
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

TO: Planning Commission

FROM: Adam Zack, Senior Planner

DATE: December 9, 2021

SUBJECT: ZTR21-006 - Land use review types

ATTACHMENTS: A. Thompson Docket Request dated November 2, 2020

SUMMARY

The purpose of this memo is to provide the Planning Commission with the staff recommendation for ZTR21-006. This zoning code amendment was proposed in a Docket Request dated November 2, 2020 (Attachment A). The docket request proposed six amendments to [Title 19 Mercer Island City Code \(MICC\)](#). This staff report focuses on and provides the staff recommendation regarding the fifth request, a proposed amendment to MICC 19.15.030 Land use review types. The proposed amendment would change the land use review type for five types of land use permits, resulting in increased levels of public notice. At the December 15 meeting, staff seeks initial guidance from the commission on the proposed code amendment. Specifically, whether the commission would like to proceed with the amendment as proposed, pursue a revised amendment, or recommend no further action.

BACKGROUND

Daniel Thompson submitted a docket request for several amendments to Title 19 MICC on November 2, 2020 (Attachment A). The City Council considered whether to add the proposed amendments to the Community Planning and Development (CPD) work program during a public meeting on December 1, 2020. The City Council approved Resolution 1594 on December 1, 2020, which directed the Planning Commission to make a recommendation on the fifth proposed code amendment from the original docket request.

The docket request proposed six amendments to Title 19 MICC. Only the fifth requested amendment, a proposed amendment to [MICC 19.15.030 – Land use review types](#), was added to the final docket by the City Council. The proposed amendment of MICC 19.15.030 would change the notice requirements for five land use review actions:

- Seasonal Development Limitation Waivers;
- Tree Removal Permits;
- Final Short Plats;
- Lot Line Revisions; and

- Setback Deviations.

The application states the purpose of the proposed amendments is to provide greater public notice of permit applications and decisions.

MICC 19.15.030 – Land use review types.

[MICC 19.15.030](#) establishes four types of land use review, each with its own unique notice requirements. The four types are described as follows:

- “A. Type I. Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.
- B. Type II. Type II reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that public notification shall be issued for Type II decisions.
- C. Type III. Type III reviews require the exercise of discretion about nontechnical issues.
- D. Type IV. Type IV reviews require discretion and may be actions of broad public interest. Decisions on Type IV reviews are only taken after an open record hearing.”

The permit types are differentiated largely by the amount of discretion and technical expertise that must be used in making permitting decisions. Type I and II permits are nondiscretionary and require the application of professional expertise on technical issues. Types III and IV permits require more discretion, with Type IV permits also being for larger, more impactful actions that are of broad public interest.

In addition to establishing four permit types, MICC 19.15.030 codifies the notice requirements, decisionmaker, and appeal authority for each land use review action in MICC 19.15.030 Table B, which states:

Table B. Review Processing Procedures				
	Type I	Type II	Type III	Type IV
	No Notice of Application No Notice of Decision Code Official	Public Notification No Notice of Application No Notice of Decision Code Official	Notice of Application Notice of Decision Code Official	Notice of Application Public Hearing Notice of Decision Hearing Examiner/Design Commission
Preapplication meeting required	No	No	Yes	Yes
Letter of completion (within 28 days)	No	No	Yes	Yes

Public Notification	No	Yes	No	No
Notice of Application (mailing and posting)	No	No	Yes	Yes
Public Comment Period	None	None	30 days	30 days
Public Hearing (open record pre-decision)	No	No	No	Yes
Notice of Decision	Code Official	Code Official	Code Official	Hearing Examiner ² or Design Commission
Notice of Decision	No	No	Yes	Yes
Appeal Authority	Hearing Examiner ¹	Hearing Examiner or Design Commission (code official design review)	Hearing Examiner	Superior Court or Shoreline Hearings Board (shoreline permits)

1 Appeals of final short plat approvals shall be to superior court. Appeals of shoreline exemptions shall be to the shoreline hearings board.

2 The hearing examiner will provide a recommendation to ecology for decisions on shoreline conditional use permits and shoreline variances.

Thus, together the permit type definitions and the review process establish a hierarchy wherein permit reviews requiring more discretion also have higher levels of public notice as well as opportunities for public comment and participation. Public notice is not required for Type I permits. Public notification posted in the weekly CPD Permit Bulletin is required for Type II permits. More public notice is required for Type III and IV permits compared with Type II. The additional notice includes posting on site, mailing to addresses within 300 feet and, in some cases, publication in the Mercer Island Reporter. Type III and IV permits also have a 30-day public comment period. Type IV permits require a public hearing.

This hierarchy matches decisions requiring substantial discretion with higher levels of public notice and opportunities for comment. This is appropriate because the decisions on these matters are not as objective or technical. Public comments can provide valuable input, and the staff are able to give some consideration to community concerns in making their decisions. On the other hand, decisions that are largely objective and/or technical and allow little discretion, less public notice is required. This is an appropriate approach because the decision maker is not able to consider community concerns in these decisions. Rather, if an application is compliant with the requirements of the code, the code official must approve it. Creating opportunities for the public to comment on these types of decisions can often lead to increased frustration

for the public and a misconception that the City is uninterested in public input; eroding public trust in the process.

SEASONAL DEVELOPMENT LIMITATION WAIVER

The first proposed amendment to MICC 19.15.030 would increase the land use review type required for Seasonal Development Limitation Waivers (SDLW) from Type I to Type II. The MICC restricts some clearing and grading work during the “wet season” from October 1 through April 1 to reduce potential impacts from erosion and landslides during these months. An SDLW is a waiver granted by the Code Official for land clearing, grading, filling and foundation work in an erosion hazard area or a landslide hazard area during the wet season. An SDLW is required in addition to the other required permits such as a building permit and grading permit for this type of work to proceed in between October 1 and April 1. Issuance of SDLW is authorized by [MICC 19.07.160\(F\)\(2\) – Geologically hazardous areas](#), which states:

2. Land clearing, grading, filling, and foundation work within: (a) an erosion hazard area, when 2,000 square feet or more of site disturbance is proposed, and/or (b) a landslide hazard area are not permitted between October 1 and April 1.
 - a. The code official may grant a waiver to this seasonal development limitation if the applicant provides a critical area study for the site concluding that:
 - i. Geotechnical slope stability concerns, erosion and sedimentation impacts can be effectively controlled on site consistent with adopted storm water standards; and
 - ii. The proposed construction work will not subject people or property, including areas off site, to an increased risk of associated impacts.
 - b. As a condition of the waiver, the code official may require erosion control measures, restoration plans, an indemnification, a release agreement and/or performance bond.
 - c. If site activities result in erosion impacts or threaten water quality standards, the city may suspend further work on the site and/or require remedial action.
 - d. Failure to comply with the conditions of an approved waiver shall subject the applicant to code compliance pursuant to chapter 6.10, code compliance, including but not limited to civil penalties and permit suspension.

As a Type I land use review action, public notice is not required for SDLWs. Public notification would be required if the land use review type were increased to Type II. The standards for public notification are established in MICC 19.15.080. Public notification for Type II actions does not include a public comment period. The notification is posted in the weekly CPD permit bulletin published on the City website at:

<https://www.mercerisland.gov/cpd/page/weekly-permit-information-bulletin>

If MICC 19.15.030 is amended as proposed, SDLWs would be posted to the weekly CPD permit bulletin. For reference, CPD reviewed 85 SDLWs between 2016 and 2021, an average of 14 a year. Listing a land use review action on the CPD permit bulletin takes roughly fifteen minutes per review.

Staff Recommendation

Do not amend the land use review type for SDLWs. SDLWs are correctly categorized as a Type I land use review action. The City has limited discretion in whether to issue an SDLW. If an application meets the

requirements of the code, the City must issue a waiver. Increasing notice for this land use review action will add process to a routine review in which the City has limited discretion in issuing a decision.

TREE REMOVAL PERMIT

The second proposed amendment to MICC 19.15.030 would increase the land use review type for tree removal permits from Type I to Type II. The City requires a permit for all tree removal except those exempted under [MICC 19.10.030 – Exemptions](#) such as small trees (under 10” diameter at breast height) and hazardous trees. As with SDLWs, this change would mean that tree removal permits would be required to be listed on the weekly CPD permit bulletin.

For reference, CPD reviewed 852 tree removal permits between 2016 and 2021, an average of 142 a year. Listing a land use review action on the CPD permit bulletin takes roughly fifteen minutes per review. Increasing the permit review type for tree removal permits would take up an average of thirty-five hours of staff time annually.

Staff Recommendation

Do not amend the land use review type for tree removal permits. Tree removal permits are correctly categorized as a Type I land use review action. The decision of whether to issue a tree removal permit is based on the evaluation of objective standards and the application of technical expertise by the city arborist; the City has limited discretion in the decision. Increasing notice for this land use review action will add process to a routine review in which the City has limited discretion in issuing a decision.

FINAL SHORT PLAT

The third proposed amendment to MICC 19.15.030 would increase the land use review type for short plats from Type I to Type II. A short plat is a land division that creates four or fewer new parcels from an existing parcel. Final plat requirements are established in [MICC 19.08.050 – Final plats](#). Short plats are granted preliminary approval as a Type III land use review action. Because the preliminary approval is a Type III land use review, the short plat is listed on the CPD permit bulletin when it is initially applied for. Notice is also posted on site and mailed to addresses within 300 feet during the preliminary short plat review.

As with SDLWs and tree removal permits, the proposed amendment would require that final short plat approval be listed on the weekly CPD permit bulletin. Because the land use review action for preliminary approval of short plats is a Type III action, the proposed amendment would result in short plats getting listed on the permit bulletin twice. The first listing would be during the initial review of the application before the preliminary approval and then a second listing would be required when final approval is granted.

For reference, CPD reviewed 24 short plats between 2016 and 2021, an average of 4 a year. Listing a land use review action on the CPD permit bulletin takes roughly fifteen minutes per review.

Staff Recommendation

Do not amend the land use review type for final short plats. Adding more public notice for final short plat approval would be duplicative because notice is already required for preliminary short plat approval. Preliminary short plat approval is currently categorized as a Type III land use review action, necessitating an expanded public notice process. Final short plat approval is a technical process to ensure that the final plat meets the requirements established during the preliminary approval process. The preliminary approval is the step in the process where public comments can be considered by the decision maker and

incorporated into the approval. Public notice at the preliminary approval step (a Type III action) is adequate for the public to weigh in on the proposal; additional public notice is unnecessary at the final plat stage.

LOT LINE REVISION

The fourth proposed amendment to MICC 19.15.030 would increase the land use review type for lot line revisions from Type II to Type III. A lot line revision is an adjustment of boundary lines between existing lots that does not create any additional lots and which does not reduce the dimensions of an existing lot to the point that it fails to meet dimensional standards.

Increasing the land use review type for lot line revisions from Type II to Type III would significantly increase the process required. The proposed amendment would add the following steps to the review of lot line revisions:

- Preapplication meeting;
- Letter of completion within 28 days of application;
- Notice of application posted on site and mailed to neighboring property owners;
- 30-day public comment period; and
- Notice of decision sent to parties of interest.

All five of the above steps would significantly add to the review time and cost for lot line revisions. On average, increasing the permit from Type II to Type III would add three hours of review time per lot line revision. In addition to the time added for posting and publishing notice, changing the permit type to Type III would commit staff time to managing the public comments as they are received. CPD reviewed 24 lot line revisions between 2016 and 2021, an average of 1.7 a year.

Staff Recommendation

Do not amend the land use review type for lot line revisions. See discussion of lot line revision with the staff recommendation on setback deviations.

SETBACK DEVIATION

The fifth proposed amendment to MICC 19.15.030 would increase the land use review type for setback deviations from Type II to Type III. A setback deviation is a process established in [MICC 19.06.110\(C\) Criteria for approval—Conditional use permits, variances, and setback deviations](#). Setback deviations provide flexibility in designing a development proposal to allow for increased protection of critical areas or critical area buffers (MICC 19.06.110(C)(1)). They accomplish this by allowing developers to develop in setbacks when necessary to avoid impacting critical areas and their buffers.

Increasing the land use review type for setback deviations from Type II to Type III would significantly increase the process required. The proposed amendment would add the following steps to the review for setback deviations:

- Preapplication meeting;
- Letter of completion within 28 days of application;
- Notice of application posted on site and mailed to neighboring property owners;
- 30-day public comment period; and
- Notice of decision sent to parties of interest.

All five of the above steps would significantly add to the review time and cost for setback deviations. On average, increasing the permit type to Type III would add three hours of review time per setback deviation. In addition to the time added for posting and publishing notice, changing the permit type to Type III would commit staff time to managing the public comments as they are received. CPD reviewed 1 setback deviation between 2016 and 2021.

Staff Recommendation

Do not amend the land use review type for setback deviations. Amending the land use review types for lot line revisions and setback deviations would be inconsistent with the permit review type descriptions established by MICC 19.15.030(B). Lot line revisions and setback deviations are land use approvals where the City has clear, objective, and nondiscretionary standards or standards that require the application of professional expertise on technical issues. Because both lot line revisions and setback deviations meet this description, they are accurately categorized as Type II actions. Neither of these land use review actions are consistent with the description of Type III land use review established in MICC 19.15.030(C), which states: "Type III. Type III reviews require the exercise of discretion about nontechnical issues."

The City does not have as much discretion in the approval of lot line revisions and setback deviations as it does for more complex land use review actions. In other words, if the proposal meets the criteria for lot line revision or setback deviation, the City has fewer options for conditioning the approval than it would for Type III land use review actions. Furthermore, adding a public comment period to lot line revisions and setback deviations would add a public process to two land use review actions in which the City has limited discretion and would likely result in frustration for the public.

ALTERNATIVES

There are three alternatives the Planning Commission can consider for ZTR21-006:

- A. Amend MICC 19.15.030 as proposed.** Alternative A would change the land use review type for all five of the review actions listed above. This amendment would commit additional City resources, in the form of staff time, to the review and provision of notice for all five land use review actions.

Benefits: Increased public notice for land use decisions. Alternative A would help the public stay informed about what development is being approved in the City.

Drawbacks: Alternative A would commit additional City resources and increase review time and cost for routine land use review actions. Committing further City resources to the review of routine projects could reduce staff time available for more complex projects.

Another drawback to Alternative A is that it creates a situation where the public can provide comments that will not influence the decision-making process. Adding a public comment period to lot line revisions and setback deviations would add a comment period to two land use review actions for which the City has limited discretion. This can lead to increased frustration for the public and a misconception that the City is uninterested in public input.

- B. Amend MICC 19.15.030 to change the land use review type for some but not all of the land use review actions.** Alternative B allows the Planning Commission to increase the land use review type for certain land use review actions but stops short of amending all proposed land use review types. Under Alternative B, the Planning Commission could, for example, recommend changing the land

use review type for SDLWs and tree removal permits but not recommend changes to final short plat approvals, lot line revisions, and setback deviations.

Benefits: Amending the land use review type for some but not all of the review actions would increase public notice for some land use review actions while committing fewer City resources than Alternative A.

Drawbacks: Amending the land use review type for any of the five review actions discussed above would commit additional City resources to routine land use review; increasing review time and cost.

- C. Do not amend MICC 19.15.030 (Staff Recommended).** Making changes to MICC 19.15.030 is a local choice. Amending this code section is not required by state or local law.

Benefits: Option C would not commit further City resources to the land use review actions discussed above. It would not increase the cost or review time for routine land use review actions.

Drawbacks: Making no change to MICC 19.15.030 would not change the amount of public notice for the land use review actions discussed in this memo.

STAFF RECOMMENDATION

Alternative C do not amend MICC 19.15.030. MICC 19.15.030 correctly types the five land use review actions contemplated in the docket application. The notice requirements for these land use review actions are commensurate with the development they authorize, the amount of discretion afforded to each action, and the necessary levels of public notice and participation. Committing additional City resources to routine land use review actions will draw resources from more complex permit review. The drawback of committing additional City resources to these land use review actions is not outweighed by the benefit of the corresponding increase in public notice.

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CITY USE ONLY

PROJECT#

RECEIPT #

FEE

Date Received:

DEVELOPMENT APPLICATION

Received By:

STREET ADDRESS/LOCATION		ZONE
COUNTY ASSESSOR PARCEL #'S		PARCEL SIZE (SQ. FT.)
PROPERTY OWNER (required)	ADDRESS (required)	CELL/OFFICE (required) E-MAIL (required)
PROJECT CONTACT NAME Daniel Thompson	ADDRESS 7265 N. Mercer Way Mercer Island, WA 98040	CELL/OFFICE 206-919-3266 E-MAIL danielphompson@hotmail.com
TENANT NAME	ADDRESS	CELL PHONE E-MAIL

DECLARATION: I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE

DATE

Nov. 2 2020

PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL (PLEASE USE ADDITIONAL PAPER IF NEEDED):

See attached suggested Residential Development Code Amendments I through VI.

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

CHECK TYPE OF LAND USE APPROVAL REQUESTED:

APPEALS	DEVIATIONS	SUBDIVISION SHORT PLAT
<input type="checkbox"/> Building	<input type="checkbox"/> Changes to Antenna requirements	<input type="checkbox"/> Short Plat- Two Lots
<input type="checkbox"/> Code Interpretation	<input type="checkbox"/> Changes to Open Space	<input type="checkbox"/> Short Plat- Three Lots
<input type="checkbox"/> Land use	<input type="checkbox"/> Seasonal Development Limitation Waiver	<input type="checkbox"/> Short Plat- Four Lots
<input type="checkbox"/> Right-of-Way Use		<input type="checkbox"/> Short Plat- Deviation of Acreage Limitation
CRITICAL AREAS	ENVIRONMENTAL REVIEW (SEPA)	<input type="checkbox"/> Short Plat- Amendment
<input type="checkbox"/> Critical Area Review 1 (Hourly Rate 2hr Min)	<input type="checkbox"/> SEPA Review (checklist)- Minor	<input type="checkbox"/> Short Plat- Final Plat
<input type="checkbox"/> Critical Area Review 2 (Determination)	<input type="checkbox"/> SEPA review (checklist)- Major	OTHER LAND USE
<input type="checkbox"/> Reasonable Use Exception	<input type="checkbox"/> Environmental Impact Statement	<input type="checkbox"/> Accessory Dwelling Unit
DESIGN REVIEW	SHORELINE MANAGEMENT	<input type="checkbox"/> Code Interpretation Request
<input type="checkbox"/> Pre Design Meeting	<input type="checkbox"/> Exemption	<input type="checkbox"/> Comprehensive Plan Amendment (CPA)
<input type="checkbox"/> Design Review (Code Official)	<input type="checkbox"/> Permit Revision	<input type="checkbox"/> Conditional Use (CUP)
<input type="checkbox"/> Design Commission Study Session	<input type="checkbox"/> Shoreline Variance	<input type="checkbox"/> Lot Line Revision
<input type="checkbox"/> Design Review- Design Commission- Exterior Alteration	<input type="checkbox"/> Shoreline Conditional Use Permit	<input type="checkbox"/> Noise Exception
<input type="checkbox"/> Design Review- Design Commission- New Building	<input type="checkbox"/> Substantial Development Permit	<input type="checkbox"/> Reclassification of Property (Rezoning)
WIRELESS COMMUNICATION FACILITIES	SUBDIVISION LONG PLAT	<input type="checkbox"/> Transportation Concurrency (see supplemental application form)
<input type="checkbox"/> Wireless Communications Facilities- 6409 Exemption	<input type="checkbox"/> Long Plat- Preliminary	<input type="checkbox"/> Planning Services (not associated with a permit or review)
<input type="checkbox"/> New Wireless Communication Facility	<input type="checkbox"/> Long Plat- Alteration	<input checked="" type="checkbox"/> Zoning Code Text Amendment
	<input type="checkbox"/> Long Plat- Final Plat	<input type="checkbox"/> Request for letter
	VARIANCES (Plus Hearing Examiner Fee)	<input type="checkbox"/> Temporary Commerce on Public Property
	<input type="checkbox"/> Variance	

I**SUGGESTION FOR RESIDENTIAL CODE AMENDMENT**

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(D)(2)(a) Gross Floor Area

Suggested Code Amendment:

I suggest MICC 19.02.020(D)(2)(a) be amended to reduce ceiling height from 12 feet to 10 feet before it is counted as clerestory space at 150% of GFA.

Analysis:

The Citizens and Council spent approximately three years rewriting the Residential Development Code. A primary motivation in the rewrite was to deal with citizen concern over “massing”, or what citizens considered out-of-scale residential development, which the Planning Commission addressed as Gross Floor Area to Lot Area Ratio (GFAR).

One of the factors that increased GFAR and led to the code rewrite was Administrative Interpretation 13-01 that allowed all clerestory space to be counted as 100% GFA.

Massing is a three-dimensional concept based on the exterior volume of the house. Whether interior space is counted as GFA or not, it is a reality in the exterior volume, or massing, of the house. GFA, meanwhile, is a two-dimensional term subject to exemption.

Ten-foot ceiling height is the industry standard for a maximum non-cathedral ceiling. The Planning Commission never recommended a 12-foot ceiling height in its recommendation to the Council, but recommended 10 feet. 12 feet was the sudden recommendation of former council member Dan Grausz at the Council’s final adoption hearing for the new Residential Development Code.

A ceiling height of 12 feet, before counting as clerestory space, allows each floor of a two-story house to increase its interior and exterior volume by 20%, directly contrary to the goals of the RDS. Furthermore, it creates a much greater need for heating and cooling, and is contrary to the purposes of green building standards.

II

SUGGESTION FOR RESIDENTIAL CODE AMENDMENT

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(D)(2) Gross Floor Area

MICC 19.16.010(G)(2)(b) Gross Floor Area Exemption for Covered Decks on the First Level

Suggested Code Amendment:

I suggest MICC 19.02.020(D)(2) be amended to include exterior covered decks in the definition of Gross Floor Area, which presently only references exterior walls even though covered decks on levels above the first level are counted towards the GFA limit.

I further suggest that MICC 19.02.020(D)(2) and 19.16.010(G)(2)(b) be amended to include covered porches on the first level in the calculation of Gross Floor Area.

Analysis:

The Citizens and Council spent approximately three years rewriting the Residential Development Code. A primary motivation in the rewrite was to deal with citizen concern over “massing”, or what citizens considered out of scale residential development, which the Planning Commission addressed as Gross Floor Area to Lot Area Ratio (GFAR).

One of the main actions in the new Residential Development Code was to remove discretion from the City Planning Department (Development Services Group at that time, now Community Planning Department), especially when it came to deviations and variances. Unfortunately, that led the prior director to simply amend the entire code when attempting to address a request from a citizen for relief from the Code.

One of these Amendments was to exempt covered decks on the first level from the GFA limits because the applicant wished to have a covered barbecue area. Instead, the code amendment exempts all covered decks on the first level from the GFA limit.

There is very little difference in massing between a deck with a railing and roof from a room. The only difference is a window. Exempting first level decks from GFA limits greatly expands the massing of the house.

To be fair to Evan Maxim, amending this definition to limit its scope was on his agenda before his departure.

A homeowner already has the benefit of an 18-inch eave that is exempt from the GFA limit. At most, any barbecue area that needed to be sheltered from the elements would be 5'x 5', or 25 square feet. I suggest that covered decks on the first level be counted in their entirety towards the GFA limit, or in the alternative a 25-foot exemption be allowed for a barbecue area.

III

SUGGESTION FOR RESIDENTIAL CODE AMENDMENT

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(c)(2)(a)(iii) Yards for Waterfront Lots

MICC 19.02.040(D)(1) Garages and Carports/Yard Intrusion

Suggested Code Amendment:

I suggest MICC 19.02.040(D)(1) be eliminated. In the alternative, I suggest that MICC 19.02.040(D)(1) not be applicable to a waterfront lot if the waterfront lot has switched its front and rear yards subject to MICC 19.02.020(c)(2)(a)(iii).

Analysis:

MICC 19.02.020(c)(2)(a)(iii) allows a waterfront lot to switch its front and rear yard because the Department of Ecology requires a 25-foot buffer between the structure and the ordinary high water mark.

However, MICC 19.02.040(D)(1) allows garages and carports to be built within 10 feet of the property line of the *front* yard if there is more than 4 vertical feet difference as measured between the bottom wall of the building and ground elevation of the front yard property line where such property is closest to the building.

Ideally, 19.02.040(D)(1) should be eliminated. It is a building or structure above the ground level that extends into the yard setback. However, in the alternative, 19.02.040(D)(1) should not be available to waterfront lots that have flipped their front and rear yards pursuant to 19.02.020(c)(2)(a)(iii) because essentially it reduces the yard between the upper house to 10 feet. The effect of this provision can easily be seen as one takes a boat around Lake Washington. The waterfront house and the house directly behind look as though they are one contiguous property.

IV

SUGGESTION FOR RESIDENTIAL CODE AMENDMENT

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(D)(3)(b) Gross Floor Area Incentives for ADU's

Suggested Code Amendment:

I suggest limiting the Gross Floor Area Incentives for ADU's in MICC 19.02.020(D)(3)(b) to lots 8,400 square feet or smaller.

Analysis:

One of the primary purposes of the rewrite of the Residential Development Code was to address the massing and out of scale development in the smaller lot neighborhoods, with lots 8,400 square feet and less. MICC 19.02.020(D)(3)(b) allows a lot 10,000 square feet or less to have up to 5% additional Gross Floor Area for an ADU. (19.02.020(D)(3)(a) already allows a lot 7,500 sf lot or below an additional 5% GFA or 3,000 sf for either an ADU or the main house.)

A 10,000-square foot lot that can have a 4,000-square foot house does not need an additional 5% Gross Floor Area for an ADU. The primary tool used by the Planning Commission to reduce massing and out-of-scale residential development was to reduce GFAR from 45% to 40%, except this provision is directly contrary to that goal.

MICC 19.02.020(D)(3)(b) should be amended to limit the 5% additional GFA to lots 8,400 square feet and less.

V**SUGGESTION FOR RESIDENTIAL CODE AMENDMENT**

MICC 19.02.020 Residential Development Standards

MICC 19.15.030 (Table A) Land Use Review Type Classification

Suggested Code Amendment:

I suggest amending MICC 19.15.030 (Table A) to change the land use type of the following permit actions:

- Seasonal Development Limitation Waiver from Type I to Type II
- Tree Removal Permit from Type I to Type II
- Final Short Plat from Type I to Type II (or in the alternative, Notice to Parties of Record)
- Lot Line Revision from Type II to Type III
- Setback Deviations from Type II to Type III

Analysis:

One of the major goals of the Residential Code rewrite was to provide greater notice and citizen participation in the permitting process. Two significant actions were requiring public notice of development permits, and 30 days notice for all permits, rather than the minimum 14 days.

However, shortly after the new code was adopted, the director of the Development Services Group at that time drafted an entirely new permit *typing* system that created four different types. This system created a new land use term that has no legal meaning called “public notification” that simply requires posting the application on the City’s online permit bulletin, which very few citizens read or follow.

The new permit typing system created four categories: I, II, III, and IV. Unfortunately, Type I permits require notice, public notice, or public notification at all, and Type II permits only receive public notification of the application on the City’s Online Permit Bulletin.

- A waiver from the Seasonal Development Limitation on Development has recently been an issue of inquiry. This is a significant waiver, and there should at least be public notification, which costs the City nothing.

- Tree removal permits should at least receive public notification. The citizens and neighbors are the eyes and ears of the Planning Department. The Island Arborist and Code Enforcement Officer are underfunded, or rarely have time to review tree removal, and just as importantly required tree replacement. Moving tree removal permits from Type I to Type II would give the citizens a way to at least have a resource to determine whether the removal of a tree in their neighborhood has been permitted. There would be no cost to the city.
- Final short plats often have some modification from the preliminary approval. As a result, they should have public notification as a Type II permit, or in the alternative written notice to parties of record. There would be no cost to the city.
- A Lot Line Revision is a significant action and should receive public notice as a Type III permit.
- Setback deviations are very significant impacts to the neighbors and should receive Type III public notice as opposed to Type II notification.

VI

SUGGESTION FOR RESIDENTIAL CODE AMENDMENT

MICC 19.02.020 Residential Development Standards

MICC 19.02.020(G)(2)(a) and (b) Parking Requirements

Suggested Code Amendment:

I suggest that MICC 19.02.020(G)(2)(a) and (b) be amended to reduce house GFA from 3,000 sf to 2,000 sf in order to reduce covered parking spaces to one covered and one uncovered space.

Analysis:

During the Residential Development Code rewrite, parking requirements for residential houses were reduced based upon the square footage of the house pursuant to MICC 19.02.020(G)(2)(a) and (b). This was a very contentious amendment. Ironically, many builders are hesitant to not build a 3-car garage on Mercer Island since many of their first-time home buyers come from off-island to the east, where a 3-car garage is common.

A 3,000 sf home is quite large. For example, I have raised two children in a 2,700 sf house with a 3-car garage on Mercer Island. A 3,000 sf house can accommodate a two-covered garage space.

Ancillary issues from reducing parking requirements for houses 3,000 feet and below that were not well-discussed during the Residential Code rewrite include:

1. Mercer Island effectively has no intra-island transit. The 201 that circled the Mercers was eliminated because of low ridership, in part because it is very difficult for citizens to even get up their steep drives to one of the Mercers, and the 201 was very slow.
2. One covered garage space is usually required for the three different bins – garbage, recycle, and yard waste – plus storage of bikes, skis, tools, and other personal equipment. For the first 16 years I lived in a small house on First Hill with a one-car garage, which effectively was a zero-car garage since there was too much stuff in the garage to park a car in it. This effectively moves either cars, or items such as garbage bins, out into the yard and street.

3. Since Mercer Island residential neighborhoods have few sidewalks, cars parked along the street push kids walking to the school bus out into the middle of the road. This is especially problematic when it is dark.
4. Overflow street parking in the residential neighborhoods makes dedicated bike paths almost impossible, including on the Mercers. Not unlike the Town Center that only requires one parking stall per unit, reducing parking requirements simply subsidizes builders by shifting parking from onsite to the street.

The original intent was to ameliorate the reduction in GFAR limits in the new code. A resident would convert one parking space to living area. However, a 3,000 sf house simply does not need this incentive, and the GFA necessary to qualify for reduced parking should be reduced from 3,000 sf to 2,000 sf.