TO: DSG Staff

FROM: Richard Hart, Development Services Director

DATE: March 15, 2002

RE: Administrative Interpretation of Nonconforming Structures

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.

Questions have been raised regarding the intentional destruction, remodeling, structural alteration, and enlargement of non-conforming structures. If any development that is non-conforming due to height, setbacks, gross floor area, impervious surface coverage or other development standards is intentionally destroyed, it may only be reconstructed in compliance with the current provisions of the Unified Land Development Code. Ordinary repairs, maintenance and interior remodeling, not involving structural alteration of a non-conforming structure, are permitted. However, this is not intended to allow total replacement, substitution, or reconstruction of the nonconforming structure.

The following is an administrative policy determination and interpretation of the Unified Land Development Code of Mercer Island regarding the intentional destruction, remodeling, structural alterations, and enlargements of nonconforming structures, as documented in Section 19.01.050.

The Code Official makes the following administrative policy determination:

“Intentional destruction” of a nonconforming structure is when less than 60% of the external walls of the structure remain. The destruction and/or subsequent reconstruction of 40% or less of a structure’s external walls shall be considered a structural alteration or remodel.

Where a structure is nonconforming due to setbacks or height, structural alterations or enlargements are only allowed if they do not increase the nonconforming intrusion in the setback or maximum height limit (19.01.050 (B)(3)(b)).

A residential structure that is nonconforming because it exceeds the maximum allowable impervious surface coverage can increase in height (up to the maximum height permitted), if it was legally constructed, if it is not located in a critical area, and if it does not expand beyond the
existing building footprint. Expansion is not permitted over non-structural impervious surfaces such as decks, patios, porches, walkways, driveways, or when the structure is located in a critical area. If the applicant is proposing to increase the height of a nonconforming structure located in a critical area or expand the nonconforming structure over existing nonstructural impervious surfaces, this will only be permitted if the property owner uses best efforts possible to bring the development into conformance or more into conformance as documented in 19.01.050 (B)(3)(a).

A proposed alteration to a structure that is nonconforming due to exceeding the maximum 45% gross floor area limit may not be enlarged. Interior remodels are permitted; however, any structural alterations are only permitted if the structure is brought more into conformance.