
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

TO: Planning Commission

FROM: Alison Van Gorp, Deputy Director

DATE: February 15, 2023

SUBJECT: ZTR22-001

ATTACHMENTS: 1. Herzl Ner-Tamid Docket Request dated September 30, 2021

SUMMARY

The purpose of this memo is to provide the Planning Commission with the staff recommendation for ZTR22-001. This zoning code amendment was proposed in a Docket Request dated September 30, 2021 (Attachment 1). The docket request proposed amending the Business Zone to allow schools. At the February 22 meeting, staff seeks initial guidance from the commission on the proposed code amendment. Specifically, whether the commission would like to proceed with the amendment as proposed, pursue a revised amendment, or recommend no further action.

BACKGROUND

Anjali Grant, on behalf of Herzl Ner-Tamid, submitted a docket request for an amendment to Title 19 MICC on September 30, 2021 (Attachment 1). The City Council considered whether to add the proposed amendments to the Community Planning and Development (CPD) work program during a public meeting on December 7, 2021. The City Council approved [Resolution No. 1615](#), which added legislative review of the proposed Business Zone amendment to the final docket.

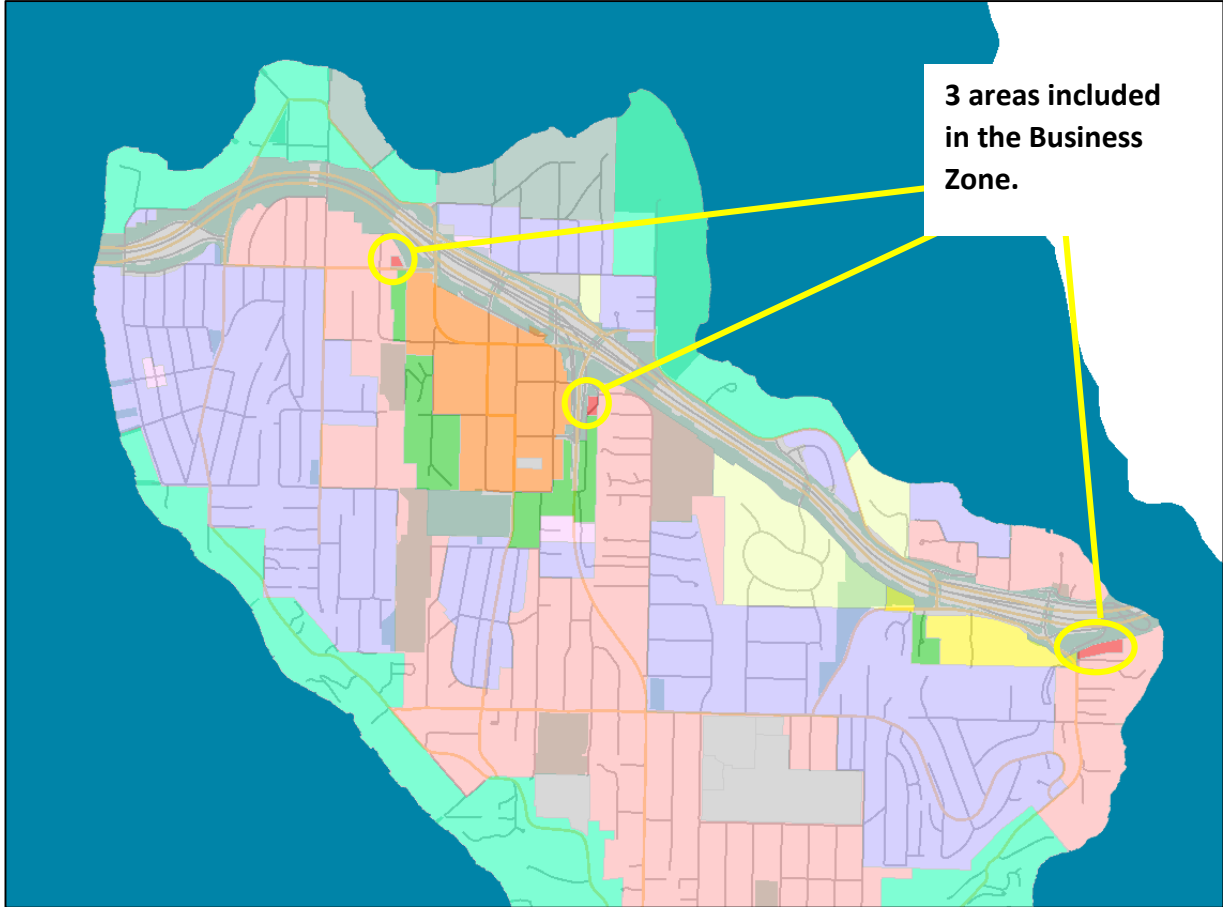
The docket request proposed an amendment to [MICC 19.04.050 Business – B](#). The proposed amendment of MICC 19.04.050 would add public and private schools to the list of permitted uses in the Business Zone. The application states that the proposed amendment would improve the consistency between the development regulations and the Comprehensive Plan (see attachment 1 for details).

MICC 19.04.050 Business – B

MICC 19.04.050 establishes the permitted uses and other zoning regulations for the Business Zone (B Zone). The B Zone currently permits a variety of commercial uses, including preschools and daycares, but does not allow public or private K-12 schools. The regulations related to setbacks and lot coverage in the B zone are minimal; only a 10-foot setback from public rights-of-way is required. There are no lot coverage or landscaping requirements.

Three areas in Mercer Island are included in the B Zone; all are located just to the south of I-90, with two being adjacent to the Town Center Zone and one being on a portion of the Herzl Ner-Tamid properties and an adjacent Puget Sound Energy (PSE) property near the eastern tip of the Island, as shown in Figure 1 below.

Figure 1: Zoning Map for Northern Mercer Island



HERZL NER-TAMID

The Herzl Ner-Tamid (Herzl) property consists of four parcels, all of which are wholly or partially included in the Business Zone (see Figure 2, below). As shown in Figure 2, three of the subject parcels are split zoned with both the B zone and the R-9.6 zones. [MICC 19.01.040\(G\)\(2\)](#) states:

“Where a boundary between zones divides a lot into two or more pieces, the entire lot shall be deemed to be located in the first zone on the following list in which any part of the lot is located: R-15, R-12, R-9.6, R-8.4, MF-2L, MF-3, MF-2, PI, PBZ, C-O, TC, and B.”

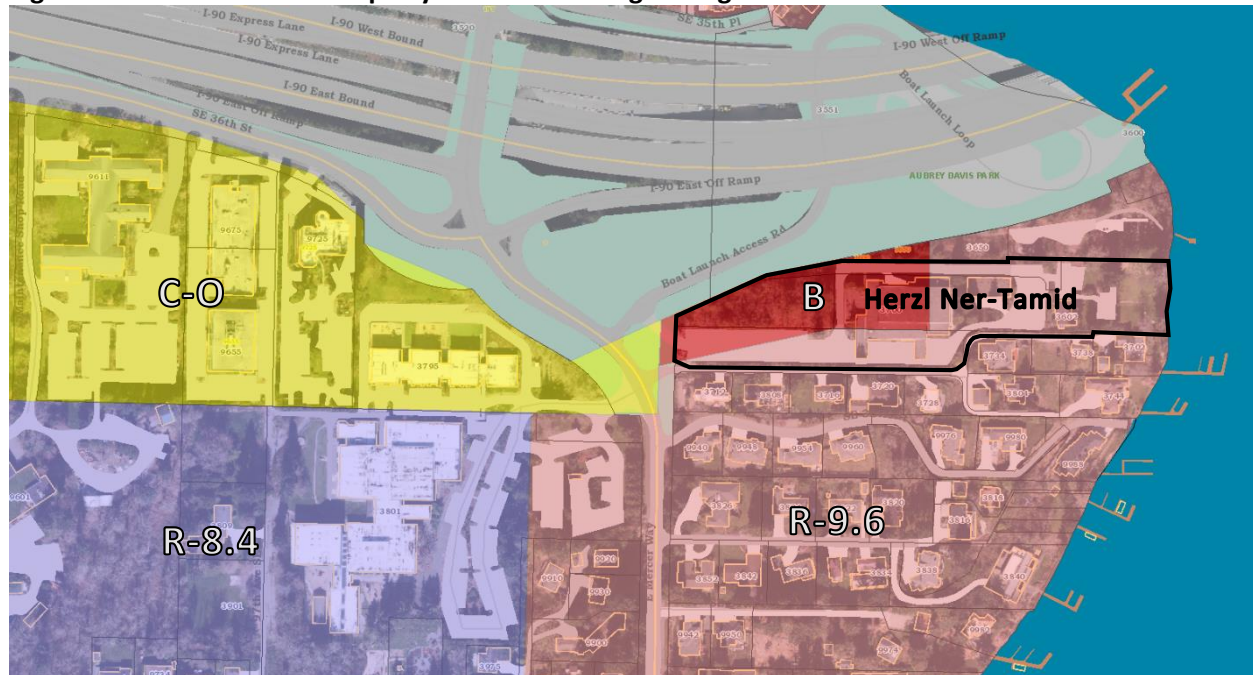
Thus, these lots are subject to the regulations for the R-9.6 zone, including allowed uses. The allowed uses in the R-9.6 zone are established in MICC 19.02.010. Private schools are allowed in the R-9.6 zone by conditional use permit by MICC 19.02.010(C)(2), which states: “Private schools accredited or approved by the state for compulsory school attendance, subject to conditions set out in subsection (A)(4) of this section.” MICC 19.02.010(A)(4) states:

“4. Public schools accredited or approved by the state for compulsory school attendance, subject to design commission review and all of the following conditions:

- a. All structures shall be located at least 35 feet from any abutting property and at least 45 feet from any public right-of-way.
- b. Off-street parking shall be established and maintained at a minimum ratio of one parking space per classroom with high schools providing an additional one parking space per ten students.
- c. A one-fourth acre or larger playfield shall be provided in one usable unit abutting or adjacent to the site.”

In addition to the land use controls in MICC 19.02.010, development in the R-9.6 zone is subject to the development standards in MICC 19.02.020 – Development Standards. This section establishes setbacks, a building height limit, and other standards to ensure that development of different land uses within the zone do not conflict with residential uses.

Figure 2: Herzl Ner-Tamid Property and Surrounding Zoning



Herzl has applied for, and the City has conducted, a pre-application meeting for the purpose of providing information related to the feasibility of a potential development proposal under current zoning. The proposal includes the construction of a new office and preschool building on the B-zoned parcel on the northwest portion of the property and a change of use to allow K-12 educational classrooms within the existing structures. Under MICC 19.04.050(B)(25), preschools, nursery schools and day care centers are allowed uses in the B zone. The change of use to allow K-12 classrooms would require a CUP per MICC 19.02.010(C)(2), which allows private schools in the R-9.6 zone by CUP.

The City understands that Herzl is interested in developing their property to accommodate a private school use, in addition to the current religious uses. This proposal is likely to be feasible in some form or fashion

under either scenario (amending the permitted uses in the B zone or pursuing a CUP with existing zoning), subject to meeting the applicable development standards.

PRIMER ON DEVELOPMENT REGULATIONS

Permitted Uses

Permitted uses are allowed outright, and do not require a land use permit in addition to other permits required such as a building permit. For example, single-family homes are allowed by right in the R-8.4 zone and they require a building permit, but a separate land use permit is not required.

When a permitted use requires another City authorization (i.e., a building permit), a planner reviews the application for compliance with Title 19 MICC. Authorization of that other permit can be conditioned to ensure that the proposal will conform to the standards established in the development code. Permitted uses can be conditioned or subjected to specific performance standards to offset the potential impacts that use might have on surrounding land uses. A planner's markup on the approved site plan for a building permit application is a common way for building permit approval to be conditioned.

Conditional Uses

Conditional uses are allowed in a zone but require an additional land use permit application and additional process for review. Conditional uses are subject more requirements or "conditions" that apply to the approval of the use. Conditional use permits require a public hearing before the Hearing Examiner prior to the Hearing Examiner issuing a decision. Typically, conditional land uses are those that are expected to have unique impacts based on the complexity of the proposal. Conditional use permits enable the City to adopt more specific requirements for a particular land use and flexibility to tailor those requirements to address the unique details of a given proposal. However, review of conditional use permits entails a longer permit review process and more staff time than a permitted use.

Conditional uses are sometimes misunderstood as uses that the City can deny authorization for because neighbors oppose the proposed development. If a use is allowed by conditional use and the applicant meets the requirements of the development code and satisfies the conditions of approval, the application cannot be denied. Allowing a land use by conditional use permit does not give the City the discretion to deny authorization of a proposal provided it meets the conditions of approval.

RECOMMENDATION

There are three alternatives the Planning Commission can consider. At the meeting on February 22, staff would like the Planning Commission to provide input on which of these alternatives is preferred. Once the Planning Commission has provided this input, staff will prepare a draft code amendment and the Planning Commission will hold a public hearing. The three alternatives are provided below.

Alternative A: Amend the B Zone to allow public and private schools as a permitted use.

This alternative was proposed in the docket application submitted by Herzl in 2021 (Attachment 1). The proposal would amend MICC 19.04.050 by adding "Public and private schools" to the list of permitted uses. As a permitted use, schools would be allowed outright, without the need for an additional land use permit. The submitted proposal does not include any special conditions or performance standards for public and private schools. The Planning Commission can propose conditions or performance standards if it expects there to be impacts to neighboring land uses (see Alternative B).

Alternative A Discussion

Alternative A is the least restrictive option considered in this memo because it would allow private schools with minimal development standards. If the City allows public and private schools in the B zone, that use would be allowed in all three of the areas designated B zone (see Figure 1). As proposed by the applicant, the use would be allowed without specific conditions or performance standards.

Alternative B: Add additional conditions or performance standards.

This alternative would amend the B zone to allow schools as in Alternative A and would also add conditions and performance standards to mitigate the impacts of these facilities.

As mentioned above, the development standards in the B-zone are very minimal, whereas the neighboring Commercial-Office (C-O) zone provides more robust regulations. The permitted uses in the C-O zone and B Zone are similar, with a variety of commercial and offices uses allowed outright. The C-O zone also permits schools.

An example of a condition that could be added can be found in the (C-O) zone, per MICC 19.04.020(A)(13)(a) public and private schools are permitted subject to the following condition “A one-fourth acre or larger playfield, play surface or open space shall be provided in one usable unit abutting or adjacent to the site.” The C-O zone also requires Design Commission review and contains larger setbacks as well as lot coverage and landscaping standards. A Comparison of the development standards in the B and C-O zones is provided in Figure 3, below. The Planning Commission may want to consider applying similar performance standards to schools if they are to be allowed in the B zone.

Figure 3. Comparison of Development Standards in B and C-O Zones.

| B Zone MICC 19.04.050 | C-O Zone MICC 19.04.020 |
|---|---|
| <p><i>Structure setback requirements.</i> All structures shall have a minimum setback from any public right-of-way of ten feet; except, service station pump islands which shall have a setback from the street line of at least 15 feet to provide for safe access or egress to or from such street. [Emphasis Added]</p> | <p><i>Yard requirements.</i> The minimum setback from all rights-of-way shall be 50 feet. The minimum rear yard setback shall be 50 feet. The sum of the side yards shall be at least 75 feet, with no side yard less than 25 feet; provided, however, that a minimum 50-foot setback shall be required from the property line of any adjacent property that is zoned residential or multifamily and developed for such use and no parking or driveways shall be allowed within this setback. The setbacks shall be clearly set out in the site and building plans and upon the building permit application. [Emphasis Added]</p> |
| <p><i>Building height limit.</i> Maximum allowable building height shall be the lesser of (1) three stories or (2) 36 feet, calculated using the method described in MICC 19.11.030(A)(3). [Emphasis Added]</p> | <p><i>Building height limit.</i></p> <ol style="list-style-type: none"> 1. Structures shall not exceed 36 feet in height, calculated using the method described in MICC 19.11.030(A)(3). 2. Outdoor storage facilities shall not exceed 20 feet in height. 3. Rooftop building appurtenances, including but not limited to mechanical equipment, chimneys, and roof access structures, may |

| | |
|-----|--|
| | extend up to ten feet above the maximum building height allowed. Rooftop appurtenances shall be located at least ten feet from the exterior edge of any building and shall not cover more than ten percent of the rooftop area. [Emphasis Added] |
| n/a | Not more than 60 percent of a lot may be covered by buildings, structures, and other impervious surfaces, including outdoor storage areas, provided the exemptions for decks, pavers, patios and walkways detailed in MICC 19.02.060(C) shall apply. The building footprint shall occupy no more than 35 percent of the gross lot area. |
| n/a | A plot, landscape, and building plan showing compliance with these conditions shall be filed with the design commission for its approval, and the construction and maintenance of building and structures and the establishment and continuation of uses shall comply with the approved plot landscape, and building plan. |
| n/a | A strip of land adjacent to all external boundaries of the site, including any frontage on public rights-of-way, shall be devoted exclusively to the planting, cultivation, growing and maintenance of sight-obscuring trees, shrubs and plant life. If required by the design commission, the maintenance of such protective strips and landscaping shall be guaranteed through a bond or assignment of funds as set out in MICC 19.01.060(C) . In lieu of such protective strips, under appropriate circumstances, there may be substituted a use classification of the outer margin of this zone consistent with the use classification of the surrounding area. |

If the Planning Commission would like to propose conditions or performance standards in conjunction with permitting schools in the B zone, specific suggestions can be offered at the meeting on February 22. Providing high level input (i.e., “increase the setback for schools” rather than “the setback should be X feet”) would be most helpful at this stage. The Planning Commission should give consideration to appropriate standards for playfields, setbacks, lot coverage, landscaping and whether to require design review. With the Planning Commission’s direction, staff can prepare draft conditions and performance standards for the Commission to consider at the next meeting.

Alternative B Discussion

Alternative B is more restrictive than Alternative A because it would add additional development standards beyond what is currently required in the B zone. The added development standards could help to offset impacts to neighboring land uses by requiring landscaping, screening, design commission review, and larger setbacks from neighboring residential properties.

Alternative C: No Change.

The City is not required to make an amendment. Making no change would maintain the existing zoning and land use controls for the subject property.

Alternative C Discussion

Alternative C is the most restrictive option discussed in this memo. With no change to the permitted uses in the B zone, the Herzl parcel that is entirely zoned B could not be developed with a private school. The other split zoned parcels would be subject to the regulations for the R-9.6 zone, which require more conditions and include more detailed development standards as well as a conditional use permit. This alternative has the added benefit of not making any changes to the regulations that apply to other B-zoned properties elsewhere in the City.

Alternative C-2 Discussion

As an optional follow-on action to Alternative C, the City could also consider a future rezone to the B-zoned parcels on the Herzl property. Changing this zoning to be more consistent with the neighboring C-O and/or R-9.6 zones could have several benefits as outlined below.

- **Rezoning the B-zoned areas to C-O:** Public and private schools are a permitted use with conditions in the C-O zone by MICC 19.04.020(13). The adjacent commercial area across East Mercer Way is zoned C-O and currently contains two private schools. Rezoning the B-zoned Herzl property to C-O would provide consistent development standards across neighboring properties. Furthermore, the C-O zone has additional development standards that would help to offset the impacts to neighboring land uses.
- **Rezoning the B-zoned areas to R-9.6:** Private schools are a conditional use in the R-9.6 zone per MICC 19.02.010(C)(2). The property immediately adjacent to Herzl, across East Mercer Way, has split zoning with C-O and R-9.6, and the private school currently located on the property was permitted via a CUP according to the standards of the R-9.6 zone. Rezoning the B-zoned area to R-9.6 would result in similar private school uses being held to consistent development standards.

If the City would like to pursue rezoning the subject area, it should be proposed for the 2024 docket as a part of the annual docket request process in September 2023.

FEEDBACK REQUESTED

The Planning Commission should indicate which of the three alternatives is preferred. If the Planning Commission prefers Alternative B, they should propose the desired high level development standards or conditions. An example of a high-level proposed development standard would be to include a larger setback. With that level of input, staff can draft options for the Planning Commission to consider during the next discussion of this topic.

NEXT STEPS

At the March 22 meeting, the Planning Commission will hold a public hearing and receive public comment. After hearing public comments on the proposed alternatives, the Commission should make a recommendation to the City Council. The recommendation will be transmitted to City Council for review later in the spring.