1) staff report and recommendation to the Hearing Examiner. This staff report and recommendation is intended to replace Exhibit 1, the original staff report and recommendation to the Hearing Examiner.

Site Description

6. The subject property is located at 5637 East Mercer Way; King County Assessor's Parcel Number 1924059312 and is zoned R-15 (Single Family Residential with a minimum lot size of 15,000 square feet). The front yard is on the east property line and requires a 20 foot depth. The rear yard is along the west property line and requires a 25 foot depth. Required side yard setbacks from the north and south property lines are 5 feet minimum with a total of 15 feet. A 5 foot setback from vehicular access easements is required.
7. The properties adjoining the subject property to the north, south, and west are zoned R-15 (Single Family Residential with a minimum lot size of 15,000 square feet). The west side of the subject property fronts on East Mercer Way; the property east of East Mercer Way is also zoned R-15.
8. The subject property is bounded by existing single-family homes to the south, southeast, and west. The east property line fronts East Mercer Way. Lots to the east of East Mercer Way are also developed with existing single-family homes. Adjoining lots developed with single family homes range in area from approximately 19,000 square feet to 88,000 square feet. The subject property is bounded on the north by the Parkwood Ridge Open Space (approximately 155,000 square feet in area).
9. The lot size is approximately 37,554 square feet and is currently improved with driveway access serving an adjacent property to the south, a public trail along the north side of the property, and a private sewer.
10. The entire subject property is constrained by wetland area, watercourses, geohazard areas, and buffers associated with the wetland and watercourses.

11. The property is sloped from the west property line descending to the east property line, forming a depression that drains to two existing watercourses and a wetland area. Slopes on the site range from 30% to 70%, with the steepest slope areas in the southeast corner of the property. The proposed area of site disturbance, including the proposed access and house, will affect the slopes on the south side of the subject property. The entire site is located within mapped landslide, seismic, and erosion hazard areas; the southeastern corner of the property and the central northern edge of the property is constrained by steep slopes in excess of 40% gradient.
12. There are two Type 2 (Np) watercourses on the subject site flowing from west to east. The northern watercourse extends upstream from the subject site into the Parkwood Ridge Open Space area. The southern watercourse is fed from an onsite wetland area. The watercourses converge at the east end of the property and continue under East Mercer Way.
13. Approximately half of the subject site is constrained by a Category III wetland area. The wetland extends from the west property line to the east property line and constrains all but the steepest slopes on the south side of the property, and the area north of the existing public trail.
14. The entire site is covered by trees and is vegetated with a mix of evergreen and deciduous trees, with an understory of shrubs and groundcovers, including ferns, ivy, and some blackberries.
15. The subject lot was legally created through the "Sunrise Ridge" short plat (Recording No. 7703310851) and is identified in the short plat as lot A (Exhibit 39). The east portion of the subject lot (lot A) is constrained by an easement for utility and road purposes.
16. The subject site is constrained by an easement (Exhibit 17) for stormwater / utilities and a pedestrian trail easement. The easement area is generally located adjacent to and paralleling the northern property line of the subject site.
17. A cultural survey (Exhibit 25) was conducted on the subject site; the subject site has a moderately low to low risk of cultural resources.

Project Description.

18. Between March 2017 and the date of this staff report and recommendation, the applicant has engaged in approximately nine rounds of review and revisions, with multiple revisions to the proposed site design. This staff report and recommendation are related to the current project design as described in the following findings.
19. The applicant has submitted a site plan for the proposed RUE and zoning variance (Exhibit 38), which reflects a proposal to construct a new single family home with a building footprint of approximately 1,631 square feet, a new driveway with approximately 1,560 square feet of area, and a total site disturbance of 6,926 square feet.
20. The proposed house is located approximately 83 feet west of the east property line and approximately 85 feet west of the west edge of the street improvement (asphalt) within the public right-of-way for East Mercer Way. The proposed house is located approximately 52 feet from the westernmost edge of the existing driveway improvement that provides access to the adjoining lot

to the south, and approximately 2 feet from the edge of the driveway easement. The proposed house is approximately 45 feet north of the south property line of the subject site.

21. Construction of the proposed driveway will require the installation of a retaining wall along the north side of the driveway with a maximum height of approximately 6 feet. A second retaining wall, to the southeast of the proposed house, will be required with a maximum height of approximately 9 feet.
22. Preliminary drainage impacts related to the proposed single family dwelling and associated improvements were addressed in a Level 1 downstream drainage analysis (Exhibit 23) and related documentation by Triad and Core Design (Exhibits 50a, 50b, and 60).

Environmental Constraints

23. The subject site is constrained by geologically hazardous areas (MICC 19.16.010); specifically the site is constrained by landslide hazard areas, seismic hazard areas, and erosion hazard areas. Development and alterations are allowed within geologically hazardous areas, pursuant to MICC 19.07 in general, and in particular MICC 19.07.160.
24. The proposed single family home and associated improvements have been reviewed extensively by the applicant's geotechnical engineer, and the City's peer review engineering consultants (Exhibits 10a through 10e, 11a through 11e, 40a through 40d, 41a through 41b). The geotechnical reports indicate that the proposed single family home and associated improvements may be built in compliance with the applicable critical area protections and standards for geologically hazardous areas.
25. The proposed reasonable use exception and zoning variance do not propose an exception or variance to the applicable critical area protections and standards for geologically hazardous areas.
26. The subject site is constrained by a Category III wetland, Type 2 (Np) watercourse(s), and associated buffers. Development and alterations are generally prohibited within wetlands, watercourses, and associated buffers. The proposed single family home and associated improvements is located partially within the Category III wetland, and within the buffers of both the wetland and watercourses.
27. The site plan (Exhibit 38) summarizes the area of direct wetland impacts (3,587 square feet), watercourse buffer disturbance (5,195 square feet), and the area where both the watercourse buffer and wetland are impacted (2,294 square feet). Based upon a review of the plans, approximately 390 square feet of the 6,926 square foot disturbance area, is located outside of wetland area and the wetland and watercourse buffer areas.
28. The proposed single-family home and associated improvements have been reviewed extensively by the applicant's wetland biologist, and the City's peer review consultants, ESA (Exhibits 12a through 12c, 13a through 13b, 42a through 42d, 43a through 43d, and 50a through 50b).
29. The City's peer review consultant, ESA, has recommended approval (Exhibit 43d) of the proposed reasonable use exception, subject to conditions of approval, which are incorporated into the recommended conditions of approval.

30. A previous owner of a downslope property, 5636 East Mercer Way (tax parcel No. 192405 9220), granted a drainage easement to the City of Mercer Island (Exhibit 14). The drainage easement provides, in part:

“...The waters which may be passed into the watercourse in existence on the Grantors’ property shall be limited to water flows which result from conditions, diversions or improvements existing as of the date of the settlement agreement, May 31, 1984, including any and all siltation contained in said water flows not to exceed 50 cubic yards of siltation per calendar year.

The Drainage Easement granted herein shall continue to exist so long as needed by Grantee [City of Mercer Island] and so long as Grantee does not divert water from any other drainage basin into the drainage course on Grantor’s property other than water that was flowing into the watercourse as of May 31, 1984...”

31. The proposed Reasonable Use Exception and Zoning Variance do not reflect the diversion of water from any other drainage basin into the watercourse on 5636 East Mercer Way.

Procedural History

32. On January 16, 2015, the applicant submitted a reasonable use exception application, which was processed pursuant to the then-adopted MICC 19.15.020. Following the submittal of additional information by the applicant, and pursuant to the then-adopted MICC 19.15.020(C), the application was deemed complete on March 30, 2015.
33. Pursuant to then-adopted MICC 19.15.010(D), a Public Notice of Application (Exhibit 4) was mailed to all property owners within 300 feet of the subject property, posted on the subject property, and published in the City’s Weekly Permit Information Bulletin on April 13, 2015. Pursuant to MICC 19.15.020(D)(2)(g), a 14-day public comment period was provided from April 13, 2015 through 5:00 PM on April 27, 2015.
34. To correct a procedural error in posting the site an additional Public Re-Notice of Application (Exhibit 5) was mailed to all property owners within 300 feet of the subject property, posted on the subject property, and published in the City’s Weekly Permit Information Bulletin on May 4, 2015. Pursuant to the then-adopted MICC 19.15.020(D)(2)(g), a 14-day public comment period was provided from May 4, 2015 through 5:00 PM on May 18, 2015.
35. Eighteen public comments (Exhibits 6.a. through 6.r.) were received in the 2015 comment period; some of the public comments contained multiple signatures. Three public comment (Exhibit 6.d., 6.e., 6.m.) supported the proposed development. The remaining public comments generally expressed the following:
- a. A desire to review the application in light of the full site history;
 - b. Concerns about the amount of time provided for public comment;
 - c. The basis for approving a reasonable use exception;
 - d. Possible destabilization of the steep hillside resulting from this project;
 - e. Concerns about the thoroughness of the geotechnical review;
 - f. Anticipated increased erosion and sedimentation in the watercourse impacting downstream property owners;

- g. The owner's reasonable expectations for development of the subject property, given the purchase price (\$32,094.00), and the applicant's prior knowledge of withdrawn zoning variance and reasonable use exception applications;
 - h. Concerns over the applicant's compliance with MICC 19.07.030(B) that "balances the public interests against the regulation being unduly oppressive to the property owner";
 - i. Approval of the proposed reasonable use exception would constitute a violation of a Settlement Agreement (Exhibit 14) by resulting in an increase in water entering the onsite watercourse; and,
 - j. Opposition to the issuance of a Determination of Non-Significance (DNS) following SEPA review.
36. One agency comment (Exhibit 6.F.) was received from the Department of Ecology in 2015. The Department of Ecology notes that the filling of a regulated wetland requires an Army Corps of Engineers permit and may require approval by the Department of Ecology.
37. A Notice of Public Hearing (Exhibit 7) was mailed to all parties of record and to property owners within 300 feet of the subject property, posted on the subject property, and published in the City's Weekly Permit Information Bulletin on January 30, 2017.
38. The City issued a staff report and recommendation in advance of the public hearing (Exhibit 1). Following the public hearing, the Hearing Examiner issued a decision on March 8, 2017 (Exhibit 36), remanding the RUE to the City for further review and action and directing the City to issue a SEPA determination.
39. On May 8, 2018, the applicant submitted a complete application (Exhibit 37) for a zoning variance. The City issued a letter of completion on May 21, 2018. The zoning variance would reduce the required setback (MICC 19.02.020(H)(1)) from a vehicular access easement. The proposed variance, if approved, would reduce the setback from 5 feet to 2 feet.
40. A Notice of Application (Exhibit 47) for the proposed zoning variance, and revision to the Reasonable Use Exception was issued on June 4, 2018. The Notice of Application was mailed to all property owners within 300 feet of the subject property, posted on the subject property, and published in the City's Weekly Permit Information Bulletin. Pursuant to MICC 19.15.030, a 30-day public comment period was provided ending at 5:00 PM on July 5, 2018.
41. Several public comment letters were received between the June 4, 2018 notice of application and comment period and the date of this recommendation to the hearing examiner (Exhibit 54a through 54g).
42. On September 17, 2018, the City Council adopted Ordinance No. 18C-08, which adopted significant amendments to the Mercer Island City Code related to the processing of land use applications.
43. On January 25, 2019, the applicant significantly revised the proposed reasonable use exception (Exhibit 56) to reduce proposed impacts to the wetlands, watercourses, and buffers on the subject site and addressing other staff review comments from November 2018.
44. On June 18, 2019, the City Council adopted Ordinance No. 19C-05, which provided a significant update to the Mercer Island City Code related to the protection of environmentally critical areas.

45. A Notice of Public Hearing (Exhibit 52) was issued on February 18, 2020 for a public hearing on March 19, 2020. The Notice of Public Hearing was mailed to all property owners within 300 feet of the subject property, posted on the subject property, and published in the City's Weekly Permit Information Bulletin. Pursuant to MICC 19.15.100 the notice was provided 30 days prior to the then-scheduled public hearing.
46. On March 5, 2020, the City Manager cancelled all public hearings and public meetings in response to the COVID-19 pandemic.
47. A Notice of Public Hearing (Exhibit 53) was issued on June 15, 2020 for a public hearing on July 20, 2020. The Notice of Public Hearing was mailed to all property owners within 300 feet of the subject property, posted on the subject property, and published in the City's Weekly Permit Information Bulletin. Pursuant to MICC 19.15.100 the notice was provided 30 days prior to the then-scheduled public hearing.

SEPA Review and Determination

48. Following review of a revised SEPA Checklist (Exhibit 55), dated May 5, 2017, the City issued a SEPA Determination of Significance (DS) on July 17, 2017 (Exhibit 44).
49. On August 19, 2019, following a significant re-design of the project and submittal of additional information, the SEPA Determination of Significance was withdrawn (Exhibit 45).
50. A Notice of Application (Exhibit 51) for the project SEPA review was issued on August 26, 2019. The Notice of Application was mailed to all property owners within 300 feet of the subject property, posted on the subject property, and published in the City's Weekly Permit Information Bulletin. Pursuant to MICC 19.15.030, a 30-day public comment period was provided ending at 5:00 PM on September 25, 2019.
51. Associated with the SEPA review of possible impacts related to noise and vibration, the applicant provided a GeoGroup Northwest Pipe Installation and Noise Memorandum (Exhibit 58) and Versatile Drilling Pipe Pilling Memorandum (Exhibit 59).
52. On January 13, 2020, a Mitigated Determination of Significance (MDNS) was issued (Exhibit 46), establishing four mitigation conditions:
 - a. The proposed house, driveway, and associated construction work (e.g. grading, retaining walls, drainage improvements, etc.) shall be constructed as reflected in the Healey Alliance Site Plan received on November 13, 2019;
 - b. Prior to building permit issuance, the applicant shall submit plans reflecting the proposed Additional Best Management Practices (BMPs) in the Core Design Memo, dated March 23, 2018 (Exhibit 50). All proposed BMPs shall be implemented during site construction;
 - c. Prior to building permit issuance, the applicant shall have a qualified professional, in consultation with a hydrologist, update the proposed wetland, wetland buffer, and watercourse buffer impacts to identify the extent of any impacts related to the final design of the drainage system. Proposed mitigation plans shall be updated and subject to City review and approval to mitigate for all identified impacts; and,
 - d. Prior to building permit issuance, the applicant shall provide an updated Statement of Risk that identifies mitigation for all geologically hazardous areas on- and off-site, including the

erosion hazard area. Proposed mitigation measures shall be reviewed and approved by the City.

53. The SEPA MDNS 14-day appeal period ended on January 27, 2020. No SEPA appeals were filed.

CONCLUSIONS OF LAW

54. The applicant has correctly applied for a reasonable use exception to allow for otherwise prohibited alterations, (i.e. the construction of a single family dwelling, a driveway, retaining walls, and other site grading) within a wetland area, wetland buffer, and watercourse buffer areas.
55. The applicant has correctly applied for a zoning variance to reduce a required setback from a vehicular access easement 5 feet to 2 feet.
56. The complete application for the Reasonable Use Exception was received on January 16, 2015. The complete application for the Zoning Variance was received on May 18, 2018. Neither application vested at the time of application; the contents of this staff report and recommendation are based on the code in effect on July 20, 2020.
57. The proposed reasonable use exception and zoning variance were processed pursuant to the hearing procedures and public notice requirements set forth in MICC 19.15.
58. Pursuant to MICC 19.15, the Hearing Examiner is the decision authority for zoning variances and reasonable use exceptions.
59. MICC 19.07.140(A) contains the applicable criteria for a reasonable use exception. The hearing examiner may approve the application for a reasonable use exception only if the development proposal meets all of the criteria.

a. The application of this chapter would deny all reasonable use of the property.

Staff Analysis: The subject site is a legally created, residential lot, with a zoning designation and land use designation intended to allow for the construction of single-family residences. "Reasonable Use" is defined by MICC 19.16.010; the definition acknowledges that "reasonable use" represents a balance between the private property owner's interests in developing the subject site with the public interests in protecting environmentally critical areas. The property owner has a reasonable expectation to develop the subject site, a residentially zoned, legally created lot, with a single-family residence. The public interest is in minimize impacts to the critical area, the degree to which regulations solve the problem, and the feasibility of other options.

The entire site is constrained by onsite wetland areas, watercourses, and the associated buffers. Construction of a single-family residence cannot be completed in compliance with the protection standards for wetlands, watercourses, and associated buffers established in MICC 19.07. Strict enforcement of the critical area protection standards would deny reasonable use of the subject site for a single-family residence, with associated vehicle access.

Since the original staff review and recommendation to the Hearing Examiner (Exhibit 1), the City has revised the applicable criteria for a Reasonable Use Exception, and the applicant has significantly revised the proposed application and provided further justification supporting the

proposed single-family dwelling reasonable use as noted in the Findings of Fact. Based upon a review of the application material, staff has concluded that reasonable use of the subject site is a single-family dwelling.

The applicant has revised the design of the proposed single-family residence and associated improvements to minimize impacts to the environmentally critical areas. Required mitigation is intended to offset unavoidable impacts to the wetlands, watercourses, and associated buffers. This criterion is met.

b. There is no other reasonable use with less impact on the critical area.

Staff Analysis: Other allowed uses in the R-15 zoning designation include, but are not limited to, private recreational areas, public schools, daycares, preschools, and places of worship. The creation of any of these allowed uses would also require an alteration of the wetlands, watercourses, and associated buffers on the subject site. The proposed single-family residence is designed to minimize impacts to the wetland, watercourse, and associated buffers. This criterion is met.

c. Any alteration to critical areas and associated buffers is the minimum necessary to allow for reasonable use of the property;

Staff Analysis: The applicant has significantly modified the design of the proposed house footprint and associated improvements to minimize the intrusion into the wetland area, and to minimize impacts to the wetland and watercourse buffers.

The house has been relocated to the south and east, and the proposed zoning variance is intended to reduce required setbacks such that additional intrusion into the wetland, and wetland and watercourse buffers are minimized. The proposed 1,631 square foot single family residence has been relocated, such that approximately 245 square feet of the proposed building is located outside the wetland area.

The City's wetland / watercourse consultant, ESA, has recommended approval of the proposed mitigation, subject to recommended conditions of approval. This criterion is met.

d. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

Staff Analysis: The proposed reasonable use exception is related to impacts to the wetland area and the watercourse and wetland buffer areas. No threats to public health, safety, or welfare on or off the development proposal site have been identified. This criterion is met.

e. The proposal is consistent with the purpose of this chapter (MICC 19.07) and the public interest; and

Staff Analysis: The purpose of the critical area regulations are established in MICC 19.07.010. The proposed reasonable use exception represents a site-specific evaluation of the balance required between protecting the public interest in environmentally critical areas and the private property owner interest. It is not possible to allow both the development of a single-family residence on the subject site, and provide for protection of the wetlands, watercourse, and associated buffers; impacts to the environmentally critical areas are unavoidable. The proposed development minimizes impacts to the watercourses, wetlands, and associated buffers to the maximum extent feasible, and provides for appropriate mitigation. This criterion is met.

f. The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or prior property owner.

Staff Analysis: There is no record of an action by the applicant or prior property owner that would affect their ability to derive reasonable use of the subject property. This criterion is met.

60. MICC 19.06.110(B)(2) contains the applicable criteria for a zoning variance. The hearing examiner may approve the application for a zoning variance only if the development proposal meets all of the criteria.

a. The strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner. For the purposes of this criterion, in the R-8.4, R-9.6, R-12, and R-15 zoning designations, an “unnecessary hardship” is limited to those circumstances where the adopted standards of this title prevent the construction of a single-family dwelling on a legally created, residentially zoned lot;

Staff Analysis: The applicant is proposing to construct a new single-family dwelling on the subject site. The proposed zoning variance will allow for the reduction of a required 5 foot setback from the existing vehicular access easement. The applicant has also proposed a reasonable use exception to allow for alterations of the existing wetlands, watercourses, and associated buffers. Denial of the proposed zoning variance would likely result in increased impacts to existing critical areas and decrease the likelihood of approval of the proposed reasonable use exception. Denial of the reasonable use exception would prevent construction of the proposed single-family residence, resulting in an unnecessary hardship. This criterion is met.

b. The variance is the minimum necessary to grant relief to the property owner;

Staff Analysis: The proposed variance will reduce the required 5 foot setback to 2 feet. The variance is the minimum necessary to allow the applicant to reduce impacts to the wetland areas on the subject site, while also ensuring there is sufficient clearance between the proposed single family dwelling and the existing vehicle access easement. This criterion is met.

c. No use variance shall be allowed;

Staff Analysis: No use variance has been requested. The proposed single family dwelling and associated site improvements are permitted by MICC 19.02.010. This criterion is met.

d. There are special circumstances applicable to the particular lot such as the size, shape, topography, or location of the lot; or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access;

Staff Analysis: The subject site is significantly constrained by wetlands, watercourses, and associated buffers; the protection standards in MICC 19.07 result in a special circumstance wherein a reduction in standard zoning setbacks will provide for greater protection of the environmentally critical areas. This criterion is met.

e. The granting of the variance 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;

Staff Analysis: The proposed zoning variance is related to the reduction of a 5 foot setback from the vehicle access easements. The proposed variance will not be materially detrimental to the public welfare or improvements in the vicinity. This criterion is met.

f. The granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property;

Staff Analysis: The proposed variance will allow for the construction of a new single family residence three feet closer to a vehicle access easement than would be normally allowed. The proposed variance will not affect the appropriate use or development of adjacent property. The proposed single family residence is consistent with the residential character of the neighborhood. This criterion is met.

g. The variance is consistent with the policies and provisions of the comprehensive plan and the development code;

Staff Analysis: The proposed variance will allow for the construction of a single family residence, which is consistent with the zoning designation, and land use policies related to the subject site. The proposed variance also supports the reduction of impacts to onsite wetlands, watercourses, and associated buffers, which is also in the public interest. This criterion is met.

h. The basis for requesting the variance is not the direct result of a past action by the current or prior property owner; and

Staff Analysis: There is no record of an action by the applicant that would have created the basis for the current request for a variance. This criterion is met.

i. Public and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent may request a variance to increase the impervious surface to a maximum 60 percent impervious surface and such variance application will be granted if the hearing examiner determines that the applicant has demonstrated that the following criteria are satisfied:...

Staff Analysis: This criterion is related to the construction of public and private schools, religious institutions, and private clubs or public facilities. The proposed variance is not related to these uses. This criterion is met.

61. The presence of a downstream drainage easement (Exhibit 14) is not material to the development proposal's compliance with the criteria for approval of the proposed reasonable use exception or zoning variance.

62. Except as specifically modified through the approval of the proposed reasonable use exception and zoning variance, the proposed development of the subject site is subject to all applicable federal, state, and local development regulations. Applicable development regulations include, but are not limited to, compliance with storm water regulations (Title 15 MICC), construction regulations (Title 17 MICC), and land use regulations (Title 19 MICC).

RECOMMENDED CONDITIONS OF APPROVAL

As noted below, the City recommends that the Hearing Examiner approve the Reasonable Use Exception (CAO15-001) subject to the following recommended conditions of approval:

- A. Except as otherwise required by the conditions of approval contained herein, construction of the proposed single-family dwelling, driveway access, retaining wall, and other site improvements shall be completed in substantial compliance with the Site Plan by Healey Alliance, dated October 23, 2019 (Exhibit 36).
- B. Prior to issuance of construction permits authorizing site grading or other construction work, the applicant shall provide a revised Statement of Risk, for City review and approval, related to erosion hazards, potential adverse impacts, and recommended measures that will eliminate or mitigate the risks as described in Exhibits 41a and 41b.
- C. Prior to issuance of construction permits, authorizing site grading or other construction work, the applicant shall provide an updated critical areas study and construction plan set (as described in Exhibit 43d) for City review and approval, that:
 - a. Further evaluates impacts and mitigation for critical areas associated with the proposed drainage, conveyance and detention system;
 - b. Documents compliance with the then-in-effect environmental code regulations, including updated mitigation ratios and standard buffers widths, except as modified by approval of the reasonable use exception;
 - c. Refines the project impacts as the proposed single-family dwelling, driveway access, retaining wall, and other site improvements are designed and construction details are available; and,
 - d. Provides a consistent set of design and mitigation plans.
- D. Prior to issuance of construction permits, authorizing site grading or other construction work, and pursuant to MICC 19.07.080, a financial guarantee, in the form of a bond or assignment of funds, shall be required to guarantee that approved mitigation plans will be undertaken and completed to the City's satisfaction.
- E. Prior to issuance of construction permits, authorizing site grading or other construction work, the applicant shall provide development plans, for City review and approval, reflecting additional temporary and erosion sediment control BMPs, as generally described in Exhibit 50a.
- F. Land clearing, grading, filling, and foundation work shall be prohibited between October 1 and April 1 shall be prohibited (Exhibit 50a).

RECOMMENDATION

Based on the above Findings of Fact and Conclusions of Law, the City recommends that the Hearing Examiner **APPROVE WITH CONDITIONS** the proposed reasonable use exception related to proposed alterations to the subject site's wetland areas, and watercourse and wetland area buffers. The City also recommends that the Hearing Examiner **APPROVE WITH CONDITIONS** the proposed zoning variance related to the reduction of the 5 foot setback from vehicle access easements to 2 feet.

Recommended this 10th day of July, 2020

**Evan Maxim, Director
Community Planning & Development
City of Mercer Island**

CAO15-001 & VAR18-002 Exhibit List
Dated July 10, 2020

1. Staff Report, dated February 13, 2017
2. RUE Development Application, received on January 16, 2015
3. Plan Set
 - a. Boundary / Topographic Survey by CHS, dated January 14, 2014
 - b. Site Plan by Healey-Jorgensen Architects, received on October 18, 2016
 - c. Foundation Plan by Healey-Jorgensen Architects, received on October 18, 2016
 - d. Main Floor Plan by Healey-Jorgensen Architects, received on October 18, 2016
 - e. Upper Floor Plan by Healey-Jorgensen Architects, received on October 18, 2016
4. Public Notice of Application dated April 13, 2015
5. Public Re-Notice of Application dated May 4, 2015
6. Public comment:
 - a. Ahalt, dated April 27, 2015
 - b. Anderson, dated April 27, 2015
 - c. Bell, dated May 15, 2015
 - d. Brotherton, dated April 27, 2015
 - e. Brown, dated April 27, 2015
 - f. Department of Ecology, dated May 18, 2015
 - g. Duchaine, dated April 27, 2015
 - h. Graham, dated April 22, 2015
 - i. Jack, dated April 22, 2015
 - j. Kohen, dated April 20, 2015
 - k. London, dated April 19, 2015
 - l. Neighborhood Comment (multi-signature), dated April 27, 2015
 - m. Panelli, dated April 28, 2015
 - n. Samms email, dated April 24, 2015
 - o. Samms letter, dated April 27, 2015
 - p. Stivelman, dated May 5, 2015
 - q. Weber, dated April 27, 2015
 - r. Weber, dated May 18, 2015
7. Notice of Public Hearing dated January 30, 2017
8. Original RUE Criteria Analysis document, undated
9. Revised RUE Criteria Analysis document, received October 18, 2016
10. Geotechnical Report by GeoGroup Northwest
 - a. March 16, 2015
 - b. July 30, 2015
 - c. October 28, 2015
 - d. February 4, 2016
 - e. April 27, 2016 (attached to June 10, 2016 letter)
11. Geotechnical Peer Review (Perrone Consulting)
 - a. June 12, 2015
 - b. September 3, 2015
 - c. November 18, 2015
 - d. March 4, 2016
 - e. May 3, 2016

12. Sewall Wetland Consulting
 - a. March 5, 2015
 - b. October 21, 2015
 - c. December 11, 2015
13. Wetland Peer Review (ESA)
 - a. July 29, 2015
 - b. January 11, 2016
14. 1998 Drainage Easement and Settlement Agreement
15. Statutory Warranty Deed, dated September 29, 2014
16. Email from Bill Summers to Evan Maxim, dated July 8, 2016
17. Permanent Stormwater/Utility and Pedestrian Trail Easement, dated April 25, 2007
18. Department of Ecology Email, dated February 9, 2017
19. Excerpted Land Use Materials – VAR04-008 and CAO07-002 **(In 2/13/17 staff report listed as Exhibit 18)**
 - a. Development Application, dated May 13, 2004
 - b. Project Description, dated May 13, 2004
 - c. Site Plan, revised March 31, 2004
 - d. Withdrawal letter, dated June 8, 2010
20. King County Assessor Official Property Value Notice, dated June 2, 2016
21. Declaration of Joseph L. Brotherton, dated February 10, 2017
22. Applicant generated site plan with color-coding
23. Triad Downstream Drainage Analysis, dated June 23, 2015 (received July 2, 2015)
24. Arborist Report by Gilles Consulting, dated July 14, 2015 (received July 15, 2015)
25. Cultural Resources Report by ESA, dated November 2016
26. Biologist Comment Letter by Sewall Consulting, dated February 12, 2017
27. Revised SEPA checklist, signed by Bill Summers on March 16, 2015
28. Two full page aerial photos provided by Robert London
29. Chart of taxpayer names, addresses, and adjoining assessed property values, provided by Gordon Ahalt
30. Department of Records Real Estate Excise Tax Affidavit
 - a. Dated September 29, 2014
 - b. Dated July 31, 2014
31. Statutory Warranty Deed(s)
 - a. Dated September 29, 2014
 - b. Dated July 31, 2014
32. Board of Equalization Decision, dated February 9, 2017
33. Applicant's Request for Official Notice, with: Exhibit A - Notice of Incomplete Application, by Travis Saunders, dated February 13, 2015; Exhibit B - Blank Indemnification and Hold Harmless Agreement; Exhibit C - Email from Evan Maxim to Rich Hill, dated February 17, 2017
34. Duchaine Comment Letter, received February 21, 2017
35. Anderson Comment Letter, received February 21, 2017
36. Hearing Examiner's Findings, Conclusions, and Decision to Remand, dated March 8, 2017
37. Zoning Variance Development Application, dated May 7, 2018
38. Site Plan by Healey Alliance dated October 23, 2019
39. Sunrise Ridge Short Plat, recording No. 7703310851
40. Geotechnical Reports by GeoGroup Northwest

- a. May 3, 2017
 - b. December 12, 2017
 - c. November 28, 2018
 - d. October 23, 2019
41. Geotechnical Peer Reviews (Shannon & Wilson)
- a. July 12, 2019
 - b. November 25, 2019
42. Sewall Wetland Consulting
- a. December 17, 2017
 - b. March 8, 2018
 - c. January 24, 2019
 - d. October 30, 2019
43. Wetland Peer Review (ESA)
- a. October 17, 2018
 - b. December 6, 2018
 - c. June 10, 2019
 - d. December 17, 2019
44. SEPA Determination of Significance, dated July 17, 2017
45. Withdrawal of SEPA Determination of Significance, dated August 19, 2019
46. SEPA Mitigated Determination of Non Significance, dated January 13, 2020
47. CAO15-001 & VAR18-002 Revised Project Notice of Application, June 4, 2018
48. Zoning Map Designation of Subject Site
49. Land Use Map Designation
50. Core Design Memos
- a. March 23, 2018
 - b. February 19, 2019
51. Notice of Application for Project SEPA Review, dated August 26, 2019
52. Notice of Public Hearing, dated February 18, 2020
53. Notice of Public Hearing, dated June 15, 2020
54. Public Comment Letters
- a. Peter Anderson, July 4, 2018 through July 9, 2020
 - b. Ahalt, June 28 through September 27, 2019
 - c. David Anderson, November 15, 2018 through December 1, 2019
 - d. Fletcher, September 8, 2019
 - e. Duchaine, July 5, 2018
 - f. London, June 24, 2018 and August 20, 2019
 - g. Stivelman, August 7, 2017 and May 20, 2019
55. SEPA Checklist, dated May 5, 2017
56. Summers letter with Exhibits A through G, dated January 24, 2019
57. Summers letter, dated March 4, 2019
58. GeoGroup Northwest Pipe Pile Installation & Noise Memorandum, dated January 5, 2018
59. Versatile Drilling Pipe Piling Memorandum, dated January 21, 2019
60. Triad Drainage Memorandum, dated January 9, 2018
61. Staff Report and Recommendation, dated July 10, 2020