
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



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.

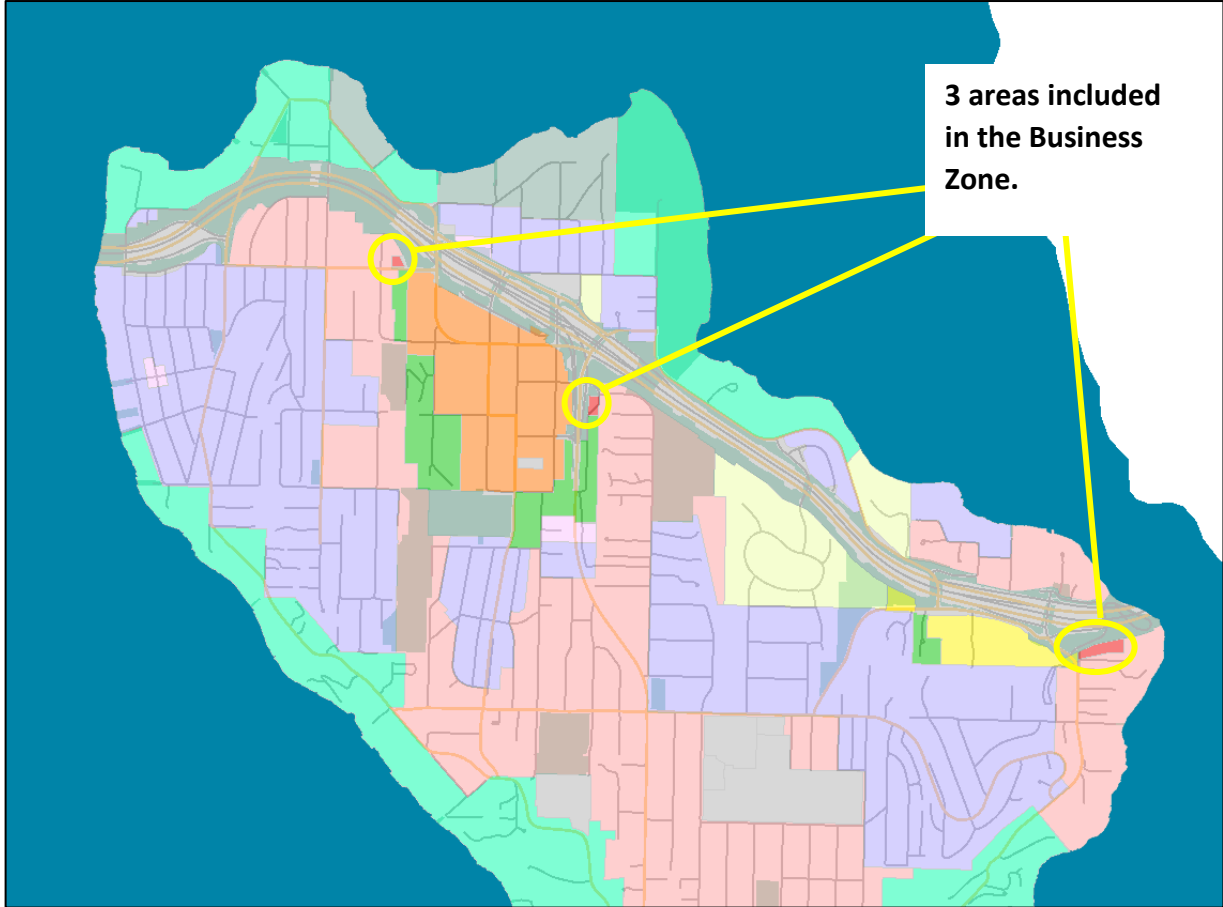
The docket request proposed an amendment to [MICC 19.04.050 Business – B](#). The proposed amendment of MICC 19.04.050 would add public and private schools to the list of permitted uses in the Business Zone. The application states that the proposed amendment would improve the consistency between the 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 Herzel 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.”

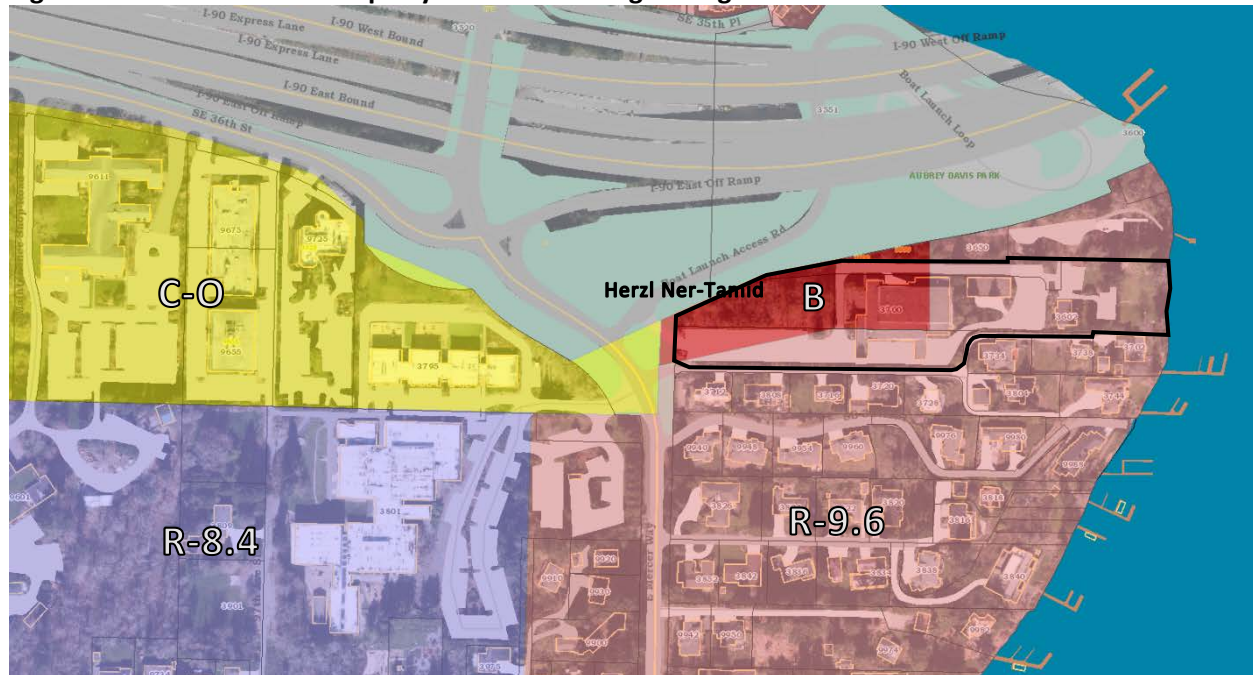
Thus, these lots are subject to the regulations for the R-9.6 zone, including allowed uses. The allowed uses in the R-9.6 zone are established in MICC 19.02.010. Private schools are allowed in the R-9.6 zone by conditional use permit by MICC 19.02.010(C)(2), which states: “Private schools accredited 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

	<p>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]</p>
n/a	<p>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.</p>
n/a	<p>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.</p>
n/a	<p>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.</p> <p>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.</p>

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.

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DOCKET REQUEST FORM

PURPOSE

The City of Mercer Island is accepting requests for amendments to its comprehensive plan and development code, to be considered in 2022. Requests to amend the comprehensive plan and development code are placed on a preliminary docket of suggested amendments to be reviewed for initial consideration by the Planning Commission and City Council in the fall of 2021. Requests that are added to the final docket by the City Council will receive additional analysis and consideration in 2022. Comprehensive plan and development code amendment requests require a Docket Request Form.

A complete Docket Request Form shall be submitted to the City of Mercer Island by Friday, October 1st at 5:00 PM via email to alison.vangorp@mercerisland.gov or mailed to the City of Mercer Island, Attention Alison Van Gorp, 9611 SE 36th Street, Mercer Island, WA 98040.

Prior to submitting a Docket Request Form, the applicant should meet with planning staff to ensure that applicable decision criteria are adequately addressed, and all necessary information is submitted. Docket Request forms that are determined to be incomplete will not be included in the public review process. If a request is accepted for review on the final docket, a State Environmental Policy Act (SEPA) Checklist may be required to be submitted for review.

For more information regarding this process, please review Mercer Island City Code [19.15.230](#), [19.15.250](#) and [19.15.260](#) or contact Alison Van Gorp, Deputy Director, at alison.vangorp@mercerisland.gov.

CONTACT INFORMATION

Name: Anjali Grant

Address: 3427 Beacon Ave S

Phone: 2065124209

Email: anjali@agrantedesign.com

REQUEST INFORMATION

Please complete a separate Docket Request Form for each item you are requesting to be added to the Docket.

Is this request related to a specific property or zone? Yes No

If yes, please complete the following information:

Property Owner: Herzl Ner-Tamid

Address: 3700 East Mercer Way

County Assessors Parcel No.: 0824059045

Parcel Size (sq. ft.): 26,774 sf

Is this request for a Comprehensive plan amendment or a development code amendment?

Comprehensive Plan amendment Development Code amendment

Would you like to submit a suggestion for a comprehensive plan or development code amendment, or is this an application for a specific amendment (see [MICC 19.15.250\(C\)\(2\)](#) for more information)?

Suggestion

Application

Please note: applications are subject to applicable permit fees. Please see our [Land Use Approval fee schedule](#) for applicable fees.

REQUEST DESCRIPTION

Please provide a clear description of proposal (please add additional paper or attachments if needed):
Please see attached document.

Signature:



Anjali Grant
2021.09.30 08:29:42-07'00'

Date:

9/30/2021

DOCKET REQUEST FORM REQUEST DESCRIPTION

This Code Amendment proposes that the Mercer Island Municipal Code, Chapter 19 be amended to be consistent with the Mercer Island Comprehensive plan by allowing public and private schools as a permitted use in the B Business zone. (19.04.050 Business – B; B. Uses Permitted).

There are three areas of Mercer Island where the B zone exists, all just south of the I-90 corridor: at SE 24th Street near 74th Avenue SE; at 81st Place SE and SE 28th Street; and at East Mercer Way, near SE 38th Street. The first two areas are on the borders of the Town Center; the third area is an extension of the Commercial CO zone to the west.

Per 19.15.250, D of the Mercer Island Municipal Code, 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.

CONSISTENCY WITH COMPREHENSIVE PLAN

Section 19.04.050 of the Mercer Island Municipal Code, as written, is in conflict with the Comprehensive Plan.

The current Comprehensive Plan explains the CO and B designations as follows (emphasis added):

The commercial office land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land use will be predominantly commercial office.
Complementary land uses (e.g. healthcare uses, **schools**, places of worship, etc.) **are also generally supported within this land use designation.**

Current Mercer Island Code Section 19.04.050 conflicts with this designation as it does not allow for schools.

In addition, the Comprehensive Plan includes the phrase "Education is the Key" as one of its community values and states both that Mercer Island will continue to

provide a wide range of educational services for the community's varied population, and that ***educational and religious organizations are important and integral elements of the community character and fabric***. Uses in commercial zones outside the town center are meant to be compatible with the residential character of the community; education is described as a compatible use that is encouraged.

As such, the proposed Code Amendment is consistent with the description of the Land Use designation 'Commercial Office,' as described in the Comprehensive Plan, which supports schools as a complementary use to commercial offices, as well as the educational values outlined in the Comprehensive Plan. The commercial office land use designation, as described in the comprehensive plan and accompanying map, includes both CO and B zones. Further information supporting this amendment is included as ***Appendix A*** to this document.

SUBSTANTIAL RELATION TO THE PUBLIC HEALTH, SAFETY, OR WELFARE

Education is vital to the health, safety and well-being of our families and is one of Mercer Island's stated community values. Similar permitted uses in the B zone include theaters; commercial recreational areas; preschools and day care centers for children up to age 12. Allowing K-12 schools in this zone increases the likelihood that future development will support the health, safety and well-being of the public.

IN THE BEST INTEREST OF THE COMMUNITY AS A WHOLE

The proposed Code Amendment will retain the residential character of the neighborhood. Similar permitted uses in the B zone include theaters; commercial recreational areas; preschools and day care centers for children up to age 12. Adding K-12 schools to the list of permitted uses will bring this zone into alignment and consistency with the comprehensive plan and will likely have less environmental impact on the neighborhood than many of the uses already permitted. A school community is able to implement traffic reduction strategies, such as carpooling, bus and van use, and staggered start times, and make lasting community connections.

APPENDIX A: ADDITIONAL INFORMATION TO SUPPORT THE REQUESTED CODE AMENDMENT

Applicable sections of the *Mercer Island Comprehensive Plan 2015-2035* are excerpted below, with added emphasis:

II. LAND USE ELEMENT

Community Values

Education is the Key

The community and its public and private institutions are committed to provide excellence in education.

How the Values Are Manifested

Community Services: Pride & Spirit; Excellence in Education; Recreational & Cultural Opportunities

Mercer Island will continue to provide a **wide range of education, cultural and municipal services for the community's varied population. Balanced and flexible programs will be necessary to meet the community's evolving needs in education, recreation and cultural enjoyment.** The community will maintain its broad range of quality basic services, including public safety, human services, physical development and utilities. At the same time, community leaders recognize that delivery of these services will take place in an arena of limited resources and heightened competition for tax revenues.

Residential Land Use: Residential; Environmental Stewardship; Leadership; Citizen Involvement; Neighborhood Pride

Civic, recreation, education and religious organizations are important and integral elements of the community character and fabric. Their contribution and importance to the established community character should be reflected and respected in land use permit processes.

IV. LAND USE ISSUES

Outside the Town Center

(3) Commercial Office and PBZ zones must **serve the needs of the local population while remaining compatible** with the overall residential character of the community.

V. LAND USE POLICIES

Outside the Town Center

GOAL 15: Mercer Island should remain principally a low density, single family residential community.

15.1 Existing land use policies, which strongly support the preservation of existing conditions in the single family residential zones, will continue to apply. Changes to the zoning code or development standards will be accomplished through **code amendments**.

15.4 As a primarily single family residential community with a high percentage of developed land, the community cannot provide for all types of land uses. Certain activities will be considered incompatible with present uses. Incompatible uses include landfills, correctional facilities, zoos and airports. **Compatible permitted uses such as education**, recreation, **open spaces**, government social services and religious activities **will be encouraged**.

VII. LAND USE DESIGNATIONS

Table

Land Use Designation	Implementing Zoning Designations	Description
Commercial Office	CO B	The commercial office land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land use will be predominantly commercial office. <u>Complementary land uses</u> (e.g. healthcare uses, <u>schools</u> , places of worship, etc.) <u>are also generally supported within this land use designation</u> .

EXISTING SCHOOLS AND ZONING

K-12 SCHOOLS ON MERCER ISLAND

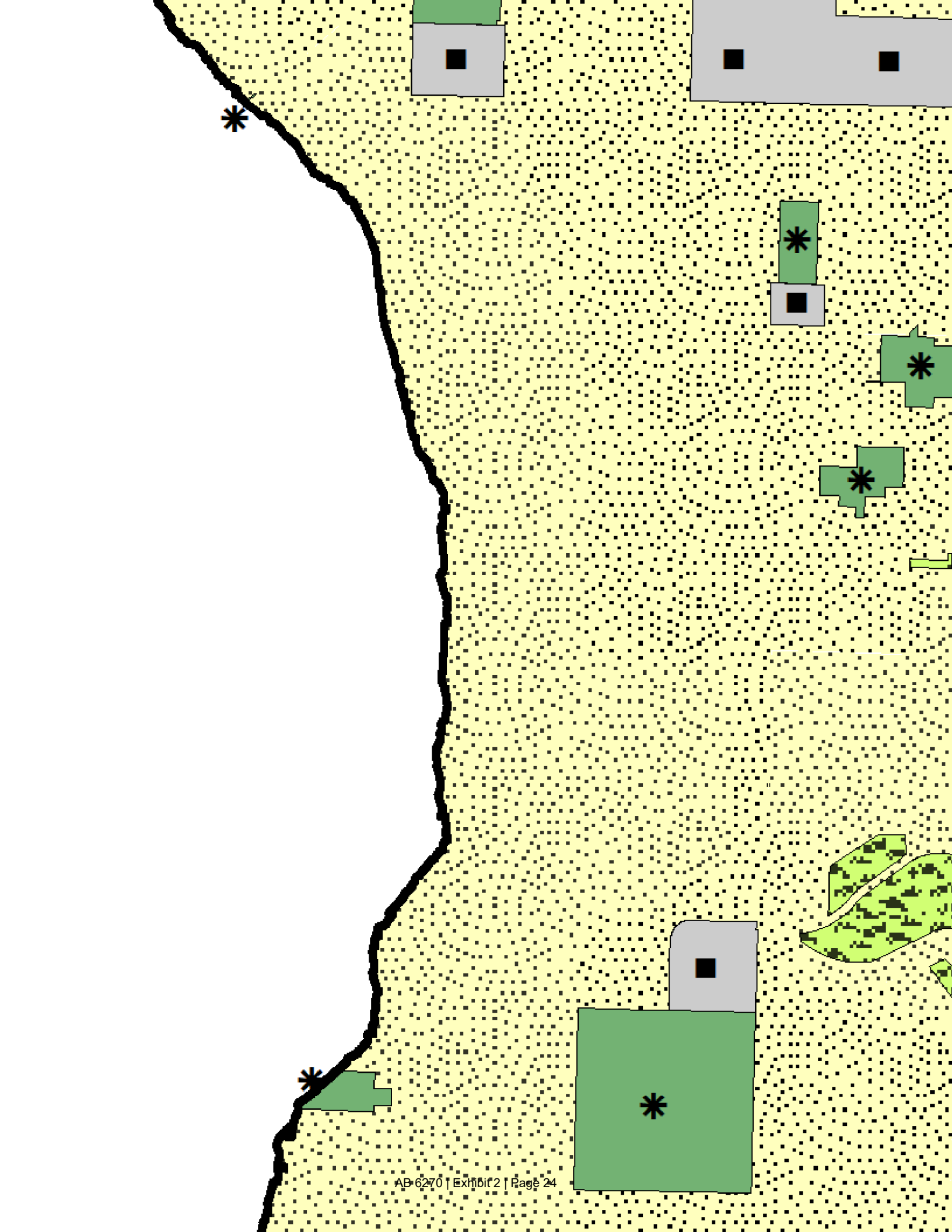
Approximately 5,200 students currently attend school on the island.

- Northwest Yeshiva High School
50 students, private co-ed college prep
- West Mercer Elementary School
428 students, public (MISD)
- Lakeridge Elementary
404 students, public (MISD)
- Northwood Elementary School
414 students, public (MISD)
- Islander Middle School
1,030 students, public (MISD)
- French American School of Puget Sound
426 students, private preK-8
- Island Park Elementary School
367 students, public (MISD)
- Yellow Wood Academy
123 students, private K-12
- St. Monica School
201 students, private preK-8
- Privett Academy
180 students, private 6-12
- Mercer Island High School
1,557 students, public (MISD)

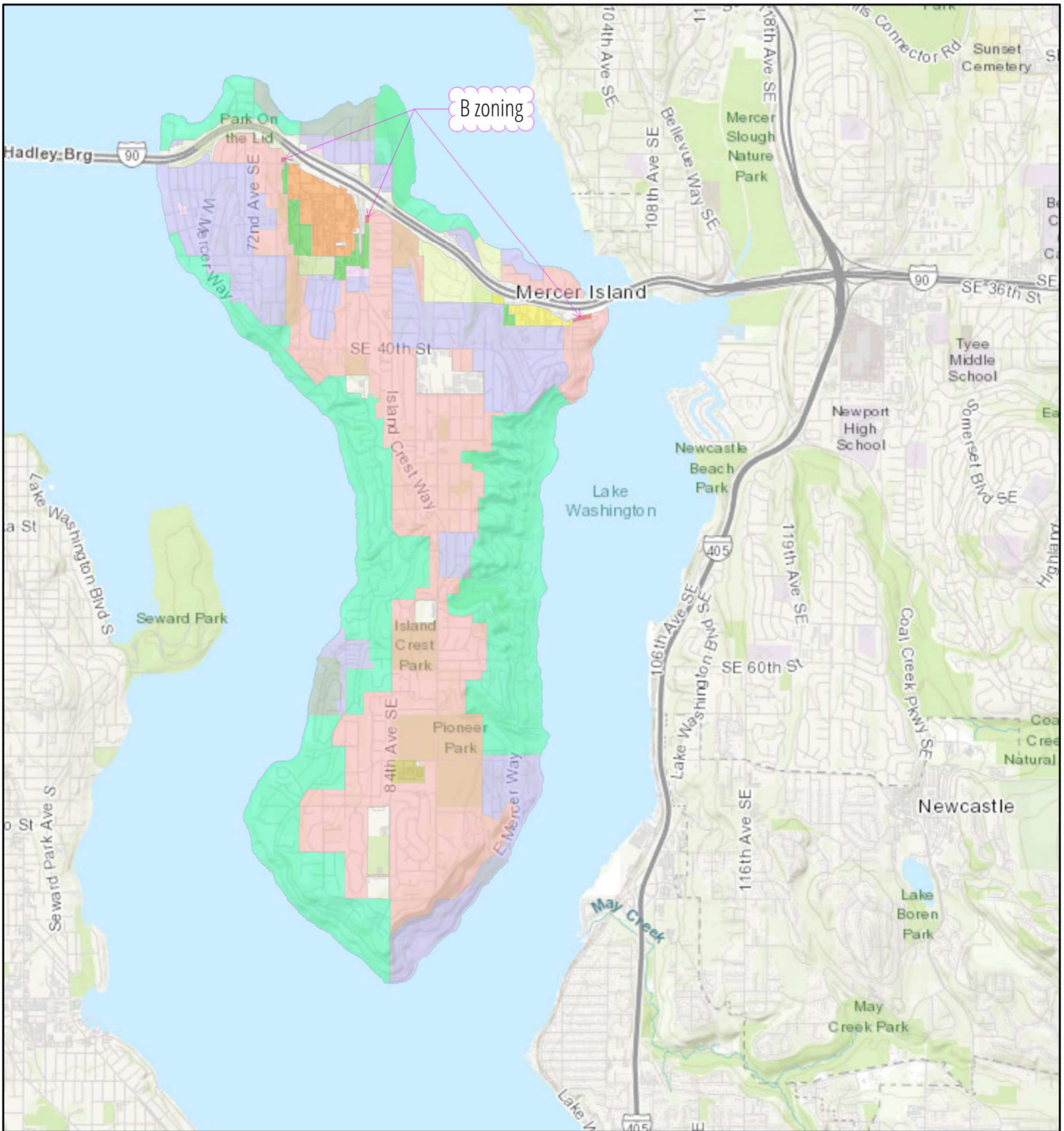
Of those, the French-American School is in the CO zone; the MISD schools are in dedicated Public Institution zones within residential neighborhoods; and the rest are in residential zones.

Below is a table showing where K-12 schools are a permitted use, where a conditional use, and where they are not allowed. They are allowed as a conditional use in all residential zones, which supports the Comprehensive Plan definition of a **compatible use**. They are not allowed in the Town Center or in the Planned Business Zone, as more dense retail environments are encouraged. They are allowed in CO commercial office zones, supporting the Comprehensive Plan definition of a **compatible use**, subject to design commission review and providing ¼ acre of usable open space abutting or adjacent to the site. We are seeking to add schools as a permitted use in the B Business zone.

Zones	Public schools	Private schools
R-8.4, R-9.6, R-12, and R-15	<p>19.02.010 A. PERMITTED</p> <p>4. Public schools accredited or approved by the state for compulsory school attendance, subject to design commission review and all of the following conditions:</p> <p>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.</p> <p>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 10 students.</p> <p>c. A one-fourth acre or larger playfield shall be provided in one usable unit abutting or adjacent to the site.</p>	<p>19.02.010 C. CONDITIONAL</p> <p>C. Conditional Uses. The following uses are permitted when authorized by the issuance of a conditional use permit when the applicable conditions set forth in this section and in MICC 19.15.040 have been met:</p> <p>2. Private schools accredited or approved by the state for compulsory school attendance, subject to conditions set out in subsection (A)(4) of this section.</p>
MF-2, MF-2L, MF-3	<p>19.03.010 B.1., C1., D.1. Any use permitted in zones R-8.4, R-9.6, R-12, and R-15.</p>	
PBZ	<p>19.04.010 B. Uses Permitted. Not listed as a Permitted Use.</p>	
CO	<p>19.04.020 A. Uses Permitted. 13. Public and private schools accredited or approved by the state for compulsory school attendance, subject to design commission review and the following conditions: a. 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.</p>	
B	<p>19.04.050 B. Uses Permitted. Not listed as a Permitted Use.</p>	
Town Center (all subareas)	<p>19.11.020 Land uses, Use Table by Subarea Neither a Permitted nor a Conditional use.</p>	



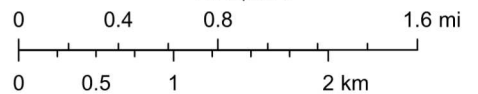
ArcGIS Web Map



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Zoning	R-12	MF-3	P
B	R-15	R-8.4	
C-O	MF-2	R-9.6	
PBZ	MF-2L	TC	



Mercer Island GIS, City of Bellevue, WA, Bureau of Land Management, Esri Canada, Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS

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PLANNING COMMISSION

TO: Planning Commission

FROM: Alison Van Gorp, Deputy Director

DATE: March 16, 2023

SUBJECT: ZTR22-001

ATTACHMENTS: 1. Summary of Development Regulations for Schools
2. Draft Code Amendment

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 March 22 meeting, a public hearing will be held, and staff seeks further guidance from the commission on the proposed code amendment. The commission may finalize and vote on a recommendation during the meeting, or direct staff to prepare a revised draft for consideration at the April meeting.

BACKGROUND

In September 2021, Anjali Grant, on behalf of Herzl Ner-Tamid (Herzl), submitted a [docket request](#) for an amendment proposing 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.

At the February 22 meeting, the Planning Commission provided initial guidance to staff on the proposed amendment. The commission requested a legal opinion on whether the proposed amendment constitutes “spot zoning” and whether development regulations can be proposed for the entirety of the B zone, or just for the schools use. The commission also requested an analysis of the existing development standards for schools in various zones within the current city code. Finally, the commission directed staff to prepare a revised amendment that permits schools in the B zone with additional development standards.

Legal Analysis

The following questions were raised during the February 22 Planning Commission meeting; staff have developed responses in consultation with the City Attorney.

Q: Is amending the B zone to allow schools a spot zone?

No, the proposed amendment would apply to the entire B zone, which is composed of several properties. This is not a spot zone, which refers to rezoning a single property. The proposed amendment would allow a land use in the B zone rather than rezoning the property.

Q: Can the City amend the development regulations to add just one use? Is this a spot zone?

Yes, the City amends development regulations from time to time in response to changing conditions and needs; there is no limit on how much or how little can be changed. Amending development regulations is unrelated to a spot zone, which refers to rezoning a single property.

Q: Could schools be permitted as a conditional use in the B zone?

Yes. A school would then require a Conditional Use Permit (CUP) with approval from the Hearing Examiner to proceed. Further discussion of this option is provided in the Draft Code Amendment section, below.

Q: If the City would like to add schools as a permitted use in the B zone, can we add development regulations that apply broadly to all uses in the zone, or only in relation to the new use (schools)?

While it is possible to amend the development regulations in the B zone more broadly, this is not recommended. The docket item and noticing related to this code amendment have been limited in scope to adding schools as a permitted use in the B Zone, and have not included considerations related to other uses in the zone. Thus, the recommended code amendment should also be limited to regulations related to the school use. Broader changes to the B zone could be docketed in a future year.

Draft Code Amendment

Staff have reviewed code provisions related to public and private schools in the Commercial Office (C-O), Residential (R) and Public Institution (P-I) zones. The most relevant code requirements are summarized in Attachment 1. A draft code amendment has been prepared with additional conditions and performance standards that were informed by this code analysis (see Alternative B, below). In drafting the code amendment, staff sought to include provisions that were both consistent with the regulations in other zones and appropriate for the context of the B zone properties.

It should also be noted that the provisions of [MICC 19.12](#) Design Standards For Zones Outside Town Center apply to all “regulated improvements” located outside the Town Center zone. Regulated improvements include development of any property except property owned by the City, single family dwellings/accessory structures and wireless facilities. Thus, the provisions of MICC 19.12 apply to schools in the C-O, R and P-I zones. This chapter establishes design review requirements, provides building design guidelines as well as standards for landscaping, screening, and lighting, among other things. Relevant code provisions from MICC 19.12 are summarized in Attachment 1 as well. Since MICC 19.12 already includes provisions requiring design review, providing building design guidelines and regulating landscaping and lighting, additional standards related to these items are not included in the draft code amendment.

At the February 22 meeting, the Commission inquired about the feasibility of adding schools as a conditional use in the B zone, subject to a CUP. As mentioned above, this is feasible. However, staff do not recommend permitting schools as a conditional use. The B zone currently permits a variety of commercial uses, including several that are higher intensity uses with impacts to neighboring properties that are likely similar to, if not greater, than those of schools. For example, the B zone currently permits service stations, auto repair shops, museums, theaters, and hotels. These uses can be developed “by right” without requiring an additional land use permit. Making schools a conditional use is not consistent with how other more intense uses are regulated in this zone.

ALTERNATIVES

There are three alternatives the Planning Commission can consider. Based on the feedback provided at the February 22 meeting, staff have prepared a draft code amendment for consideration (Alternative B). 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 request](#) submitted by Herzl in 2021. 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. An analysis of this alternative was provided in the [February 15 staff memo](#).

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 potential impacts of these facilities. The draft code amendment includes the following conditions, which are applicable to public and private schools:

a. Setbacks

- i. a setback of 45 feet is required from property lines that abut single-family zones.
- ii. a setback of 30 feet is required from public rights of way.
- iii. a setback of 15 feet is required from public parks.

b. Screening. Along property lines abutting rights of way, public parks, and single-family zoning, a landscaped area at least ten feet wide must provide a partial visual barrier to adjacent properties and rights of way. The screening shall be composed of a combination of trees, bushes, and groundcover that produce an eight-foot-tall visual barrier in all seasons within three years of planting. A minimum of one tree for every 20 feet of landscape perimeter length must be provided.

c. Playfield. 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.

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 are intended to mitigate impacts to neighboring land uses by requiring larger setbacks and screening requirements. In addition, a playfield is required as in other zones that allow private schools. If Alternative B is adopted, an application for a school in the B zone would be reviewed for consistency with the proposed standards during review of the building permit. A separate land use permit would not be required.

Feedback Requested

The Planning Commission should consider whether the proposed standards are appropriate for the B zone. In particular, do the proposed numeric standards provide an appropriate level of separation and screening from surrounding properties? The setback standards are similar to those for public schools located in the P-I zone. The P-I Zone school properties are composed of large parcels and are developed with large school facilities and sports fields. Due to the size of the properties in the B zone, it is possible that smaller setbacks may be more appropriate given the scale of development that is possible.

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. An analysis of this alternative was provided in the [February 15 staff memo](#).

STAFF RECOMMENDATION

Staff recommends Alternative B to amend MICC 19.04.050 as drafted in Attachment 2. The B zone does not currently allow schools as a permitted use and the proposed amendment would add this use, as well as additional development conditions and performance standards intended to mitigate impacts on surrounding neighborhoods. The B zone already allows land uses with similar or greater intensity such as service stations, auto repair shops, museums, theaters, and hotels. Furthermore, zones intended for less intense development including single-family residential zones, also allow private schools subject to similar conditions. Subjecting schools in the B zone to development standards can help ensure that if properties in the B zone are developed with schools, that land use would be compatible with surrounding land uses. The proposed development standards can offset potential impacts by establishing screening and setbacks to shield single-family neighborhoods from possible noise and lighting. Alternative B would enable an organization like Hertzl Ner-Tamid to develop a private school. Alternative B as presented is consistent with the policies of the Comprehensive Plan and the Mercer Island development code.

Consistency with the Code Amendment Criteria in MICC 19.15.250(D)

Decision criteria for amending the development code are established in MICC 19.15.250(D). The proposed amendments in Alternative B.1 are consistent with those criteria as follows.

MICC 19.15.250(D)(1)

MICC 19.15.250(D)(1) states that a code amendment may only be approved if, “The amendment is consistent with the comprehensive plan”. The comprehensive plan land use designation of [Commercial Office](#) includes both the C-O and B zones and is described as follows.

The commercial office land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land use will be predominantly commercial office. Complementary land uses (e.g., healthcare uses, schools, places of worship, etc.) are also generally supported within this land use designation.

The proposed code amendment is consistent with the Commercial Office land Use designation in the Comprehensive Plan because schools are supported in this area as a complimentary use to commercial office.

MICC 19.15.250(D)(2)

The second criterion for approval of a development code amendment is established in MICC 19.15.250(D)(2), which states, “The amendment bears a substantial relation to the public health, safety, or welfare”. The proposed code amendment would relate the public welfare by enabling development of schools in the B zone. The corresponding development regulations would ensure that the development would occur with reduced impacts to neighboring uses and with adequate outdoor play space for students.

MICC 19.15.250(D)(3)

The third and final criterion for approval of a development code amendments is established in MICC 19.15.250(D)(3), which states, “The amendment is in the best interest of the community as a whole.” The

proposed code amendment would serve the community interest by providing additional opportunities for the development of schools, expanding the potential educational services provided on the island. As identified in the Comprehensive Plan, schools are a key element of the community character and providing a range of educational opportunities to the community's varied population is a priority.

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 Planning Commission should indicate which of the three alternatives is preferred. If the Planning Commission prefers Alternative B, they can consider further revisions to the proposed code amendment, if desired, and provide direction to staff. Simple changes can be made by motion during the March 22 meeting. More extensive revisions or wordsmithing will require scheduling a 3rd review for the April 26, 2023 meeting.

When the Planning Commission concludes deliberations, a recommendation to the City Council should be finalized by motion. The commission's recommendation will be transmitted to City Council for review later in the spring.

	B Zone MICC MICC 19.04.050	C-O Zone MICC 19.04.020	R Zones MICC 19.02	P-I Zone MICC 19.15.010
Permitted Uses	<ul style="list-style-type: none"> Schools are not a permitted use 	<ul style="list-style-type: none"> Schools are a permitted use 	<ul style="list-style-type: none"> Schools permitted as conditional uses, subject to CUP 	<ul style="list-style-type: none"> Public schools are a permitted use.
Setbacks	<ul style="list-style-type: none"> 10-foot setback from any public ROW for all structures 15-foot setback from streets for service station pump islands 	<ul style="list-style-type: none"> 50-foot setback from all ROW Rear yard setback of 50-feet, side yard setbacks totaling 75-feet with at least 25 feet per side. 50-foot setback from property line of adjacent residential or multifamily that is developed for this use. No parking or driveways allowed within this setback. 	<ul style="list-style-type: none"> All structures shall be located at least 35 feet from any abutting property and at least 45 feet from any public right-of-way. 	<ul style="list-style-type: none"> Setbacks are established individually for each school site in <u>19.05.010</u> (F), ranging from 15 to 65 feet, with the widest setbacks along property lines that abut single-family zoning. 45-feet is a common setback for property lines that abut single-family 30-feet is common setback from public ROW. 15-feet is a common setback from internal property lines and public parks.
Building Height	<ul style="list-style-type: none"> The lesser of 3 stories or 36 feet, calculated using the method described in MICC <u>19.11.030(A)(3)</u>. 	<ul style="list-style-type: none"> 36 feet in height, calculated using the method described in MICC 19.11.030(A)(3). Outdoor storage facilities shall not exceed 20 feet in height. Additional 10 feet for rooftop appurtenances 	<ul style="list-style-type: none"> 30 feet above the average building elevation to the highest point of the roof in MICC 19.02.020(E)(1).. 	<ul style="list-style-type: none"> Heigh limits are established individually for each school site in <u>19.05.010</u> (F), ranging from 2 stories/30 feet to 3 stories/53 feet, with the lowest limits along property lines that abut single-family zoning.

	B Zone MICC MICC 19.04.050	C-O Zone MICC 19.04.020	R Zones MICC 19.02	P-I Zone MICC 19.15.010
Lot Coverage	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Not more than 60 percent of a lot may be covered by buildings, structures, and other impervious surfaces. The building footprint shall occupy no more than 35 percent of the gross lot area. 	<ul style="list-style-type: none"> Lot coverage limited to 20%-40% of the lot, depending on lot slope Maximum 9 percent of the lot may be covered with hardscape per MICC 19.02.020(F)(3)(b)(i). 	<ul style="list-style-type: none"> Maximum allowable coverage with impervious surfaces of 55 percent for elementary and middle schools and 63 percent for the high school mega-block. Additional five percent allowed for synthetic turf fields, non-drivable pervious paving.
Design Review	<ul style="list-style-type: none"> Design Commission review required per <u>MICC 19.12.010 (D)</u> 	<ul style="list-style-type: none"> Design Commission review required per <u>MICC 19.12.010 (D)</u> 	<ul style="list-style-type: none"> Design Commission review required per <u>MICC 19.12.010 (D)</u> 	<ul style="list-style-type: none"> Design Commission review required for major new construction. Administrative design review required for minor exterior modification and portable classrooms.
Landscaping /Screening	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.040</u> <u>19.12.060</u> and apply. Minimum of 25 percent of the gross lot area shall be landscaped. 10-foot partial screen required around perimeter 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.040</u> <u>19.12.060</u> and apply. Minimum of 40 percent of the gross lot area shall be landscaped. A 20-foot partial screen required around the perimeter 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.040</u> <u>19.12.060</u> and apply. Minimum of 25 percent of the gross lot area shall be landscaped 10-foot partial screen required around perimeter 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.040</u> and <u>19.11</u> apply. Landscaped surfaces equal to 25% of the development site shall be provided (planting beds, green roofs, green walls all included) Screening of service areas, loading zones, storage areas, garbage collection, mechanical units, etc required 20 foot partial or full perimeter screen required
School Playfields	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> A one-fourth acre or larger playfield shall be provided in one usable unit abutting or adjacent to the site. 	<ul style="list-style-type: none"> n/a

	B Zone MICC MICC 19.04.050	C-O Zone MICC 19.04.020	R Zones MICC 19.02	P-I Zone MICC 19.15.010
Lighting	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.070</u> apply. 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.070</u> apply. 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.070</u> apply. 	<ul style="list-style-type: none"> Standards in <u>MICC 19.12.070</u> apply.
Parking	<ul style="list-style-type: none"> Public and private schools shall provide at a minimum two off-street parking spaces per classroom unless additional parking spaces are deemed necessary through design commission or administrative SEPA review and shall provide adequate off-street loading and unloading facilities as determined by the city engineer. 	<ul style="list-style-type: none"> Public and private schools shall provide at a minimum two off-street parking spaces per classroom unless additional parking spaces are deemed necessary through design commission or administrative SEPA review and shall provide adequate off-street loading and unloading facilities as determined by the city engineer. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Public elementary and middle schools shall provide a minimum of two parking spaces per classroom. Public high schools shall provide a minimum of one parking space per classroom plus an additional one parking space per ten students. If the parking spaces that would need to be provided as specified above are in excess of the actual parking demands of the school's staff, students, and visitors, the code official may allow a reduction in minimum parking requirements based on a parking analysis prepared by a qualified professional, with the approval of the city engineer and the design commission, for projects reviewable by the design commission.

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19.04.050 Business—B.

- A. *Required conditions.* All uses permitted in this zone shall be subject to the following conditions:
1. All goods produced on the premises shall be sold at retail on the premises, except as provided herein.
 2. Processes and equipment employed and goods processed or sold shall be limited to those which are not objectionable by reason of odor, dust, smoke, cinders, gas, fumes, noise, vibration, refuse matter, or water carried waste.
 3. No service station or other establishment where motor fuel or lubricating oils are stored or motor services are rendered, may be located within 300 feet of any property upon which a place of worship, school, hospital, institution, theater, or public assembly seating over 50 persons, is located, and said distances shall be measured on a straight line or air line from the outer boundary or property line in the one instance to the nearest property or boundary line.
 4. *Outdoor storage and merchandise display requirements.*
 - a. The total area allowed for outdoor storage and/or merchandise display shall be less than five percent of the total gross square footage of the subject store; provided, however, that such area may exceed five percent if it is fenced or screened in a manner acceptable to the design commission;
 - b. Stored and/or displayed materials shall not obstruct fire lanes;
 - c. The stored and/or displayed materials shall be attractively and safely displayed, and remain on the area specified for such display;
 - d. Bulk (uncontained) materials shall be stored less than 24 hours;
 - e. Items stored on a site during construction and temporary uses approved by the code official (e.g., Christmas tree sales lots) shall be exempt from the requirements for this section.
 5. On-site hazardous waste treatment and storage facilities as defined in MICC 19.16.010 are permitted as an accessory use to a permitted use in this zone. These facilities must comply with the state siting criteria as adopted in accordance with RCW Chapter 70.105.
- B. *Uses permitted.*
1. Government services, utilities, and museums and art exhibitions.
 2. Day care.
 3. Public and private schools accredited or approved by the state for compulsory school attendance, subject to design review as specified MICC 19.12.010 (D), and the following conditions:
 - a. Setbacks
 - i. a setback of 45 feet is required from property lines that abut single-family zones.
 - ii. a setback of 30 feet is required from public rights of way.
 - iii. a setback of 15 feet is required from public parks.
 - b. Screening. Along property lines abutting rights of way, public parks, and single-family zoning, a landscaped area at least ten feet wide must provide a partial visual barrier to adjacent properties and rights of way. The screening shall be composed of a combination of trees, bushes, and groundcover that produce an eight-foot-tall visual barrier in all seasons within three years of planting. A minimum of one tree for every 20 feet of landscape perimeter length must be provided.

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c. Playfield. 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.

- ~~34~~. Healthcare services.
- ~~45~~. Personal services.
- ~~56~~. Professional, scientific, and technical services; provided, animal hospitals and clinics shall be structurally enclosed.
- ~~67~~. Office uses.
- ~~78~~. Service stations.
- ~~89~~. Repair services.
- ~~910~~. Theaters.
- ~~1011~~. Restaurants, cafeterias, catering.
- ~~1112~~. Retail stores.
- ~~1213~~. Financial and insurance services.
- ~~1314~~. Commercial recreational areas; provided, teen dances and teen dance halls as defined herein are not permitted uses.
- ~~1415~~. Special needs group housing, as provided in MICC 19.06.080.
- ~~1516~~. Social service transitional housing, as provided in MICC 19.06.080.
- ~~1617~~. Wireless communications facilities subject to the conditions set out in MICC 19.06.040.
- ~~1718~~. Accessory uses customarily incidental to a principal use permitted outright in this section.
- ~~1819~~. Hotels/motels and multiple-family dwellings.
- ~~1920~~. Decorating shops.
- ~~2021~~. Employment agencies.
- ~~2122~~. Printing establishments and newspaper printing presses.
- ~~2223~~. Public garages and auto repair shops.
- ~~2324~~. Sales rooms or storerooms for motor vehicles and other articles of merchandise.
- ~~2425~~. Telephone exchanges or telegraph offices.
- ~~2526~~. Preschools, nursery schools and day care centers, subject to the following conditions:
 - a. Such facilities shall meet all applicable safety and licensing laws and requirements.
 - b. All outdoor play areas shall be adequately fenced.
- ~~2627~~. Adult entertainment, subject to the following conditions:
 - a. The point of public entry into the structure housing the business shall be at least 800 feet from the property line of any R or MF zoned property; from the boundary of the area designated as "proposed landscaping" on Figure 6 of the final EIS (Volume I) for I-90; or from the property line of any property containing one or more of the following uses: single- or multiple-family dwelling, retirement home, preschool, nursery school or day care center, publicly owned park or open space, recreational area (commercial, noncommercial or private), public or private primary or

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secondary school, religious institution, governmental building, or an establishment which caters primarily to minors.

- b. No adult business shall be located closer than 400 feet to another adult business. Such distance shall be measured by following a straight line from the nearest point of public entry into the proposed adult business to the nearest point of entry into another adult business.
 - c. Point of public entry into adult businesses shall not be located along 78th Avenue SE or along primary pedestrian corridors.
 - d. Window or exterior displays of goods or services which depict, simulate, or are intended for use in connection with specified sexual activities as defined by this title are prohibited.
- C. *Structure setback requirements.* 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.
- D. *Building height limit.* 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).

(Ord. 19C-21 § 1 (Att. A); Ord. 03C-08 § 7; Ord. 99C-13 § 1)