

Alison Van Gorp

From: Dan Thompson <danielphompson@hotmail.com>
Sent: Tuesday, February 14, 2023 12:59 PM
To: Planning Commission
Cc: Jeff Thomas; Jessi Bon; Council; Robert Medved
Subject: Re: 2023 Legislative Item: Amending Business Zone To Allow Schools As An Allowed Use/Planning Commission Agenda AB 6212/A FOURTH OPTION

Follow Up Flag: Follow up
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Hello, my original email on this issue is below and addresses the three options Jeff will present to the PC on February 24.

Considering it does not appear the applicant Herzl has a party interested at this time to apply for and build a school on its B zoned property, **I think there may be a fourth option:**

Rezone the property from B to residential.

This has the following benefits:

A. Schools are an allowed use in the residential zone and simply need a CUP at the time an application to build a school is submitted.

B. A rezone to residential would not require rezoning the other B zoned properties to add schools as an allowed use.

B. If a school is not ultimately built on the property rezoning it residential will better protect the neighbors due to scale of development and intensity of use, is more consistent with the surrounding residential zoned properties, and will lower the neighbors' concerns at a rezone without an actual application for development.

C. The Island needs more housing to meet its GMPC housing growth targets if a school is not built.

D. My guess is if Herzl wanted to sell or develop the property without a school residential would be a much easier sell and realize the same profit.

E. Traffic concerns would be less with residential uses if a school is not built.

F. The other likely option is A. Do nothing at this time. Any kind of rezone makes little sense at this time without an applicant wanting to build a school.

G. A rezone to C-0, or even adding schools as an allowed use in the B zone, could require several public meetings, and could lead to litigation, when the applicant has paid no fee for this pretty specific upzone. A rezone to residential would have a much lower likelihood of citizen objection and litigation.

As with a rezone of the property to C-0, Herzl would need to submit a new suggested amendment for the October 2023 docket along with a suggested amendment to amend the comp. plan and land use map to rezone the property to residential, but at this point time does not seem to be of the essence.

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From: Dan Thompson <danielthompson@hotmail.com>

Sent: Thursday, February 9, 2023 4:44 PM

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Cc: jeff.thomas@mercerisland.gov <jeff.thomas@mercerisland.gov>; jessi.bon@mercergov.org <jessi.bon@mercergov.org>; council@mercergov.org <council@mercergov.org>; Robert A. Medved <robertamedved@msn.com>

Subject: 2023 Legislative Item: Amending Business Zone To Allow Schools As An Allowed Use/Planning Commission Agenda AB 6212

Dear Planning Commission, later this month the suggested code amendment by Herzl Ner-Tamid is scheduled to come before the PC for a preliminary review of "options". Attached to this email are: 1. Herzl's Sept. 2021 Suggested Code Amendment to add schools as an allowed use in the B zone; and 2. the CPD's 2023 Legislative Work Plan presented to the council at the January 17, 2023 council meeting, including Herzl's suggested code amendment (page 2). Please consider these my public comments.

According to Jeff Thomas at the January 17, 2023 council meeting the options are:

A. "No change" to the B zone.

B. "Adding schools as an allowed use in the Business Zone (as proposed)";

C. "Rezoning the B-zoned parcels owned by Herzl Ner-Tamid to Commercial-Office, which allows schools". (See, page 2 of the attached January 17, 2023 legislative work plan).

SUMMARY OF PUBLIC COMMENTS:

1 Rezoning the B-zoned parcels owned only by Herzl Ner-Tamid to Commercial-Office was never part of the suggested code amendment, and was never part of the council's approval to put this suggested amendment on the PC docket, or part of the public notice. This option simply is not before the planning commission, and has never been part of the suggested code amendment until the January 17, 2023 council meeting.

2 A rezone of Herzl's B zone properties to C-O would require amending the land use map, and require a concurrent application to amend the comprehensive plan, and an application to rezone the property as opposed to simply a code amendment to allow schools as an authorized use.

3 Rezoning only the B-zoned parcels owned only by Herzl Ner-Tamid to allow schools as an allowed use would be a spot zone, which is not appropriate for the suggested code amendment docket, in part due to the cost to the city of such a zoning change, and spot zones are highly disfavored in law.

4 The reason the council placed the suggested code amendment on the PC docket in 2021 was because Herzl told the council time was of the essence because Herzl had an interested party wanting to build a school on the property (the Bellevue Jewish Day School). That deal never happened, and so there is no urgency for such an upzone *of all B zoned properties*, and this application should be tabled until Herzl can identify an actual party wanting to apply for the building permit to build a school on the property before applying for the extraordinary relief of adding schools as an allowed use in the B zone, and having the city incur the costs of such an upzone.

5 There currently is a compliance action involving this area and intersection that requires a traffic concurrency study once traffic resumes to normal. It is not productive to upzone the Herzl properties to allow a very intensive use like a school only to find a later a traffic study shows the intersections and streets do not meet the levels of service in the TCO. **A traffic study to show a land use action will comply with the levels of service in the TCO comes *before* the proposed land use action can be taken.**

6 The public notice for the code amendment docket in 2021 never mentioned upzoning the properties to C-O. As a result, the citizens and surrounding neighbors were never given the opportunity to provide public comments on such an upzone.

7 As far as I know no other B zone property owners have been given public notice of this application, and the surrounding neighbors of those B zoned properties that will allow schools as an allowed use if this suggested amendment is adopted.

8 There are no restrictions in the suggested code amendment limiting the ability of Herzl to sell or transfer the property once the upzone has been adopted by the council, *especially if the upzone is to C-O, and nothing to ensure the upzone is used for a school*. In this situation it is impossible for citizens and neighbors to meaningfully comment because they can't know the intended use, including town center style office towers and regulatory limits.

HISTORY OF PROCEEDINGS:

Herzl filed a timely Docket request in Sept. 2021 (attached). The request was reviewed by the Planning Commission along with many other suggested code amendments, three from the City, six from Daniel Thompson, two by planning Commissioner Boatsman, and two by other residents.

The City Council took up the Docket issue at their 12/07/21 meeting. After much debate the Council decided to only docket the State mandated items the City proposed along with the Herzl suggested amendment.

The general consensus among the council (and CPD) was that the CPD and PC did not have the time to take up the suggested code amendments that were not State mandate. Council Member Rosenbaum, after stating that he checked with the City attorney, stated he had no conflict of interest and would therefore participate in the discussions and vote, moved to add the Hertzl suggested amendment to the docket.

This was seconded by Mayor Salim Nice, who stated that Herzl needed a variance (which would be applied for at the same time an actual permit application to build a school on the B zoned property was filed), but Mayor Nice did not want Herzl to wait too long for a decision if, as Herzl had indicated, an existing school had a deadline to move to the property and construct a school. It also appeared Mayor Nice was mistaken in his understanding that not adding the Herzl suggested amendment would prohibit Herzl from suggesting a similar amendment for three years. As a result, the council voted 4-3 to add the Herzl suggested code amendment to the PC's docket.

The complete video of the 12/7/2-21 council meeting re: this amendment is at [Meetings | Mercer Island, Washington](#):

Comments by City Attorney Bio Park at 2:41.

Comments by Dave Rosenbaum at 2:49.

Comments by Mayor Salim Nice at 2:56.

The CPD plans to present this issue to the Planning Commission at the next (Feb 24) Planning Commission meeting (see AB 6212) and has it on the work plan for council action in the 2nd quarter of 2023.

OBJECTIONS TO UPZONING THE HERZL B ZONED PROPERTIES AT THIS TIME:

1 Upzoning the Herzl B zoned properties to Commercial--Office was never part of the original suggested amendment, was never approved by the council, and is not before the Planning Commission. One suggested amendment added to the docket cannot serve as a vehicle for a completely different and much greater amendment. The original suggested amendment maintained the B zone and regulatory limits applicable to the B zone, but would allow schools as an allowed use. To then convert that suggestion to an application to rezone the entire parcel C-O with the dramatically different uses and regulatory limits applicable to a C-O zone in an area adjacent to residential neighborhoods is not appropriate, and was never part of the public notice to surrounding neighbors.

2 The "urgency" to add schools to the B zone to allow an existing school that had a deadline to find and build in a new location no longer exists. Herzl cannot show any school that is interested in building a school on this site. This is not unlike the application for hardship variances the JCC recently filed in which the CPD noted the applicant (JCC) was placing the cart before the horse by requesting a change in zoning, or a variance, without some kind of application for the intended use, and user. Herzl's suggested amendment is not ripe, and so it is virtually impossible for citizens and neighbors to comment because the scale of the school, and intensity of use, are unknown.

3 Upzoning only the Herzl properties, either to C-O or to allow schools, is a spot zone benefiting a single property. Either all B zoned properties are upzoned to allow schools, or none (and I am not sure the other B zone property owners have been given notice of this). Again, I don't think the suggested code amendment docket to upzone only the Herzl properties is appropriate or the allowed use of the docket, and would note the Beach Club was required to file a formal application to amend the development code and pay the required fee for a much smaller change in the code.

4 Without a concurrent application to actually build a school on the Herzl properties, any upzone -- especially to C-O -- is unknown, and there is nothing preventing Herzl from selling or transferring the property to a third party who has no intent of using the property for a school. This makes it impossible for surrounding neighbors (including the city) and citizens to provide meaningful public comments on the scale, size and intensity of use.

5 To upzone the Herzl property to anything other than B zone would require amending the land use map, require an application to rezone the property, and require a concurrent application to amend the comprehensive plan.

6 Until the traffic study for this heavily used intersection and area is completed, and it is shown the intersections and roads meet the TCO levels of service for this area, any upzone is both premature, and illegal. A determination of the impact on the levels of service comes **before** the requested land use action.

CONCLUSION

The only suggested amendment before the planning commission is whether to amend the **entire** B zone to allow schools as a use. Without an actual applicant and application to actually build a school onsite the suggested amendment by Herzl is premature, and allows citizens no opportunity to comment or object on a use, and intensity of use, they cannot possibly know. The city and applicant are obligated to perform a traffic study in an area already under a compliance review to determine whether the proposed use will meet the TCO's levels of service **before** amending the B zone to allow a very intensive use, a school.

Furthermore notice must be given to other B zoned properties, and the surrounding neighbors to allow them to comment and participate.

Since there is no identified school or applicant interested at this time to build a school on Herzl's properties consideration of adding schools as an allowed use in all B zoned properties is premature, and notice and consideration must be provided to other B zoned properties and their neighbors.

Therefore, the only legal and appropriate action at this time is **option A, do nothing**. If necessary, the suggested code amendment can remain dormant until a school ready and willing to build a school is identified, and provides some kind of application showing the scale, use, and intensity of use of the proposed school, and the required traffic study for this area has been completed and it is determined the levels of service in the TCO will support a very intensive use like a school.

Thank you.

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