
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercergov.org



PLANNING COMMISSION

To: Planning Commission

From: Alison Van Gorp, CPD Deputy Director

Date: January 14, 2020

RE: ZTR21-002 Goldbach II Code Amendment (CUP Applicability)

SUMMARY

The proposed code amendment amends MICC 19.06.110(A)(5), creating a new subsection (c) and adding clarity on the applicability of Conditional Use Permits (CUPs).

BACKGROUND

Matthew Goldbach suggested through the annual docketing process and the City Council placed on the final docket a proposed code amendment to MICC 19.06.110(A)(5) adding a new subsection (c), as outlined in Attachment 1. This amendment would provide additional clarity around the applicability of CUPs. The new subsection would spell out that a CUP is only applicable to the property for which it is granted. Any expansion of a conditional use beyond this property to contiguous or non-contiguous properties would require a new CUP.

Beyond providing additional clarity, this amendment would have no further effect because the City's application and approval procedures already make it clear that a CUP is only applicable to the property for which it was originally granted. Under MICC 19.15.060, the City's Code official has authority to require "all information deemed necessary by the code official..." as a part of applications for development approval. The City's application form requires the applicant to provide a Tax Parcel Number. Additionally, MICC 19.15.060 (A)(2) requires a site plan at application submittal and MICC 19.15.060(A)(7) requires a legal description of the site. This information already serves to create an administrative record establishing the boundaries of the property to which a CUP, if granted, will apply.

The Mercer Island City Code specifies the following decision criteria for code amendments (MICC 19.15.250 (D)), which should be used to evaluate the proposed amendment:

Criteria. The [city](#) may approve or approve with modifications a proposal to amend this code only if:

1. The amendment is consistent with the comprehensive plan; and
2. The amendment bears a substantial relation to the public health, safety, or welfare; and

3. The amendment is in the best interest of the community as a whole.

City staff believe this proposal meets all three criteria. The draft amendment included in Attachment 1 was drafted by Mr. Goldbach. Staff recommend adoption of the amendment; however, staff also recommend that the commission consider revisions to the amendment for clarity and to avoid any ambiguity in implementation. Staff will be prepared to discuss this recommendation in more detail at the January 20 Planning Commission meeting.

NEXT STEPS

Please review the attached proposed code amendment. At the January 20 meeting the Commission will discuss the proposal and provide feedback to staff on any revisions. A Public Hearing is scheduled during the Planning Commission's February 17 meeting. After hearing public comments on the proposal, the Commission should make a recommendation to the City Council.

ATTACHMENTS

1. Proposed amendment to MICC 19.06.110(A)(5)

Attachment 1

ZRT21-002 – Proposed Code Amendment on CUP Applicability

19.06.110 Criteria for approval – Conditional use permits, variances, and setback deviations.

A. *Conditional Use Permits.*

1. *Purpose.* A use may be authorized by a [conditional use](#) permit for those uses listed in Chapters [19.02](#) and [19.11](#) MICC. The intent of the [conditional use](#) permit review process is to evaluate the particular characteristics and location of certain uses relative to the [development](#) and design standards established in this title. The review shall determine if the [development proposal](#) should be permitted after weighing the public benefit and the need for the use with the potential impacts that the use may cause.

2. *Criteria for Conditional Use Permits That Are Not Located in Town Center.* An [applicant](#) must demonstrate how the [development proposal](#) meets the following criteria:

- a. The permit is consistent with the regulations applicable to the zone in which the [lot](#) is located;
- b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding [development](#), traffic capacities of adjacent [streets](#), environmental factors, size of proposed [buildings](#), and density;
- c. The use is consistent with policies and provisions of the comprehensive plan; and
- d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

3. *Criteria for Conditional Use Permits That Also Require Design Review and Are Located in Town Center.* An [applicant](#) must demonstrate how the [development proposal](#) meets the following criteria:

a. *General Criteria.*

- i. The proposed use complies with all the applicable [development](#) and design provisions of this chapter.
- ii. The proposed use is consistent with the comprehensive plan.

- iii. The proposed use is harmonious and appropriate in design, character, and appearance with the existing or intended uses within the surrounding area.
- iv. The proposed use will not generate excessive fumes, odor, dust, light, radiation, or refuse that would be injurious to surrounding uses.
- v. The proposed use will not generate levels of noise that adversely impact the health, safety, or general welfare of surrounding uses.
- vi. The proposed use will be served by adequate public services, including [streets](#), fire and public safety protection, water, sewer, and storm water control, and will not adversely impact the level of service standards for such facilities.
- vii. The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interest, health, safety, convenience, or welfare of the [city](#).

b. Additional Criteria for Approval of a Conditional Use for Adult Entertainment in Town Center.

- i. The point of entry into the [structure](#) housing the [adult entertainment](#) use shall be located at least 100 feet, measured in a straight line, from the property line of: (a) any R-zoned property; (b) any public institution zoned property; (c) any property containing one or more of the following uses: [residential uses](#) including single- or [multiple-family dwellings](#) or [residential care facilities](#); schools including public, private, primary or secondary, preschool, nursery school, or [day care](#); recreational uses including publicly owned park or [open space](#); commercial or noncommercial or private [recreation](#) facility; religious institutions; public institutions; or uses which cater primarily to minors.
- ii. No [adult entertainment](#) use shall be located closer than 400 feet to another [adult entertainment](#) use. Such distance shall be measured by following a straight line from the nearest point of entry into the proposed [adult entertainment](#) use to the nearest point of entry into another [adult entertainment](#) use.
- iii. The point of entry into an [adult entertainment](#) use shall not be located along 78th Avenue SE.
- iv. Signing shall be limited to words and letters only. [Window](#) or exterior displays of goods or services that depict, simulate, or are intended for use in connection with [specified sexual activities](#) as defined by Chapter [5.30](#) MICC are prohibited.

4. No [building](#) permit, business license, or other permits related to the use of the land shall be issued until final approval of the [conditional use](#) permit.

5. *Change After Conditional Use Permit Granted.*

a. *Change of Ownership.* [Conditional use](#) permits granted shall continue to be valid upon change of ownership of the site.

b. *Change of Use.* Modifications to the use shall require an amendment to the [conditional use](#) permit and shall be subject to the review process in Chapter [19.15](#) MICC.

c. *Applicability.* A conditional use permit shall be applicable only to the property for which it was granted. Property whether contiguous or noncontiguous to the property for which the conditional use permit was granted shall require new conditional use permit applications and shall be subject to this Chapter 19.13 MICC and to Chapter 19.15 MICC.

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PLANNING COMMISSION

To: Planning Commission

From: Alison Van Gorp, CPD Deputy Director

Date: February 17, 2021

RE: ZTR21-002 Goldbach II Code Amendment (CUP Applicability)

SUMMARY

The proposed code amendment amends MICC 19.06.110(A)(5), creating a new subsection (c) and adding clarity on the applicability of Conditional Use Permits (CUPs).

BACKGROUND

On January 20, 2021, the Planning Commission reviewed the proposed code amendment. Based on the staff recommendation, the Commission requested further revisions to the amendment to provide additional clarity and to remove ambiguity in the implementation of the amendment. The proposal for consideration at the February 17, 2021 meeting is has been revised to reflect this direction. This meeting will include a public hearing on the proposal, and then the Commission will have time for discussion and a recommendation.

The Mercer Island City Code specifies the following decision criteria for code amendments (MICC 19.15.250 (D)), which should be used to evaluate the proposed amendment:

Criteria. The [city](#) may approve or approve with modifications a proposal to amend this code only if:

1. The amendment is consistent with the comprehensive plan; and
2. The amendment bears a substantial relation to the public health, safety, or welfare; and
3. The amendment is in the best interest of the community as a whole.

City staff believe this proposal meets all three criteria and recommend adopted the revised code amendment.

NEXT STEPS

Hold the public hearing and receive public comment. After hearing public comments on the proposal, the Commission should make a recommendation to the City Council. The recommendation will be transmitted to City Council for review (likely in April).

ATTACHMENTS

1. Proposed amendment to MICC 19.06.110(A)(5)

Attachment 1

ZRT21-002 – Proposed Code Amendment on CUP Applicability

19.06.110 Criteria for approval – Conditional use permits, variances, and setback deviations.

A. *Conditional Use Permits.*

1. *Purpose.* A use may be authorized by a [conditional use](#) permit for those uses listed in Chapters [19.02](#) and [19.11](#) MICC. The intent of the [conditional use](#) permit review process is to evaluate the particular characteristics and location of certain uses relative to the [development](#) and design standards established in this title. The review shall determine if the [development proposal](#) should be permitted after weighing the public benefit and the need for the use with the potential impacts that the use may cause.

2. *Criteria for Conditional Use Permits That Are Not Located in Town Center.* An [applicant](#) must demonstrate how the [development proposal](#) meets the following criteria:

- a. The permit is consistent with the regulations applicable to the zone in which the [lot](#) is located;
- b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding [development](#), traffic capacities of adjacent [streets](#), environmental factors, size of proposed [buildings](#), and density;
- c. The use is consistent with policies and provisions of the comprehensive plan; and
- d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

3. *Criteria for Conditional Use Permits That Also Require Design Review and Are Located in Town Center.* An [applicant](#) must demonstrate how the [development proposal](#) meets the following criteria:

a. *General Criteria.*

- i. The proposed use complies with all the applicable [development](#) and design provisions of this chapter.
- ii. The proposed use is consistent with the comprehensive plan.

- iii. The proposed use is harmonious and appropriate in design, character, and appearance with the existing or intended uses within the surrounding area.
- iv. The proposed use will not generate excessive fumes, odor, dust, light, radiation, or refuse that would be injurious to surrounding uses.
- v. The proposed use will not generate levels of noise that adversely impact the health, safety, or general welfare of surrounding uses.
- vi. The proposed use will be served by adequate public services, including [streets](#), fire and public safety protection, water, sewer, and storm water control, and will not adversely impact the level of service standards for such facilities.
- vii. The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interest, health, safety, convenience, or welfare of the [city](#).

b. Additional Criteria for Approval of a Conditional Use for Adult Entertainment in Town Center.

- i. The point of entry into the [structure](#) housing the [adult entertainment](#) use shall be located at least 100 feet, measured in a straight line, from the property line of: (a) any R-zoned property; (b) any public institution zoned property; (c) any property containing one or more of the following uses: [residential uses](#) including single- or [multiple-family dwellings](#) or [residential care facilities](#); schools including public, private, primary or secondary, preschool, nursery school, or [day care](#); recreational uses including publicly owned park or [open space](#); commercial or noncommercial or private [recreation](#) facility; religious institutions; public institutions; or uses which cater primarily to minors.
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- iii. The point of entry into an [adult entertainment](#) use shall not be located along 78th Avenue SE.
- iv. Signing shall be limited to words and letters only. [Window](#) or exterior displays of goods or services that depict, simulate, or are intended for use in connection with [specified sexual activities](#) as defined by Chapter [5.30](#) MICC are prohibited.

4. No [building](#) permit, business license, or other permits related to the use of the land shall be issued until final approval of the [conditional use](#) permit.

5. *Change After Conditional Use Permit Granted.*

a. *Change of Ownership.* [Conditional use](#) permits granted shall continue to be valid upon change of ownership of the site.

b. *Change of Use.* Modifications to the use shall require an amendment to the [conditional use](#) permit and shall be subject to the review process in Chapter [19.15](#) MICC.

c. *Applicability.* A conditional use permit shall be applicable only to the property for which it was granted, as defined by the legal description of the property boundaries submitted with the conditional use permit application. The use(s) permitted under a conditional use permit shall be permissible only within the boundaries of the legal description submitted with the permit application, even if the boundaries of the property are subsequently enlarged. This Property whether contiguous or noncontiguous to the property for which the conditional use permit was granted shall require new conditional use permit applications and shall be subject to this Chapter 19.13 MICC and to Chapter 19.15 MICC.

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PLANNING COMMISSION

To: Planning Commission

From: Alison Van Gorp, CPD Deputy Director

Date: March 17, 2021

RE: ZTR21-002 Goldbach II Code Amendment (CUP Applicability)

SUMMARY

The proposed code amendment amends MICC 19.06.110(A)(5), creating a new subsection (c) and adding clarity on the applicability of Conditional Use Permits (CUPs).

BACKGROUND

On January 20 and February 17, 2021, the Planning Commission reviewed the proposed code amendment. At the February meeting a public hearing was held and then the Commission requested further revisions to the amendment to provide additional clarity around how conditional uses could be permitted on adjacent/added property. Commissioner Murphy provided a suggested revision to the amendment via email after the conclusion of the meeting. The proposal for consideration at the March 17 meeting is based on Commissioner Murphy's suggestions, with additional input from the City Attorney. Please review this draft closely and be prepared to make any final edits during the March 17 meeting. It is anticipated that the Commission will finalize their recommendation on this amendment during this meeting.

NEXT STEPS

Continue deliberations on the proposal, providing any final input on the wording of the amendment, and finalizing the Commission's recommendation to the City Council. The recommendation will be transmitted to City Council for review in April.

ATTACHMENTS

1. Proposed amendment to MICC 19.06.110(A)(5)

Attachment 1

ZRT21-002 – Proposed Code Amendment on CUP Applicability

19.06.110 Criteria for approval – Conditional use permits, variances, and setback deviations.

A. *Conditional Use Permits.*

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- b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding [development](#), traffic capacities of adjacent [streets](#), environmental factors, size of proposed [buildings](#), and density;
- c. The use is consistent with policies and provisions of the comprehensive plan; and
- d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.

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- vi. The proposed use will be served by adequate public services, including [streets](#), fire and public safety protection, water, sewer, and storm water control, and will not adversely impact the level of service standards for such facilities.
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a. *Change of Ownership.* Conditional use permits granted shall continue to be valid upon change of ownership of the site.

b. *Change of Use.* Modifications to the use shall require an amendment to the conditional use permit and shall be subject to the review process in Chapter 19.15 MICC.

c. *Applicability.* A conditional use permit shall be applicable only to the property for which it was granted, as defined by the legal description of the property boundaries submitted with the conditional use permit application (“Permitted Property”). The use(s) permitted under a conditional use permit shall not extend beyond the boundaries of the legal description submitted with the permit application. Permitted Property to adjoining property or property added to the Permitted Property even if the boundaries of the property are subsequently enlarged unless the conditionally approved use(s) are already allowed on the adjoining or added property or a new conditional use permit is granted for the adjoining or added property.

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