

**CITY OF MERCER ISLAND
HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Wayne Seminoff

File Numbers: VAR07-004, VAR07-005, VAR07-006, VAR07-007

Application: The applicant seeks variance relief from the minimum front yard standard, the minimum rear yard standard, the maximum allowed percentage of impervious surface, and the maximum allowed percentage of gross floor area.

Public Hearing: The Hearing Examiner held a public hearing on the application on March 8, 2010, in Mercer Island City Hall, Mercer Island, Washington. Represented at the hearing were the City's Development Services Group, by Travis Saunders, Planner; and the applicant, Wayne Seminoff, pro se. A verbatim recording of the hearing is available at the City Clerk's office. The Examiner viewed the site on March 5, 2010. The record was held open through March 15, 2010, to receive a response from DSG to some of the applicant's exhibits.

Staff Recommendation: Denial

Findings of Fact

1. The applicant, Wayne Seminoff, has applied for four variances: (1) a variance from the required 20-foot front yard, to one foot or less (VAR07-004); (2) a variance from the required 25 feet rear yard, to one foot (VAR07-005); a variance from the maximum allowed impervious surface area, from 30 percent to 51.77 percent (VAR07-006); and a variance from the maximum allowed gross floor area, from 45 percent to 81.2 percent (VAR07-007). The applicant requests variance relief as part of his proposal to construct a single family residence of approximately 3,692 square feet.
2. The subject property is located at 53XX West Mercer Way, and is approximately 3,755 square feet in size. The undeveloped property is King County Parcel #2948900005.
3. The site is zoned R-15 Single Family (minimum lot size 15,000 square feet). The zoning of the surrounding area is also R-15, and the areas to the north, south, west and east across West Mercer Way are developed with single family residences. The lot fronts on West Mercer Way, which is a secondary arterial with a posted speed of 30 mph. Near this location, the road curves and visibility can be limited because of this.
4. Lots in the area tend to exceed the minimum lot size and have large yards. The average lot size in this area of R-15 zoning is 18,225 square feet. The lots in the neighborhood have an approximate average impervious surface coverage of 28.42

percent. Houses on lots in the immediate area have an average gross floor area of 26.3 percent of lot size. The average front yard setback on lots in the area is approximately 40 feet, and the average rear yard setback is approximately 51.4 feet. The development pattern in the vicinity includes a wide variety of housing styles, with houses built during the last five decades under the applicable development codes of the time.

5. Properties in the vicinity are shown in Exhibit 1 and other documents in the file. The property immediately to the west has a side yard which abuts the subject property. Thus, a conforming structure could be built on this neighboring lot, to within five feet of the property line between the two lots.

6. The subject lot is approximately 140 feet in width, and ranges between 17.46 feet to 46.59 feet in depth. Because it is less than 50 feet deep, the lot does not meet the minimum requirements for development established in MICC 19.01.050(G)(3).

7. There is a Puget Sound Energy (PSE) easement which encumbers the lot. A survey submitted by the applicant in October 2007 indicates there is a water meter and irrigation control valve in the City Right-of-Way, near the existing stairway that crosses the property. City maps indicate that a water line on the site serves the property at 5270 Forest Avenue SE. A survey submitted by the applicant on March 17, 2009, shows the "approximate" location of water service to 5270 Forest Avenue SE and an "approximate" location of an irrigation water line; the survey is not stamped or signed by the surveyor of record.

8. The City's critical areas maps show steep slope areas and erosion and landslide hazards on the property.¹ MICC 19.07.020(C) provides that the approximate location and extent of critical areas are shown on the city's critical area maps, and that the maps are used as a reference. "The applicant is responsible for determining the scope, extent and boundaries of any critical areas to the satisfaction of the code official."

9. Under the Code, the site is considered a geologic hazard area. MICC 19.07.060 sets out requirements for development within a geologic hazard area. Among other requirements, the applicant is required to submit a geotechnical report which satisfies this section, and development can only occur if the code official reaches the requisite conclusions identified in this section.

¹ The applicant at hearing presented an enlarged copy of the City's critical areas map, and pointed out that on his enlarged version, his property was no longer within the shaded areas denoting various hazard areas. However, the maps referred to in the Code are the City's official maps, not an enlarged copy that changes or distorts the appearance of the shading or boundaries as they appear on the original; and there is nothing in the record to show that the code official agrees that there are no critical areas on this site pursuant to MICC 19.07.020(C).

10. As part of his application, the applicant submitted a "Limited Geotechnical Engineering Report" dated March 9, 2007, which was prepared by the Riley Group. The report states that it is a "letter report" providing preliminary recommendations, based on limited soil investigation at shallow depth. The report noted that no site grading or building plans were available for review at the time of the report. Among other recommendations, the report stated that "The soil condition at deeper depth needs to be verified during project design and construction stage as soon as site access is available." The report noted that "curved trees and surface erosion" were observed on the site, and that the slope surface "seems to have experienced long-term creep."

11. A March 13, 2008 letter by the Riley Group stated that it had reviewed architectural plans for the site dated October 4, 2007. The letter noted that based on those plans, "Excavation up to 15 feet will be needed along the east property line to reach the final grade elevation." The letter also stated that the consultant had not found any "obvious surface indications or history of unstable soils in the immediate vicinity during our field exploration" (presumably referring to its 2007 visit).

12. The City's Building Official, Don Cole, stated at hearing that the Riley reports were not sufficient to verify that other properties would not be affected by the proposed disturbance of the hazard area. Mr. Cole stated that he would not be able to approve development at this site in light of the lack of sufficient information. He noted that the City's standard practice is to require needed information, which under these circumstances included a geotechnical soils report, before it issues a land use approval.

13. The City's Development Services Group (DSG) determined that the site is a legally non-conforming lot. Pursuant to MICC 19.01.050(G)(3), DSG also determined that the strict application of MICC 19.01.050(G)(3)(b) would prevent all reasonable use of the lot, and that the applicant was not involved in the creation of the legal nonconformity. DSG thus determined that under MICC 19.01.050(G)(3), the applicant could be permitted to use the lot for one single family residential dwelling, as long as all other applicable site, use and development standards were met, or a variance from those standards had been obtained.

14. The applicant submitted an initial application in March 2007, but this application and subsequent applications were not deemed by the City to be complete pursuant to MICC 19.15.020(C)(2). The applicant's October 16, 2007 submittal was determined to be complete on November 13, 2007. On November 26, 2007, the application was put on hold pursuant to the applicant's request. On December 13, 2007, the applicant advised DSG that he would proceed with the application as "originally presented."

15. A Notice of Application was published on January 14, 2008. DSG requested additional information in a February 12, 2008 letter. Among other items, DSG requested: an updated geotechnical report meeting the standards of MICC 19.07.050 and .060, including a statement of risk, as well as an analysis of historical slide activity in the area

(based on reports of historic slide activity reported in public comments); a survey showing the location of utilities on the property; and more specificity as to the physical conditions on the lot that justified a variance. The letter also cited MICC 19.01.050(G)(3), and advised the applicant to "explore development options in closer conformance to applicable development standards. Examples might include reducing the footprint of the proposed building and/or relocation of the PSE easement."

16. In a December 8, 2008 letter to the applicant, DSG noted that it not yet received a response to its February 12, 2008 request for additional information.

17. The applicant submitted materials labeled "Seminoff 2d Submittal" on March 17, 2009; Exhibit 14. The March 2009 submittal differed from the 2007 application, showing a footprint that had been reduced from 1405 to 1401 square feet, and showing larger percentages of impervious surface (from 45.22 percent to 51.77 percent) and gross floor area (from 75 percent to 81.2 percent). The size of the proposed structure increased from 3,365 square feet to 3,692 square feet. The drawings still showed an 18 percent slope in the 10-15 foot "transition zone" between West Mercer Way and the steepest portions of the driveway, which would violate the City Engineer's standards and which DSG considers unsafe.

18. On August 28, 2009, DSG sent the applicant another letter (Exhibit 15) which reiterated many of the same requests for information that were in DSG's February 12, 2008 letter. DSG also requested additional information about the applicant's March 2009 submittal. The letter asked for to-scale plan sheets, noting that the applicant's plan sheets were out-of-scale and that the elevation and section views were at a distorted scale, so the measurements could not be verified by staff. The letter also noted that the March 17, 2009 survey was not stamped or signed by the surveyor of record, and asked for a properly certified survey. The letter noted that the applicant had been advised in April 2008 that the City Engineer would require that the first 10-15 feet from the City street be less than a five percent slope to provide a transition zone between the street and the steeper portion of the driveway, but that the drawings showed an 18 percent slope for this transition area. The letter asked the applicant to clearly show how the 5 percent transition zone would be accomplished.

19. The procedural history of this application is further described in the staff report at pages 6-7. Exhibit 17 shows the timeline of communications between the City and the applicant.

20. The SEPA responsible official issued a Mitigated Determination of Nonsignificance (MDNS) for the project on November 23, 2009. The MDNS was not appealed.

21. The MDNS identified several impacts from the proposal. The SEPA official determined that there was an increased risk of accidents because the steep incline of the

project's driveway would cause limited visibility and slower acceleration speeds for vehicles entering West Mercer Way from the site. The MDNS also identified an increased risk of traffic accidents, given the limited vehicle turning radius on the property, if vehicles entering or exiting the property attempted to back onto or off of West Mercer Way. The MDNS also identified impacts from site construction activities that could affect utilities, trees and other vegetation within the West Mercer Way right-of-way

22. To mitigate these impacts, the MDNS requires the proposal to provide a transition zone between the street and the driveway, with the first fifteen feet of the driveway from the edge of the pavement on West Mercer Way to be less than five percent slope. The MDNS requires that vehicles entering or exiting the property cannot back onto or off the street, and that the applicant's proposed mechanical vehicle turnaround device must be approved by the City Engineer. The MDNS also requires that all construction activities must be performed on the property without encroaching into the West Mercer Way right-of-way.

23. A number of public comment letters were submitted to DSG and to the Hearing Examiner concerning the application. Several members of the public offered public testimony at the hearing.

24. DSG reviewed the application in light of the variance criteria contained in MICC 19.15.020(G)(4), and recommended denial of all of the variances.

25. In its staff report and at hearing, DSG noted that the applicant had consistently failed to provide sufficient information to show how the requested variances met the Code criteria, and that the submitted generalized drawings and narrative descriptions of the project did not support the requests.

26. DSG also noted that the lack of specificity in the applicant's submittals raised substantial doubts as to whether proposal could be developed under the City's building codes and standards that were not subject to variances. The transition zone of 10 feet with a five percent grade to the street would be a requirement that is not subject to variance, but there was no indication as to how the application could feasibly meet this requirement. DSG also noted that the building code would not allow openings within three feet of the property line, and therefore under the applicant's proposal, the view side of the house would not be allowed to have windows, given the proposed setback. In his hearing submittals, the applicant suggested that he could address this issue by incorporating a five-foot setback, and seeking relocation of utilities and the PSE easement if necessary.

27. DSG's analysis (see page 11 of the staff report) estimates that revisions to the site plan would allow the site to accommodate required parking, creating a 584 square foot building pad with additional living space stacked above to the height limit of 30 feet.

Such a design revision would allow the site to be developed with a house that would meet the Code-required percentages for impervious surface and gross floor area. DSG's staff report (at page 9, footnote 3) also shows that a West Mercer Way house with 740 square feet on a 5,400 square foot lot was sold for \$675,000 in 2007.

28. A prehearing conference was held with the parties on January 13, 2010, and the Examiner issued a Prehearing Order on January 14, 2010. The Order set forth a prehearing schedule, and the parties were required to file and serve their proposed exhibits by February 22, 2010, with original exhibits to be kept in the City file and working copies submitted to the Examiner. The Order also required that the staff report be filed and served on that date.

29. The parties filed and served exhibits on February 22, 2010. DSG filed an objection, based on lack of relevance, to the applicant's Exhibits 3 and 4, consisting of portions of previous City variance decisions. The Examiner heard argument from the parties during the hearing concerning the objection, and advised them that she would admit those exhibits but would give them what weight, if any, they might merit. The Examiner also admitted Exhibit 23, submitted by DSG as rebuttal to the applicant's exhibits.

30. The applicant filed additional exhibits with the Hearing Examiner prior to hearing, but did not serve DSG with a copy of those exhibits. This fact was only discovered by the Examiner and DSG toward the end of the hearing. The Examiner left the record open for one week, until March 15, 2010, to allow DSG to respond to the exhibits.

31. On March 12, 2010, the applicant filed with the Hearing Examiner and apparently served on DSG additional exhibits ("Final Reply to Issues for Variance Approval"). DSG filed its response on March 15, 2010, which included an objection to all of the late-filed exhibits on the grounds that the applicant failed to serve DSG with them, as required by the prehearing order, that the exhibits were untimely under the prehearing order, and that the exhibits were not relevant or included proposed revisions to the application that had not been provided to the City or the public. In addition, DSG noted that there were various documents that had not been provided to the Hearing Examiner, although they were provided to the City.

32. The applicant responded via email to the City's objection with his own objection to DSG's response as being untimely because it was delivered on March 15, 2010 after 5 p.m.

33. The Comprehensive Plan includes the following statements:

Land Use Policies Outside the Town Center

Goal 7: Mercer Island should remain principally a low density, single family residential community.

Goal 8: Achieve additional residential capacity in single family zones through flexible land use techniques.

Goal 8.5: Encourage infill development on vacant or under-utilized sites that are outside of critical areas and ensure that the infill is compatible with the surrounding neighborhoods.

Land Use Element IV Land Use Issues

Outside the Town Center (4): Ongoing protection of environmentally sensitive areas including steep slopes, ravines, watercourses, and shorelines is an integral element of the community's residential character.

Natural Environment Policies Goal 10.1: The City of Mercer Island shall protect environmentally sensitive lands such as watercourses, geologic hazard areas, steep slopes...Such protection should continue through the implementation and enforcement of critical areas and shoreline regulations.

Natural Environment Policies Goal 10.3: New development should be designed to avoid increasing risks to people and property associated with natural hazards.

34. MICC 19.01.050(G)(3) states in part:

Minimum Requirements for Development of Legally Nonconforming Lot. In order to be used as a building site, an undeveloped legally nonconforming lot must meet the following minimum requirements:

- a. The lot must exceed 3,500 square feet;*
- b. The lot must have a minimum width of 30 feet and a minimum depth of 50 feet;*
- c. The property owner must provide evidence that establishes that the lot was intended to be a building site at the time of its creation; and*
- d. The lot must not be subject to consolidation pursuant to subsection (G)(5) of this section.*

If the owner provides proof to the satisfaction of the code official, demonstrating that the strict application of subsections (G)(3)(a) through (d) of this section prevents all reasonable use of the lot and that the owner

was not involved in the creation of the legal nonconformity, such owner may be permitted to use the lot for one single-family residential dwelling, even if the lot does not meet the size, width, depth and other dimensional requirements of the zone, as long as all other applicable site, use and development standards are met or a variance from such site use or development standards has been obtained.

35. MICC 19.01.070 provides that

An applicant for a permit under this development code may request a variance or deviation from those numeric standards set out in the code that are applicable to the permit. The applicant shall make such a request to the official or body designated in MICC 19.15.010 (E).

A. Variance.

1. *An applicant may request a variance from any numeric standard applicable to the permit or from any other standard that has been specifically designated as being subject to a variance.*

2. *A variance may be granted if the applicant demonstrates that the criteria set out in MICC 19.15.020(G)(4), and any additional variance criteria set out in the code section under which the permit would be issued, are satisfied.*

36. MICC 19.15.020(G)(4) contains the criteria for granting a variance:

4. Variances.

a. *No use variance shall be allowed;*

b. *There are special circumstances applicable to the particular lot such as the size, shape, topography, or location of the lot; the trees, groundcover, or other physical conditions of the lot and its surroundings; or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access;*

c. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;*

d. *The granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property; and*

e. The variance is consistent with the policies and provisions of the comprehensive plan and the development code.

Conclusions

1. The Hearing Examiner has jurisdiction over this application pursuant to MICC 19.15.010(E).
2. As noted in the findings, a number of exhibits were offered by the applicant after the deadline for filing and service of exhibits, and after the hearing. In some cases, the applicant did not serve DSG with a copy of the exhibit. The City's March 15, 2010 objection to untimely and improper filings must be sustained; no good cause was shown for disregarding the schedule and procedure set forth in the January 14, 2010 prehearing order. Therefore, the applicant's exhibits referred to in the City's motion as Exhibits B, C and D, as well as the post-hearing March 12, 2010 "Final Reply" document are not admitted and are not a part of this record.
3. The applicant objected to the City's response as untimely, but the City's response was submitted by March 15, 2010, the date specified by the Hearing Examiner at the hearing. The objection is overruled.
4. The City determined that this lot may be developed with a single family home under MICC 19.01.050(G)(3) to avoid denying the owner of all "reasonable use." As noted in the DSG staff report, reasonable use is any economically viable use for which a property is reasonably adapted; *Carlson v. City of Bellevue*, 73 Wn.2d 41, 435 P.2d 957 (1967). The applicant has suggested that he is entitled to construct a house with the same size and/or dimensions as neighboring houses on substantially larger lots, but that is not the correct standard for determining "reasonable use."
5. The SEPA MDNS for this project was not appealed, and the analysis and mitigation described in that decision must be accepted for purposes of reviewing this proposal.
6. MICC 19.15.020(G)(4) sets out the criteria for variances, as set forth below. In order for a variance to be granted, the applicant must demonstrate that all of the criteria are satisfied; MICC 19.01.070.
 - a. **No use variance shall be allowed;**
 7. No use variance is proposed with regard to any of the variances, so MICC 19.15.020(G)(4)(a) is met.
 - b. **There are special circumstances applicable to the particular lot such as the size, shape, topography, or location of the lot; the trees, groundcover, or other physical conditions of the lot and its surroundings; or factors necessary for the**

successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access;

8. The lot's shallow depth, which ranges from 17.45 feet to 46.59 feet, is a special circumstance satisfying subsection (4)(b) with regard to the variances for the front and rear yards. The Code requires a front yard of 20 feet and a rear yard of 25 feet, and application of these requirements would leave insufficient area to construct a single family residence on the site. Thus, this criterion is met.

9. Special circumstances have not been demonstrated to support the granting of variances from the impervious surface limit or from the gross floor area limit. The applicable impervious surface limit is 30 percent, or approximately 1,126 square feet. The staff analysis shows that parking and living space within the maximum gross floor area allowance of 45 percent (1,689 square feet) could be achieved on this lot while also meeting the applicable impervious surface limit.

10. The applicant has not provided information which credibly rebuts this analysis. He notes there are many houses in the City and along West Mercer Way which are as large or larger than his proposed house, and that he too would like to enjoy a house of similar size. But the applicant has not demonstrated that there are special circumstances that prevent this project from meeting the Code standards for impervious surface and gross floor area limits.

c. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;

11. The yard variances would reduce the front yard to zero to one foot, and the rear yard to one foot. As noted in the findings, the applicant did not submit scaled drawings of his proposal, so the exact locations of the structure walls are not known. Based on the information which is in the record, the applicant has not satisfied this criterion. The proposed site access off West Mercer Way does not meet the City Engineer's standards for safe vehicular ingress/egress given the elevation difference between the street and the site, which limits visibility and causes slow acceleration speeds for vehicles entering West Mercer Way. The applicant responded at hearing that he could address the need for a transition by running the driveway parallel to West Mercer Way for 60 feet, but there is no indication that this would be legally permissible or would address the safety concerns raised by the City Engineer.

12. The record also indicates that utilities, e.g., a water line, serving other properties lie beneath the applicant's proposed building pad, the location of which is affected by the yard variances. The applicant has not provided credible survey information showing the location of these utilities, which is needed to demonstrate that his proposal does not impair or interfere with utilities on and off the site. Instead, he has asked that the

variances be approved, after which he could shift the site of the house and move the water lines and power lines. Absent credible information about the location of utilities, and a scaled site plan made available to the City for review, the offer to move utilities later does not satisfy this criterion.

13. The site contains areas that are shown on the City's critical area maps as steep slopes areas and areas presenting erosion and landslide hazards. Absent the information repeatedly requested by DSG concerning historical slide activity and soil conditions at 15 foot depths, it cannot be concluded that any of the variance requests would satisfy this criterion.

d. The granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property; and

14. None of the variance requests meet this criterion, in light of the safety concerns created by the site's access that could impair use of West Mercer Way, the potential for the building pad to interfere with utilities serving other properties, and the lack of information about geologic hazards that might affect development of the site. The proposed reduction of yard sizes to as little as zero or one foot, and the high percentage of impervious and gross floor area sought, would also alter the character of this neighborhood, given the existing development pattern.

e. The variance is consistent with the policies and provisions of the comprehensive plan and the development code.

15. The applicant is proposing a single family home, which is a consistent with the Comprehensive Plan's goals (Land Use Element, Goals 7 and 8) for low density, single family residential uses in single family zones. Because a single family residence cannot be constructed on this lot with the required front and rear yards, variances from the yard requirements would be consistent with these goals.

16. However, granting any of the variances, based on the information in this record, would conflict with Land Use Element – IV. Land Use Issues Outside the Town Center, number 4, which calls for ongoing protection of sensitive areas, including steep slopes. The variance applications do not show how impacts on sensitive areas on the site or in the vicinity will be minimized, or show how the impacts will be addressed.

17. The proposed variances are not consistent with Goal 8.5, which encourages infill development outside of critical areas compatible with surrounding neighborhoods. It is not consistent with Natural Environment Policy Goal 10.3, since the information does not show that the risks from geologic hazards are minimized and indicates that access to West Mercer Way would not meet minimum safety standards.

Hearing Examiner Decision

VAR07-004/VAR07-005/VAR07-006/VAR07-007

Page 12 of 18

19. The applicant has expressed much frustration with the application process, particularly DSG's repeated requests for a reliable survey of the utilities on the property, a five percent transition zone of at least 10 feet, a complete geotechnical soils report, historical information about slides in the area, and scaled drawings to demonstrate compliance with standards. The applicant notes that he has submitted thousands of pages of documents to the City, and there is no reason to doubt this, but those pages do not show that his application meets the variance criteria. The information in the record does not provide a reasonable basis upon which to grant any of the variances, and the City cannot simply grant them and accept on faith that any effects on neighboring utilities, traffic safety requirements, geologic hazards, and other issues can later be satisfactorily addressed.

21. The applicant offered excerpts from other variance decisions in support of his application. As noted above, many of these exhibits were not timely offered and are therefore not part of the record. But a review of the variance decisions that were admitted at hearing fails to show that this application is being subjected to a different set of standards (except to the extent the requests were subject to different Codes) than other projects, or that the application here meets the applicable variance criteria.

22. Because the variance applications do not meet all of the criteria of MICC 19.15.020(G)(4), the applications must be denied.

Decision

The applications for variances VAR07-004, VAR07-005, VAR07-006, and VAR07-007 are hereby denied.

Entered this 29th day of March, 2010.



Anne Watanabe
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

MICC 19.15.020(J) provides:

1. *Any party of record on a decision may file a letter of appeal on the decision. Appeals shall be filed with the city clerk within 14 days after the notice of decision or after other notice that the decision has been made and is appealable.*
2. *Appeals shall include the following information:*
 - a. *The decision being appealed;*
 - b. *The name and address of the appellant and his/her interest in the matter;*
 - c. *The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;*
 - d. *The desired outcome or changes to the decision; and*
 - e. *The appeals fee, if required.*

TESTIMONY:

The following persons testified at the public hearing:

City of Mercer Island:
Travis Saunders, Planner, DSG,
George Steirer, Principal Planner, DSG
Don Cole, Building Official
Patrick Yamashita, City Engineer

Applicant:
Wayne Seminoff

Public:
Mark Orenstein
Lawrence H. Muramoto

Gertrude Muramoto
Hans Orth
Gary Morishima
Doug Rigby
Steve Bryan

PARTIES OF RECORD

Wayne Seminoff, applicant, P.O. Box 956, Kirkland, WA 98083
Development Services Group, City of Mercer Island
Hans and Ingrid Orth of 5261 West Mercer Way; Mercer Island, WA 98040
Nick Leclercq of 5325 West Mercer Way; Mercer Island, WA 98040
John C. Radovich of 5425 West Mercer Way; Mercer Island, WA 98040
John P. and Laurie J. McHale of 5319 West Mercer Way; Mercer Island, WA 98040
Elizabeth Larson Loken of 5331 Forest Avenue SE; Mercer Island, WA 98040
Gary S. and Dorothy L. Morishima of P.O. Box 1563; Mercer Island, WA 98040
Janet Roberts Purcell of 5310 West Mercer Way; Mercer Island, WA 98040
Bradley E. Sparks of 5320 West Mercer Way; Mercer Island, WA 98040
Shelly B. Milano of 5329 West Mercer Way; Mercer Island, WA 98040
Donna Martin of 5267 Forest Avenue SE; Mercer Island, WA 98040
John and Harriett Morton of 5263 Forest Avenue SE; Mercer Island, WA 98040
Helen and Oliver Foehr of 5413 West Mercer Way; Mercer Island, WA 98040
Janet L. Sayers of 5445 West Mercer Way; Mercer Island, WA 98040
Marilee Clarke of 9115 SE 50th Street; Mercer Island, WA 98040
Trent and Genevieve Morton of 5327 West Mercer Way; Mercer Island, WA 98040
Peter J. Eglick and Jane Kiker, EKW Law, of 1000 Second Avenue; Suite 3130; Seattle, WA 98121, representing Kathleen Barnett of 5270 Forest Avenue SE; Mercer Island, WA 98040
Philip and Frances Ohringer, 5242 Forest Avenue SE, Mercer Island, WA 98040

EXHIBITS:

The following exhibits were entered into the record:

City's Exhibits:

- 1 Neighborhood Comparison Analysis
- 2 Geological Hazards Maps
- 3 VAR07-004 Application materials City date stamped received on 10/16/07
 - 3.1 Request for consolidated review
 - 3.2 Variance Application
 - 3.3 Applicant Narrative
 - 3.4 Statement of ownership or consent for application submittal
 - 3.5 Title Report prepared by First American Title Insurance Company

- 3.6 Letter from Jennifer Mai, Puget Sound Energy re: electrical facilities and operating rights
- 3.7 Legal description
- 3.8 Site Survey, prepared by GeoDatum
- 3.9 Variance Worksheet, site plans, and elevations, prepared by TCA Architecture and Planning
- 3.10 Elevation renderings
- 3.11 Applicant response to variance criteria
- 3.12 City Code - 19.02.020, 19.01.070
- 3.13 Site photographs
- 3.14 Site development worksheet
- 3.15 SEPA application and checklist
- 3.16 Limited Geotechnical Engineering Report, prepared by The Riley Group Inc.
- 3.17 Maps – vicinity, quarter section, King County Imap, King County Department of Assessments, GIS
- 3.18 Groveland Park Plat and street vacation information
- 3.19 King County Tax Cards
- 3.20 City Code – 19.01.050
- 3.21 Subdivision Guarantee prepared by First American Title Insurance Company
- 3.22 Visibility Study by Pace Engineering
- 4 VAR07-005 Application materials City date stamped received on 10/16/07
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- 4.2 Variance Application
- 4.3 Applicant Narrative
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- 4.20 City Code – 19.01.050

Hearing Examiner Decision

VAR07-004/VAR07-005/VAR07-006/VAR07-007

Page 16 of 18

- 4.21 Subdivision Guarantee prepared by First American Title Insurance Company
- 4.22 Visibility Study by Pace Engineering
- 5 VAR07-006 Application materials City date stamped received on 10/16/07
- 5.1 Request for consolidated review
- 5.2 Variance Application
- 5.3 Applicant Narrative
- 5.4 Statement of ownership or consent for application submittal
- 5.5 Title Report prepared by First American Title Insurance Company
- 5.6 Letter from Jennifer Mai, Puget Sound Energy re: electrical facilities and operating rights
- 5.7 Legal description
- 5.8 Site Survey, prepared by GeoDatum
- 5.9 Variance Worksheet, site plans, and elevations, prepared by TCA Architecture and Planning
- 5.10 Elevation renderings
- 5.11 Applicant response to variance criteria
- 5.12 City Code – 19.02.020, 19.01.070
- 5.13 Site photographs
- 5.14 Site development worksheet
- 5.15 SEPA application and checklist
- 5.16 Limited Geotechnical Engineering Report, prepared by The Riley Group Inc.
- 5.17 Maps – vicinity, quarter section, King County Imap, King County Department of Assessments, GIS
- 5.18 Groveland Park Plat and street vacation information
- 5.19 King County Tax Cards
- 5.20 City Code – 19.01.050
- 5.21 Subdivision Guarantee prepared by First American Title Insurance Company
- 5.22 Visibility Study by Pace Engineering
- 6 VAR07-007 Application materials City date stamped received on 10/16/07
- 6.1 Request for consolidated review
- 6.2 Variance Application
- 6.3 Applicant Narrative
- 6.4 Statement of ownership or consent for application submittal
- 6.5 Title Report prepared by First American Title Insurance Company
- 6.6 Letter from Jennifer Mai, Puget Sound Energy re: electrical facilities and operating rights
- 6.7 Legal description
- 6.8 Site Survey, prepared by GeoDatum
- 6.9 Variance Worksheet, site plans, and elevations, prepared by TCA Architecture and Planning
- 6.10 Elevation renderings
- 6.11 Applicant response to variance criteria
- 6.12 City Code – 19.02.020, 19.01.070
- 6.13 Site photographs

- 6.14 Site development worksheet
- 6.15 SEPA application and checklist
- 6.16 Limited Geotechnical Engineering Report, prepared by The Riley Group Inc.
- 6.17 Maps – vicinity, quarter section, King County Imap, King County Department of Assessments, GIS
- 6.18 Groveland Park Plat and street vacation information
- 6.19 King County Tax Cards
- 6.20 City Code – 19.01.050
- 6.21 Subdivision Guarantee prepared by First American Title Insurance Company
- 6.22 Visibility Study by Pace Engineering
- 7 November 26, 2007 application hold request by applicant
- 8 December 13, 2007 release application from hold request by applicant
- 9 January 14, 2008 Public Notice of Application for VAR07-004, VAR07-005, VAR07-006, VAR07-007, and SEP07-035
- 10 Public comment received during comment period (January 14, 2008 – January 28, 2008)
- 11 February 12, 2008 request for additional information by the City
- 12 April 7, 2008 City email regarding Puget Sound Energy power line re-route and driveway slope
- 13 December 8, 2008 follow up letter to February 12, 2008 letter by the City
- 14 March 17, 2009 applicant response to the City's February 12, 2008 letter
- 14.1 Written response to the City's February 12, 2008 letter
- 14.2 Site Survey, prepared by GeoDatum
- 14.3 Limited Geotechnical Report prepared by The Riley Group, Inc.
- 14.4 Development application and site development worksheet
- 14.5 Variance Worksheet, site plans, and elevations, prepared by TCA Architecture and Planning
- 14.6 Mercer Island Comprehensive Plan Introduction page 8; Land Use Element pages 8 and 17; Housing Element pages 10 and 19
- 15 August 28, 2009 request for information by the City
- 16 September 1, 2009 Applicant letter requesting Hearing Examiner review
- 17 September 23, 2009 City's response to applicant's September 1, 2009 letter
- 18 October 23, 2009 follow-up email by City regarding September 23, 2009 letter
- 19 October 27, 2009 email from applicant requesting hearing
- 20 November 23, 2009 SEPA Mitigated Determination of Non-Significance issued by the City
- 21 February 22, 2010 Public notice of open record hearing
- 22 Tax Assessor Information for Parcel Number 2174504180
- 23 Assessor information and variance decision for 2413 70th Avenue SE, Mercer Island WA

Applicant's Exhibits:

- 1 Proposed home renderings
- 2 City General Variance Process sheet

Hearing Examiner Decision

VAR07-004/VAR07-005/VAR07-006/VAR07-007

Page 18 of 18

- 3 Summaries/excerpts from other variance decisions
- 4 Variance decision pages
- 5 Neighborhood comparison
- 6 City Sewer Atlas page marking nonconforming residences
- 7 Entire Atlas marking nonconforming residences in City
- 8 Lot setback from neighbor map
- 9 Enlarged geologic hazard map
- 10 Enlarged geologic hazard map
- 11 November 30, 2009 email from George Steirer
- 12 Email dated June 20, 2007
- 13 July 27, 2007 letter from Travis Saunders
- 14 September 1, 2009 letter
- 15 Emails and correspondence between applicant and City with applicant's notes re:
timeframe
- 16 Emails between City and applicant