| | |
|---|---|
| **From:** | David Tyler |
| **To:** | Andrew Galuska |
| **Cc:** | Sarah Kress; SYLVIA S KAWABATA; Bryan Carli; Matthew Geiger |
| **Subject:** | RE: Harbor Grove |
| **Date:** | Wednesday, March 8, 2023 9:16:22 AM |
| **Attachments:** | image001.png<br>image002.png<br>image003.png<br>image004.png |

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[WARNING: THIS MESSAGE HAS COME FROM A SENDER OUTSIDE THE CITY OF MUKILTEO NETWORK,]
Andy,

Thank you for your response. On the wall design issue, I don't think final engineered drawings are what's needed at this point. What is needed is sufficient detail to understand the appearance and future maintenance needs. This includes materials, height, and placement relative to the property line and other infrastructure. A cross-section or two would be helpful. The adjacent property owners want to know how the walls will appear from their properties. This information is necessary for the analysis of project impacts.

On the building height issue, it would be helpful to have further input as follows:

- Lots 4 - 7 will be elevated by placement of fill at considerable depth. Lot 6, for example, will have a finished grade of 406' which is 20' higher than existing grade. So if I understand correctly, the City will allow the applicant to construct a 30' high building on top of 20 feet of fill up to the 25' rear setback line. This allows a building that is up to 50 feet above existing grade near the western property boundary. Is this correct?

- Does the Planning Department have discretionary authority, under SEPA, zoning, or any other city code, to limit wall height, building height or placement of fill if it expects that a subdivision will create impacts on the adjacent properties? Or, are these issues addressed as a matter of engineering design that are handled by the City's engineering group?

Thank you
David Tyler

> On 03/06/2023 4:45 PM Andrew Galuska <agaluska@mukilteowa.gov> wrote:
>
> David,

Thank you for the comments, I will add them to the record for the file.

In your comment letter you asked about the building height calculations. The following definition is given in code:

““Building height” means the vertical distance from the mean ground level (prior to any elevation change in native existing grade except as approved through a plat or short plat) to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the height of the highest gable or roofline of a gable or pitched roof.”

I have included the form we use to calculate the building height for building permits.

Regarding requests for the design of the wall, typically that level of detail is not designed until after preliminary plat approval. They did clarify some of the issues our engineering staff raised related to drainage and the geotechnical report.

Preliminary plat approval is neat and approximate and there is a greater level of detail in the engineering that is reviewed during the civil review phase. I would say that ecology blocks are not typically used in plat construction because they are not engineered to be used as a retaining wall. The most common approach is to use pre-engineered interlocking stacking blocks, this level of review would not be done until civil review. In any case the wall would have to meet the structural requirements in the adopted building code and our engineering design standards.

Andy Galuska

*Community Development Director*

CITY OF MUKILTEO

*11930 Cyrus Way*

*Mukilteo, WA 98275*

*Ph: (425) 263-8084*

*Cell: (425) 866-9129*

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**From:** David Tyler <david.d.tyler@comcast.net>
**Sent:** Monday, March 6, 2023 8:15 AM
**To:** Andrew Galuska <agaluska@mukilteowa.gov>
**Cc:** Sarah Kress <skress@mukilteowa.gov>; SYLVIA S KAWABATA <sylvia6031@comcast.net>; Bryan Carli <mrbryancarli@gmail.com>; Matthew Geiger <mgeiger@mukilteowa.gov>
**Subject:** RE: Harbor Grove

[WARNING: THIS MESSAGE HAS COME FROM A SENDER OUTSIDE THE CITY OF MUKILTEO NETWORK,]

Andy,

Please see attached letter concerning retaining walls.

Regards,

David Tyler

> On 02/03/2023 10:00 AM Andrew Galuska <agaluska@mukilteowa.gov> wrote:
>
> David,
>
> The code specifically names free standing walls in MMC 17.20.080, so it seems that the council's intent in that section did not include retaining walls. I would say in general setback regulations do not commonly regulate retaining walls. It is often necessary to locate retaining walls for certain improvements.
>
> MMC 17.20.080 does discuss height of fences in setbacks. The code section specifically specifies how fence height is calculated when they are located on top of retaining walls, which implies retaining

walls are permitted in the setback. To confirm this interpretation, I went back through several previously approved plats and was able to find several instances of retaining walls permitted in front, rear, and side setbacks.

Based on this analysis I have concluded that the retaining walls proposed in the Harbor Grove plat are approvable. Ultimately, the plat approval will be issued by the Hearing Examiner, but this is the finding of staff.

In regards to the vegetation removal question, this is a public works call and I believe Brian already sent a response.


Andy Galuska

*Community Development Director*

CITY OF MUKILTEO

*11930 Cyrus Way*

*Mukilteo, WA 98275*

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**From:** David Tyler <david.d.tyler@comcast.net>
**Sent:** Wednesday, February 1, 2023 3:40 PM
**To:** Andrew Galuska <agaluska@mukilteowa.gov>
**Cc:** Sarah Kress <skress@mukilteowa.gov>
**Subject:** RE: Harbor Grove

[WARNING: THIS MESSAGE HAS COME FROM A SENDER OUTSIDE THE CITY OF MUKILTEO NETWORK,]

Andy,

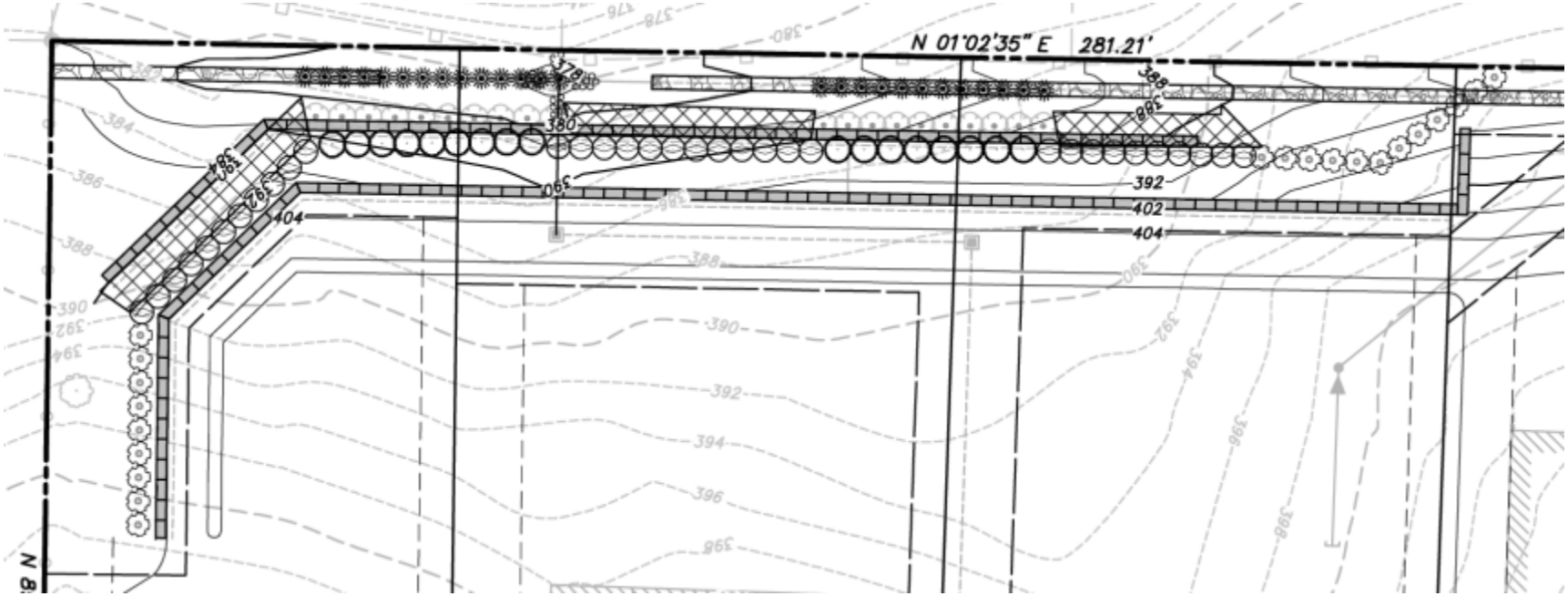
Thanks for your earlier reply. It seems that any wall or fence within the rear setback should be treated the same since the purpose of a setback requirement is to allow natural light and air on adjacent properties. This is particularly the case in a large lot single-family context--not so much in tighter urban areas. I would appreciate some additional perspective on the city's thinking—particularly since your application of the code would prohibit me from putting a 7-foot fence or wall along my property line, while allowing the applicant to place 20 feet of retaining wall along the same property line. And since the walls are hundreds of feet in length, this is not much different from putting a very large building within the setback, which would be impossible in a SF zone. This doesn't make sense--and it creates impacts.

Another provision in the code, **15.16.050 Requirements.**, limits the amount of vegetation removal on the site depending on the slope (Table 1 – Clearing Matrix). The slope of the property does trigger these requirements. How would the project meet this section? And did the applicant provide a slope report consistent with this section?

Regards,

David Tyler

> On 01/25/2023 8:10 AM Andrew Galuska <agaluska@mukilteowa.gov> wrote:
>
> David,
>
> MMC 17.20.080 refers to freestanding walls, which we do regulate like fences. However, the applicant is proposing retaining walls which are not regulated in the same manner. The project proponent is proposing landscaping to help reduce the visual impacts on the neighboring properties.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## PLANT SCHEDULE

| TREES | QTY | BOTANICAL / COMMON NAME |
|---|---|---|
| | 3 | ACER CIRCINATUM<br>VINE MAPLE |
| | 9 | ACER RUBRUM 'FRANKSRED' TM<br>RED SUNSET MAPLE |
| | 4 | CERCIDIPHYLLUM JAPONICUM<br>KATSURA TREE |

| REPLACEMENT TREES | QTY | BOTANICAL / COMMON NAME |
|---|---|---|
| R | 4 | THUJA PLICATA 'EXCELSA'<br>WESTERN RED CEDAR |

| SHRUBS | QTY | BOTANICAL / COMMON NAME |
|---|---|---|
| | 42 | CORNUS SERICEA 'ARTIC FIRE'<br>ARTIC FIRE DOGWOOD |
| | 9 | LONICERA INVOLUCRATA<br>TWINBERRY |
| | 20 | LONICERA NITIDA 'BAGGESEN'S GOLD'<br>BOXLEAF HONEYSUCKLE |
| | 55 | PANICUM VIRGATUM 'NORTHWIND'<br>NORTHWIND SWITCH GRASS |
| | 20 | RHUS AROMATICA 'GRO-LOW'<br>GRO-LOW FRAGRANT SUMAC |
| | 36 | SYMPHORICARPOS ALBUS<br>COMMON WHITE SNOWBERRY |
| | 48 | VACCINIUM OVATUM<br>EVERGREEN HUCKLEBERRY |

| GROUND COVERS | QTY | BOTANICAL / COMMON NAME |
|---|---|---|
| | 4,692 | COTONEASTER DAMMERI 'CORAL BEAUTY'<br>CORAL BEAUTY COTONEASTER |

## RAIN GARDEN

| | | |
|---|---|---|
| | RAIN GARDEN PLANTS PER SW-047<br>– | 2,494 SF |

Andy Galuska

*Community Development Director*

*11930 Cyrus Way*

*Mukilteo, WA 98275*

*Ph: (425) 263-8084*

*Cell: (425) 866-9129*

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**From:** David Tyler <david.d.tyler@comcast.net>
**Sent:** Tuesday, January 24, 2023 5:05 PM
**To:** Andrew Galuska <agaluska@mukilteowa.gov>
**Cc:** Sarah Kress <skress@mukilteowa.gov>
**Subject:** Re: Harbor Grove

[WARNING: THIS MESSAGE HAS COME FROM A SENDER OUTSIDE THE CITY OF MUKILTEO NETWORK,]

Hello Andy and Sarah,

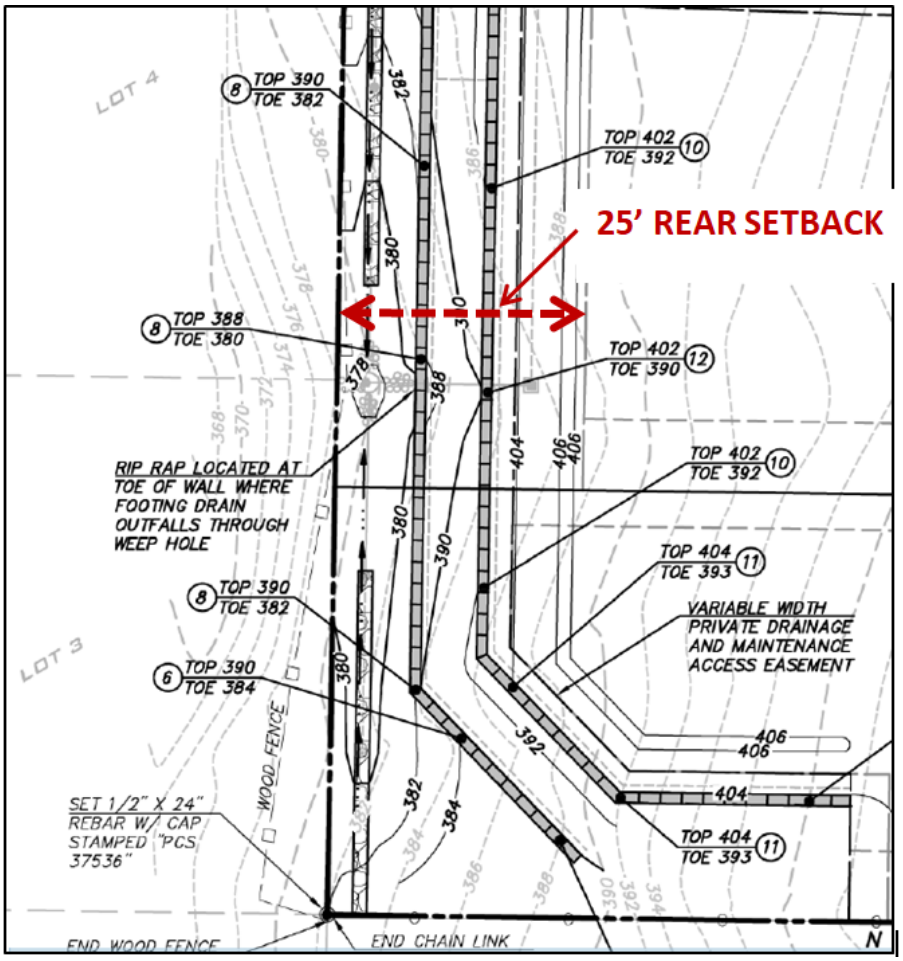
Thanks for the follow-up on this issue. Here's the code section I found and cited in a previous comment letter to Linda Ritter. Seems like it limits wall height to six feet in the rear setback. This is not an unusual requirement--Everett had something similar. For the project, the combined wall height within the rear setback is 20 feet on Lots 6 and 7. Linda never addressed this in her letter of Feb. 17, 2022. This is a critical issue for the neighbors in Rugosa that will most assuredly be raised during the SEPA process if it is not addressed prior to. I have developed some graphic information I would like to share with you at some point showing the impacts of these walls and grade changes on the site.

17.20.080 Fences and freestanding walls.

Also, you may be getting a call from Bryan Carli, Rugosa HOA president, about the project in the near future.

Best regards,

David Tyler




On 01/24/2023 3:39 PM Andrew Galuska <agaluska@mukilteowa.gov> wrote:

Mr. Tyler,

In our discussion last week, we discussed the requirements around retaining wall heights and setbacks from the property lines. I did not find any code citations which regulated the height of retaining walls. Looking through previous department history and past short plats and subdivisions, the department has not enforced property line setbacks for retaining walls.


Andy Galuska

*Community Development Director*

CITY OF MUKILTEO

*11930 Cyrus Way*

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March 6, 2023 *VIA EMAIL*

Andrew Galuska
Planning/Community Development Director
City of Mukilteo
11930 Cyrus Way
Mukilteo, WA 98275

***RE: Harbor Grove Subdivision Application***
***Retaining Wall Setbacks and Height; Building Height; Retaining Wall Details***

Dear Mr. Galuska,

This is a formal request that the City reconsider its determination regarding zoning code applicability to the proposed retaining walls along the western boundary of the project. The City maintains they are not freestanding walls and therefore are not required to meet height and setback regulations for walls, fences or other structures *(Galuska email 2-3-23)*. Under this reasoning, there is no limit to the height of retaining walls within setback areas and they are exempt from regulation under the zoning code. This interpretation of the zoning code is contrary to the purpose and intent of setback regulations and allows damaging impacts on adjacent properties including light, shadow, and increased building height caused by abrupt and artificial grade increases. Even if a hearing examiner were to rule that the proposed walls are exempt from zoning regulations, it will be impossible to ignore the impacts that such an interpretation would cause under SEPA.

The proposed retaining walls along the western boundary of the project are located within the 25-foot rear setback required by the zoning code. The lower wall would be within 12 feet of the property line, while the upper wall would be within 21 feet. The total length of the lower wall would be 170 feet, while the upper wall would be 250 feet. The combined height of the walls would be up to 20 feet on Lots 6 and 7, in the southwest corner of the project site. Both walls would exceed six feet in height in places.

Applicable City code sections:

**17.08.020 Definitions.**

*"Setback line" means a line parallel to the property line and located at the minimum distance required by the code or ordinance between a building wall and a property line or other reference.*

*"Structure" means a combination of materials constructed or erected on the ground or water, or attached to something having a location on the ground or water.*

*"Freestanding sign" means a pole, pylon, ground or monument sign supported by the structures or supports that are placed on, or anchored in, the ground and that are independent from any building or structure.*

**17.20.080 Fences and freestanding walls.**

*A. Fences and Freestanding Walls. Fences and freestanding walls are allowed under the following conditions.*

*2. Height.*

*a. In residential zones, fences and freestanding walls located in side and rear yards may not exceed six feet in height and must be stepped down to not more than four feet or forty-eight inches at the front setback line.*

*C. Variances. Increases in the height of fences or freestanding walls by more than two feet in height shall be subject to the review procedures and requirements of Section 17.64.040, Variances.*

What exactly is the difference between a retaining wall and a freestanding wall? City code does not define either term. The term "freestanding" is, however, used in identification of sign types and provides guidance on how it should be applied here (see definition above). A freestanding sign is a self-supporting structure that is not attached to a building or other structure. Using this same approach, the retaining walls in the Harbor Grove project are also considered freestanding since they are not connected to any other structures. Their only function is to support fill dirt and allow the site elevation to be raised.

The proposed walls, because of their height, length and continuous nature are more like large buildings than the type of retaining walls that are commonly used on residential lots. In fact, the proposed walls create a greater impact than if a variance were issued for a residential house within the rear setback. This is due to the continuous length, with no gaps to allow light to pass through.

The American Planning Association in, A Planner's Dictionary includes model definitions for setback regulations, including the following:

> ***Setback regulation.*** *The requirement that a building be set back a certain distance from the street or lot line, whether on the street level or at a prescribed height. The aim is to allow more room for the pedestrian or to reduce the obstruction to sunlight reaching the streets and lower stories of adjoining buildings. (Handbook for Planning Commissioners in Missouri)*

The proposed walls along the western and southern property lines are both retaining walls ***and*** freestanding walls under city code and are therefore subject to the height and setback provisions under MMC 17.20.080.A.2.a. The Planning Department should have required either a project redesign or a variance application for wall height exceeding six feet within the 25-foot rear setback. With the current project design the application is incomplete because it does not include a variance request.

Building height:

A closely related issue is building height. How will future building height be calculated for lots that are created on structural fill with a finished grade higher than existing grade? Please provide the relevant code framework and rationale.

Additional information regarding retaining wall design details:

One of the items in the City's letter dated Feb. 17, 2022 requesting additional information for the Harbor Grove application was, *"Detailed drawings of the proposed retaining walls"* (see page 6 of the letter). This information has not been provided by the applicant.

In the applicant's response letter to Linda Ritter dated Aug. 11, 2022, the applicant addresses this issue:

> **Response:** *Coordination has been made with the geotechnical engineer in providing detailed drawings of the proposed retaining walls and drains. Details will be submitted with the retaining wall clearing and grading permit when obtained.*

The applicant stated they will not be providing the information as part of the land use application, but will instead submit it with the grading permit application. The design details for the retaining walls are important to understand the impacts of the project. For example, we need to know if the applicant intends to construct the walls using ecology blocks, which will be an instant eyesore. Long-term structural stability and maintenance are other key concerns. (After all, the walls need to last forever due to the difficulty in gaining access to repair/replace them.) The City recognized this in their request for additional information. And since this issue was raised in the public comments received by the City, there is no basis to waive the requirement. The additional information requested by the City has not been provided within the code required time frame and the Harbor Grove application should be terminated under MMC 17.13.040.E.

Your consideration and response to these issues would be greatly appreciated.

Sincerely,

David Tyler
9055 Hargreaves Pl., Mukilteo, WA 98275

CC: Sarah Kress, Matthew Geiger – City of Mukilteo
Sylvia Kawabata
Bryan Carli