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| **City of Mercer Island LogoCITY OF MERCER ISLAND****COMMUNITY PLANNING & DEVELOPMENT**9611 SE 36TH STREET | MERCER ISLAND, WA 98040PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org) |
| **STAFF REPORT & Recommendation** **to hearing examiner****Reasonable Use exception and zoning variance** |

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| **Project Nos:** | CAO15-001 & VAR18-002 |
| **Description:** | 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. 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. |
| **Recommendation:****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 District** | R-15 |
| **Staff Contact:** | Robin Proebsting, Senior Planner |
| **INTRODUCTION** |
| 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 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 recommended approval with conditions of the Reasonable Use Exception and approval of the Zoning Variance at a second public hearing. The Hearing Examiner remanded the application in August of 2020, citing a need for analysis of potential impacts related to geologically hazardous areas and clarification of an incomplete and internally inconsistent project file.To respond to the conclusions in the August 2020 Hearing Examiner’s decision, the applicant has provided updated geotechnical analysis and [a new site plan showing a re-flagged watercourse]. Based on the updated information, staff are recommending that the Hearing Examiner [conditionally approve the proposed RUE and approve the zoning variance.] |
| **Findings of Fact** |
| Hearing Examiner History1. 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.
2. 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.
3. Previously filed exhibits 1 through 35 are incorporated into the City’s exhibit list for this staff report and recommendation.
4. On July 20, 2020 the Hearing Examiner conducted a public hearing and received a staff report and recommendation on the proposed RUE and Zoning Variance.
5. On August 7, 2020 the Hearing Examiner issued a decision (Exhibit #), remanding the RUE and Zoning Variance to the City for further review and action.
6. The applicant has provided updated an geotechnical study, site plan, and [...] since the drafting of the most recent staff report and recommendation to the Hearing Examiner (Exhibit 1). This staff report and recommendation is intended to replace Exhibit 1, the original staff report and recommendation to the Hearing Examiner.

Site DescriptionOutcome of first hearing1. Outcome of second hearing
2. NOA, review process, comment period, combined SEPA comment period (followed process perfectly
3. OPTIONAL site visit finding (staff name, date visited, pictures as an exhibit / observations as a finding)
4. Public comment and brief staff response
5. NOPH (notice of public hearing) – if required
6. Public hearing findings – pre-filing, scheduled date, prehearing conference – if required
7. Site Description
8. Project Description
9. Critical Areas
10. GHAs
11. Wetland
12. Watercourses
13. Procedural History
14. SEPA Review and Determination
15. The hearing examiner may approve the application for a reasonable use exception only if the development proposal meets all of the following criteria:
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| * 1. MICC 19.07.140(A)(1) 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 the construction of a single-family residence. “Reasonable Use” is defined by MICC 19.16.010; the definition notes that “[t]he decisionmaker must balance the public’s interests against the owner’s interests” and that “[p]ublic interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions.* + - **The site contains critical areas**
		- **Impacts of building on critical areas are...**
		- **Regulations address the potential impact of development on critical areas by...**
		- However, application of these regulations would prevent the construction of a sngle-family home.
		- Less-oppressive solutions include...
		- The applicant has proposed to ...
		- The impacts of not meet the CAO are mitigated by...
	1. MICC 19.07.140(A)(2) 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, and there is no other reasonable use with less impact on the critical area. The proposed single-family residence is designed to minimize impacts to the wetland, watercourse, and associated buffers. This criterion is met.* 1. MICC 19.07.140(A)(3) Any alteration to critical areas and associated buffers is the minimum necessary to allow for reasonable use of the property;

**Staff Analysis**: * + - **Square footage within wetland & watercourse:**
		- **Square footage within wetland & watercourse buffer:**
		- Is locating the house further from the wetland possible? What would the implications of this be? (e.g. cutting into steep slopes?)
	1. MICC 19.07.140(A)(4) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

**Staff Analysis**: * + - **Potential public health, safety, or welfare impacts may include slope instability**
		- These potential impacts have been prevented by... (e.g. siting the house in a certain way? Including catchment walls or other mitigation measures? Using certain construction techniques like piles?)
	1. MICC 19.07.140(A)(5) 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 is 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.* 1. MICC 19.07.140(A)(6) 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.1. 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.
	1. MICC 19.06.110(B)(2)(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**: * 1. MICC 19.06.110(B)(2)(b) The variance is the minimum necessary to grant relief to the property owner;

**Staff Analysis**: * 1. MICC 19.06.110(B)(2)(c) No use variance shall be allowed;

**Staff Analysis**: * 1. MICC 19.06.110(B)(2)(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**: * 1. MICC 19.06.110(B)(2)(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**: * 1. MICC 19.06.110(B)(2)(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**: * 1. MICC 19.06.110(B)(2)(g) The variance is consistent with the policies and provisions of the comprehensive plan and the development code;

**Staff Analysis**: * 1. MICC 19.06.110(B)(2)(h) The basis for requesting the variance is not the direct result of a past action by the current or prior property owner.
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| **Recommended CONDITIONS OF APPROVAL** |
| 1. Substantial conformance with the development plan set (Exhibit X)
2. Expiration of approval
3. Financial guarantees
4. Locate lake sewer main
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| **DEVELOPMET REGULATION COMPLIANCE – DISCLOSURE** |
| 1. Comply with all local, state and federal regulations
2. Timing of improvements 9e.g. tree protection, site development stuff – roads, stormwater, TESC)
3. Fish window
4. Consistent with other agency requirements
5. Required permits must be obtained prior to construction
6. Engineering / Fire / Arborist development regulations
7. Impact Fees
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| **RECOMMENDATION** |
| Based upon the above noted Findings of Fact and Conclusions of Law, the City recommends that the Hearing Examiner... applications CAO15-001 and VAR18-002, as depicted in Exhibit 7, is hereby preliminarily **APPROVED**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.020(J), and all other applicable appeal regulations.**Approved this XX day of XXXXX, 2021****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****Robin Proebsting, Senior Planner****Community Planning & Development****City of Mercer Island** |
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