

- Existing grade determination by code official
 - Existing grade is the grade established in the 2021 survey submitted with the building permit application - OR - the interpolated grade done by neighbors based on the conclusions of the out of date administrative interpretation:
 - No. 3 is based on whether or not there is a current survey available. The interpolated survey done by the neighbors is based on a survey from 1961 and an old survey for a neighboring property.
 - The existing house was built in 1952.
 - We need to decide which method is correct and which one we want to make the applicant go through with. This would affect the project's maximum height and gross floor area (basement exclusion) allowances.
- Existing rockery needs mitigation
 - Michele's original email in October:
 - Comment:
The geotechnical engineering report indicates "...due to the loose nature of the upper fill soils behind the rockery, it would only be considered moderately stable, and likely has a current factor of safety of 1.0 or slightly higher with regards to slope stability."

Indicate how this hazard is being mitigated (MICC 19.07.160).

Although the new site development is not "touching—altering" the existing rockeries (except for utilities that may be incorrectly located on the civil drawings) does this statement in the report identify a hazard that then has to be mitigated? FS of 1.0 is not the standard for long term stability—not to mention the use of rockery to retain a loose fill.

- Don's reply:
 - Ryan or Jeff, please see Michele's question whether to include a comment requesting mitigation for an appropriate factor of safety (FOS) for an existing rockery located below a SF Demo/Rebuild project. If the Geotech report did not mention the FOS, then we would have assumed the existing rockery was acceptable. However, the Geotech report stated the existing rockery has a FOS that is less than standard for a new design and the scope of work does not propose any mitigation. However, the scope of work does not touch the rockery, so Michele's question is whether MICC 19.07.160 applies, which would trigger her comment to provide mitigation.

My initial thoughts based on code language are the following (but it's your call):

The Title 19 definition of "Development" appears to extend to the entire site, so believe the statements within MICC 19.07.160 would apply, and

mitigation to the rockery should be addressed. This would be an unpopular interpretation because it is an existing rockery that is not touched, and the cost to repair the situation is very expensive. On the other hand, there are public comments from the downhill neighbors expressing concerns of this rockery failing.

Also, when considering that this is an existing rockery, as previously stated, our first assumption is that an existing rockery is likely constructed properly, considered “grandfathered”, and no comment would be made. However, because the geo report information describes construction methods that would not have been legal at the time along with the marginal FOS, it may not be appropriate to consider the rockery to be legally grandfathered. Your choice, please feel free to contact me for questions.

- Michele’s reply (after some back and forth)
 - I think the issue is that the rockery is substandard to begin with and the geotechnical engineer has noted a marginal stability (no stability analyses were given, but rockeries are not used to retain a fill since they are not considered retaining walls). Also the fact that the fill is loose indicates no compaction during original placement of this fill—so this fill would be considered an uncontrolled or unengineered fill. Since this has been noted by their geotechnical engineer, it is my opinion that there has to be some mitigation.
- We determined that mitigation would be required for the rockery due to the fact that it was not constructed with methods that would have been legal at the time with the marginal factor of safety. Additionally, several public comments were regarding the rockery.
- March - Michele asked about height restrictions for the rockery. The rockery is located partially in the front and side yard setbacks, and partially in the ROW. Per MICC 19.02.050, the rockery is limited to 72 in height. The existing rockery is around 11 ft at the tallest point in the SW corner of the property. Michele stated that the height requirement in the front yard will complicate their mitigation of the marginally stable rockery.
- Don’s reply:
 - Molly, maybe I do not understand the scope of work correctly, but are there exemptions for an existing situation? It seems problematic to require the repair/replacement of the many existing property line walls around Mercer Island that are over 72” with a max 72” wall. Perhaps there is an exemption or interpretation (e.g. - definition of preconstruction/existing grade, etc.)? After confirming, please make any wall height restrictions as a separate land use comment, so questions are directed to you and not Michele.

Michelle, please do not include the land use wall height requirement in your comment. Instead, please feel free to refer to Molly’s land use comment.

- Per MICC 19.01.050(B)(1): *Ordinary repairs and maintenance*. Ordinary repairs

and maintenance of a legally nonconforming structure are permitted. In no event may any repair or maintenance result in the expansion of any existing nonconformity or the creation of any new nonconformity. However, Michele and Don's original comments stated that the rockery was not constructed using methods that would have been accepted for the factor of safety. Therefore, I don't think that we can use ordinary repairs and maintenance for the structure to maintain the existing nonconforming height.