

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT
9611 SE 36TH STREET | MERCER ISLAND, WA 98040
PHONE: 206.275.7605 | www.mercergov.org



CITY USE ONLY

PROJECT#	APPEAL#	FEE
APL 19-002		990.86

Date Received: 11-4-2019

Received By: Ksalvo

APPEAL

Name Shane Miller
Address 7709 W Mercer Way
Phone (206) 910-8443 Email shanemillerus@gmail.com

What is the decision that you are appealing? Include any applicable project file number.

Decision to issue Notice of Violation & Order to Correct dated October 21, 2019 for property address 7709 WMW

What are your reasons for appealing this decision?

(You must indicate specifically that there were substantial errors, the decision is unsupported by the facts presented, the decision is in conflict with the standards for review of the action or there were irregularities in the procedure. Attachments or supporting information may be included.)

All of the above apply: 1. There were substantial errors; and 2. The decision is unsupported by the facts presented; and 3. The decision is in conflict with the standards for review of the action; and 4. there were irregularities in the procedure.

5. See attached letter dated November 4, 2019, and including as exhibits the signed Letters from the ...Licensed Engineer and Architect saying no permit required
6. Note that a Sworn Affidavit from the original owner and developer will be provided separately

What is the outcome or changes in the decision that you are seeking?

Dismissal of the Notice of Violation & Order to Correct dated October 21, 2019 for 7709 W Mercer Way.

Signature: Shane Miller  Date: November 4, 2019

RECEIVED

NOV 05 2019

MERCER ISLAND
CITY CLERK

1/2019

November 4, 2019

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

Shane Miller
7709 W. Mercer Way
Mercer Island, WA 98040

Dear Appeals Representative,

I am writing in response to the Notice of Violation and Order to Correct dated October 21, 2019 for my home at 7709 W. Mercer Way.

1. The NOV relates entirely to matters dating way back to February 2, 2018. Note that prior to now, I had not heard anything about this violation throughout the past 20+ months between February 2018 and September/October 2019, which means the case should have been closed at some point during the past 20+ months. The time to have issued an NOV was during February 2018; not during October 2019.

2. This matter had been investigated during February 2018 and it was determined by the Code Officer at that time, Ms. Jimmi Serfling, that there was not a need to move forward with enforcement. However, now 20+ months after the fact, Mr. Anthony Myers as a new employee is reexamining and reworking Ms. Jimmi Serfling's files, which is improper. This complaint was previously investigated by Code Enforcement Officer, Ms. Jimmi Serfling, during February 2018, and I believed it had been closed as unfounded by Ms. Serfling following the in-person meeting.

3. The Notice references an email dated February 16, 2018, which makes a claim that is not accurate. Specifically, the August 23rd Notice states:

"a permit is required for this work because work within land use critical areas is not exempt from permit [sic]."

However, this statement is not accurate because a building permit is not required to perform landscape maintenance work. Only landscape maintenance was performed. A Licensed Engineer and Architect had entered written findings to Ms. Jimmi Serfling back during February 2018 that proved that only maintenance work had occurred.

4. Specifically, Mr. Phil Haberman, PE, LG, LEG entered written findings which state,

"the scope of work was limited to yard maintenance"

(See Exhibit A – signed Letter from Mr. Haberman, PE, LG, LEG)

Also, the licensed architect Mr. Michael Lee entered written findings, which state,

“project scope little more than simple landscape maintenance, which should be expected periodically and which would not typically require a permit”

(See Exhibit B – signed Letter from Mr. Lee, Architect)

5. Mr. Haberman and Mr. Lee are Qualified to make determinations about what is maintenance and what does not require a building permit.

6. Additionally, I hold a Bachelors degree from the College of Engineering at the Georgia Institute of Technology, and I too am qualified to assess and confirm that only simple maintenance occurred.

7. Virtually every waterfront home on Mercer Island maintains its shoreline areas. Otherwise, the shorelines would soon be haphazard jungles of overgrown vegetation versus the pristine maintained areas that exists currently throughout.

8. I had previously hosted at my home on February 14, 2018 Code Enforcement Officer, Ms. Jimmi Serfling, for the purpose of meeting in person to review and question Mr. Haberman and Mr. Lee on their findings that only maintenance work had occurred. However, there was no dispute asserted by Ms. Serfling during the meeting at my home with the Licensed Engineer and Architect. It appears that Mr. Anthony Myers has replaced Ms. Serfling and now he is going back and undoing her past work, but without the benefit of having attended the meetings such as these. This is improper.

9. This property was developed during the 1980's with permits having been issued and all inspections completed by the City. These records are on file with the City. The subject area has been developed during the 1980s, but the area was never an engineered wall, and therefore it remains the same today. That is, the area never did encompass an engineered wall of any kind, and the remains the case currently.

10. The original developer from the 1980's, Mr. George Lewis, continues to reside in the neighborhood, and has graciously offered to sign an Affidavit confirming the shoreline area was permitted and developed by him during the 1980s and has not changed since that time other than maintenance. I will submit the Affidavit from Mr. Lewis separately later this month following his return from out of town.

The shoreline area is unchanged since the 1980's. Specifically, the poured concrete pathway that exists currently atop the bulkhead and along the shoreline area is exactly the same as it was in the 1980's. This can be seen from the weathering of the concrete and review of historical satellite imagery. Any "work" done to the area since the last inspections from the 1980's was limited to maintenance and upkeep. Mr. Lewis has recently investigated the area and agrees only maintenance occurred. Mr. Lewis can be reached at (206) 232-6844.

11. The Complainant – Mr. William “Bill” Gartz – has a long history of false reporting, and has been deemed by City Code Enforcement Officer Ms. Jimmi Serfling “not credible”, according to Ms. Serfling’s emails, which are disclosed in record requests. City Staff have also labeled Mr. Gartz a “Code Violations Frequent Flyer” in emails.

12. Additionally, the Complainant was sanctioned by King County Superior Court and ordered by the Court to return land to its rightful owner / his neighbor, which he did. Also, Mr. Gartz was ordered to pay monetary sanctions totaling approximately \$35,000, which he paid. He was then facing another lawsuit with the same neighbor and settled for another \$25,000, which he paid. Ever since losing in Court, the Complainant has been bitter and vengeful toward both of his adjacent neighbors. Unfortunately, the Complainant has a history of improper behavior and revenge motivations and the February 2018 complaint is merely a continuation. Suffice it to say, the Complainant is not credible. And the City should not be catering to neighbor complaints that are not credible and vengeful. Ms. Serfling knew this to be the case, and treated the complaint accordingly by not taking enforcement action.

13. The City has stated that this area is a “critical slope”, which the City defines as a slope greater than 40%. However, the slope of the property is not greater than 40%, and in fact is less. I have a Topographic Survey from a Licensed Surveyor, which proves the slope is less than 40% and therefore “non-critical” per City definitions. The City argues there is a document on file, which shows the slope is closer to 43%, but the document is likely from before the properties were developed and regardless this 43% measurement is not accurate. The current slope is <40%, which means the City’s arguments about slope-based critical areas, etc are not accurate.

Specifically, I have in my possession an altimeter, which measures altitude above sea level. The Altimeter readings at relevant property corners are as follows:

Figure 1.0 – GPS Altimeter reading at southwest property corner – 40’ elevation



Figure 2.0 – GPS Altimeter reading at the southeast property corner – 97' elevation



Therefore, there is just 57 feet of elevation change across the east-west direction of the full property distance at the south boundary. The City is welcome to come see this measurement in-person.

14. Furthermore, the Licensed Professional Surveyor, Group4, Inc, provided official survey drawings, which measure the length of the south property boundary from the shoreline to the southeast property corner showing 319.59 feet length of run along the same location area.

Therefore, the measure of the property slope is defined as the distance of rise divided by the distance of run, i.e. $\text{slope} = \text{rise} / \text{run}$. The rise is 57 feet elevation change from shoreline to uphill property corner, and the run is 319.59 feet property boundary length from southeast to southwest corner, and therefore $57 \text{ feet} / 319.59 \text{ feet} = 17.9\%$ lot slope. The Altimeter measurements prove beyond a shadow of a doubt the total lot slope is less than 40%, and therefore is non-critical, etc.

15. The property has already undergone significant Geotechnical Engineering testing and review, and has been deemed stable including under seismic conditions. This has included boring, soil testing, geo-modeling, seismic factoring, etc. The City has these records on file. More of the same testing would be imprudent and unhelpful.

16. I have owned and lived at the subject property for the past 14 years continuous. During this time, I have planted approximately 500 new trees and shrubs, all of which add significantly to stability. The 70 cypress trees span virtually the entire length of the property and are nearing 50 feet tall each tree. The roots are established and significant. The Engineer and Architect have confirmed this also:

"The addition of approximately 70 large cypress trees, 60 arborvitae trees and many other additional trees and plants have and will improve surface slope stability and erosion control"

(See Exhibit A – signed Letter from Mr. Haberman, PE, LG, LEG)

"The plants chosen will hold the soil well without supplemental watering, and the owner has even added to the number of groundcover plants I recommended. These will prevent erosion.

(See Exhibit B – signed Letter from Mr. Lee, Architect)

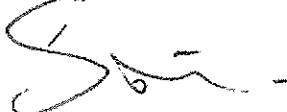
17. I should be commended by the City Building Department for having been proactive in making considerable investments in trees and shrubs that help support soil and slope stability throughout the entire property.

18. During February 2018 the Licensed Geotechnical Engineer entered written findings that the area remains stable and improved. All other Geotechnical Engineering reviews completed at the property also find the property stable. The City has in its possession these Geotechnical Engineering reports and records. These written findings include signatures by the Licensed Engineers and are sufficient to counteract and dismiss any and all false claims to the contrary.

19. Please feel free to call any time to discuss. I can also schedule a time to visit your offices and meet with you in-person to discuss. I had extended this offer to Mr. Anthony Myers, but he did not accept my offer to meet. I look forward to cooperating and getting this Notice of Violation & Order to Correct dismissed.

20. Please kindly dismiss the Notice of Violation & Order to Correct dated October 21, 2019. The Notice of Violation and Order to Correct is inaccurate to include substantial errors, the decision unsupported by the facts presented, the decision in conflict with the standards for review of the action, and there were irregularities in the procedure. Also, the action is improper, unjust and unconstitutional as it infringes on my homestead property rights. Unfortunately, the Notice is part of a pattern of revenge and harassment by a neighbor and I ask that the City not cater to such vengeful behavior.

Sincerely,



Shane Miller
(206) 910-8443

Placeholder for Affidavit from the original developer and owner, Mr. George Lewis.

Mr. Lewis will sign an Affidavit saying no development has occurred. Only maintenance occurred.

In the meantime, Mr. Lewis can be reached at (206) 232-6844.

Michael Lee
Landscape Architect

4010 SW 106th Street
Seattle, Washington 98146
206.749.9508
colvos@gmail.com

February 6, 2018

TO: City of Mercer Island

I am writing to provide background for the retaining wall and planting work above the shoreline at the Shane Miller property. I am the designer of the slope improvements at that location.

Mr. Miller showed me the site two years ago and asked me to design a replacement for the failing timber wall, which I understand is at least 30 years old. Also, the plantings there were in poor condition and not suited to the site nor good for soil erosion control.

The owner has followed my suggestions exactly. The stone wall is a much better replacement for the rotting wood and will hold the slope long term. The plants chosen will hold the soil well without supplemental watering, and the owner has even added to the number of groundcover plants I recommended. These will prevent erosion.

☆ { In summary, I believe the slope in question is in much better shape now and that overall erosion into the lake will be largely eliminated. I would characterize the project scope as little more than simple landscape maintenance, which should be expected periodically and which would not typically require a permit.



Michael Lee

7 OF 8



P.O. Box 82243
Kenmore, Washington 98028
(206) 331-1097

Date: 2/9/18 **Project:** 7709 W. Mercer Way **Job No.:** 2018-031
Contractor: None **Location:** Mercer Island, WA **Weather:** Clouds, 50

Observations:

At your request and authorization, Cobalt Geosciences, LLC was on site to observe completed erosion control placement over the affected portion of the slope area above the shoreline at the reference property.

We observed that the facing of a timber wall had been replaced with stacked stone. Mulch and plants have been placed in the areas and we understand that a landscape architect is involved in the overall planting design and schedule.

In general, the current stone facing is more suitable than the previous railroad tie landscaping wall. The railroad tie landscaping wall was approximately 30-40 years old, and was not an engineered structure. The railroad tie wood was badly decomposed and had been heavily treated with creosote, which should not have remained near the lake environment. In other words, there is no net negative effect on slope stability, erosion or the environment in the area of the recent work.

Given the former landscape wall was not an engineered structure to begin with and the scope of work was limited to yard maintenance to repair the decomposed wall timbers, the new rock facing is consistent with a landscaping wall replacement. } *

The addition of approximately 70 large cypress trees, 60 arborvitae trees and many other additional trees and plants have and will improve surface slope stability and erosion control.

Cobalt Geosciences, LLC

Phil Haberman, PE, LG, LEG
Principal
(206) 331-1097
cobaltgeo@gmail.com

PH/sc