

**From:** [jim.mattison.me](mailto:jim.mattison.me)  
**To:** [Molly McGuire](#)  
**Subject:** APL23-009 Ruling and Its Implications for Building Permit 2207-019  
**Date:** Sunday, January 21, 2024 6:05:10 PM  
**Attachments:** [APL23-009 Ruling Comments.pdf](#)

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Hello Molly -

Please see my attached comments pertaining to the above listed project.

Thank you,

Jim Mattison

Ms. Molly McGuire  
Planner  
Community Planning and Development City of Mercer Island  
9611 SE 36th Street  
Mercer Island, WA 98040

RE: APL23-009 Ruling and Its Implications for Building Permit 2207-019

Hello Ms. McGuire -

As an appellant of CAO23-011, I am writing to ensure that the conclusions of the Hearing Examiner in APL23-009 are applied to Building Permit 2207-019, both of which are for the 6950 SE Maker Street Site.

In the Hearing Examiner's "summary dismissal" of APL23-009, issued December 2, 2023, he found the following set of facts: "the rocks covering the western slope were placed on the slope as it existed in 1955. The rocks may well be protecting the slope from erosion, but they are not retaining the slope in the normal sense of a typical, near-vertical retaining wall; **they are not a wall**" (emphasis added).

It is important to note that MICC defines "Retaining walls/rockeries" as "**A wall** of masonry, wood, rock, metal, or other similar materials or combination of similar materials that bears against earth or other fill surface for purposes of resisting lateral or other forces in contact with the wall, and/or the prevention of erosion" (emphasis added).

Because the Hearing Examiner found that there is "not a wall" in place at 6950 SE Maker, the rocks that are present today cannot be considered "retaining walls/rockeries" under current MICC, and therefore, the definition does not apply. Additionally, because these rocks have been deemed "not a wall", they cannot be typified as a "retaining wall" under the Mercer Island 1960 Zoning Code, and as such are not a structure.

Because these rocks are not considered and do not meet the definition of a structure, they are not grandfathered as a legally/nonconforming structure per MICC 19.01.050 which states, "All structures...that lawfully existed prior to September 26, 1960, shall be considered legally nonconforming". (Incidentally, this ruling agrees with the Applicant's July 6, 2023 memo which argued that the rocks were indeed "not 'structure'".) See [SUB4 additional submission](#).

Because the rocks are not a legally nonconforming structure, any retaining wall (piling) or rockery proposed for 2207-019 should comply with the current MICC regulations (including height in required yards) for retaining walls that retain the fill slope. (The Hearing Examiner, the Applicant's consultants, and the City itself have all acknowledged the presence of this fill slope.)

In closing, and I will keep this brief, I also want to express my disagreement with the Hearing Examiner's ruling pertaining to existing grade. New "concrete evidence", photographs taken during the time of development (1952-1955), clearly shows the native sloping grade and subsequent placement of substantial fill materials which backs up our interpolated contours. This evidence should be considered. I also want to express my disappointment with the City for continually dismissing what clearly is a tree cutting violation involving an exceptional tree during time of development planning for 6950 SE Maker Street.

Thank you for taking my comments.

Jim Mattison