
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: 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.