

# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercerisland.gov](http://www.mercerisland.gov)



### CITY USE ONLY

PROJECT#

APPEAL#

FEE

Date Received:

**APPEAL**

Received By:

SITE ADDRESS OF PROPERTY WHERE THE DECISION IS BEING APPEALED:

4304 East Mercer Way, Mercer Island, WA 98040

PROPERTY OWNER NAME:

Carly Bird-Vogel

ADDRESS:

4304 E. Mercer Way

PHONE:

E-MAIL:

APPELLANT NAME (If different from property owner):

Stephen Strong, Lorri Falterman

ADDRESS:

4314 E. Mercer Way

PHONE:

E-MAIL: [ljfalterman@gmail.com](mailto:ljfalterman@gmail.com)

APPELLANT ATTORNEY INFORMATION (if applicable):

Stephen Strong

ADDRESS:

126 NW Canal St., Ste 100  
Seattle, WA 98107

PHONE: 206-622-3536

E-MAIL: [skstrong@bs-s.com](mailto:skstrong@bs-s.com)

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

Building permit application 2110-247

**What are your reasons for appealing this decision? (Attach additional pages if necessary)**

*(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.)*

The approval is not supported by the facts and is in conflict with requirements of the city code. See attached letter dated Dec. 22, 2021.

**What is the outcome or changes in the decision that you are seeking? (Attach additional pages if necessary)**

Add conditions regarding access road as explained in the Dec. 22, 2021 letter.

Signature:

Date:

July 8, 2022

DAVID F. STOBAUGH  
STEPHEN K. STRONG  
JOHN L. LOESCH  
*Also admitted in Oregon & Alaska*  
ALEXANDER F. STRONG  
*Also admitted in Alaska*

**BENDICH, STOBAUGH & STRONG, P.C.**

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December 22, 2021

Andrew Leon  
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Community Planning & Development  
9611 SE 36th Street  
Mercer Island, WA 98040  
[andrew.leon@mercerisland.gov](mailto:andrew.leon@mercerisland.gov)

**VIA EMAIL**

Re: Permit Application – 4304 East Mercer Way  
File No. 2110-247

Dear Mr. Leon,

I am submitting these comments on behalf of my wife Lorri Falterman and myself, residents and owners of the property at 4314 East Mercer Way, adjacent to the 4304 project property to the East-NE. We have owned the 4314 property since 2004. Throughout that time Dale Vogel and Nancy Bird have held themselves out as the owners of 4304 as well as our next-door property, 4324 East Mercer Way, where they reside. They apparently own the 4304 property through a family LLC, and the applicant, Carly Bird-Vogel, is their daughter.

The issues all arise from development of the lot that is part of the complete redevelopment of the 4304 property. The issues arise because the original developer of this subdivision in the 1950s made some major errors. The private road was laid out as if the whole area were flat. Although on paper the road may have met the requirements for a private road in MI Muni. Code 19.09.040, the road was paved in a way that was both inconsistent with the road's layout and boundaries on the plat, and much narrower than required in portions. (See the two pages of the topographic and boundary survey submitted by the applicant.) The paved road also has an inexplicable error in a corner (just outside the NW corner of the 4304 lot), where the turn is a right angle on a narrow road with a turning radius that ordinary delivery trucks cannot manage.

The problems with the private road as it was paved are significant and make it dangerous. I know of several dangerous situations where a pedestrian had difficulty in avoiding harm from cars at the blind curve on the paved road on the West side of the 4304 property, especially in the dark. This also occurs with cars and trucks sometimes. I spoke with Dale Vogel several years ago about the need for safety improvements on the private road. He agreed there are problems and suggested they might be dealt with when the property was developed. But this did not occur; the plan for the 4304 project property instead makes the road safety problems indefinite or permanent by redeveloping the lot without improvement, rendering the possibility of future corrections or adjustments to the paved road for safety reasons.

In 2015 the City put a new water main under the private road and also tight-lined a storm runoff stream that connected to an underground storm sewer at the corner of the paved road near and outside of the NW corner of the 4304 project property. The City had a contractor repave the

road after the water main project, but apparently Dale Vogel paid the City's contractor something extra to widen the private road in front of his residence (*i.e.*, between his 4304 and 4324 properties) and place large rocks along the 4304 side of the paved portion of the road on the North and NE sides of the project property, some within the private road boundaries. The road repaving therefore did not fix the problems with the corner (at the NW corner of the project property) where it is too tight a turn for delivery trucks, and the repaved road remained outside the private road boundaries at the corner. The problem at the corner was aggravated by the City's contractor (apparently on behalf of Dale Vogel) putting in large rocks just inside that corner of the paved road, *i.e.*, within the private road boundaries and outside the boundary of the 4304 property. This had the effect of interfering with delivery trucks, making them run into the rocks. The large rocks have been pushed back several feet over time by the trucks hitting them, making them mostly out of the way now.

The plan for the 4304 property does not include any provisions for correcting the paved road corner to meet the municipal code requirements, or even for avoiding placement of obstructions such as large rocks within the private road boundaries. The plan should include paving that corner of the private road to meet its correct boundaries in the original development plan.

At least equally important is the dangerous blind curve in the paved road to the West of the 4304 property. The blind curve would not exist if the original development of the subdivision had been followed in the original plan given to the City by the developer. The 4304 project plan needs to include widening of the paved road to avoid the hazards caused by the blind curve, which exist only due to the road being out of compliance with the private road code provision cited above. Instead, the plan shows development ("disturbance") inside the road boundaries and outside the 4304 boundary (including a water meter) and shows a new retaining wall on the existing West slope that assumes the slope will not change.

While it is clear that the development of the 4304 property did not cause the original problems with the private road, except to some extent the turn at the NW corner of the property (as described above), the Municipal Code requirements for private roads should be applied to the 4304 development for several reasons:

- 1) the safety purposes of the Municipal Code provisions on private roads apply to this development, as well as those below it;
- 2) the 4304 property encompasses the majority of the linear feet of the whole Sandy Cove private road, and virtually all of the lower portion of this road, which Dale Vogel told me is separately owned from the upper portion; and
- 3) the original developer's failure to properly lay out the private road boundaries in accordance with the actual location of the private road should not be indefinitely continued by a complete redevelopment of the most important property along the road.

I don't know the terms of the contract among the owners of our private road, but it is possible that some costs such as new paving could be shared with other owners of the road. If the City

December 22, 2021

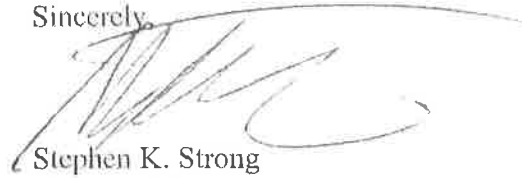
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were to insist that the entire private road be brought up to code as much as reasonably feasible, I think the property owners should all be expected to share in the costs.

About two or three years ago Dale Vogel had seven large Douglas firs (*i.e.*, more than two feet in diameter cut down to the ground level on the West side of the 4304 property as part of planning this development. (I do not see them mentioned in the arborist report, although the stumps remain there, covered by dirt.) I thought that was a good idea because it removed some potential impediments to improving the private road West of 4304 (some of the trees were within or near the private road boundary). But unfortunately that is not the case. Anyway, there should be replacement fir trees put on the 4304 property (and not within the private road boundaries).

I am available to show you the points I'm trying to put into words with an inspection of the property and also available to answer any questions, such as on matters on which I may be unclear.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen K. Strong', with a large, sweeping flourish extending to the right.

Stephen K. Strong  
[skstrong@bs-s.com](mailto:skstrong@bs-s.com)