



CITY OF MERCER ISLAND

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STAFF REPORT
APL22-003– APPEAL OF DECISION (7422 E Mercer Way)

September 13, 2024

I. APPEAL SUMMARY

File Nos.:	APL22-003
Location:	7422 East Mercer Way, Mercer Island WA 98040; King County Assessor tax parcel number 257950-0102 (“Property”)
Appellant(s):	Pearl Ren 7422 East Mercer Way, Mercer Island WA 98040 King County Assessor tax parcel number 257950-0102
Responsible Person or Persons:	Owner: Pearl Ren 7422 East Mercer Way, Mercer Island WA 98040 Email: xiangping_ren@yahoo.com
Description:	City of Mercer Island Staff posted a stop work order at the Property on August 26, 2022. Appellant appealed the stop work order.
Recommendation:	Staff recommends that the Hearing Examiner uphold the decision to post a stop work order and dismiss Appellant’s appeal.

II. Introduction

The City of Mercer Island (“City”) submits the following pursuant to Hearing Examiner Rules of Procedure (“RoP”) 224(g). Appellant Pearl Ren (“Appellant” or “Ren”) appealed the City’s decision to post a stop work order at the Property. Ex. 23.

Between 2019 and 2022, contractor for Appellant obtained permits to demolish and replace damaged components of an existing dock and boathouse. Exs. 1 and 2. While the construction of the replacement dock was underway in August 2022, concerns were raised regarding the condition of the adjacent, abutting dock at 7430 East Mercer Way. Ex 3. Further, Staff was contacted by the neighbor residing at 7430 East Mercer Way (Lynn Tuttle), expressing concerns about construction undertaken on behalf of Appellant Ren. Exs. 4-6. After investigation, the Building group of the City’s Community Planning and Development Department (“CPD”) posted a stop work order to prohibit further work at the site until the issue could be addressed. Ex. 16.

Appellant provides three bases for her appeal. Ex. 23. The record and testimony are expected to show that the first two provided bases are factually incorrect. The third stated reason for appeal does not contest the validity of the decision to post the stop work order, but instead, requests modification of the corrective action. As explained below and will be explained at hearing, modification of the corrective action in the manners suggested by Appellant is inappropriate and unnecessary.

III. FACTUAL BACKGROUND

Testimony is expected to show that prior to damage from a tree strike, a boathouse and dock existed on the east shoreline of Mercer Island which abutted the properties at 7422 and 7430 E Mercer Way. Exs. 17-19. The configuration of the boathouse and the dock to the south appeared to be relatively unchanged from that found in aerial photography from 1963 and likely as far back as 1946. Exs. 18 and 19, respectively.

On August 23, 2019, a contractor applied for a permit on behalf of Appellant to demolish a boathouse and portion of a dock (Ex. 20), which was assigned permit no. 1909-076. Ex. 1. During the plan review for this demolition and prior to approving the application, the City requested the plan comment “[c]ontractor to verify that no existing framing to remain relies upon the components to be removed” to be added. Ex. 21. Testimony is expected to show that the impetus behind this plan comment was concern that the age of the dock suggests that there was not structural separation that coincided with the lateral line extending from the two properties. It was indeed added to the plan set by the contractor and Demolition permit 1909-076 required the “[c]ontractor to verify that no existing framing to remain relies upon the components to be removed.” Ex 1, Sheet A2.0.

On April 8, 2021, the same contractor applied for a permit on behalf of Appellant to construct a replacement dock and covered moorage, which was assigned permit number 2104-111. Ex. 22, 2. This application was reviewed and construction documents were issued with permit 2104-111. Ex. 2.

On August 9, 2022, the City received a code compliance request from an anonymous user related to the condition of the southern dock that was proposed to remain in place following completion of permits 1909-076 and 2104-111. Ex. 3.

On August 10th, 2022, the City received a separate request from the resident at 7430 E Mercer Way, Ms. Tuttle, asking the City to investigate damage claimed with respect to the southern dock during the performance of work permitted under 1909-076 and 2104-111. Exs. 4-5. The City subsequently received a photo from Ms. Tuttle, showing the condition of the damaged boathouse prior to removal. Ex. 6.

On August 16th, 2022, the City's code enforcement officer sent several photos to the then Building Official, Don Cole, reflecting the progress of construction at that time. Exs. 7-8.

On August 22nd, 2022, the City received an updated code compliance request from the anonymous user with concerns over the safety of the southern dock. Ex 9. On the same date, the City received additional photos from Ms. Tuttle, displaying work that was not authorized under either permit 1909-076 or permit 2104-111. Ex. 10. This work involved steel half-piles, evidence of recent cutting of framing associated with the southern dock, and pile configurations which did not appear to match the documents for 2104-111. Ex. 10 (*Cf.* Ex. 2). This communication from the resident at 7430 East Mercer Way also included a photo taken during demolition, which shows the southern dock bearing on a pile cap which had been removed prior to the photos taken by the City's code enforcement officer. Exs. 7-8, and a contractor's strap lifting the southern dock stringer from the pile cap. Ex 11.

Testimony is also expected to show that between August 23 and August 25, 2022, City staff arranged a site visit and communicated with both the contractor and resident at 7430 East Mercer Way, including notifying the contractor that work should be paused, attaching the photo of work being performed on the southern dock. Ex. 12. The contractor replied with photos which clearly show the deteriorated condition of the southern dock, that its stringers extend to the pile cap that was subsequently removed, and that it had been "blocked up" from its remaining piles. Of note during discussion with the contractor was a concrete masonry unit (CMU) block, which appeared to move between photos and which the contractor acknowledged was unlikely to have been part of the original structure. Removal of this CMU block appeared to allow the pile cap to drop away from the southern dock structure. Ex. 13. The contractor also provided a photo which shows the southern dock stringers bearing on the pile cap which was subsequently removed. Ex. 14.

On August 25th, 2022, testimony is expected to show that Building Official Don Cole and Sr. Plans Examiner Gareth Reece visited the site. Testimony is expected to show that the results of the on site investigation supported the issuance of a stop work order. Following direct observation of the condition of the southern dock, and after reviewing photos provided by the contractor and resident referenced above, Cole and Reece drafted a stop work order which was posted on site by the City's Code Enforcement Officer. Ex. 16. Appellant's appeal followed. Ex. 23.

IV. LEGAL STANDARD

Appellant challenges CPD Staff's decision to post a stop work order pursuant to the provisions of MICC 6.10.070 (C). The authority to issue a stop work order is granted to the City by MICC 6.10.070. Having found any of seven conditions to be present, MICC 6.10.070 requires the issuance of a stop work order.

Further, Hearing Examiner rule 316(a) places the burden of proving the violation in code enforcement proceedings on the City. The testimony and evidence will establish that the City correctly posted the Stop Work Order based upon the violations of the terms of permits 1909-076 and 2104-111, the conditions documented by Appellant's contractor and Appellant's neighbor, and the conditions observed directly by City Staff.

V. ARGUMENT

City Staff correctly posted the stop work order. Appellant does not dispute that demolition permit 1909-076 required “contractor to verify that no existing framing to remain relies upon the components to be removed,” or that such permit expired without the required closeout inspections. Ex. 23.

Of the seven elements listed in MICC 6.10.070, the facts supported issuance of a stop work order on no fewer than five of the possible conditions to support a stop work order. The City notes that Appellant’s appeal does not allege error based on misapplication of MICC 6.10.070. Ex. 23.

1. The work is not authorized by a valid permit or inaccurate information was used to obtain the permit;

No permit was issued related to the southern dock structure. Exs. 1 and 2. Photos and direct observation demonstrated that work had been performed on the southern dock (blocking of the dock, lifting of stringers to change support conditions, sawing of stringers to modify span). Exs. 10, 11, 14. Photos provided by Ms. Tuttle and direct observation of the work on site by CPD staff evidenced deviation from the scope of work approved under permit 2104-111, namely framing of the southern dock had been recently sawn, steel half-sleeves had been installed, existing pile configuration did not match the plans, and piles anticipated to be spliced were abandoned below the southern dock. Ex. 10, Ex. 2. That work was thus not authorized by a valid permit. Ex. 2.

2. The permittee is not complying with the terms or conditions of the permit or approved plans (...)

Demolition permit 1909-076 was conditioned on the contractor’s duty to verify that the southern dock was unaffected by the scope of work. Ex. 1. This permit expired without obtaining City inspections to verify compliance with the condition, and photos and CPD Staff direct observation demonstrated that the permittee did not comply with this condition. Exs. 13-15.

5. The work is adversely affecting the public health, safety, or welfare;

Code compliance requests reported that the condition and use of the southern dock was a hazard to safety. Exs. 3, 9. Photos provided by the Appellant’s contractor and Ms. Tuttle, along with direct observation by City Staff supported this report. Exs. 13 (showing piles that appear to be rotted, blocking which had been installed to raise the dock without permit, sawn stringers which no longer bore on a previous pile cap, and an unstable stringer configuration which could overturn under unbalanced live loading).

6. The work is a hazard to the property or is adversely affecting, or could adversely affect, adjacent property (...)

The permitted work involved two areas of dock which are accessed by two adjacent property owners. Testimony is expected to demonstrate that the conditions related to the dock framing specifically create a hazard and adversely affect the safety of a dock accessed from the neighboring property. The potentially unsafe framing remaining which supported the southern dock was concealed by decking and a non-skid covering. The property at 7422 East Mercer Way utilized access via the affected areas of the southern dock to access boat moorage and a swimming platform, and thus a failure of the southern dock would adversely affect both the property at 7422 and 7430 East Mercer Way.

7. [The work o]therwise materially impairs the director’s ability to secure compliance with the MICC.

Allowing work to proceed following the discovery of the permittee’s failure to comply with conditions of the demolition permit and the contractor’s deviations from the approved plans in 2104-111 would impair the City’s ability to secure conformance with construction regulated under Title 17 of the MICC, and environmental provisions of Title 17 of the MICC. Testimony is expected to show that allowing any progress on the permitted work would acutely impact the City’s ability to evaluate the structures, for instance installation of deck grating obscures and prohibits visual observation of framing below. See e.g. Ex. 12.

The City correctly posted a stop work order and informed the parties of their actions, their reasoning, and a suggested course of action. Ex. 17.

VI. RESPONSE TO APPEAL

1. The Appellant erroneously alleges in their first cause for appeal that the contractor verified that no framing to remain relied upon the components removed under Permit 1909-076.

Staff Response: Appellant does not dispute that Permit 1909-076 expired without a City inspection; therefore, the contractor failed to demonstrate to the City that this condition was satisfied. Ex. 15. Further, testimony is expected to demonstrate that this allegation is incorrect and that the contractor did not perform the required verification.

2. The Appellant challenges the SWO language providing that “the span conditions of at least two existing and remaining pile caps were modified during the demolition of the damaged boathouse.”

Staff Response: The evidence and the testimony are expected to verify that Appellant’s contractor did indeed modify the span conditions of at least two existing and remaining pile caps during demolition of the damaged boathouse. For example, Ex. 13 contains a photo of the contractor’s crane lifting a stringer protruding from the southern dock. The pile cap from which the stringer is being lifted was later removed by the contractor. Ex. 5. The photo in Ex. 13 further demonstrates the westernmost stringer of the southern dock bearing on the cap.

Photographs provided by Appellant’s contractor further demonstrate the same stringer blocked up on its other piles with the cap lowered away from the southern dock. Ex. 14. Photos provided by Ms. Tuttle show fresh end-cuts of stringers beneath the southern dock; these cuts indicate that these stringers were recently cut flush so as to no longer protrude to bear on the pile cap that the contractor removed. Ex. 10.

3. The Appellant objects to the instructions on the stop work order to “resolve discovery of framing condition with a revision to 2104-111,” and requests modification of the corrective action.

Staff Response: City Staff do not believe that modification of the corrective action is necessary. The corrective action noted in the Stop Work Order is an effort to provide the applicant with an expedient path forward. MICC 6.10.070 does not require that a Stop Work Order contain a required course of action, and the applicant is free to pursue any actions which would demonstrate that “the reason for the order has been resolved or abated” as required by MICC 6.10.070 (D). The email provided by staff on the same day describes the revision as “an appropriate remedy.” Ex 16. In the 24 months since the posting of the Stop Work Notice, the Appellant has failed to pursue or attempt any of the three modifications proposed in the appeal.

VII. Conclusion

The City correctly issued the Stop Work Order. The City respectfully requests the Hearing Examiner uphold the City's action and dismiss Appellant's appeal.

Dated this 13th day of September, 2024.

A handwritten signature in black ink, appearing to read 'GR', with a long horizontal stroke extending to the right.

Gareth Reece
Assistant Building Official
City of Mercer Island