

Subject: FW: Miller code violations

Date: Monday, August 24, 2020 at 1:00:29 PM Pacific Daylight Time

From: Alison Van Gorp

To: william.gartz@gmail.com

Dear Mr. Gartz,

The City of Mercer Island has recently gone through some staffing transitions and Anthony Myers is no longer with the City. Thus, I am stepping in to follow up on the code enforcement case he was pursuing with you earlier this year. I have conducted a review of our files, including the case files from this year, and those from 2013-2018. This issue certainly has a long history!

In your letter to Mr. Myers dated 3/23/2020, you summarized your main points as follows:

1. *The eave intrusion into the setback has been there since 1986 and therefore it is grandfathered by the City. There is no need for an additional permit.*
2. *The new Applied Gutter on the existing eave was shown in the 2007 permit documents and reviewed and approved by the City of Mercer Island on 9/24/2007.*
3. *The Applied Gutter is non-combustible and poses no life-safety threat. Additionally, it cannot even be seen from Mr. Miller's property due to his planting of Leyland Cyprus trees to block our views. The City previously ruled that due to their permit approval and hardship to correct it can remain in the setback. Please see the numerous correspondence I had with the City.*
4. *While I am confirming the location of the south property line with the surveyors, if the angle does trespass it is no longer a City Code issue but a civil issue between Mr. Miller and me. As I have been advised, I already have acquired a prescriptive easement for the angle since it has been in place for over 12 years and the eave on which it is mounted is grandfathered*

I would like to respond to these assertions based on the information I have gathered from my review of our records.

1. While the eave intrusion into the setback has indeed been in place since the 1980s, the architectural or "applied" gutter, with an approximately 7" horizontal metal element at the outer edge, does expand the intrusion into the setback. Thus, while the eave as it existed in 1986 likely has legal nonconforming status (i.e. it is "grandfathered in"), the architectural or "applied" gutter expands the non-conformity in a way that may be illegal. Given the nonconforming nature of the eave, city code would have allowed for repair and maintenance (including replacement) of the gutters with something of a similar character, scope, size and footprint (MICC 19.01.050(B)(1)). However, the architectural/applied gutter does not fall within this definition of repair and maintenance since it has a substantially greater width due to the horizontal metal element.
2. You have stated that the gutter replacement was included in the 2007 permit documents. In the documents you provided and in our code compliance records, I see copies of some sheets/partial sheets of architectural drawings that appear to have been submitted to the City in 2007, but it does not constitute a complete plan set and it is not the approved plans. From these incomplete documents, I am not able to determine if the approved plans clearly indicated the gutters were to be replaced on this nonconforming portion of the roof eave, or not. In addition, our records include notes and letters from the Code Compliance Officer and City Attorneys from 2014-2015; it appears they believed that the work was done without permit or inspection.
3. The safety and visual impacts of the architectural/applied gutter are not material. Your correspondence with Ms. Serfling from 2018 indicates that based on Judge Eadie's ruling, you believed the property line was located 1.2 feet further to the south. I believe that the City closed the enforcement case in 2018 because the Code Compliance Officer and City Attorneys took you at your word and believed that the judge's ruling eliminated the trespass and reduced the setback violation to a degree that it was no longer worth pursuing further enforcement action. However, in my review of the court records and Mr. Myers' analysis of the survey records, I believe the City's decision in 2018 to close the case was made in error. The court ruling is not applicable to the Gartz/Miller property line. The survey that was found to be "not credible" is not the same survey as the Group 4 survey commissioned by Mr. Miller, and in fact Mr. Miller's Group 4 survey and the ESM survey are in agreement as to the location of the Miller/Gartz property line and it is not 1.2 feet further to the south as you have suggested.
4. You stated that you were confirming the location of your southern property line with the surveyors – has this work been completed and what was the result? I agree that any trespass of the eave/gutter over the property line is a civil matter between yourself and Mr. Miller. That said, the violation that the City is investigating is the expansion of the non-conformity of the eave when the

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architectural/applied gutter was added in 2007. If this work was not permitted, it is an illegal expansion of a nonconforming structure, a violation of MICC19.01.050(A)(4). In addition, this code section further states that illegal expansion of a legal nonconforming structure results in the loss of legal nonconforming status and the structure must be brought into conformance with all applicable code requirements.

After reviewing your correspondence with Mr. Myers from earlier this year, I felt the best way to proceed would be to clarify the above information, including the specific nature of the code violation. Based on the evidence I currently have, I believe the addition of the architectural/applied gutter in 2007 constituted an illegal expansion of the non-conforming eave, in violation of MICC 19.01.050(A)(4), 19.01.050(B)(1) and 19.02.020(C)(3)(a)(i). That said, I would like to give you the opportunity to provide any documents in your possession that may be relevant to the City's investigation, particularly any permit documents or approved plans that could shed light onto whether the architectural/applied gutter was permitted in 2007. The photos or scanned images of architectural plans you provided previously were not complete and were not sufficient to make a determination.

Please respond with any relevant documents in your possession by September 7, 2020. Thank you for your assistance.

Sincerely,
Alison Van Gorp

Alison Van Gorp

Deputy Director *working remotely*
Community Planning & Development | City of Mercer Island
206.275.7733 | mercerisland.gov/cpd |   **LET'S TALK**
— Mercer Island —

Due to the COVID-19 outbreak, Community Planning and Development has modified our operations. City Hall and the Permit Center are closed to the public. There is no "walk in" permit service; staff are working remotely and services are being continued via remote operations. More information is available on the City's website: mercerisland.gov/cpd. Please contact us by phone for general customer support at 206-275-7626.

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From: William Gartz <william.gartz@gmail.com>
Sent: Wednesday, March 25, 2020 6:49 PM
To: Anthony Myers <anthony.myers@mercergov.org>