

October 26, 2022

35653.0101

Tony and Missy Johnson
9031 SE 59th St.
Mercer Island, WA 98040

Re: Reply to Public Comment on VAR22-001

Dear Mr. and Mrs. Johnson:

Our office represents Market Place Properties, LLC (“MPP”), applicant under VAR22-001. We are in receipt of your comments on the Variance Application and were requested to provide a response to those comments.

As an initial matter, I have enclosed a copy of a supplemental September 30, 2022 letter submitted to the City which provides additional explanation regarding the special circumstances applicable to the MPP Property. As set out in the September 30, 2022 letter, there is a “break in bearing” between the survey monuments installed at the intersections of Island Crest Way/SE 60th St. and 92nd Ave Se/SE 60th St, which is not evident from conducting a survey of the physical monuments. The bearing break is only discoverable from reviewing the plat records for the property.

The bearing break is unique to the MPP Property and the surrounding properties. Taking the physical location of the monuments at face value results in a northerly shift of surveyed east-west property lines. Indeed, a survey of the property southwest of the MPP Property – at 9016 SE 61st Street – appears to have missed the break in bearing, and as a result the survey for that property was off by approximately 5 feet, with the survey stake marking the north backyard property line placed 5 feet north of the correct location.

The erroneously located survey stake for 9016 SE 61st Street reflects the same northern shift by the MPP surveyor in staking the foundation of the MPP residence, the result being the foundation was slightly closer to the true front MPP property line than was intended.

Because of the unusual circumstances surrounding the survey error at the MPP Property, granting the requested Variance will not set a precedent for other variance requests in this neighborhood or elsewhere in the City. It is highly unlikely that an identical issue will arise, where the circumstance of the City’s physical survey monuments lead to a survey error. This type of error is very unusual as it is, but given the City is now aware of the unique “break in bearing” issue, there is no reason to believe

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these unusual circumstances would arise again. Granting this isolated Variance will not have a precedential effect.

Further, the less than four feet reduction in the front yard setback is minimal. A 20% reduction in the front yard is not an obvious divergence from the street frontage presentation of other homes on the surrounding blocks. The many large trees that line the Right of Way further assure that a small reduction in the front yard size will be obscured.

The requested Variance is needed due to the bearing break of the physical City surveying monuments and erroneous acts of an independent surveyor. MPP is simply seeking the least amount of relief that would allow the newly constructed single-family dwelling to remain, and avoid the excessive economic impact to the MPP Property value if the setback encroachment had to be removed. Avoiding these harsh economic consequences is the precise reason that variances exist in the City zoning code and across the country – to provide substantive due process to property owners where unusual circumstances exist.

Regards,

WILLIAMS, KASTNER & GIBBS PLLC



Abigail Stagers

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cc: City of Mercer Island
Community Planning & Development
9611 SE 36th Street
Mercer Island, WA 98040

September 30, 2022

35653.0101

City of Mercer Island
Community Planning & Development
9611 SE 36th Street
Mercer Island, WA 98040

Re: VAR22-001

Dear Permit Coordinator:

On behalf of Market Place Properties, LLC (“MPP”), applicant under VAR22-001, this letter is submitted in supplementation of MPP’s request for a variance regarding property at 6027 SE 60th Street (“MPP Property”).

MICC 19.06.110(B) sets out the eight criteria for granting a variance. Subsection (d) requires showing that there are special circumstances applicable to the property in question. Examples of special circumstances include size, shape, topography or location of the lot.

As set out in the initial Variance Application, a survey error led to a mistake in the location of the foundation and the encroachment into the setback for which this variance is sought. Ultimately, however, the survey error was the result of a physical feature unique to the MPP Property – a bearing break affecting City survey monuments to the east at the Island Crest Way/SE 60th St. intersection and the monument to the west at the 92nd Ave Se/SE 69th St. intersection. (See, Survey noting “bearing break per Plat of Timberland No. 4” attached at *Exhibit G*). The noted break in bearing is only evident from review of the final plat records. A survey conducted simply by referencing the two physical survey monuments does not disclose the break.

The break in bearing appears to have been missed by a prior surveyor at the property kitty-corner southwest of the MPP Property, at 9016 SE 61st Street (“Neighbor Property”). The survey stake for the northeast corner of the Neighbor Property (the southwest corner of the MPP Property) was placed 5 feet north of the actual property line. (See, *Exhibit G*). Likewise, the north property line for the MPP Property was initially staked approximately 5 feet north of the actual boundary line and the MPP site features (such as the fence) were incorrectly mapped onto the MPP survey map. As such, it can be concluded that MPP’s surveyor relied upon the Neighbor Property’s erroneous survey stake as the beginning point to measure and stake the MPP Property. As a result, the foundation form for the MPP project was staked in a location that encroached into the actual front yard setback.

City of Mercer Island
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The “break in bearing” between monuments is a physical feature unique to the lot location. The survey kitty-corner to the MPP Property failed to account for this physical feature affecting all lots in the block containing the MPP Property, which is a special circumstance unique to these parcels, and warrants variance relief under the facts of this application.

Regards,

WILLIAMS, KASTNER & GIBBS PLLC



Abigail Stagers

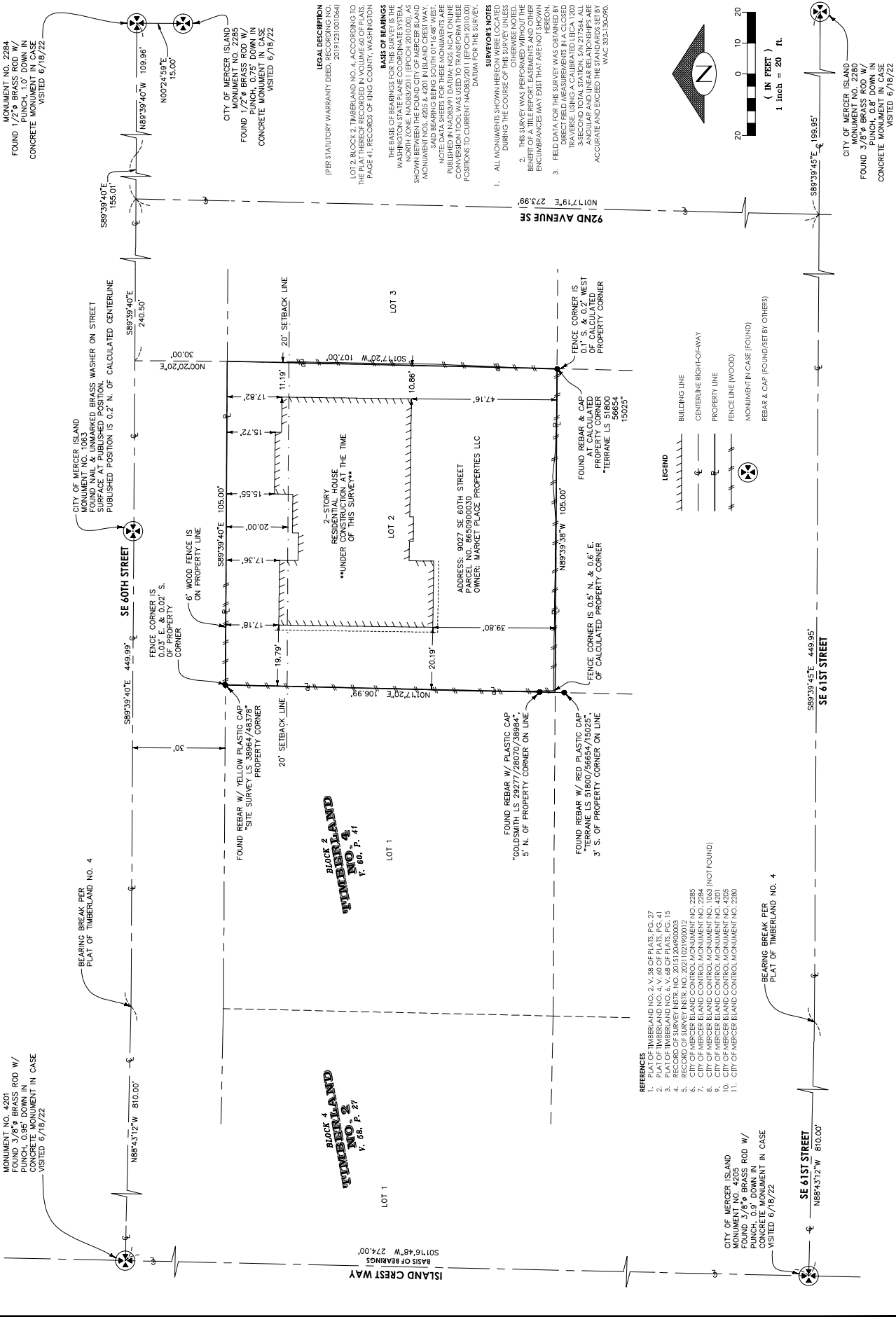
Alan Wallace

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awallace@williamskastner.com

EXHIBIT G

SOUTHWEST 1/4 SECTION 19, TOWNSHIP 24 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN



RECORDERS CERTIFICATE

FILED FOR RECORD THIS _____ DAY OF _____ OF SURVEYS,
 20____ AT _____ M IN BOOK _____ OF SURVEYS,
 AT PAGE _____ AT THE REQUEST OF
 BUSH, ROED & HITCHINGS, INC.

SURVEYORS CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME
 OR UNDER MY DIRECTION IN CONFORMANCE WITH THE
 REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE
 REQUEST OF _____
 IN _____

MANAGER _____ SUPT. OF RECORDS _____

RECORD OF SURVEY

9027 SE 60TH STREET
 MERCER ISLAND, WA 98040

LUCAS
 WASHINGTON STATE PROFESSIONAL SURVEYORS
 171075

BUSH, ROED & HITCHINGS, INC.
 LAND SURVEYORS & CIVIL ENGINEERS
 2009 MINOR AVE. EAST
 SEATTLE, WASHINGTON
 (206) 332-4144
 1-800-835-0088
 98102-5818 WWW.BUSHROEDINC.COM

DATE: 7/10/22
 JOB NO.: 2022156.00
 SCALE: 1" = 20'
 CHK. BY: PLS
 DWN. BY: LWR

LEGAL DESCRIPTION
 [PER STATUTORY WARRANTY DEED, RECORDING NO. 20191231001064]

BASIS OF BEARINGS
 THE BASIS OF BEARINGS FOR THIS SURVEY IS THE TRUE MERIDIAN AS SHOWN ON THE PLAT THEREOF RECORDED IN VOLUME 60 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON.

LEGAL DESCRIPTION
 LOT 2, BLOCK 2, TIMBERLAND NO. 4, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 60 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON.

SURVEYORS NOTES
 1. ALL MONUMENTS SHOWN HEREON WERE LOCATED DURING THE COURSE OF THIS SURVEY UNLESS OTHERWISE NOTED.
 2. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT, EASEMENTS AND OTHER ENCUMBRANCES MAY EXIST THAT ARE NOT SHOWN HEREON.
 3. FIELD DATA FOR THIS SURVEY WAS OBTAINED BY DIRECT FIELD MEASUREMENTS IN A CLOSED TRAVERSE USING A CALIBRATED LEICA 1203 TOTAL STATION. ANGULAR AND LINEAR READING ERRORS ACCURATE AND EXCEED THE STANDARDS SET BY WAC 352-130-090.

REFERENCES

- PLAT OF TIMBERLAND NO. 2, V. 58 OF PLATS, PG. 27
- PLAT OF TIMBERLAND NO. 3, V. 58 OF PLATS, PG. 15
- PLAT OF TIMBERLAND NO. 4, V. 58 OF PLATS, PG. 15
- RECORD OF SURVEY INSTR. NO. 201912049500003
- RECORD OF SURVEY INSTR. NO. 202110219500012
- CITY OF MERCER ISLAND CONTROL MONUMENT NO. 2284
- CITY OF MERCER ISLAND CONTROL MONUMENT NO. 4201
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LEGEND

- BUILDING LINE
- CENTERLINE RIGHT-OF-WAY
- PROPERTY LINE
- FENCE LINE (WOOD)
- MONUMENT IN CASE (FOUND)
- REBAR & CAP (FOUND/SET BY OTHERS)

MONUMENT NO. 2284
 FOUND 1/2" BRASS ROD W/ PUNCH, 1.0' DOWN IN CONCRETE MONUMENT IN CASE VISITED 6/18/22

MONUMENT NO. 4201
 FOUND 3/8" BRASS ROD W/ PUNCH, 0.95' DOWN IN CONCRETE MONUMENT IN CASE VISITED 6/16/22

MONUMENT NO. 1063
 CITY OF MERCER ISLAND FOUND NAIL & UNMARKED BRASS WASHER ON STREET PUBLISHED POSITION IS 0.2' N. OF CALCULATED CENTERLINE

MONUMENT NO. 2285
 CITY OF MERCER ISLAND FOUND 1" BRASS ROD W/ PUNCH, 0.75' DOWN IN CONCRETE MONUMENT IN CASE VISITED 6/18/22

MONUMENT NO. 4201
 CITY OF MERCER ISLAND FOUND 3/8" BRASS ROD W/ PUNCH, 0.95' DOWN IN CONCRETE MONUMENT IN CASE VISITED 6/16/22

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