

DSG Policy Memorandum
Administrative Interpretation
#04-01



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TO: DSG Staff
FROM: Richard Hart
DATE: April 2, 2004
RE: Interpretation of Legally Nonconforming Policy

The Code Official under Section 19.15.010(C)(5)(a) of the Unified Land Development Code makes this administrative policy determination and interpretation of the Unified Land Development Code of Mercer Island.

The purpose of this administrative interpretation is to clarify when legally non-conforming structures and sites must be brought into conformance with current code requirements.

Roofs

Pursuant to MICC 19.01.050 (D)1(b)(i), applicants may intentionally alter a structure and retain legally nonconforming status of that structure as long as no more than 40 percent of the length of the exterior walls of the residence (excluding attached accessory buildings) are structurally altered.

According to the Code, a “structural alteration” is defined as:

MICC 19.16.010

“Any change, addition, or modification to elements of a structure that are or relate to load-bearing members or the stability of the structure (as distinguished from screening or ornamental elements). Examples of structural alterations include, but are not limited to any change in the supporting members of a structure, such as foundations, studs in exterior or bearing walls or bearing partitions, columns, beams, headers, girders, joists or rafters. Replacement of exterior cladding and replacement of glazing in existing openings shall not be considered structural alteration.”

The following section explains the “40 percent rule.”

MICC 19.01.050(D)(1)(b)(i)

1. Detached Single-Family Residential Structures.
 - b. Intentional Exterior Alteration or Enlargement

i. Detached Single Family Dwelling. A legally nonconforming detached single family dwelling may be intentionally altered or enlarged without losing its legal nonconforming status as long as no more than 40 percent of the length of the dwelling's exterior wall, excluding attached accessory buildings, are structurally altered. Any portion of the length of existing walls that are structurally altered shall be included in calculating the 40-percent threshold. In no event shall the alteration or enlargement increase any existing nonconforming aspect of the dwelling or create any new nonconformance. Legal nonconforming status shall be lost, and the structure shall be required to come into conformance with current code requirements, if the 40-percent threshold is exceeded. An increase in height of that portion of a structure that is legally nonconforming because it intrudes into a required yard is an increase in the nonconformity and is not allowed unless the additional height meets the current yard requirements of MICC 19.02.020(C)(1) except:

(A) A change from a flat roof to a pitched roof is allowed under MICC 19.02.020(C)(3)(a); and

(B) A height increase of a single-family dwelling and any accessory building or structure in the R-8.4 zone that is legally non-conforming because it intrudes into a minimum five-foot required side yard is allowed only if the additional height is modulated so that it is a minimum of 10 feet from the side yard property line.”

The following reference to 19.02.020(C)(3)(a) addresses setback nonconformance in the case of roof replacement:

MICC 19.02.020 (C)(3)(a)

“3. Intrusions into Required Yards.

a. Minor Building Elements. Porches, chimney(s) and fireplace extensions, and unroofed, unenclosed outside stairways and decks shall not project more than three feet into any required yard. Eaves shall not protrude more than 18 inches into any required yard; provided, no penetration shall be allowed into the minimum five-foot setback abutting an interior lot line except where an existing flat roofed house has been built to the interior side yard setback line and the roof is changed to a pitched roof with a minimum pitch of 4:12, the eaves may penetrate up to 18 inches into the side yard setback.”

The preceding sections refer only to height and 5-foot setback encroachment by a new pitched roof. If a 4:12 pitched roof replaces a flat roof, it may encroach 18 inches into all setbacks, including the five foot setback. In all other cases, roof eaves may encroach maximum 18 inches into all setbacks, with no encroachment into the five foot setback.

These sections only address the issue of setbacks for roof replacement. None of the preceding sections state that an applicant may replace an entire flat roof with a pitched roof and retain legally nonconforming status for the structure.

Second Story Additions

Second story additions are not mentioned anywhere as an exemption from the 40 percent rule or the definition of “structural alteration.” The addition of height is referenced in 19.01.050(D)(1)(b)(i)(B), but is not specifically exempt from the 40 percent calculation. Height additions must meet current setbacks and are further restricted with an additional setback in the R-8.4 zone where a first story encroaches into the five foot setback.

Impervious Surface Nonconformance

The 40 percent rule references nonconformities of the structure (such as setbacks) but does not reference nonconformities of the site (such as impervious surface). Legal nonconformance due to impervious surface is addressed in the following sections:

MICC 19.01.050 (A)(4)

“A structure, site or use may be maintained in legal nonconforming status as long as no new nonconformances are created, there is no expansion of any existing nonconformity, and legal nonconforming status is not lost under any of the circumstances set forth in this section. If legal nonconforming status is lost, the structure, site or use must be brought into conformance with all applicable code requirements.”

And:

MICC 19.01.050 (F)(1)

“A structure on a site that is legally nonconforming because the maximum allowable surface coverage has been exceeded can be increased in height (up to the maximum height permitted) if it does not expand beyond the existing building footprint. Expansion is not permitted over impervious surfaces such as decks, patios, porches, walkway, and driveways.”

These sections indicate that impervious surface nonconformance is not governed by the 40 percent rule and that applicants may increase the height of the building, but not expand the footprint.

Interpretations

After closely reviewing the specific language and intent of the MICC, the Code Official does hereby make the following clarification and interpretation:

1. The process of replacing an entire roof would structurally alter all existing walls (according to MICC definition above). However, the intent of 19.01.050 (D)(1)(b)(i)(A) is to allow a change from a flat roof to a pitched roof. Therefore, applicants with structures that don't conform to all minimum setback requirements may replace a flat roof with a 4:12 pitched roof, so long as the eaves do not encroach more than 18 inches into the five foot setback(s).
2. Based on the definition of “structural alteration,” second story additions would structurally alter the existing walls. The code does not specifically exempt these from the 40% calculation. For structures to retain legally non-conforming status, a second story addition may occur over no more than 40 percent of the length of the existing walls.
3. Impervious surface nonconformance is not addressed in the 40 percent calculation. Applicants may add height to a structure on a site that does not conform to impervious surface requirements, but they may not increase the building footprint.

4. If the site is both nonconforming to setbacks and impervious surface:
 - a. applicants may not increase the building footprint
 - b. applicants may add a second story or according to the restrictions in (3) above
 - c. Roof replacement is allowed according to (1) and (2) above. However, if the applicant replaces a roof, the eaves may not be increased even if the increase meets the restrictions in (1) and (2) above. This is because larger eaves would increase the drip line of the roof, which is not permitted if a site is already nonconforming due to impervious surface.