BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND

In the Matter of the Appeals by STROUM JEWISH COMMUNITY CENTER, ET AL., of an Interpretation by the Community Planning & Development Department	Hearing Examiner File: APL22-004 DECLARATION OF DAN GRAUSZ

I, Dan Grausz, declare as follows:

1. I intended to testify in the appeal, but I have surgery planned for January 12, 2023 which may make it difficult for me to testify at the actual hearing. I have prepared and am submitting this Declaration in the event that I am unable to testify at the hearing.

2. I was a Mercer Island City Councilmember for 18 years, including in 2017 when the "mega-house" legislation (Ordinance 17C-15) was proposed and passed. In fact, I was a major proponent of the mega-house legislation/Ordinance 17C-15 (the "Ordinance"), attending all or almost all of the Planning Commission meetings at which the Ordinance was developed, oftentimes leading the discussion on the Ordinance during Council meetings and being the

MCCULLOUGH HILL PLLC
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
Phone: 206.812.3388
Fax: 206.812.3389

Councilmember who proposed, and got passed, most of the amendments that were approved by the Council during its consideration of the Ordinance.

3. The Ordinance was intended to limit the size of single-family homes. Prior to 2017, large "mega-houses" were being built all over the island that were very out of scale with existing houses in neighborhoods. The Ordinance sought to impose a maximum square footage limit for single family homes based on their lot size, generally limit the impact of large single-family homes on existing houses in neighborhoods, protect the environment by reducing hardscape and generally prevent Mercer Island from turning into a series of gated communities with homes that would be unaffordable for younger couples wanting to raise families in the City.

4. I have reviewed the interpretation issued by Jeff Thomas, Interim CPD Director, on November 21, 2022. A key finding of the interpretation states that "discussion between the City Council and…CPD Director reflected an intent to greatly reduce the number of variances granted, which was the impetus behind adding the hardship criterion now contained in MICC 19.06.110(B)(2)(a)." *Interpretation, Finding 6.* The packet from the July 5, 2017 meeting lists a proposed amendment from me that would "Prohibit the application for a variance to minimum lot area requirements, gross floor area, building height, or lot coverage." Staff did not recommend this amendment and instead recommended limiting variances to "situations where a property owner cannot comply with all of the development standards and build a new single-family home." *Interpretation, p. 4.*

5. The reason I proposed this amendment was my opinion was that there was a significant problem with single-family home builders obtaining variances from the pre-2017 single family code to make their houses larger and more imposing. Public comment reflected

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frustration with a zoning code that, on paper, limited development, but builders being able to obtain variances as a routine matter simply by saying that the market demanded larger homes. The Council wanted to be clear in the Ordinance that variances for single-family houses should not be available as they once were and that instead, homes should be in scale with the size of the lot and should not include excessive hardscape. CPD staff advised that a blanket ban on variances could lead to legal problems by denying people their property rights, so instead they included the language that currently exists in the code that limits variances for single-family houses only when the code results in a single-family house not being able to be built at all. The specific examples I recall being pointed out by CPD staff included flag lots (which required additional hardscape for the private right-of-way to the public street) and very small (but legal) lots in which the requirements of the code would leave insufficient area to build a house and a driveway and/or include setbacks. This concern about small lots is why one sees the reference in MICC 19.06.110(B)(2)(a) to "a legally created, residentially zoned lot."

6. CPD's reliance on this amendment as "intent" that the City Council meant to limit variances of non-residential structures is misplaced and wrong. The intent of the City Council was never to limit the ability of clubs, institutions, schools, and other non-residential structures located in single-family zones to obtain variances. We did not consider this clause to be applicable to non-residential structures; it was never even discussed by the Council because no one thought about it at the time as we were discussing single family residences. The major impetus behind the Ordinance was controls on the development of single-family houses, which is reflected in the many hours of public testimony that was received by the Council on the matter.

McCULLOUGH HILL PLLC
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
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7. It is illogical to now suggest that language in MICC 19.06.110(B)(2)(a) talking about the ability to construct a single family home somehow was intended to apply to non-residential uses. This aspect of the Interpretation suggests the Council and then-existing CPD staff did not distinguish between residential and non-residential uses as otherwise, why would Council talk about being able to build a single family home when referring to non-residential development. Neither we nor then-existing CPF staff would have intentionally created a scenario as suggested by the Interpretation that one undertaking non-residential development can only get a variance if necessary to undertake residential development.

8. In addition, while the Interpretation tries to reconcile MICC 19.06.110(B)(2)(a) with MICC 19.06.110(B)(2)(i) by concluding that the words "prevent the construction of a single-family dwelling on a legally created, residentially zoned lot" does not apply to a variance under MICC 19.06.110(B)(2)(i), it would be equally plausible to say that by having included MICC 19.06.110(B)(2)(i) in the Ordinance, Council must not have intended the problem language in MICC 19.06.110(B)(2)(a) to be applicable to any non-residential development variances or simply assumed it was inapplicable to non-residential development. The history behind MICC 19.06.110(B)(2)(i) was quite straightforward from my recollection. Council was concerned about development on steep slopes (due to landslide risks) but was prepared to allow additional impervious surface for non-residential development on flatter lots, subject to certain conditions.

9. True and correct copies of the meeting minutes from the many meetings at which the City Council took public comment and discussed the Ordinance are attached as Exhibit A to this Declaration. The primary focus of the Ordinance was residential development and making

MCCULLOUGH HILL PLLC
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Fax: 206.812.3389

sure that the revised code could not be circumvented by aggressive residential developers. In fact, the Ordinance makes clear that it is to apply to "all building and other construction permits associated with single family development received on or after the effective date of the ordinance." The "prevent the construction of a single-family dwelling on a legally created, residentially zoned lot" language at issue in MICC 19.06.110(B)(2)(a) was never intended to limit the ability of non-residential structures to rebuild, remodel, or expand.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 10th of January, 2022, in San Francisco, CA.

Dan Grausz

[HOLD TO INSERT EXHIBITS]

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