
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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STAFF REPORT TO HEARING EXAMINER

APPEAL OF ACCESS GATE PERMIT 2105-227

Project No:	APL21-006
Description:	Appeal of Access Gate Permit 2105-227 decision, which found that the proposed access gate met applicable requirements of the Mercer Island City Code ("MICC") and the International Fire Code ("IFC") as adopted by MICC Ch. 17.07.
Appellants:	Steve and Sophy Yang, C/O Ahlers Cressman & Sleight PLLC; Cassidy Ingram
Applicants/ Owners:	Christopher A. and Nicole Niederman
Site Address:	6800 96 th Ave SE, Mercer Island, WA 98040
Zoning District	R-8.4
Staff Contact:	Tim McHarg, AICP, Principal Planner Jeromy Hicks, Fire Marshal

INTRODUCTION

The subject of this appeal is the decision for 2105-227, an access gate permit for the property located at 6800 96th Ave SE, APN 3024059098. Access gate permits are Type I permits per MICC 19.15.030.

The purpose of application 2105-227 was to install an access gate along the northerly property line of the subject property. The access gate is located entirely within the boundaries of the subject property, and the gate swings inward toward the subject property.

PROJECT HISTORY AND BACKGROUND

The applicants' property is approximately 16,699 sq ft and located on 96th Ave SE, in the southeast quadrant of Mercer Island. The property is located within a residentially-zoned area. The property has frontage on Lake Washington to the east. The applicants' property is developed with a single-family home, and the adjacent properties to the north, west, and south are also developed with single-family homes.

The applicants applied for an Access Gate Permit (assigned Permit No. 2105-227) in late May 2021 (Exhibits 1-3). The City reviewers included Fire Marshal Jeromy Hicks and Planner Andrew Leon.

After his initial review, Fire Marshal Hicks provided review comments to the applicants on June 1, 2021 with respect to the plans submitted. (Exhibits 9-10). The review comments pertained to the location of the gate on the subject property, the swing direction of the gate, and the method of gate locking/emergency access to same. *Id.* The applicants responded to the review comments on the same day, resubmitting plans, and confirming that the gate would be located entirely on the subject property and would swing inward. (Exhibits 11-14). Based on his determination that the gate access permit met all applicable IFC access gate standards, Fire Marshal Hicks approved his component of the permit review on June 1, 2021. (Exhibit 18).

After his initial review, Planner Leon provided review comments to the applicant beginning on June 18, 2021. (Exhibit 19). The review comments pertained to the height of the gate, posts, and fence. *Id.* The applicants responded to the review comments on July 1 with revised plans to reduce the height of the gate, posts and fence to comply with MICC 19.02.050(E)(1)(a)(i). *Id.* Based on his determination that the access gate permit met all applicable MICC standards for gates and fences, Planner Leon approved his component of the permit review on July 1, 2021. (Exhibit 21)

In mid-July, in response to inquiries from the appellants, Fire Marshal Hicks confirmed with the applicants that the gate would swing inward on July 14, 2021. (Exhibits 26-29).

Having been approved by all City reviewers, access gate permit 2105-227 was issued in late July of 2021 (Exhibits 30-32).

The appellants appealed Staff's determination to issue the permit on July 26, 2021. (Exhibits 33-34)

DISCUSSION OF APPEAL

A. Standards for Review

For access gate permit 2105-227, the standards for review of a gate permit by the City of Mercer Island are the IFC and MICC 19.02.050 (Fences, Retaining Walls and Rockeries), which are addressed in turn below. This gate access permit did not require review under the International Residential Code ("IRC") as adopted by the City of Mercer Island by MICC Ch. 17.02.

B. International Fire Code ("IFC")

In their appeal of access gate permit 2015-227, the appellants have not alleged any specific violations, or misapplications of the IFC. (Exhibit 34) However, as the appeal broadly alleges that "[a]pproval of this permit violates the purpose of the Mercer Island Code, including but not limited to section 19.150.060(8)" [sic], City staff provide the following explanation of Staff's application of the IFC to the permit under appeal.

The IFC is adopted with amendments by the State Building Code Council under WAC Chapter 51-54 as the Washington State Fire Code. The Washington State Fire Code is adopted with local amendments by the City of Mercer Island by MICC Ch. 17.07. Note that none of the local amendments by the City of Mercer Island involve Fire Apparatus Road Gate Access requirements. The 2018 version of the Washington State Fire Code is currently adopted by the City of Mercer Island.

Fire access and gate operation are regulated under the IFC for access width, operation, and components. It should be noted that the specific access, gate construction, and location may fall under several different codes, including the IFC and MICC 19.02.050. The Fire Marshal's office reviews gates for specific tactical approaches to firefighting operations and EMS responses. Put differently, the Fire

Marshal reviews to ensure that gates will not create physical obstacles to the provision of fire department and other emergency responder services. In this case, the access gate is proposed to be located on the applicants' private residential property, and no part of the gate extended into the public Right-of-Way or a private fire access easement. Further, when in operation, the in-swinging gate would not obstruct ingress or egress to or from another's property.

It should also be noted that the Fire Marshal has been to both the applicants' and the appellants' residences in question several times and was able to clearly identify property markers. The gate location is also within roughly 40 feet of the applicants' residence and within their lot boundaries. This area would not be used to place a fire apparatus; however, the gate must be accessible to open by first responders during an emergency. The proposed gate will use the "Click to Enter" system which provides emergency responders access in an emergency. (Exhibit 13)

There are no standards or requirements in the IFC that an access gate must be aligned with a deeded access. The IFC standards require only a fire apparatus access road not be obstructed. IFC 503.4. Further, IFC 503.6 relates to security gates and requires approval by the fire code official for the installation of security gates across a fire apparatus access road. Because the access gate approved by 2105-277 is located entirely on the subject property (and not across a fire apparatus access easement) and swings inward (outside of the area of the fire access road), Fire Marshal Hicks approved the access gate permit as conforming to IFC requirements.

The following are IFC/ Washington State Fire Code (2018 edition) references for the gate installation:

IFC 105.7.12: Gates and barricades across fire apparatus access roads.

A construction permit is required for the installation of or modification to a gate or barricade across a fire apparatus access road.

IFC Appendix D - D103.5: Fire apparatus access road gates.

Gates securing the fire apparatus access roads shall comply with all of the following criteria:

1. Where a single gate is provided, the gate width shall be not less than 20' (6096 mm). Where the fire apparatus road consists of a divided roadway, the gate width shall be not less than 12' (3658 mm).
2. Gates shall be of the swinging or sliding type.
3. Construction of the gates shall be materials that allow manual operation by one person.
4. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.
5. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be approved by the Fire Code Official.
6. Methods of locking shall be submitted for approval by the fire code official.
7. Electric gate operators, where approved, shall be listed in accordance with UL 325.
8. Gates intended for automatic operation shall be designed, constructed, and installed to comply with the requirements of ASTM F2200.

C. MICC 19.02.050: Fences, Retaining Walls and Rockeries

Staff also reviewed the access gate permit application for compliance with MICC 19.02.050. In their appeal application of access gate permit 2105-227, the appellants identify no specific provisions of MICC 19.02.050 that they allege have been applied or interpreted erroneously. However, as the appeal broadly alleges that “[a]pproval of this permit violates the purpose of the Mercer Island Code, including but not limited to section 19.150.060(8)” [sic], City staff provide the following explanation of Staff’s application of the MICC 19.02.050 to the permit under appeal.

The gate is located in the required 5-foot side yard setback of the subject property. MICC 19.02.050(A) allows fences, retaining walls, and rockeries in required yards subject to the standards of that code section.

MICC 19.02.050(E) establishes maximum height standards for fences and gates located in required yards. The maximum height for a fence or gate within the required side yard setback is 72 inches per MICC 19.02.050(E)(1)(a)(i). The maximum height of the gate, including the gate, fence, and posts is 72 inches as shown on the approved plans (Exhibits 19-21). There are no standards or requirements in MICC 19.02.050, or elsewhere in MICC Title 19, that an access gate must be aligned with a deeded access, and Staff did not review the permit application for alignment with a deeded access under MICC 19.02.050.

C. Application of MICC 19.15.060

In the appeal (Exhibit 34), the appellants state the following as the reasons for their appeal:

“While the physical construction may be on the Niederman Property, the proposed gate installation is being installed in a manner that obstructs the deeded access easement and forces the Niedermans to access their property through the Yang Property, in areas where the Niedermans do not have a deeded easement. Approval of this permit violates the purpose of the Mercer Island Code, including but not limited to Section 19.150.060(8) [sic]. The Yangs are involved in active litigation with the Niedermans, and the City, by approving the permit, may have some role in determining the outcome of the litigation, which is inappropriate and runs contrary to Washington State caselaw.”

There is no MICC 19.150.060(8). Staff believes that the correct code reference intended by the applicant is MICC 19.050.060(A)(8), which states as follows:

“Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (A)(9) of this section shall satisfy the requirements of this subsection;”

Per the representations of the Applicants, the access gate approved by 2015-227 is located entirely on the property owned by the Applicants, the Niedermans. The approved access gate swings inward into the property. To the best of Staff’s knowledge, no component of the gate or fence is within the appellants’ property. Therefore, to the best of Staff’s knowledge, the “affected property” is exclusively owned by applicants, the Niedermans. Further, while the appellants allege easement rights, easement rights are property rights separate from ownership that allow the use of another’s land without

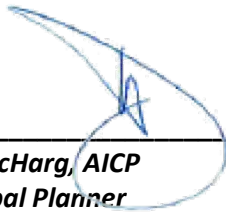
compensation. *810 Props v. Jump*, 141 Wn.App. 688, 696, 170 P.3d 1029 (2007).¹ MICC 19.050.060(A)(8) does not require approval from easement holders and therefore, Staff relied on the Applicants' representations that they were the sole owners of the relevant property when processing the application.

Finally, the City is aware that there is pending litigation between the Niedermans and the Yangs. As the City has previously informed counsel for both parties, the City reiterates it is prepared to comply fully with all orders from the court in that litigation.

CONCLUSION

In approving access gate permit 2105-277, City staff correctly applied the standards of MICC 19.050.060(A)(8), the IFC as adopted with local amendments by MICC 17.07, and MICC 19.02.050. The City respectfully requests that the Hearing Examiner uphold the decision issued for access gate permit 2105-227.

Dated this 10th day of September, 2021.



Tim McHarg, AICP
Principal Planner
Community Planning & Development
City of Mercer Island

¹ *Cf. Halverson v. Bellevue*, 41 Wn. App. 457, 460, 704 P.2d 1232 (1985), requiring cities to exercise caution in approving plats in cases where *ownership* is disputed. Additionally, in *Halverson*, the former Bellevue City Code required final plat sign offs from "all parties having any interest in the lands subdivided," rather than those with "ownership" the MICC requires in MICC 19.15.060(A)(8). *Id*