

From: Jeff Thomas <jeff.thomas@mercerisland.gov>
Sent time: 2022/06/16 09:36:26 PM
To: Kate Miller <kate@brandtdesigninc.com>
Cc: Colin Brandt; Bree Medley <bree@brandtdesigninc.com>; Andrew Leon
Subject: RE: Building Permit No. 2109-150
Attachments: FW: Building face /height question RE: Permit # 2109-150 Clarifications 220510_2109-150_HeightCoordinationPackage.pdf

Kate,

This message is responsive to your request for clarification related to Building Permit No. 2109-150, specifically the application of Mercer Island Municipal Code (MICC) 19.02.020(E)(2) for maximum building height on downhill building façade. We discussed the matter at issue during a video meeting on May 26, 2022. MICC 19.02.020(E)(2) requires maximum building height on downhill building façade as follows:

2. *Maximum building height on downhill building facade.* The maximum building facade height on the downhill side of a sloping lot shall not exceed 30 feet in height. The building facade height shall be measured from the existing grade or finished grade, whichever is lower, at the furthest downhill extent of the proposed building, to the top of the exterior wall facade supporting the roof framing, rafters, trusses, etc.

While a plain reading of this code requirement is clear, there has been an attempt to construe it in a manner that would allow another and/or perceived façade of lesser height located closer to a property line to be used to meet the requirement of MICC 19.02.020(E)(2), provided “structural independence” was achieved. This was further qualified by a former employee that such structural independence was acceptable provided, “The lower roof must include framing, rafters or trusses. In other words, it cannot be simply a projection.” (see attached McHarg 11-12-2021). Furthermore, it was noted that structural independence would need to be determined by a Building Plans Examiner, not a Land Use Planner (see attached McHarg 02-09-2022).

Based on a review of applicable provisions of the MICC, relevant information submitted as part of Building Permit No. 2109-150, information exchanged at our May 26 video meeting and discussion with Mercer Island staff, I’ve concluded the following as the designated Code Official by definition of the MICC for the City:

1. The legislative intent of MICC 19.02.020(E)(2) is clear - the maximum building facade height on the downhill side of a sloping lot shall not exceed 30-feet in height, measured as described.
2. The application of MICC 19.02.020(E)(2) to the proposal contained within Building Permit No. 2109-150 results in a building height on the downhill building façade of 33-feet, 6-inches (see attached).
3. MICC 19.02.020(E)(2) does not contemplate multiple building facades or exterior wall facades on the downhill side of a sloping lot – only the maximum building façade height as a singular treatment, the exterior wall façade supporting the roof framing, rafters, trusses etc.
4. The phrases “structural independence” and “structurally independent” are not contemplated anywhere in the MICC, including MICC 19.02.020(E)(2).
5. The attempt to construe MICC 19.02.020(E)(2) in the manner that has occurred has left this code requirement looking like a shell of itself, leaving a completely unchecked exterior wall façade height in favor of another lesser exterior wall façade height on the downhill side of a sloping lot. This is far outside the bounds of what I believe to be the legislative intent.
6. Therefore, in the absence of further direction in the MICC, there are two options to resolve the building height on the downhill building façade of 33-feet, 6-inches for Building Permit No. 2109-150:
 - A. Revise this application to comply with MICC 19.02.020(E)(2) 30-foot requirement; or
 - B. Apply for a Zoning Variance to seek relief from this requirement.

I appreciate your patience waiting for a final response to this matter. As you’re likely aware the planning division has been significantly short staffed in recent weeks, but work volumes have continued to increase.

Thanks, Jeff