TO: DSG Staff  
FROM: Scott Greenberg, Development Services Director  
DATE: October 20, 2014  
RE: Impervious Surface Deviation Review Criteria  
CC: City Attorney

MICC SECTION(S) INTERPRETED  
MICC 19.01.070(B)(2), MICC 19.02.020(D), 19.15.020(G), MICC 19.15.010(E)

AUTHORITY  
This administrative interpretation is issued under the authority of Section 19.15.010(C)(5)(a) of the Mercer Island City Code (MICC).

ISSUE(S)  
The purpose of this administrative interpretation is to clarify the criteria for review of an impervious surface deviation.

FINDINGS  
1. MICC 19.02.020(D)(3) permits the Code Official to grant a deviation allowing for an additional five percent of lot coverage over the maximum requirements and provides deviation criteria.

2. MICC 19.15.010(E) provides the “Criteria” for a “Deviation (Except Shoreline Deviations)” is “MICC 19.01.070, 19.02.020(C)(4) and (D)(3), 19.02.050(F), 19.15.020(G).” MICC 19.02.020(C)(4) applies to setback deviations and does not apply to impervious surface deviations. MICC 19.02.050(F) applies to fence height deviations and does not apply to impervious surface deviations.

3. MICC 19.01.070(B)(2) states:  
   A deviation may be granted if the applicant demonstrates that the criteria set out in MICC 19.15.020(G)(5), and any additional deviation criteria set out in the code section under which the permit would be issued, are satisfied.

4. MICC 19.15.020(G) states, in part:
Decisions shall be based on the criteria specified in the Mercer Island City Code for the specific action. A reference to the code sections that set out the criteria and standards for decisions appears in MICC 19.15.010(E). For those actions that do not otherwise have criteria specified in other sections of the code, the following are the required criteria for decision.

5. MICC 19.15.020(G)(5) states:
   Deviation.
   a. No use deviation shall be allowed;
   b. The granting of the deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated;
   c. The granting of the deviation will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property; and
   d. The deviation is consistent with the policies and provisions of the comprehensive plan and the development code.

6. MICC 19.02.020(D)(3) states:
   The code official may grant a deviation, allowing an additional five percent of lot coverage over the maximum requirements; provided, the applicant demonstrates through the submittal of an application and supporting documentation that the proposal meets one of the following criteria:
   a. The proposal uses preferred practices, outlined in MICC 19.09.100, which are appropriate for the lot; or
   b. The lot has a unique shape or proportions (i.e., a flag lot, with a circuitous driveway corridor); or
   c. The proposal minimizes impacts to critical areas and provides the minimum extent possible for the additional impervious surfaces.
   The city shall provide notice for the proposed action as required by MICC 19.15.020(D) and (E), Administration.

CONCLUSIONS
A. MICC 19.01.070(B)(2) requires deviations to show that the criteria of 19.15.020(G) are met.

B. MICC 19.15.020(G) requires general criteria to be met where specific criteria are not otherwise provided.

C. MICC 19.02.020(D)(3) provides specific criteria for granting a request for an impervious surface.

INTERPRETATION
For an impervious surface deviation application, only the criteria of MICC 19.02.020(D)(3) apply. The general criteria in MICC 19.15.020(G) do not apply.