
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

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PRELIMINARY SHORT SUBDIVISION DECISION

SUB20-004

Project No:	SUB20-004
Description:	The proposal is a request to subdivide the subject site into two lots.
Applicant/ Owner:	Darrell Offe / George Constantine
Site Address:	8817 SE 44 th ST Mercer Island WA 98040 Identified by King County Assessor tax parcel number: 759810-0191
Zoning District	R-9.6
Staff Contact:	Lauren Anderson, Planner
Exhibits:	<ol style="list-style-type: none">1. Development Application, signed October 30, 2020.2. Public Notice of Application for project SUB20-004, dated December 21, 2020.3. Plan set prepared by Offe Engineers, dated February 24, 2021.4. Geotechnical report prepared by Cobalt Geosciences, dated November 5, 2020.5. Memorandum from Ruji Ding, City of Mercer Island Senior, Development Review Engineer, dated May 4, 2021.6. Memorandum from John Kenney, City of Mercer Island City Arborist, dated April 28, 2021.7. Transportation Concurrency Certificate No. TCC21-004.8. Geotechnical Peer Review Letter, dated December 28, 2020.

INTRODUCTION

I. Project & Site Description

The applicant proposed to subdivide an existing lot of 19,467 sq ft into two lots, with one lot of 9,748 sq ft (Lot 1) and one lot of 9,748 sq ft (Lot 2). Both lots will take access from a private shared access easement that connects to SE 44th Street.

II. Site Description and Context

The project site is located on SE 44th Street and to the east of 88th Ave and is bordered by single-family residential development. To the north of the site is Rotary Park and to the East is the Mercer

Island Library. The subject lot is 19,467 square feet with an existing house. The lot is relatively flat with low slope.

FINDINGS OF FACT & CONCLUSIONS OF LAW

III. Application Procedure

1. An application for preliminary short plat approval was received by the City of Mercer Island on November 9, 2020.
2. A letter of completeness was issued on December 17, 2020, establishing a vesting date of November 9, 2020.
3. Pursuant to section 19.15.030 MICC Table A, applications for preliminary short plats are Type III reviews, which require a notice of application, a 30-day public comment period, and a notice of decision.
4. The City of Mercer Island issued notice of application for this preliminary short plat application consistent with the provisions of MICC 19.15.090, which include the following methods: a mailing sent to neighboring property owners within 300 feet of the subject parcels; a notice sign posted on the subject parcels; and publication in the City of Mercer Island's weekly permit bulletin. The notice of application began a 30-day comment period, which took place between December 21, 2020 and January 20, 2021 (Exhibit 2).
5. No public comments were received for this land use application.

IV. State Environmental Policy Act (SEPA) Compliance

6. The application for a preliminary short plat approval is exempt from SEPA review, pursuant to WAC 197-11-800(6)(d).

V. Consistency with Subdivision Code Standards

7. **MICC 19.08.020(C)(2)** Long Subdivision or Short Subdivision Plans. The applicant shall provide copies of fully dimensioned plans of the project prepared by a Washington registered civil engineer or land surveyor, meeting the requirements of Chapter 19.07 MICC, Environment, and containing any other information deemed necessary by the code official. The city engineer may waive the requirement that an engineer or surveyor prepare the plans for a short subdivision. The submitted plans shall identify the proposed building pad location for each proposed lot pursuant to MICC 19.09.090.

Staff Finding: The applicant has provided dimensioned plans prepared by a professional land surveyor, identifying proposed building pad locations.

8. **MICC 19.08.020(D)(1)** Preliminary Application Procedure. All preliminary approvals or denials of long subdivisions or short subdivisions shall be accompanied by written findings of fact demonstrating that:
 - a. The project does or does not make appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation,

playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;

- b. The public use and interest will or will not be served by approval of the project; and
- c. The project does or does not conform to applicable zoning and land use regulations.

Staff Finding: *The proposed subdivision makes appropriate provisions for public health, safety, and general welfare by providing adequate infrastructure to support future development as shown in the analysis below. Safe walking conditions for children who walk only to and from school are provided to Northwood Elementary School which is 0.81 miles away and Mercer Island High School which is 0.4 miles away from the subject site. The shoulders provide safe walking access.*

Goal 2.7 of the Housing Element of the City's Comprehensive Plan states that the City should "Encourage infill development on vacant or under-utilized sites that are outside of critical areas and ensure that the infill is compatible with the scale and character of the surrounding neighborhoods." The proposed subdivision is located in a single-family residential zone with adjacent single-family residential uses. The proposed short subdivision would foster infill development on a site with adequate lot area outside of critical areas. The proposed development is single-family and proposed a density that is commensurate with existing development in the vicinity. Therefore, the public use and interest will be served by approval of the project due to compliance with the comprehensive plan, growth targets, and coordinated growth.

Conformance with applicable zoning and land use regulations is documented in findings 10 through 25 below.

9. **MICC 19.08.020(D)(2)** Short Subdivisions. The code official shall grant preliminary approval for a short subdivision if the application is in proper form and the project complies with the design standards set out in MICC 19.08.030, the comprehensive plan, and other applicable development standards.

Staff Finding: *The application is in proper form and the project complies with the design standards set out in MICC19.08.030 as documented findings 10 through 25. The proposed short subdivision is consistent with Land Use Goal 15 ("Mercer Island should remain principally a low density, single family residential community.") and Land Use Policy 16.5 ("Infill development on vacant or under-utilized sites should occur outside of critical areas and ensure that the infill is compatible with the surrounding neighborhoods.") The zoning and Comprehensive Plan designation of the property described in the application is Single-Family Residential R-9.6 (9,600 square foot minimum lot size). The proposed and current use of this property is single-family residential, which is a permitted use in the R-9.6 zone and consistent with the Comprehensive Plan Land Use and Housing elements.*

10. **MICC 19.08.030(B)(1):** The subdivision shall be reconciled as far as possible with current official plans for acquisition and development of arterial or other public streets, trails, public buildings, utilities, parks, playgrounds, and other public improvements.

Staff Finding: *The current City of Mercer Island official plans for acquisition and development of arterial or other public streets, trails, public buildings, utilities, parks, playgrounds, and other public improvements do not designate any portion of the subject property. This standard does not apply.*

11. **MICC 19.08.030(B)(2)** If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city shall adopt the designated name.

Staff Finding: *The preliminary plat does not propose the dedication of a public park (Exhibit 3). This standard does not apply.*

12. **MICC 19.08.030(C)(1)** Where the project may adversely impact the health, safety, and welfare of, or inflict expense or damage upon, residents or property owners within or adjoining the project, other members of the public, the state, the city, or other municipal corporations due to flooding, drainage problems, critical slopes, unstable soils, traffic access, public safety problems, or other causes, the city council in the case of a long subdivision, or the code official in the case of a short subdivision, shall require the applicant to adequately control such hazards or give adequate security for damages that may result from the project, or both.

Staff Finding: *The applicant has provided a geotechnical report (Exhibit 4). On page 4 the report states the following: "based on our review of geologic mapping in conjunction with the results of our field investigation, it is our opinion that the site is not located within a seismic hazard area." Construction on site will be required to comply with all applicable drainage design, building and engineering standards in place at the time of permit application, addressing potential erosion hazards. Compliance with fire code standards will occur during building permit review of future structures, and a condition of approval, reflecting this requirement has been added to this decision.*

13. **MICC 19.08.030(C)(2)** If there are soils or drainage problems, the city engineer may require that a Washington registered civil engineer perform a geotechnical investigation of each lot in the project. The report shall recommend the corrective action likely to prevent damage to the areas where such soils or drainage problems exist. Storm water shall be managed in accordance with Chapter 15.09 MICC and shall not increase likely damage to downstream or upstream facilities or properties.

Staff Finding: *A geotechnical report has been provided for this site that provides an analysis of the conditions present (Exhibit 4). Based on this analysis, the report makes recommendations for future construction and drainage design. Field and engineering review services will be required during the construction phase in order to provide a Final Letter for the project. All private shared utilities and shared access for Lot 1 and Lot 2 shall be completed prior to plat recording. The proposed demolition/common utility plan and conceptual grading & utility plan has been reviewed by the City Senior Development Engineer and as conditioned (Exhibit 5), complies with the provisions of Chapter 15.09 MICC.*

14. **MICC 19.08.030(C)(3):** Alternative tightline storm drains to Lake Washington shall not cause added impact to the properties, and the applicant shall submit supportive calculations for storm drainage detention.

Staff Finding: *No tightline storm drain to Lake Washington is proposed as part of these storm drainage plan (Exhibit 3, sheet 9 of 10). This standard does not apply.*

15. **MICC 19.08.030(D)(1):** The width and location of rights-of-way for major, secondary, and collector arterial streets shall be as set forth in the comprehensive arterial plan.

Staff Finding: No right-of-way is proposed to be dedicated as part of this subdivision. This standard does not apply.

16. **MICC 19.08.030(D)(2)** Public rights-of-way shall comply with the requirements set out in MICC 19.09.030.

Staff Finding: No right-of-way is proposed to be dedicated as part of this subdivision. This standard does not apply.

17. **MICC 19.08.030(D)(3)** Private access roads shall meet the criteria set out in MICC 19.09.040.

Staff Finding: The proposed Lot 1 will be accessed by a driveway of 20 feet and Lot 2 will be accessed by a driveway of 14 feet (Exhibit 3, sheet 5 of 10). This is consistent with the standard in MICC 19.09.040, which requires driveways serving one single-family dwelling to be at least eight feet in width.

Per MICC 19.09.040 all private access roads serving three or more single-family dwellings shall be at least 20 feet in width. All private access roads serving two single-family dwellings shall be at least 16 feet in width, with at least 12 feet of that width consisting of pavement and the balance consisting of well compacted shoulders. As seen in Exhibit 3, sheet 6 of 10, the existing 20 foot wide shared access easement will be improved to 20 feet paved until Lot 1 driveway access, then 12 feet paved and 4 feet compacted gravel shoulder until Lot 2 driveway access, then transitioned into the existing driveway for 8815 SE 44th Street to the south. The proposed improved private access road complies with this criterion.

18. **MICC 19.08.030(D)(4)** Streets of the proposed subdivision shall connect with existing improved public streets, or with existing improved private access roads subject to easements of way in favor of the land to be subdivided.

Staff Finding: The driveways providing access to both the proposed Lots 1 and 2 will connect to the existing shared access easement to the west which connects to SE 44th Street, consistent with this standard (Exhibit 3, sheet 5 of 10).

19. **MICC 19.08.030(E)(1)** The area, width, and depth of each residential lot shall conform to the requirements for the zone in which the lot is located. Any lot which is located in two or more zones shall conform to the zoning requirements determined by the criteria set out in MICC 19.01.040(G)(2).

Staff Finding: The proposed residential lots conform to the area, width, and depth requirements for the zone in which the lot is located (R-9.6) shown in MICC 19.02.020(A), as summarized in the table below:

	Net Lot Area	Lot Width	Lot Depth
R-9.6 zone minimum requirement	9,600 sq ft	75 feet	80 feet
Lot 1	9,748 sq ft	75 feet	130 feet

Lot 2	9,748 sq ft	75 feet	130 feet
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20. **MICC 19.08.030(E)(2)** Each side line of a lot shall be approximately perpendicular or radial to the center line of the street on which the lot fronts

Staff Finding: *One side lot line will be created by the proposed short subdivision, which will be approximately perpendicular to the 20 foot shared access easement, refer to sheet 4 of 10 in Exhibit 3. Per MICC 19.16 the definition of street is as follows: "improved or unimproved public or private right-of-way or easement which affords or could be capable of affording vehicular access to property." The shared private access easement is a street based on the city's definition. Refer to sheet 4 of 10 in Exhibit 3. The proposed lot lines are consistent with this criterion.*

21. **MICC 19.08.030(E)(3)** The proposed subdivision shall identify the location of building pads for each proposed lot per MICC 19.09.090. No cross-section dimension of a designated building pad shall be less than 20 feet in width (Exhibit 3).

Staff Finding: *Building pads, with no cross section less than 20 feet in width, are shown on sheet 4 of 10 of the preliminary short plat (Exhibit 3). The topographic site plan indicates less than a 2-foot elevation change across the site. The city's Geotechnical peer reviewer stated the following on page 2 of Exhibit 8: "the proposed building pad locations minimize the disturbance of the existing, natural topography."*

22. **MICC 19.08.030(E)(4)** The proposed subdivision shall incorporate preferred development practices pursuant to MICC 19.09.100 where feasible.

MICC 19.09.100 Proposed development shall incorporate all of the following preferred development practices where feasible:

- A. Use common access drives and utility corridors.
- B. Development, including roads, walkways and parking areas, in critical areas should be avoided, or if not avoided, adverse impacts to critical areas will be mitigated to the greatest extent reasonably feasible.
- C. Retaining walls should be designed to minimize grading, including the placement of fill, on or near an existing natural slope.

Staff Finding: *Lots 1 and 2 will be accessed via the existing 20 foot shared access easement to the west. This easement will be improved to provide access shared access to both new lots. A geotechnical report has been submitted, documenting how future development will meet the standards in MICC 19.07.160 (Exhibit 4). The city's Geotechnical Peer Reviewer has assessed "that the property is not within a seismic hazard area as defined in MICC 19.16" and "that the proposed building pad locations minimize the disturbance of the existing, natural topography" (Exhibit 8). No retaining walls are proposed as part of this subdivision. These preferred development practices have been incorporated where feasible.*

23. **MICC 19.08.030(E)(5)** The proposed subdivision shall be designed to comply with the provisions of Chapter 19.10 MICC.

Staff Finding: The proposed tree retention plan has been reviewed by the City Arborist and as conditioned (Exhibit 6), complies with the provisions of Chapter 19.10 MICC.

24. **MICC 19.08.030(F)(1)** Subdivisions abutting an arterial street as shown on the comprehensive arterial plan shall be oriented to require the rear or side portion of the lots to abut the arterial and provide for internal access streets.

Staff Finding: The subdivision abuts SE 44th Street, which classified as a local street. The side yard of Lot 1 is proposed to abut SE 44th Street, and access will be provided via a shared access easement to the west connecting to SE 44th Street.

25. **MICC 19.08.040(A)** Streets, Utilities and Storm Drainage. A subdivision shall include provisions for streets, water, sanitary sewers, storm drainage, utilities and any easements or facilities necessary to provide these services. All utilities shall be placed underground unless waived by the city engineer. Detailed plans for these provisions shall not be required until after the approval of the preliminary plat and shall be a condition precedent to the official approval of the subdivision.

Staff Finding: Preliminary grading and storm drainage plans have been provided, showing that the provision of services is feasible (Exhibit 3). A condition of approval has been added to this decision requiring construction of all improvements for access, utilities, all storm drainage system and all site work, shall be completed prior to final plat application.

26. **MICC 19.17, 19.18, and 19.19:** The city shall collect impact fees, based on the city's permit and impact fee schedule, from any applicant seeking a residential building permit from the city.[...] For building permits within new subdivisions approved under Chapter 19.08 MICC (Subdivisions), a credit shall be applied for any dwelling unit that exists on the land within the subdivision prior to the subdivision if the dwelling unit is demolished. The credit shall apply to the first complete building permit application submitted to the city subsequent to demolition of the existing dwelling unit, unless otherwise allocated by the applicant of the subdivision as part of approval of the subdivision

Staff Finding: A condition of approval has been added to this decision and requiring that school, park, and transportation impact fees shall be paid at the issuance of each building permit unless deferral of payment is sought pursuant to MICC 19.17.080, 19.18.060, or 19.19.060. Impact fees are not subject to vesting and the amount paid will be the impact fee amount in effect at the time of payment.

27. **MICC 19.20.020** A transportation concurrency application and transportation concurrency certificate are required for any development proposal specified in MICC 19.20.030 or any development that will otherwise result in the creation of one or more net new trips in the morning peak hour or evening peak hour. No development shall be required to obtain more than one transportation concurrency certificate, unless the applicant or subsequent owners propose changes or modifications that require a new development permit application or result in increased net new trips, a future phase of the project requires a transportation concurrency application, or the original transportation concurrency certificate has expired.

Staff Finding: A transportation concurrency certificate has been issued for this development proposal (Exhibit 7).

CONDITIONS OF APPROVAL

1. The final short plat for SUB20-004 shall be in substantial conformance with the preliminary plat drawing attached as Exhibit 3.
2. Expiration of approval – The final short plat shall be recorded prior to the expiration deadline set forth in MICC 19.15 – Administration.
3. Show all the existing and proposed easements on the final plat. Clearly distinguish all public easements from the private easements. The private utility easement and public utility easement shall not be combined. Clearly distinguish all existing easements from the proposed easements.
4. Easements for utilities and storm drainage facilities shall be depicted on the face of the Final Plat. Language which indicates joint rights and responsibilities of each lot with respect to all utilities and roadways shall be shown along with individual lot Joint Maintenance Easement Agreements (where applicable) for all shared usage and filed with the King County Recorder and noted on the final plat. The easement notation shall indicate whether the easement is public or private, existing or proposed.
5. The Final Plat shall be prepared in conformance with Title 58 RCW and Surveys shall comply with Chapter 332-130 WAC. Submit using Mercer Island's datum and tie the plat to at least two monuments.
6. A City of Mercer Island title block for approval signatures (Planner and City Engineer) shall be provided on the final plat along with the designated Short plat number.
7. All private shared utilities and shared access for Lot 1 and Lot 2 shall be completed prior to plat recording. A Site Development Permit for constructing all shared utilities and access are required for the city approval. A construction bond (150% of the construction cost) for the plat improvement is required prior to issuance of the permit. All construction must be completed prior to submit the final plat.
8. Construction of all improvements for other access, utilities, all storm drainage system (conveyance system and onsite detention system), except the items described in Condition #7, and all site work shall be completed as part of future building permits for individual lots. The requirements will be based on the City ordinances, regulations, and requirements of the City Engineer established at the time of application for future building permits.
9. A tree replacement plan for the 105 required replacement trees or 52 trees/lot. Or a fee in lieu of \$494.50/tree for any tree that cannot be planted at least 10' away from each other, existing trees and infrastructure such as fences. This replanting/fee in lieu plan for both lots will be required at the building plan application. Very little room appears on site for replanting and no opportunity in the right of way. It will follow the requirements described in 19.10.070.
10. The tree protection plan will be submitted during building review. No further tree removal will be allowed unless it is justified under 19.10.060.A. Showing tree protection fencing at the Arborist stated tree protection zone (TPZ).

11. The tree protection fence shall be 6' chain-link fence secured into the ground. This will be called out on the Tree Plan during building review.
12. The Project Arborist is to be on site and in control of any excavation or grading within trees dripline. They will document and clean cut any root over 1" in diameter that needs to be removed. Call this out on Tree Plan during building review.
13. The plan showing numbered retained trees and building pad will be recorded as part of the plat. This plan should be the same or consistent with the Preliminary Tree Plan.
14. The existing house and shed shall be demolished prior to Final Plat application.
15. Include the following conditions to the face of the final plat:
 - a. Maintenance and repair of joint use side sewers (sewer lines from the building to the City sewer main), shared roads, access easements, storm drainage facilities shall be the responsibility of the owners of each lot served (with the exception that owners of any lot which is lower in elevation shall not be responsible for that portion of a private side sewer above their connection.) In the event that maintenance and repair of any facilities enumerated above are not performed to the satisfaction of the City Engineer, after a timely demand has been made for such action, the City or its agent shall have the right to enter upon the premises and perform the necessary maintenance and repair to protect the safety and general welfare of the public and shall have the right to charge the owner of each lot an equal share of the total maintenance and repair costs. The City or the owner of any lot within this Short plat shall have the right to bring action in Superior Court to require any maintenance or repair and to recover the costs incurred in making or effecting repairs to improvements.
 - b. The monitoring, cleaning, maintenance and repair of storm drainage systems in accordance with City Ordinance No. 95C-118 is required for all lot owners within this Plat to control stormwater runoff and control erosion and flooding downstream. All costs related to stormwater runoff control shall be borne by the owners of each lot in equal share. This obligation shall be recorded separately with each individual lot sale and shall travel with the land.
 - c. All staging for construction shall occur on site and shall not be located in the public right-of-way.
 - d. Prior to the issuance of a building permit, each application shall be accompanied with a temporary erosion and sedimentation control plan, clearing and grading plan, access and utility service plan, a landscape plan (which shall identify existing vegetation to be retained, limits of all clearing and grading), and a schedule for the construction. The applicant's Civil Engineer, experienced in soils geology and mechanics, shall review the proposed site and building construction and provide recommendations that will limit site disturbance, minimize risk of soils movement, evaluate site slope stability and define materials and construction practices for the work. The Building Official may require that the Engineer be present during construction, monitor the work, and recommend special techniques or

mitigating measures. The costs associated with the Engineer's monitoring and mitigation measures shall be borne by the applicant.

- e. No permanent landscaping, structures, or fences shall be placed on or within public utility or storm drainage easements without the written approval of the City Engineer. If in the opinion of the City Engineer, utilities or storm drainage facilities require maintenance, repair or replacement, the City or its agent shall have the right to enter those lots adjoining the facility for the purpose of maintaining, repairing, relocating or replacing said facilities. Lot owners shall be responsible for the restoration of any private improvements or landscaping within said easements.
- f. Installation of landscaping and/or structures including trees, shrubs, rocks, berms, walls, gates, and other improvements are not allowed within the public right-of-way without an approved encroachment agreement from the City prior to the work occurring.
- g. No tree identified for retention may be removed unless otherwise approved by the City Arborist.
- h. All building permits are subject to meeting current fire code requirements at the time of permit submittal. Access shall be provided as outlined in the International Fire Code Appendix D and MICC 19.09.040. Fire plan reviews will be conducted at time of building permit submittal and may require additional fire protection systems and/or additional fire prevention measures for building approval.
- i. At building permit application, the applicant shall pay school, park, and transportation impact fees based on the fee schedule in place at the time of application. A credit shall be applied for any dwelling unit that exists on the land within the subdivision prior to the subdivision if the dwelling unit is demolished. The credit shall apply to the first complete building permit application submitted to the city subsequent to demolition of the existing dwelling unit, unless otherwise allocated by the applicant of the subdivision as part of approval of the subdivision.

DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

- 1. Compliance with all local, state and federal regulations is required.
- 2. No construction, tree removal, grading, installation of utilities on land within a proposed long or short subdivision shall be allowed prior to preliminary approval of the long or short subdivision and until the applicant has secured the permits required under the Mercer Island City Code. Following preliminary approval, tree removal, grading, and installation of utilities shall be the minimum necessary to allow for final plat approval of the long or short subdivision. (MICC 19.08.020(5)).

3. DECISION / RECOMMENDATION

Based upon the above noted Findings of Fact and Conclusions of Law, preliminary short plat application SUB20-004, as depicted in Exhibit 3, is hereby preliminarily **APPROVED**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.130, and all other applicable appeal regulations.

Approved this 10th day of May 2021

Lauren Anderson

Lauren Anderson
Planner
Community Planning & Development
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206-275-7704

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.