

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.

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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