

Alison Van Gorp

From: Dan Thompson <danielpthompson@hotmail.com>
Sent: Thursday, May 11, 2023 10:55 AM
To: Council
Cc: Jessi Bon; Alison Van Gorp; Jeff Thomas; Planning Commission; Robert Medved; Matthew Goldbach; John Hall
Subject: AB 6270: Development Code Amendment – Business Zone Permitted Uses – First Reading of Ordinance No. 23C-08/Request For Legal Opinion From City Attorney

Follow Up Flag: Follow up
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Dear Council, I have written to you twice on this proposal as it wound through the planning commission. Staff's report can be found at [ITEM-Attachment-001-3ef22a116d384b8cb29cc266e222108b.pdf \(usgovcloudapi.net\)](https://usgovcloudapi.net/ITEM-Attachment-001-3ef22a116d384b8cb29cc266e222108b.pdf)

1 CHANGES IN ORDINANCE.

The current proposal is different from earlier proposals in two ways:

1 The setback from residential zones has been decreased from 45' to 35', (and would include the playfield if there are no structures).

2 The ordinance now exempts any setbacks for an "internal property line" which really means the B zone property and adjacent property are owned by the same person or entity. This is not ok.

2 CURRENT ORDINANCE LANGUAGE.

"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 35 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."

"iv. Setbacks are not required on *internal property lines*."

3 REGULATORY LIMITS AND SETBACKS CANNOT BE CONTINGENT ON PROPERTY OWNERSHIP.

One of the basic principles of regulatory limits (height, setbacks, et al) is that who owns the property or adjacent property does not change the regulatory limits applicable **to each parcel**. **The regulatory limits run with the land, not the owner, because of course properties are sold all the time although the development remains on the property.**

For example, if I own two residential lots next to each other -- that then have an "internal property line" -- I can't waive the setbacks between the properties if I build a house.

The reason for this rule is properties get sold all the time, but the development allowed -- if regulatory limits are different depending on who owns the properties -- remains. So what happens when one of the properties is sold or transferred or there is a change in legal name to the suddenly non-conforming development?

For example, if Hertzl were to build a school on the B zone parcel and waive the setback and then sell the property would the new owner have to remove any non-conforming structures and any encroachment into the 35' setback because the two properties are no longer owned by the same entity? What happens if Hertzl grants a 99-year lease on the B zone property? What if Hertzl is sold or its legal ownership changed in any way?

4 CONCLUSION.

This is a pretty basic error of property law by the CPD and Planning Commission and a little concerning although it was added at the last second. **Surely the city attorney should review this new ordinance and advise the council.** I can understand the CPD and Hertzl want to amend the B zone to allow a new use for schools -- which is such a major change it can't be done by variance -- while protecting adjacent property owners. Personally I thought a larger setback for one use -- schools -- than the other uses is a little unorthodox and basically a spot zone but figured this would only apply to one B zoned parcel out of three so could live with this unusual approach.

But now the CPD and Hetzl are attempting to effectively eliminate this larger setback -- really any setback -- with some pretty vague and unorthodox language which I find disingenuous, and I am pretty surprised the Planning Commission went along with such a ruse.

Hetzl could apply to consolidate the two parcels into one parcel which would eliminate an internal setback. The council can decide to allow no additional setbacks for a new use for a school in the B zone which would apply to all three B zoned properties on the Island, or 35', or as originally proposed by the CPD 45', but it can't condition that setback or any regulatory limits on the ownership of the adjacent properties.

Property ownership has nothing to do with the regulatory limits in a zone which apply to the parcel, not the owner. The CPD and Planning Commission should know this basic principle of land use. I would advise the council to seek a legal opinion from the city attorney on this proposed ordinance before holding the first hearing.

Thank you.

Daniel Thompson

Thompson & Delay

Attorneys at Law

80th Avenue Professional Building

2955 80th Ave SE, Suite 202

Mercer Island, WA 98040

Phone: (206) 622-0670

Fax: (206) 622-3965