

EXHIBIT #1

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



CITY USE ONLY

PROJECT#	RECEIPT #	FEE

Date Received:

Received By:

DEVELOPMENT APPLICATION

STREET ADDRESS/LOCATION 3700 E Mercer Way		ZONE B/R-9.6
COUNTY ASSESSOR PARCEL #'S 0824059045; 1515600010 and 151560TRCT; 2107000010		PARCEL SIZE (SQ. FT.) 26,744 SF; 48,076 SF; 84,200 SF
PROPERTY OWNER (required) Herzl-Ner Tamid Conservative Congregation	ADDRESS (required) 3700 E Mercer Way Mercer Island, WA 98040	CELL/OFFICE (required) 206-232-8555 E-MAIL (required)
PROJECT CONTACT NAME Anjali Grant	ADDRESS 3427 Beacon Ave S Seattle, WA 98144	CELL/OFFICE 206-512-4209 E-MAIL
TENANT NAME The Jewish Day School	ADDRESS 15749 NE 4th Street Bellevue, WA 98008	CELL PHONE 425-460-0260 (land line) E-MAIL

DECLARATION: I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Digitally signed by Anjali Grant
Date: 2024.04.02 08:16:14-07'00'

3/28/2024

DATE

PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL (PLEASE USE ADDITIONAL PAPER IF NEEDED):

Attached is a consolidated Land Use Application which covers the construction of a new, three-story K-8 school with rental offices (permitted outright); shared parking (CUP); associated site improvements (CUP); and a change of use TI from religious school classrooms to preschool use (permitted outright).

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

CHECK TYPE OF LAND USE APPROVAL REQUESTED:

CRITICAL AREAS	ENVIRONMENTAL REVIEW (SEPA)	SUBDIVISION
<input type="checkbox"/> Critical Area Review 1	<input type="checkbox"/> SEPA Review	<input type="checkbox"/> Short Plat- Preliminary
<input type="checkbox"/> Critical Area Review 2	<input type="checkbox"/> Environmental Impact Statement	<input type="checkbox"/> Short Plat- Alteration
		<input type="checkbox"/> Short Plat- Final Plat
DESIGN REVIEW		<input type="checkbox"/> Long Plat- Preliminary
<input type="checkbox"/> Design Review – Signs	LEGISLATIVE	<input type="checkbox"/> Long Plat- Alteration
<input type="checkbox"/> Design Review – Code Official	<input type="checkbox"/> Code Amendment	<input type="checkbox"/> Long Plat- Final Plat
<input type="checkbox"/> Design Commission Study Session	<input type="checkbox"/> Comprehensive Plan Docket Application	<input type="checkbox"/> Lot Line Revision
<input type="checkbox"/> Design Commission Review – Exterior Alteration	<input type="checkbox"/> Comprehensive Plan Application (If Docketed)	
<input type="checkbox"/> Design Commission Review – Major New Construction	<input type="checkbox"/> Rezone	
	OTHER LAND USE	
	<input type="checkbox"/> Accessory Dwelling Unit	
	<input type="checkbox"/> Code Interpretation Request	
	<input type="checkbox"/> Conditional Use (CUP)	WIRELESS COMMUNICATION FACILITIES
<input type="checkbox"/> Deviations to Antenna Standards – Code Official	<input type="checkbox"/> Noise Exception Type I - IV	<input type="checkbox"/> New Wireless Communication Facility
<input type="checkbox"/> Deviations to Antenna Standards – Design Commission	<input type="checkbox"/> Other Permit/Services Not Listed	<input type="checkbox"/> Wireless Communications Facilities- 6409 Exemption
<input type="checkbox"/> Public Agency Exception	SHORELINE MANAGEMENT	<input type="checkbox"/> Small Cell Deployment
<input type="checkbox"/> Reasonable Use Exception	<input type="checkbox"/> Shoreline Exemption	<input type="checkbox"/> Height Variance
<input type="checkbox"/> Variance	<input type="checkbox"/> Shoreline Substantial Development Permit	
<input type="checkbox"/> Seasonal Development Limitation Waiver – Wet Season Construction Approval	<input type="checkbox"/> Shoreline Variance	
	<input type="checkbox"/> Shoreline Conditional Use Permit	
	<input type="checkbox"/> Shoreline Permit Revision	

PROJECT

Barnabie Point Project
3700 E Mercer Way
Project Narrative, Conditional Use Permit

8 April 2024

Project Narrative

The development site at 3700 E Mercer Way includes both residentially zoned and commercially zoned properties. On the commercially zoned property on the northwest corner of the site, the proposed uses are permitted outright.

The proposed project on the commercially zoned lot is a 3-story mixed-use building housing a Preschool-8 private school on levels 0, 1 and 2; and B-occupancy community office rental space on levels 2 and 3. B occupancy includes offices and training/skill development not in a school or academic program. Accessory uses customarily incidental to these principal uses are expected, such as use of school multipurpose areas by non-school groups.

The existing permitted uses on the residentially zoned lots at 3700 E Mercer Way site include a synagogue building (use approved 1970); caretaker's facility and outdoor play areas (1979); multipurpose building (1979); non-commercial recreational area used between 7 am and 10 pm (1979); and associated parking.

The proposed amendment to the existing conditional use permit(s) would allow the users of the mixed-use building to share the synagogue's existing parking lots for parking, drop-off and pickup during hours when the synagogue is not being used for worship; and would allow for potential future use of existing outdoor areas by BPP tenants.

Shared parking is consistent with Goal 1.2 of the Comprehensive Plan's Transportation Goals, to "Encourage businesses and residential areas to explore opportunities for shared parking and other parking management strategies." and allows this small parcel to be developed in a manner that is consistent with its designated zoning and the growth management plans of the City of Mercer Island.

The proposed physical changes to the existing property related to the Conditional Use Permit are limited to pedestrian pathways, underground utilities, fencing, and landscaping. Existing development is noncompliant with current impervious surface limits but legally conforming per 19.01.050.A.7. Any added impervious surface will be offset by removed impervious surface so that we retain existing lot coverage and impervious surface areas.

Land Use History from City records:

April 1969	Property Acquired
July 30, 1979	FRS Building (Multipurpose Building) permitted with the following conditions: "present title holder of Lot 8 Channel Crest will release its vehicular access rights across Tract A (tract 151560); secondary access route shall be used exclusively until satisfactory arrangements can be made with the title holders in the Doyle-Hanson plat; the small appendage linking the Doyle-Hanson road with the secondary access road [shall] not be used until and agreement has been reached with the title holders in Doyle-Hanson plat."
December 1970	Synagogue Building permitted
December 19, 1979	Caretaker's facility and outdoor play areas approved under the following conditions: evergreen shrub border and two shade trees
	Day school established prior to 1986.
	Lighting conditions: 7 am to 10 pm use, 2 fc maximum light level at the property line.
	Parking: 82 spaces required for sanctuary; 91 provided; 24 spaces required and provided for multipurpose building.
June 20, 1979	Non-commercial recreational area permitted per Planning Commission Staff Report dated June 20, 1979 under the following conditions: A. Access to local and/or arterial thoroughfares reasonably provided. B. Outdoor lighting shall be located to minimize glare upon abutting property and streets. C. Buildings and active play areas shall be located 20 feet or more from all boundaries above the line of ordinary high water. D. Boundaries of the area above the line of ordinary high water shall be reasonably screened or fenced, or both, from abutting property and streets and appropriately landscaped. The Design Commission required that the existing vegetation along the south property line be augmented with English Laurel hedge instead of the ornamental pines as previously proposed. Additionally, there is a six foot high fence along the entire southern boundary of the property. STAFF RECOMMENDATION The request does meet the conditions for a Conditional Use Permit and noncommercial recreation area. Much of this compliance is due to the review by the Design Commission in a preliminary phase, Staff will recommend that the Non-Commercial Recreational Tract for the Herzl-Ner-Tamid Congregation be approved as submitted on June 20, 1979,

subject to the following conditions:

1. That activity in the recreational tract shall be limited to daylight hours between 7:00 A.M. and 10:00 P.M,
2. That the dilapidated existing dock be removed.
3. That a bond be secured in the amount to install all the proposed improvements in addition to possible reconstruction of the existing fence and removal of the existing dilapidated dock.

ISSUED BY

Anjali Grant

8 April 2025

MEMORANDUM

by digital delivery only

To: City of Mercer Island, Attn: Hearing Examiner and Planning Department

From: Anjali Grant, Architect of Record

Re: Architect's Pre-Hearing Memorandum for CUP24-001

The applicant seeks to modify existing surface improvements established under a preexisting conditional use permit ("CUP"). This project does not propose to initiate any new conditional uses on the subject site.

1. Project Narrative.

1.1 Description of Proposal.

The development site at 3700 E Mercer Way includes both residentially zoned and commercially zoned properties. On the commercially zoned property on the northwest corner of the site, the proposed uses are permitted outright.

The proposed project on the commercially zoned lot is a 3-story mixed-use building housing a Preschool-8 private school and community multipurpose space on levels 0, 1 and 2; and B-occupancy community rental space on levels 2 and 3. (B occupancy includes offices and training/skill development not in a school or academic program.) The building covers 16,417 SF of the lot; the Gross Floor Area is 40,511 SF.

The existing permitted uses on the residentially zoned lots at 3700 E Mercer Way site include a synagogue building (use approved 1970); caretaker's facility and outdoor play areas (1979); multipurpose building (1979); non-commercial recreational area used between 7 am and 10 pm (1979); and associated parking.

The proposed amendment to the existing conditional use permit(s) would allow the users of the new mixed-use building to share the existing synagogue's existing parking lots for parking, drop-off and pickup during hours when the synagogue is not being used for worship. It would also allow new building tenants to potentially use the existing non-commercial recreational area under the conditions of the existing CUP. Shared parking is consistent with Goal 1.2 of the Comprehensive Plan's Transportation Goals, to "Encourage businesses and residential areas to explore opportunities for shared parking and other parking management

strategies.” Therefore, the requested Conditional Use Permit (“CUP”) amendment to the synagogue site will allow the small adjacent parcel to be developed in a manner that is consistent with its designated zoning and the growth management plans of the City of Mercer Island.

On the property that holds a preexisting CUP, physical changes are limited to pedestrian pathways, underground utilities, fencing, and landscaping. Existing development is noncompliant with current impervious surface limits but legally conforming per 19.01.050.A.7. Any added impervious surface will be offset by removed impervious surface so that we retain existing lot coverage and impervious surface areas.¹

1.2 Description of Consistency with Comprehensive Plans.

This Project’s initial application materials were submitted under Mercer Island’s 2015 Comprehensive Plan, but a new Comprehensive Plan was adopted in November of 2024. Accordingly, this section highlights a variety of goals and policies that illustrate the Project’s consistency with both the previous Comprehensive Plan and the current applicable Comprehensive Plan. Italics have been added to emphasize areas of particular consistency.

1.2.1 2024 Comprehensive Plan (Adopted Nov. 19, 2024).

The adjoining educational and childcare services uses that will be enabled by this CUP are consistent with the 2024 Comprehensive Plan as a whole, and most notably with these goals and policies:

2. V. Land Use Policies.

Goal 7.4. Social and recreation clubs, *schools, and religious institutions* are predominantly located in single-family residential areas of the Island. *The City may consider measures within the land use code to address the maintenance, updating, and renovation of these facilities, while ensuring compatibility with surrounding neighborhoods. Such facilities contribute to the mental, physical, and spiritual well-being of Mercer Island residents. Land use decisions should balance the retention of these facilities with overall community planning and zoning regulations.*

Goal 7.5. Encourage compatible uses such as *education, recreation, open spaces, government, social services, and religious activities.*

¹ The Project Narrative filing submitted on September 22, 2024 also included a brief summary of the subject site’s land use history. For brevity, that summary is not reproduced here.

Goal 9.2. *Commercial uses and densities near the I-90/East Mercer Way exit and SE 36th Street are appropriate for that area.* All activities in the Commercial Office zone are subject to design review, and supplemental design guidelines may be adopted.

4. II. Transportation Goals and Policies:

Goal 1.2. Encourage businesses and residential areas to *explore opportunities for shared parking* and other parking management strategies.

Goal 11.6. Encourage improved access to transit, bicycle, pedestrian *and shared parking facilities* to reduce trip generation and provide transportation alternatives, particularly for secondary trips once users reach the town center.

Goal 12.5. Strive to build community through the in-person interactions facilitated by active transportation at community connection points (*schools, library, community centers, bike-share hubs, etc.*).

1.2.2 2015 Comprehensive Plan.

2. V. Land Use Policies:

Goal 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. . . . Compatible permitted uses such as *education, recreation, open spaces, government social services and religious activities will be encouraged.*

Goal 17.2. *Commercial uses and densities near the I-90/East Mercer Way exit and SE 36th Street are appropriate for that area.* All activities in the CO zone are subject to design review and supplemental design guidelines may be adopted.

Goal 17.4. *Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect the desire to retain viable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island.*

4.II. Transportation Goals and Policies, Goal 1.2. *Encourage businesses and residential areas to explore opportunities for shared parking* and other parking management strategies.

2. Narrative of Code Compliance.

Narrative information concerning the project's compliance with the applicable code criteria has previously been provided (August 9, 2024) in the matrix form that is believed to be preferred by the City's code official. For the Examiner's convenience, this memorandum consolidates and expands the applicable narrative with respect to the CUP criteria outside the Town Center, MICC 19.06.110(2), and with respect to post-issuance CUP changes, MICC 19.06.110(5).

MICC 19.06.110(A)(2): Criteria for CUPs not located in Town Center.

"a. The permit is consistent with the regulations applicable to the zone in which the lot is located;"

The permit is consistent with the regulations applicable to the zone. Please see the application's enclosed code compliance matrix, detailed plan set, and supporting studies for further information.

"b. The proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed uses, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and density;"

No new uses are being proposed under the Property's preexisting CUP. Rather, this application only proposes parking and vehicle circulation revisions to accommodate shared parking with the adjacent proposed school. The applicant is not aware of any allegations that the existing use is not acceptable.

Size and Location of Site. There are minimal changes proposed for the site, which has ample capacity to absorb the proposed uses. The proposed uses occur when the existing site is not being used for worship.

Nature of Proposed Uses. No new uses are proposed under this CUP application. The nature of the proposed improvement is very much in keeping with existing uses.

Character of Surrounding Development. The site is characterized by its proximity to a major throughfare (E Mercer Way), to commercially zoned property, and to I-90 and its frontage road, including access to the Mercer Island Boar Launch.

Traffic Capacities of Adjacent Streets. The enclosed traffic study and concurrency information and analyses fully addresses traffic capacities, and the proposed revision of the site under this CUP is therefore believed to be fully acceptable under applicable codes and standards.

Environmental Factors. The enclosed environmental checklist and critical areas studies address environmental factors in substantial detail. Please see those documents for further information. All improvements will be completed in full compliance with applicable stormwater rules and other environmental standards.

Size of Proposed Buildings: No buildings are proposed on the site that is subject to this CUP. Physical changes to the property are limited to pedestrian pathways, utilities, fencing, and landscaping.

Density: No buildings are proposed on the site that is subject to this CUP. Physical changes to the property are limited to pedestrian pathways, utilities, fencing, and landscaping.

“c. The use is consistent with policies and provisions of the comprehensive plan; and”

Please see Section A.2 of this memorandum, above, for a detailed description of consistency with policies and provisions of the comprehensive plan.

“d. Conditions shall be attached to the permit assuring that the use is compatible with other existing and potential uses within the same general area and that the use shall not constitute a nuisance.”

The City's authority to attach conditions to the CUP is understood and acknowledged. The applicant and its design team have appreciated the opportunity to work in close collaboration with the City's professional staff to prepare a design approach that aligns with the City's policies and goals while advancing the nonprofit mission of the Property and its users.

MICC 19.06.110(A)5. Change after conditional use permit granted.

The Property continues to operate under its previously granted CUP. This application only proposes to alter the previously granted CUP's approved site layout through the various shared parking revisions described in further detail throughout this application package.

“a. Change of ownership. Conditional use permits granted shall continue to be valid upon change of ownership of the site.”

This provision is understood and acknowledged. No ownership change is contemplated for the site holding the existing CUP.

“b. Change of use. Modifications to the use shall require an amendment to the conditional use permit and shall be subject to the review process in chapter 19.15 MICC.”

This provision is understood and acknowledged. This submission applies for an amendment to the subject property’s existing CUP, in order to approve the requested modifications to the existing use. All applicable review processes are expected to be fully completed prior to approval.

“c. Applicability. A conditional use permit shall be applicable only to the property for which it was granted, as defined by the legal description of the property boundaries submitted with the conditional use permit application (“permitted property”). The use(s) permitted under a conditional use permit shall not extend beyond the permitted property to adjoining property or property added to the permitted property unless the conditionally approved use(s) are already allowed on the adjoining or added property or a new conditional use permit is granted for the adjoining or added property.”

This provision is understood and acknowledged. The application does not seek to extend any conditionally permitted uses (as approved in 1970 and 1979) onto adjoining property. Outside of this CUP process, the applicant is undertaking to establish certain uses related to development of a school on the adjoining B-zoned property. That property’s zoning allows private schools, offices, and recreational areas/theaters/cafeterias (multipurpose room) outright.

3. Statement of Proposed Measures to Ensure Ch. 19.10 MICC (Tree Code) Compliance.

The proposed revision to the subject property’s existing CUP does not contemplate any tree removal in connection with the CUP modification, and therefore requires no measures to ensure compliance with the MICC tree code.

The adjoining school development, which is not subject to CUP review, will be completed in full compliance with Ch. 19.10 MICC, as fully documented under separate cover.

4. Preapplication Meeting Notes.

Finalized notes from all preapplication meetings are attached to this memorandum.

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PHONE: 206.275.7605 | www.mercerisland.gov



Pre-Application Meeting (PRE22-067)

An Intake Screening is required in addition to a Pre-Application Meeting. A Pre-Application Meeting does not replace the required Intake Screening. This meeting is to provide guidance and information include prior to formal submittal.

Summary:

Site Location:	3700 E Mercer Way	Parcel Numbers:	0824059045, 2107000010, and 1515600010
Lot Size:	Lot 1: 26,774 sq ft or 0.61 acres Lot 2: 84,200 sq ft or 1.93 acres Lot 3: 48,076 sq ft or 1.10 acres	Zoning:	B (Commercial) & R-9.6 (Single Family)
Brief Project Description:	The applicant proposes to develop a private school on the Herzl (HNT) property by reconfiguring the uses of the existing structures and by developing a new structure on parcel 0824059045 (Zone B) to house administrative offices for the private school; a preschool; a chapel; and (leased) offices for affiliated groups, businesses & nonprofits.	Documents Provided:	Application form, Narrative, and Drawings
Applicant Information:			
Anjali Grant		Email: anjali@agrantdesign.com	Phone: 206-512-4209
Second Pre-application Meeting Required:	Not required.		

Proposal:

The applicant proposes to develop a private school on the Herzl (HNT) property by reconfiguring the uses of the existing structures and by developing a new structure on parcel 0824059045 (Zone B) to house administrative offices for the private school; a preschool; a chapel; and (leased) offices for affiliated groups, businesses & nonprofits.

Permits Required:

- Conditional Use Permit – Hearing Examiner
- Design Review – Design Commission
- Building Permit

Location: The subject property is located at 3700 E Mercer Way (King County Assessor Parcel Numbers: 0824059045, 2107000010, and 1515600010). The subject property is situated in the SW 1/4 of Section 8, Township 24 North, and Range 5 East, W.M in the City of Mercer Island, King County, WA.

PLEASE NOTE: *These pre-application meeting notes have been prepared to assist the applicant in completing and submitting the application in a manner that complies with applicable development standards and permit processing requirements. Although care has been taken, in the event of a conflict between these notes and any applicable law, regulation or decision criteria, the latter shall prevail. The City of Mercer Island makes no warranty of any kind to the accuracy of the information contained in these notes. The information herein notwithstanding, it is the applicant's sole duty to ensure that the proposed development complies with all applicable laws, regulations and decision criteria. Neither the discussions nor the notes provided at the pre-application meeting shall bind the City in any manner or prevent the City's future application or enforcement of all laws, regulations and decision criteria.*

December 13, 2022

0011

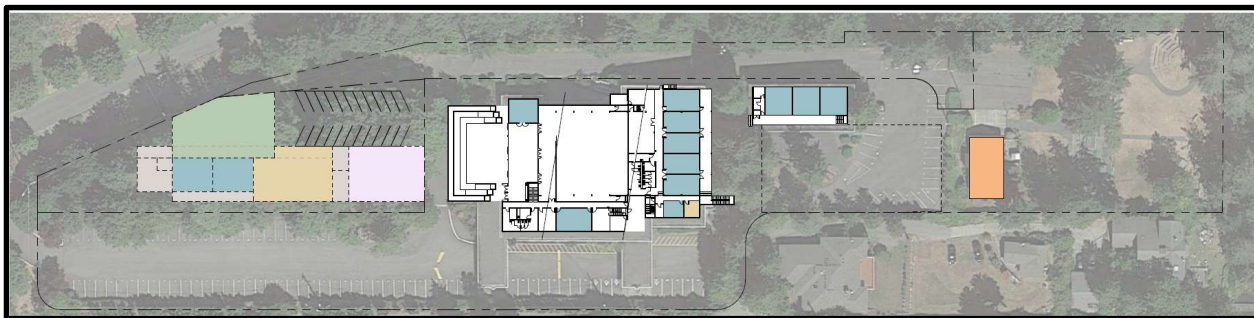
Property:

County Assessor Tax Parcel	Lot Size	Zoning
0824059045 (Lot 1)	26,774 sq ft or 0.61 acres	B
2107000010 (Lot 2)	84,200 sq ft or 1.93 acres	B and R-9.6
1515600010 (Lot 3)	48,076 sq ft or 1.10 acres	B and R-9.6

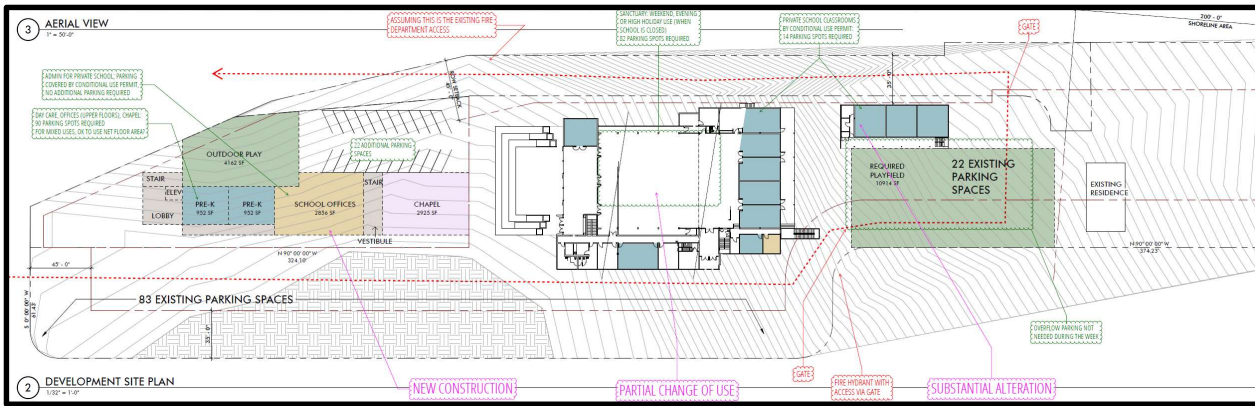


Background:

The subject property contains three existing structures: a synagogue building (1970), a multipurpose building (1970), and a single-family residence (approved 1979). The existing structures were developed as part of a 1969 Land Use variance process to allow a religious institution on a residential site. There is another parcel, zoned B, to the west of the original property.



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Planning Comments:

Planning Contact: ryan.harriman@mercerisland.gov or (206) 275-7717.

Partial change of use:

The applicant proposes to change the use of several rooms to E/A-3 occupancy classrooms within the original synagogue building (HNT). According to the applicant, the existing classrooms are A-3 occupancy (accessory to religious institution). The applicant proposes to utilize the classrooms for the private school during the week and the religious school on weekends.

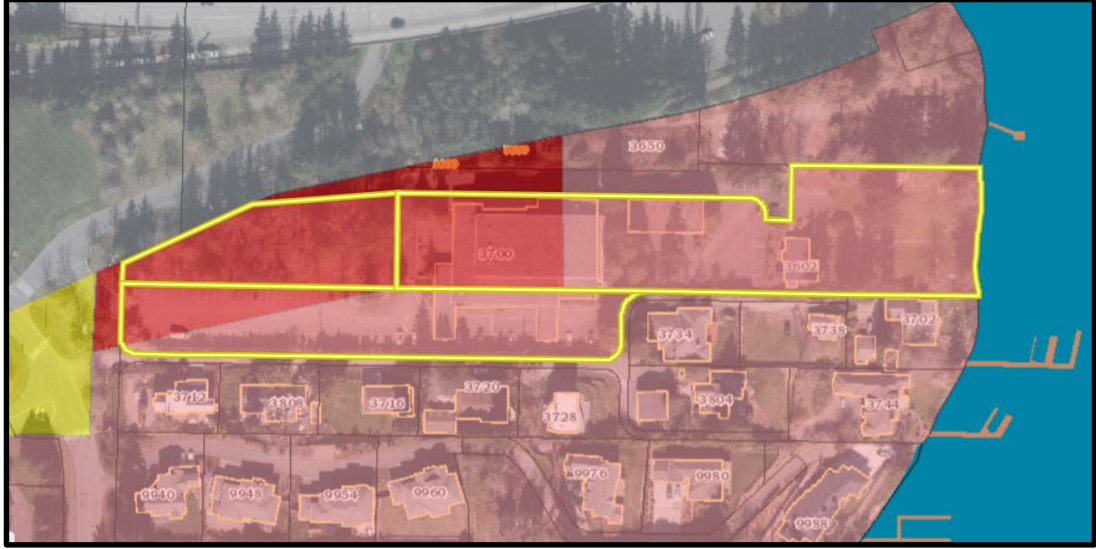
Full change of use and substantial alteration:

The applicant proposes to change the use of the entire existing multipurpose building (MP) from A-3 to E/A-3 occupancy. The classrooms would primarily be used for the private school during the week and the religious school on weekends.

New construction:

The applicant proposes to develop parcel 0824059045 with a 3-story building that would house administrative offices for the private school; a preschool; a chapel; and (leased) offices for affiliated groups, businesses & nonprofits.

Zoning:



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Red is Zone B

Light Red: Zone R-9.6

Pursuant to MICC 19.01.040(G)(2): 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. The location of the zone boundary shall be determined by use of the scale appearing on the zone map unless the location of the boundary is indicated by dimensions.

Design Review: Design Review is separate from the consolidated permit process per MICC 19.15.220. Please also see MICC 19.15.220 as to the required timing for Design Review and how it interplays with the variance and CUP Review processes. The applicant will need to decide what process to start with.

Zone B – Permitted Uses:

- Office uses.
- Accessory uses customarily incidental to a principal use permitted outright in this section. 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.

Zone R-9.6 – Permitted Uses:

- Single-family dwelling.
- Accessory buildings incidental to the main building.
- Private recreational areas.
- Places of worship may have a stage theater program as an accessory use.

Zone R-9.6 – Conditional Uses:

- Private schools accredited or approved by the state for compulsory school attendance, subject to conditions set out in subsection (A)(4) of this section.
 - 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.
- Places of worship subject to the following conditions:
 - a. All structures shall be located at least 35 feet from any abutting property.
 - b. Off-street parking shall be established and maintained at a ratio of one parking space for each five seats in the chapel, nave, sanctuary, or similar worship area.

Parking:

Parking in the B Zone is subject to the provisions of MICC 19.04.040.

- Financial and insurance services, healthcare services, office uses and professional, scientific, and technical services shall provide one parking space for every 300 square feet of gross floor area of the building.

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- Places of worship shall provide one parking space for every five seats in the chapel, nave, sanctuary, or similar worship area.
- 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.
- *Mixed use parking.* In the case of mixed uses, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately. Off-street parking facilities for one use shall not be considered as providing required parking facilities for any other use, except as hereinafter specified for cooperative use
- *Cooperative parking.* Cooperative parking between two or more adjoining property owners is allowed; provided, the code official, with approval from the design commission and city engineer, may reduce the total required spaces by 25 percent of the total combined required spaces when the applicant has demonstrated that no adverse impact will occur due to the reduced number of stalls.

Parking in the R-9.6 Zone is subject to MICC 19.02.020(G).

- Except as otherwise provided in this chapter, each lot shall provide parking deemed sufficient by the code official for the use occurring on the lot; provided, any lot that contains ten or more parking spaces shall also meet the parking lot requirements set out in appendix A of this development code.

The code official will want the applicant to complete a traffic impact analysis and parking analysis to determine if the proposed parking is sufficient. This will likely be a recommend condition of approval for the CUP. The applicant will need to provide operational details for a parking management plan associated with any agreement the city may approve. The applicant will need to show the math and demonstrate how the uses will work together during holidays, events, and general business hours.

Residential Zoning Standards:

1. Residential Zoning Standards:
 - a. Yards
 - i. Front yard: 20 feet
 - ii. Rear yard: 25 feet
 - iii. Side yards:
 1. Requirements based on lot width: (15 feet total; no side yard less than five feet **-OR-** Total side yards must be at least 17% of the lot width; no side yard less than 33% of the total side yard requirement.
 2. Variable Side Yard Depth Requirement:
 - a. Variable Side Yard Depth Requirements apply to interior lot lines only.
 - b. A minimum side yard of 7.5 feet is required for 1) nongabled roof ends where the height is more than 15 feet; or 2) gabled roof ends more than 18 feet. Both measurements are taken from existing or finished grade, whichever is lower, to the top of the gabled roof end adjoining the side yard.
 - c. A minimum side yard of 10 feet is required for single-family dwellings with a height of more than 25 feet measured from the existing or finished grade, whichever is lower, to the top of the exterior wall facade adjoining the side yard.

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- iv. Eaves may only protrude up to 18 inches into yards; note that no protrusion is allowed within *minimum* side yard setbacks.
 - v. No eave and minor building element protrusion is allowed into the minimum side yard setback established by either the requirements based on lot width or Variable Side Yard Depth Requirement. (MICC 19.02.020(C)(3)).
- b. Height:
- i. 30 feet maximum above the Average Building Elevation (ABE) to the highest point of the roof.
 - ii. 30 feet on the furthest downhill extent of the proposed building to the top of the exterior wall façade supporting the roof framing, rafters, trusses, etc.
- c. Lot Coverage:
- i. Calculated by totaling the following:
 - 1. All drivable surfaces (driveway, parking pad, turn-arounds, etc. regardless the material type; e.g. pervious driveway counts towards lot coverage)
 - 2. Roof line (includes eaves and covered decks)
 - ii. Lot Coverage is limited to a percentage of net lot area; this percentage varies between 20-40% depending on the slope of the lot. Lot slope is calculated by subtracting the lowest existing elevation from the highest existing elevation and dividing the resulting number by the shortest horizontal distance between these two points.
 - iii. Allowed a maximum of 9% of the lot area can be hardscape .
 - 1. Hardscape includes: patios, uncovered steps, walkways, decks, retaining walls, rockeries, and other hardened surfaces other than drivable surfaces or roofs.
 - 2. Hardscape improvements can be within the maximum lot coverage allowance. That is, if the proposed lot coverage is less than the maximum lot coverage, the difference between the maximum and proposed areas can be used for hardscape.
- d. Gross Floor Area (MICC 19.02.020(D):
- i. Pursuant to MICC 19.16.010 Gross floor area: The total square footage of floor area bounded by the exterior faces of the building.
 - ii. Gross Floor Area includes:
 - 1. The main building, including but not limited to attached accessory buildings.
 - 2. All garages and covered parking areas, and detached accessory buildings with a gross floor area over 120 square feet.
 - 3. That portion of a basement which projects above the lower of existing grade or finished grade as defined and calculated in Appendix B of this development code.
 - 4. Staircases.
 - 5. Decks that are attached to the second or third level of a single-family dwelling and are covered by a roof. For the purposes of calculating the gross floor area of covered decks, the entire deck area covered by the roof shall be accounted for as floor area, provided an 18-inch eave extending beyond the edge of the deck shall not be included in the gross floor area.
 - 6. Space under stairways or stairwells that is used, for example, as a closet or storage space if that space meets the definition of "Floor."
 - iii. Based on ceiling height, additional GFA may be applied
 - 1. The gross floor area shall be 150 percent of the floor area of that portion of a room(s) with a ceiling height of 12 feet to 16 feet, measured from the floor surface to the ceiling.
 - 2. The gross floor area shall be 200 percent of the floor area of that portion of a room(s) with a ceiling height of more than 16 feet, measured from the floor surface to the ceiling.

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3. Staircases shall be counted as a single floor for the first two stories accessed by the staircase. For each additional story above two stories, the staircase shall count as a single floor area. For example, a staircase with a 10-foot by 10-foot dimension that accesses three stories shall be accounted as 200 square feet (100 square feet for the first two stories, and 100 square feet for the third story).
- iv. Second or third level covered decks count towards GFA, only uncovered or covered decks on the main level don't count towards GFA
2. Critical area constraints (on and off-site)
 - a. Geological hazardous areas – seismic and potential slide.
 - b. Critical area study
 - c. Geotechnical reports must address the criteria in MICC 19.07.160, which include an analysis documenting that the subject property, neighboring properties, and other critical areas will not be adversely impacted. A statement of risk must also be provided. Please review this code section for full details.
 3. State Environmental Policy Act (SEPA) Review
 - a. The proposed scope of work requires SEPA review.
 4. Easements:
 - a. Vehicular Access Easements. No structures shall be constructed on or over any vehicular access easement. A minimum five-foot yard setback from the edge of any easement that affords or could afford vehicular access to a property is required for all structures; provided, that improvements such as gates, fences, rockeries, retaining walls and landscaping may be installed within the five-foot yard setback so long as such improvements do not interfere with emergency vehicle access or sight distance for vehicles and pedestrians.
 - b. Utility and Other Easements. No structure shall be constructed on or over any easement for water, sewer, storm drainage, utilities, trail or other public purposes unless it is permitted within the language of the easement or is mutually agreed in writing between the grantee and grantor of the easement.
 - c. Since multiple property owners share an interest in the easement, all parties with an interest must agree to the change.
 5. Impact fees
 - a. Rates are available online and typically are adjusted from year to year.
 - b. Note that fees are due at the time they are assessed--they do not vest to the time of complete subdivision or building permit application.
 6. Transportation Concurrency: Please apply for a transportation concurrency certificate at the same prior to submittal of any of proposed land use application.
 7. Vesting: Please see the standards in MICC 19.15.170.
 8. Application fees
 - a. Deposit due at time of application
 - b. Review time is billed hourly against the deposit; additional fees may be requested if additional review time is required.
 - c. When third-party technical review is required (e.g. geotechnical, wetland, watercourse etc.), this is billed separately, in addition to staff review time.

Applicant Questions:

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Land Use Questions:

1. There are two uses on the two adjacent sites (same Owner) with complementary times of use. The private school, preschool, offices, and chapel together require a total of 104 parking spots.

a. For a mixed-use building, would we calculate the sub-uses based on net area? For example, the office building has shared entries and stairs.

Staff Response: The total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately. Off-street parking facilities for one use shall not be considered as providing required parking facilities for any other use, except as hereinafter specified for cooperative use

b. The synagogue requires a total of 82 spots, based on the capacity of the sanctuary. The chapel (40 parking spaces required) would typically be used for smaller services.

Staff Response: The mixing of uses and parking in different zones will cause confusion. Mixed use parking requirements must be followed, as will the requirements in residential zones. To ease the confusion, the code official requests the applicant submit a parking analysis for the proposed uses and overall development of the subject property.

c. Could we consider the total parking requirement to be 104, given that the uses do not coincide during the week? There is a section on ‘cooperative parking,’ but it really does not address non-coincident uses.

Staff Response: A parking analysis will be required to determine if the proposed parking is sufficient. This will likely be a recommended condition of approval for the CUP. The applicant will need to provide operational details for a parking management plan associated with any agreement the city may approve. The applicant will need to show the math and demonstrate how the uses will work together during holidays, events, and general business hours.

d. Alternatively, we could consider the chapel to be accessory to the main sanctuary and calculate the parking based on the private school, preschool, offices, and synagogue sanctuary for a total parking requirement of 146 spots and use the cooperative parking reduction to arrive at 110 spots.

Staff Response: A parking analysis will be required to determine if the proposed parking is sufficient. This will likely be a recommend condition of approval for the CUP. The applicant will need to provide operational details for a parking management plan associated with any agreement the city may approve. The applicant will need to show the math and demonstrate how the uses will work together during holidays, events, and general business hours.

2. Please clarify regulations around maximum impervious surface regarding existing hardscape that is replaced, such as:

a. Existing asphalt replaced with a platform lift

b. Existing asphalt replaced with a roof covering.

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Staff Response: See MICC 19.02.060 for lot coverage requirements.

Pursuant to MICC 19.16.010 *Lot coverage, maximum:* The maximum area of a residentially zoned lot that may be covered by a combination of buildings, including eaves and roof overhangs, and vehicular driving surfaces.

Pursuant to MICC 19.16.010 Impervious surfaces: Includes without limitation the following:

1. Buildings — the footprint of the building and structures including all eaves;
2. Vehicular use — driveways, streets, parking areas and other areas, whether constructed of gravel, pavers, pavement, concrete or other material, that can reasonably allow vehicular travel;
3. Sidewalks — paved pedestrian walkways, sidewalks and bike paths;
4. Recreation facilities — decks, patios, porches, tennis courts, sport courts, pools, hot tubs, and other similar recreational facilities;
5. Miscellaneous — any other structure or hard surface which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, or causes water to run off the surface in greater quantities or at an increased rate of flow from present flow rate under natural conditions prior to development.

Fire/Building Code Questions

There is a partial change of use project at the existing synagogue and a substantial alteration project at the adjacent multipurpose building.

1. I've marked up what I believe is the existing fire lane access and hydrant on the site plan. Could we install gates on the fire lane, assuming there is a Knox box at each gate?

Fire Review Comment: Gates could be installed if they conform to the Fire Access/Gate Standards found at:

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/24371/auto_security_gates_2022.pdf.

The gates would need to all have Knox Box Access and not block fire hydrants or protection systems.

A separate Fire Access/Gate permit would be required and can be obtained at:

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/24341/fire_permit_application_2022.pdf

2. The sub alt is straightforward as I understand it – we'll need to upgrade for seismic, accessibility, energy code and add sprinklers.

Fire Review Comment: Correct with the Fire Code upgrades required on a substantial alteration.

Building review comment: Also, please be certain to review IFC Ch. 11, Construction Requirements for Existing Buildings, and IBC Level 3 Alterations, as these requirements are often forgotten and may have significant design and budget impacts. For example, retroactive requirements for egress, vertical openings, wall and opening protection near property lines, accessibility, etc.

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3. The partial change of use is less straightforward.
 - a. The building is partially sprinklered. I am proposing a 2-hour occupancy separation to separate the classroom level from the other levels. There are an additional 2 classrooms that I am considering an accessory use (less than 10% of the floor area), so we do not increase the nonconformity per IFC 901.4.7.1 "Additions or changes of use.

Additions or changes of use to existing buildings which would result in a nonconforming building shall cause the building to be brought up to current code requirements for fire protection systems."

Please let me know if this approach makes sense.

Fire Review Comment: IFC Chapter 9 (State Amended) Section 903.2.3 states that..." an automatic sprinkler system shall be provided for fire areas containing Group E occupancies where the fire areas has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2." Review the exceptions.

- Exception 3 "... Fire areas containing day care and preschool facilities with a total occupant load of 100 or less located at the level of exit discharge where every room in which care is provided has not fewer than one exit discharge door."
- In addition to 901.4.7.1, Section 901.4.7.2 would apply:
 - i. Alterations and repairs. When the value of all alterations of repairs performed within a sixty-month period exceeds 50 percent of the value of the building, the fire extinguishing systems and fire detection systems shall be installed throughout as for new construction. For the purposes of this section, the value of the building shall be determined by an approved method by the fire code official.
- Clarifying question: Is there a change of use in the synagogue building with the two rooms? What will these be used for?
- IFC 303.1.3 Associated with Group E occupancies. "A room or space used for assembly purposes that is associated with Group E occupancy is not considered a separate occupancy.

Building review comment: Given that the proposed private school will no longer be considered "Accessory to places of religious worship", it follows that both the synagogue and multipurpose room would now be considered as part of the Group E occupancy, with the change of use triggering the fire sprinkler requirement. Note - the previously utilized IBC Section 305.1.1 would not apply. Instead, IBC 303.1.3 would apply. Similarly, it would appear the fire areas of the additional 2 "accessory" classrooms may need fire sprinkler protection too.

- b. No energy code changes proposed, as we are not adding A/C or changing from residential to commercial.
- c. We'll provide accessible routes of travel up to a 20% of the construction cost per the EBC.

Building review comment: Also, see IEBC 305 for accessibility upgrades to existing buildings for partial change of occupancy, complete change of occupancy and alterations, such as providing accessible parking, signage, toilet and bathing facilities, etc.

- d. This doesn't appear to trigger any other required upgrades.

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Building review comment: Please be certain to review IFC Ch. 11, Construction Requirements for Existing Buildings, and the appropriate IBC Level Alteration levels, as these requirements are often forgotten and may have significant design and budget impacts. For example, retroactive requirements for egress, vertical openings, wall and opening protection near property lines, accessibility, etc.

Additional Building review comment for New Building: The submitted drawing is very preliminary without detail, dimensions, etc. Please feel free to submit a code analysis for a future preapplication meeting to review allowable building areas & stories, protection requirements for exterior walls and openings near property lines, egress, accessible routes, etc.

Fire Review Comment: Additional Considerations:

- All fire protection systems must be annually tested and compliant at time of final.
- Update all Knox Entry Keys. New Knox Box on new building.
- Fire walls need to conform to IBC 706.4 Fire Resistive Rating. Note that penetrations through the wall shall conform to the fire wall resistive rating. This would include doors, ducts, or any penetrations.
- Emergency Responder Radio Coverage (ERRC). Provide a radio test to verify coverage. If coverage is not available, we will need to discuss the install of a BDA/DAS system due to the substantial remodel. Additionally, the risk of the proposed non-sprinklered areas (if proposed or permitted) is high and will need to be reviewed. New buildings will need ERRC.
- Fire Access- The plan shows two dead end access points that exceed 150' without turn arounds. The current layout has a "looped" drive. This would need to conform to the fire access standards in IFC Appendix D. (>500' would be 26' of width). Can you provide more information on this?
- Aerial Access required per IFC Appendix D: <https://codes.iccsafe.org/content/IFC2018/appendix-d-fire-apparatus-access-roads>
- Fire Hydrant placement per IFC Appendix C: <https://codes.iccsafe.org/content/IFC2018/appendix-c-fire-hydrant-locations-and-distribution>
- Permits required:
 - i. TI Fire Sprinkler System
 - ii. TI Fire Alarm System
 - iii. Fire Access/Gate

Fire Review Comment: Subject to change pending submittal of plans and plan review. Plan approval/ Plan review does not relieve the designer/contractor from complying with all applicable codes and requirements as adopted by the City of Mercer Island and the State of Washington, nor does it abrogate the requirements of other authorities having jurisdiction.

Follow-up Items:

1. Is a chapel a permitted use in Zone B?

Staff Response: A chapel is not listed as a permitted use in Zone B.

2. MICC 19.02.060 does not address the replacement of existing asphalt with a roof covering. Generally will need to demonstrate that we are not exacerbating noncompliance.

Staff Response: Lot coverage and impervious surface are terms used within the code that could be

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considered the same thing, but have different definitions in MICC 19.16.010. If a surface is currently covered with an impervious surface and the applicant wants to put a carport over it, there is no increase in lot coverage. The lot coverage and carport wouldn't be counted twice. It's important to show the math in your site planning preparation to ensure there is no increase in lot coverage.

3. Would a carport, stair way, and other covered areas be considered gross floor area?

Staff Response: Pursuant to MICC 19.16.010 Gross floor area: The total square footage of floor area bounded by the exterior faces of the building.

4. What are site-specific application form requirements for Design Review and Conditional Use Permit for the two separate sites?

Staff Response: The Conditional Use Permit is needed for the entire property utilized in the parking plan. The school needs a Conditional Use Permit. The new building needs Design Review. Ideally, the intent of the new Conditional Use Permit will supersede previous agreements, incorporating historical agreements as needed. All items listed on the respective forms (see below) are necessary for a complete application.

Development Application:

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/9261/devapp.pdf

Land Use Application Plan Set Guide:

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/9261/landuseappplansetguide.pdf

Traffic Impact Analysis Guidelines:

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/9261/trafficimpactanalysisreg.pdf

Transportation Concurrency Application:

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/9261/transportationconcurrencyform.pdf

SEPA Environmental Checklist:

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/9261/sepachecklist.pdf

Design Review:

<https://www.mercerisland.gov/sites/default/files/fileattachments/planning/page/9261/designreviewdesigncommission.pdf>

Conditional Use Permit:

<https://www.mercerisland.gov/sites/default/files/fileattachments/planning/page/9261/conditionalusepermit.pdf>

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5. A robust traffic study and parking management plan will be needed to demonstrate complementary parking uses. Of particular concern is parking surges due to the confluence of events. Parking for existing uses will be under consideration as the new development and change of use may impact the existing parking.
6. The Conditional Use Permit will need to include both sites (Lot 1 and Lots 2+3) if parking on both sites is interdependent.
7. Design Review will be required for the new building. Design Review may also be needed for exterior alterations to existing buildings or the site. Please refer to MICC 19.15.220.
8. Both Design Review and the Conditional Use Permit have separate open record public hearings.
9. SEPA review is required as part of the Conditional Use Permit and Design Review processes.
10. Transportation Concurrency Application or Certificate. Submit prior to, or concurrent with, any development proposal that will result in the creation of one or more net new vehicle trips during peak hours.
11. Identification of the preferred process flow that is code compliant. The City requested the applicant to map out a code compliant path for preferred review process and timeline for City review and response. The review process could happen generally concurrently, although the review bodies are different. The 120 days is the total review time. This counts for each day the City is reviewing the proposal. The review time ends when a decision is issued. Please note there are separate decision bodies with separate processes.
12. The applicant will want to consider completing the parking analysis and traffic impact analysis before the city issues a recommendation to the Hearing Examiner. That way the Hearing Examiner would be able to review the materials as part of the public hearing process.
13. If the covered hallway and stairs are substantially altered could the alteration be considered as an exception/possible variance to the GFA limits. The applicant wants to enclose them for both safety and energy code.

Staff Response: Please refer to Code Official Interpretation, DCI22-004, attached to this letter.

For more information on Land Use and Planning please refer to this useful webpage:

<https://www.mercerisland.gov/cpd/page/land-use-application-forms-and-submittal-requirements>

Sincerely,

Ryan Harriman

Ryan Harriman, EMPA, AICP

Planning Manager

Community Planning & Development

City of Mercer Island

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December 13, 2022

0023

**Development Code Interpretation
22-004**

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT
9611 SE 36TH STREET | MERCER ISLAND, WA 98040
PHONE: 206.275.7605 | www.mercerisland.gov



TO: CPD Staff
FROM: Jeff Thomas, Interim CPD Director
DATE: November 21, 2022
RE: Variances for Non-Residential Structures in Residential Zones

A. MICC SECTION(S) INTERPRETED

MICC 19.06.110(B)

B. AUTHORITY

This development code interpretation is issued under the authority of sections 19.15.030 and 19.15.160 of the Mercer Island City Code (MICC).

C. ISSUE

MICC 19.06.110(B), *Variances*, imposes a hardship criterion that requires applicants requesting variances in residential zones to demonstrate that strict enforcement of Title 19 MICC will prevent the construction of a single-family dwelling on a legally created residentially zoned lot. MICC 19.06.110(B)(2)(a).

Can the City grant a variance from numeric standards for a non-residential structure sited in a residential zone, if under MICC 19.06.110(B)(1), all criteria in subsection(B)(2)(a) through (B)(2)(h) must be met, and that for a variance to lot coverage standards, the criteria in subsection (B)(2)(a) through (B)(2)(i) must be met?

D. BACKGROUND

The hardship criterion contained in MICC 19.06.110(B)(2)(a) was adopted by Ordinance No. 17C-15 on September 19, 2017. The criterion contained in MICC 19.06.110(B)(2)(i), relating to variances as to lot coverage for specific non-residential structures, existed in the MICC prior to the adoption of Ordinance No. 17C-15. However, that language was moved to MICC 19.06.110(B)(2)(i) within Ordinance No. 17C-15 to consolidate criteria relating to variances.

E. FINDINGS

1. Per MICC 19.15.160, the Code Official may issue a written interpretation of the meaning or application of provisions of the development code.¹
2. This written interpretation is intended to interpret the scope of the hardship criteria as applied to non-residential structures in residential zones.
3. MICC 19.06.110(B)(1)(a) could be read to foreclose variances from numeric standards for non-residential structures in residential zones because the hardship criterion limits the application of variances to instances where strict application of Title 19 would prohibit construction of one single family residence on a legally created residential lot. The applicant or property owner of a non-residential structure would not be able to demonstrate an unnecessary hardship because there are no circumstances where the adopted standards of Title 19 MICC are preventing construction of a single-family dwelling; rather the applicant or property owner is seeking a variance for a non-residential structure. It is not Title 19 that would preclude the construction of a residential structure, but rather the choice of the applicant or property owner. However, MICC 19.06.110(B)(2)(i) explicitly affords the applicant or property owner of a non-residential structure the opportunity for a variance from impervious surface standards for particular types of non-residential structures.
4. This apparent conflict within MICC 19.06.110(B) requires interpretation to administer.
5. A plain reading of MICC 19.06.110(B), giving meaning to all of the text within that section, results in the following conclusions:
 - a. Non-residential structures in residential zones are generally precluded from receiving variances from numeric standards of Title 19, because they cannot meet the hardship criterion—to wit, they cannot demonstrate that Title 19 prevents the construction of a single-family dwelling on a legally created residential lot.
 - b. The one exception is that certain enumerated non-residential structures (public and private schools, religious institutions, private clubs, and public facilities) within residential zones with slopes of less than 15 percent *can* receive a variance to increase impervious surface to a maximum of 60 percent if the Hearing Examiner determines the applicant has demonstrated satisfaction of the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv).
 - c. Further, an applicant or property owner would also be required to demonstrate the other criteria outlined in subsection (B)(2)(a) through (B)(2)(i), with the exception of being able to demonstrate inability to construct a single-family residence on a legally created residential lot. The applicant or property owner would still have to demonstrate an unnecessary hardship to the property owner, because the first sentence of MICC 19.06.110(B)(2)(a) requires proof that “[t]he strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner.”
6. As discussed further below, the legislative history relating to Ordinance No. 17C-15 supports this conclusion. During the process of adopting Ordinance No. 17C-15, discussion between the City Council and the City’s then Community Planning and Development (CPD) Director reflected an intent to greatly reduce the number of variances granted, which was the impetus behind adding the hardship criterion now contained in MICC 19.06.110(B)(2)(a).
7. In issuing an interpretation, the Code Official is directed to consider eight factors specified in MICC 19.15.160(A). These factors are:

(1.) The plain language of the code section in question;

Analysis: A reading of the plain language of MICC 19.06.110 results in the following findings:

¹ Under the MICC, variances are granted by the Hearing Examiner. MICC 19.15.030 and Tables A-B.

- i. MICC 19.06.110(B), *Variances*, imposes a hardship criterion; an applicant or owner applying for variance must show that strict enforcement of Title 19 will create an unnecessary hardship to the property owner. MICC 19.06.110(B)(2)(a). For properties in residential zones, “unnecessary hardship” is limited to those circumstances where the adopted standards of Title 19 MICC prevent the construction of a single-family dwelling on a legally created residential zoned lot. *Id.*
- ii. However, MICC 19.06.110(B)(2) also includes a criterion for variances to impervious surface standards for “[p]ublic and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent.” MICC 19.06.110(B)(2)(i).
- iii. MICC 19.06.110(B)(1) further provides: “[a] variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(2)(a) through (B)(2)(h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (B)(2)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (B)(2)(a) through (B)(2)(i) of this section.”

(2.) Purpose and intent statement of the chapters in question;

Analysis: Chapter 19.06 MICC does not contain a general purpose statement; however, MICC 19.06.110(B)(1) provides a purpose statement for the MICC section in question: “*Purpose.* An applicant or property owner may request a variance from any numeric standard, except for the standards contained within chapter 19.07 MICC. A variance shall be granted by the city only if the applicant can meet all criteria in subsections (B)(2)(a) through (B)(2)(h) of this section. A variance for increased lot coverage for a regulated improvement pursuant to subsection (B)(2)(i) of this section shall be granted by the city only if the applicant can meet criteria in subsections (B)(2)(a) through (B)(2)(i) of this section.”

(3.) Legislative intent of the city council provided with the adoption of the code sections in question;

Analysis: Review of the legislative history of MICC 19.06.110(B) results in the following findings:

- i. On September 19, 2017, the Mercer Island City Council adopted Ordinance No. 17C-15, adding the unnecessary hardship criterion currently contained in MICC 19.06.110(B)(2)(a).
- ii. The minutes from the relevant City Council meetings indicate the following:

The July 5, 2017 minutes contains the following discussion:

Variance Criteria:

- Planning Commission Recommendation: prohibit / limit variances to GFA, minimum lot size, height, fence height and staff does not recommend adopting this amendment
- Alternative: Limit variance approvals to those circumstances where a house could not otherwise be built on a legal, residential lot and remove ambiguous language regarding groundcover, trees, physical condition of the lot from “d.”

Council Direction: Staff propose a solution for “flag lots.” Support alternative to limit variance approvals to those circumstances where a house could not otherwise be built on a legal, residential lot and remove ambiguous language regarding groundcover, trees, physical condition of the lot from “d.”

iii. The packet from the July 5, 2017, reading of the later adopted ordinance included the following discussion of the options before City Council with respect to the hardship criterion ultimately added to MICC 19.06.110(B)(2)(a):

Variance Criteria				
Draft Page #	Planning Commission Recommendation	Proposed Amendment	Source	Staff Recommendation / Rationale
17 Page 71 – Variances	Allow for an application for a variance to any numeric standard, except for the standards in Chapter 19.07.	Prohibit the application for a variance to minimum lot area requirements, gross floor area, building height, or lot coverage.	Dan Grausz	Staff does not recommend adopting this amendment. There are some circumstances where allowing for a variance to these standards is appropriate to avoid a regulatory takings. The variance criteria have been revised to limit variances to only those circumstances where a variance is warranted.
		Alternatively, limit variance approvals to those situations where a property owner cannot both comply with existing standards and build a home on a legally created residential lot.		Staff recommends further revising the criteria for approval. In particular, staff recommends limiting variances to situations where a property owner cannot comply with all of the development standards and build a new single family home. This item was discussed by the Planning Commission.

- iv. The discussion between the then CPD Director and City Council regarding the hardship criterion further indicates the intent of restricting variances in residential zones only to those instances where a variance is necessary to permit the construction of a single-family residence on a legally created residential lot.
- v. The Code Official is unaware of any discussion by City Council or other materials regarding the resulting conflict between the language in MICC 19.06.110(B)(2)(a) and the language in MICC 19.06.110(B)(2)(i).

(4.) Policy direction provided by the Mercer Island comprehensive plan;

Analysis: Review of the Comprehensive Plan results in the following findings:

- (1) The Comprehensive Plan envisions Mercer Island as a residential community:
 - (a) “Mercer Island prides itself on being a residential community. As such, most of the Island’s approximately 6.2 square miles of land area is developed with single family homes.” [Land Use Element, Introduction]
 - (b) “Single family residential zoning accounts for 88 percent of the Island’s land use. There are 3,534 acres zoned for single family residential development. This compares to 77 acres in the Town Center zones, 19 acres for Commercial Office zone, and 103 acres in multi-family zones (Table 2). City Hall is located in a Commercial Office zone, while other key civic buildings such as the Post Office and the Main Fire Station are located in the Town Center and City Hall. Many of the remaining public buildings, schools, recreational facilities and places of religious worship are located in residential or public zones.” [Land Use Element, II Existing Conditions and Trends, Areas outside the Town Center]
 - (c) “OUTSIDE THE TOWN CENTER (1) The community needs to accommodate two important planning values — maintaining the existing single family residential character of the Island, while at the same time planning for

population and housing growth.” [Land Use Element, IV. Land Use Issues, Outside the Town Center (1)]

(2) A primary component of the housing element is the City’s desire to protect single-family residential neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. City code provisions were specifically designed to protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character. This includes limiting the size and scope of nonresidential uses to be consistent with existing neighborhood character.

(a) “Housing Element

III. Neighborhood Quality

Mercer Island single family neighborhoods pride themselves on their narrow, quiet streets and dense plantings. The City protects these neighborhoods through development regulations and other City codes which restrict the bulk and scale of buildings, control noise and nuisances, minimize the impact of non-residential uses and help preserve the natural environment. Parks, open spaces and trails also contribute to the neighborhood quality.” [Housing Element, III. Neighborhood Quality]

(b) “GOAL 1: -

Ensure that single family and multi-family neighborhoods provide safe and attractive living environments, and are compatible in quality, design and intensity with surrounding land uses, traffic patterns, public facilities and sensitive environmental features.

1.1 Ensure that zoning and City code provisions protect residential areas from incompatible uses and promote bulk and scale consistent with the existing neighborhood character.” [Housing Element, III. Neighborhood Quality, Goal 1.1]

(3) The Comprehensive Plan evidences an intent to retain certain non-residential structures located in residential zones. However, the Comprehensive Plan is silent on whether such structures would be eligible for variances from otherwise applicable numerical standards.

(a) “GOAL 17: -

With the exception of allowing residential development, commercial designations and permitted uses under current zoning will not change.

17.4 Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect the desire to retain viable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island.” [Land Use Elements, IV Land Use Issues Outside the Town Center]

(4) The Comprehensive Plan also evidences an intent to preserve existing conditions and to generally permit changes only through amendments to the development code, rather than through granting numerous of variances to that development code. At the same

time, there is also recognition that some non-residential structures and uses are compatible with residential zones.

(a) "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.

15.2 Residential densities in single family areas will generally continue to occur at three to five units per acre, commensurate with current zoning. However, some adjustments may be made to allow the development of innovative housing types, such as accessory dwelling units and compact courtyard homes at slightly higher densities as outlined in the Housing Element.

...

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." [Land Use Elements, IV Land Use Issues Outside the Town Center].

(5.) Relevant judicial decisions;

Analysis: The Code Official is unaware of any relevant judicial decisions related to this issue. However, the Code Official is aware of several cases regarding code interpretation. Municipal ordinances are subject to the same rules of statutory interpretation as are statutory enactments. *Hassan v. GCA Production Services, Inc.*, 17 Wn.App. 625, 637, 487 P.3d 203 (2021). Additionally, the goal of code interpretation is to give effect to the intentions of the drafters. *Jametsky v. Olsen*, 179 Wash. 2d 756, 762, 317 P.3d 1003, 1006 (2014). Absurd results are to be avoided in construing ambiguous language, although the principle is to be used sparingly. *Seattle Hous. Auth. v. City of Seattle*, 3 Wash. App. 2d 532, 538–39, 416 P.3d 1280, 1283 (2018); *Samish Indian Nation v. Wash. Dep't of Licensing*, 14 Wash.App.2d 437, 444, 471 P.3d 261 (2020). Further, when possible, legislation must be construed so that no clause, sentence, or word is rendered superfluous, void, or insignificant. *Coates v. City of Tacoma*, 11 Wash. App. 2d 688, 695, 457 P.3d 1160, 1164 (2019).

(6.) Consistency with other regulatory requirements governing the same or similar situation;

Analysis: The Code Official is unaware of other regulatory requirements governing the same or similar situations.

(7.) The expected result or effect of the interpretation; and

Analysis: The interpretation will result in clarifying the position of the Code Official in that the MICC prohibits variances from numerical standards for non-residential structures in residential zones, with the sole exception of the specific types of non-residential structures enumerated in MICC 19.06.110(B)(2)(i) from impervious surface standards.

(8.) Previous implementation of the regulatory requirements governing the situation.

Analysis: The Code Official is unaware of any previous implementation of regulatory requirements relating to variances for non-residential structures within residential zones since the addition of the hardship criterion in September 2017.

F. CONCLUSIONS

1. MICC 19.06.110(B) contains conflicting language as to variances for non-residential structures in residential zones. Reconciling this conflict, the Code Official makes the following interpretations:
 - a. The specifically enumerated non-residential structures listed in MICC 19.06.110 (B)(2)(i) are eligible to receive a variance from impervious surface standards if:
 - i. The Hearing Examiner finds that the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv) have been satisfied, and
 - ii. The Hearing Examiner finds compliance with the other criteria enumerated in subsection (B)(2)(a) through (i), including demonstrating an unnecessary hardship, per subsection (B)(2)(a), but disregarding the second sentence of (B)(2)(a) due to the conflict with subsection (B)(2)(i).
 - b. The MICC prohibits other variances from numerical standards for non-residential structures in residential zones.
2. Both conclusions enumerated above are based upon the following:
 - a. It is apparent from the relevant legislative history that City Council’s stated intent was to restrict variances in residential zones only to those circumstances in which construction of a single-family residence upon a legally created residential lot would be prohibited. The Code Official did not find any evidence that City Council was aware of the conflict between MICC 19.06.110(B)(2)(a) and (B)(2)(i).

Because the language regarding variances from impervious surface standards for certain specified non-residential structures in residential zones was also reorganized by City Council to MICC 19.06.110(B) contemporaneously with the creation of the hardship criterion, it is the position of the Code Official that the language in MICC 19.06.110(B)(2)(i) must be also given effect as a narrow exception to the prohibition against variances for non-residential structures in residential zones as put forth in MICC 19.06.110(B)(2)(a). This conclusion is necessary in order to give the fullest effect to the legislative enactment of the City Council.

- b. Utilizing statutory interpretation principles, the Code Official is required to construe the MICC to give the fullest effect to the legislative intent of the City Council, to utilize the principles of avoiding absurd results (but in a sparing manner), and to avoid making code language superfluous, void, or insignificant. Other than variances from impervious surface standards, no other variances for non-residential structures within residential zones are listed in MICC 19.06.110(B)(2).
- c. There is nothing in the City’s Comprehensive Plan to contradict the conclusions of the Code Official. The Comprehensive Plan prioritizes residential uses while also recognizing certain non-residential uses within residential zones. The interpretation of the Code Official does not prohibit the siting of non-residential structures in residential zones where otherwise permitted, but it does limit the type of variances available for such structures.

G. INTERPRETATION

The specifically enumerated non-residential structures listed in MICC 19.06.110 (B)(2)(i) are eligible to receive a variance from impervious surface standards if the Hearing Examiner determines the application has demonstrated satisfaction of the criteria contained within MICC 19.06.110(B)(2)(i)(i-iv) and the applicant or property owner demonstrates compliance with the other criteria enumerated in subsection (B)(2)(a) through (i), including demonstrating an unnecessary hardship, per subsection (B)(2)(a), but disregarding the conflicting second sentence of (B)(2)(a).

Having not been expressly included in MICC 19.06.110(B)(2), the position of the Code Official is that all other variances from numerical standards for non-residential structures in residential zones are prohibited by MICC 19.06.110(B)(2)(a).

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



Pre-Application Meeting (PRE24-004)

An Intake Screening is required in addition to a Pre-Application Meeting. A Pre-Application Meeting does not replace the required Intake Screening. This meeting is to provide guidance and information include prior to formal submittal.

Summary:

Site Location:	3700 E Mercer Way	Parcel Numbers:	0824059045, 2107000010, and 1515600010
Lot Size:	Lot 1: 26,774 sq ft or 0.61 acres Lot 2: 84,200 sq ft or 1.93 acres Lot 3: 48,076 sq ft or 1.10 acres	Zoning:	B (Commercial) & R-9.6 (Single Family)
Brief Project Description:	The applicant proposes to develop a new school and office building on the Herzl (HNT) property.	Documents Provided:	Application form, Narrative, and Drawings
Applicant Information:			
Herzl Ner-Tamid Conservative Congregation c/o Anjali Grant, 3427 Beacon Ave S, Seattle 98144		Email: anjali@agrantedesign.com	Phone: 206-512-4209
Second Pre-application Meeting Required:	Not required.		

Proposal:

The applicant proposes to develop a 3-story mixed-use building housing a K-8 private school on the lower levels and rental office space on the upper level and a half. The bulk of the project is situated on the B-zoned parcel at the northwest corner of the site. Parking, trash, utilities, and pedestrian paths are located on adjacent parcels owned by Herzl Ner-Tamid Conservative Congregation (HNT).

Permits Required:

- Conditional Use Permit – Hearing Examiner
- Design Review – Design Commission
- SEPA
- Traffic Concurrency
- Building Permit

Location: The subject property is located at 3700 E Mercer Way (King County Assessor Parcel Numbers: 0824059045, 2107000010, and 1515600010). The subject property is situated in the SW 1/4 of Section 8, Township 24 North, and Range 5 East, W.M in the City of Mercer Island, King County, WA.

Property:

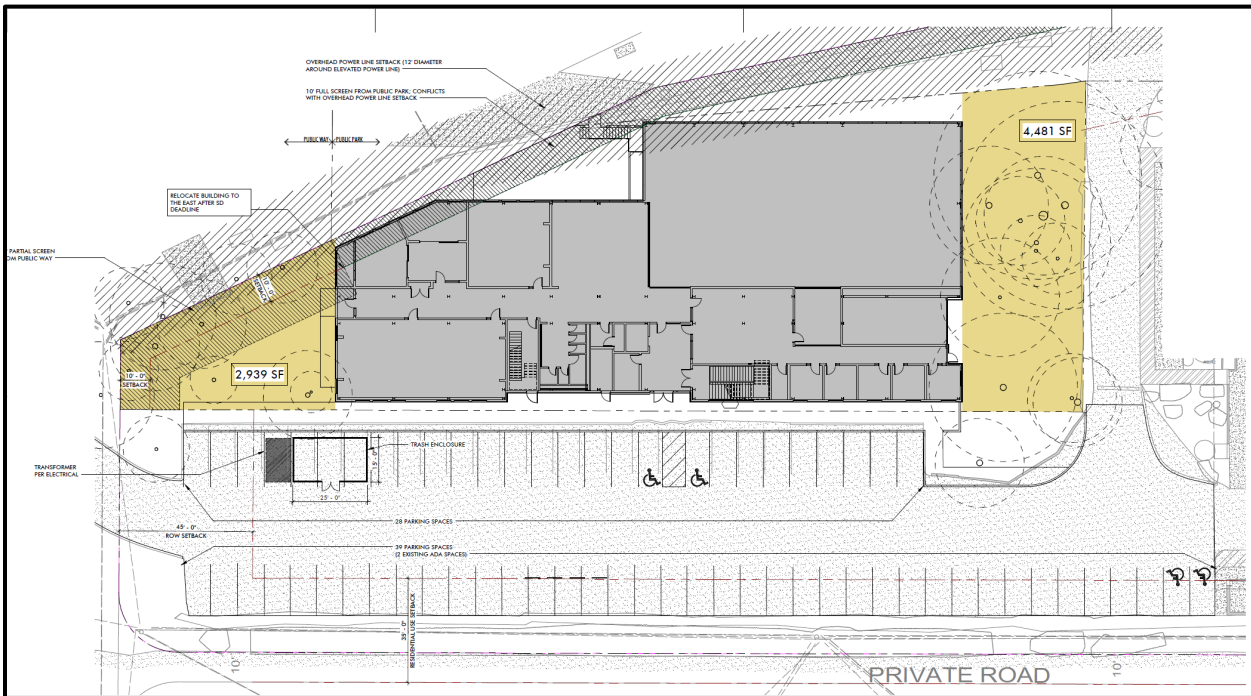
County Assessor Tax Parcel	Lot Size	Zoning
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PLEASE NOTE: These pre-application meeting notes have been prepared to assist the applicant in completing and submitting the application in a manner that complies with applicable development standards and permit processing requirements. Although care has been taken, in the event of a conflict between these notes and any applicable law, regulation or decision criteria, the latter shall prevail. The City of Mercer Island makes no warranty of any kind to the accuracy of the information contained in these notes. The information herein notwithstanding, it is the applicant's sole duty to ensure that the proposed development complies with all applicable laws, regulations and decision criteria. Neither the discussions nor the notes provided at the pre-application meeting shall bind the City in any manner or prevent the City's future application or enforcement of all laws, regulations and decision criteria.

March 5, 2024

0032

0824059045 (Lot 1)	26,774 sq ft or 0.61 acres	B
2107000010 (Lot 2)	84,200 sq ft or 1.93 acres	B and R-9.6
1515600010 (Lot 3)	48,076 sq ft or 1.10 acres	B and R-9.6



Background:

The subject property contains three existing structures: a synagogue building (1970), a multipurpose building (1970), and a single-family residence (approved 1979). The existing structures were developed as part of a

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March 5, 2024

1969 Land Use variance process to allow a religious institution on a residential site. There is another parcel, zoned B, to the west of the original property.

Applicant Questions:

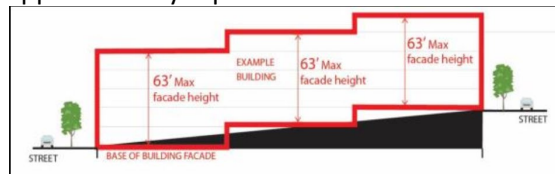
1. MICC 19.04.050 Business – B.

a. Height limit

i. Looking at stepping the building north to south to maintain accessibility; average will be below 36-foot height limit.

Staff Comment: Pursuant to MICC 19.11.030(A)(3), Calculation of building height.

- a. The intent of the building height calculation in this section is to limit the visual mass of a building so that it does not appear to exceed the maximum height limit in subsection (A)(1) of this section.
- b. The maximum allowable building height in subsection (A)(1) of this section shall be calculated as the vertical distance measured from the base of a building facade to the highest point of the roof structure excluding appurtenances. The base of the building facade shall be measured from the adjacent public sidewalk if applicable, or from the lower of existing or finished grade along building facades that are not adjacent to a public sidewalk. See Figure 4.
- c. If the bases of the opposite building facades are at approximately the same elevation, then the building height at any point between the facades can never exceed the maximum permitted building height. If the bases of the opposite building facades are not at approximately the same elevation, then the building must be configured to go down in height as between the higher and lower facades in a manner similar to Figure 4 or in an equivalent manner such that the average of the building heights calculated between the facades is approximately equal to or less than the maximum permitted building height.



Staff Comment: It is the responsibility of the Applicant to ensure the proposed development is consistent with the provisions of MICC 19.04.050(D). The Design Commission will want to see how the proposed development is consistent with the height requirements.

2. MICC 19.02.010 Single-family

a. MICC 19.02.060 B. Maximum Impervious Surface Limits

i. Exception for Pedestrian-Oriented Walkways. Uncovered pedestrian walkways constructed with gravel or pavers not to exceed 60 inches in width shall be exempt from the maximum impervious surface limits.

b. Replacing/repairing impervious existing parking for maintenance and accessibility, but not increasing impervious area.

Staff Comment: Pursuant to MICC 19.02.060(C)(3), Pedestrian-oriented walkways. Uncovered pedestrian walkways constructed with gravel or pavers not to exceed 60 inches in width shall be exempt from the maximum impervious surface limits. The Applicant may want to consider a distinct decorative paver system to denote a clear separation from the walkway and the parking area.

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March 5, 2024

0034

Staff Comment: Paver systems are generally considered as a Hard Surface in the Stormwater regulations (MICC 15.09), will be a part of the Stormwater Mitigation system. All pervious pavements are considered Hard Surface in the Stormwater regulations (MICC 15.09), there will be no difference of the type of pervious materials from the stormwater point of view.

3. Chapter 19.10 MICC - TREES

a. We will follow up with a tree form; the area of development is pretty heavily wooded so tree removal and replacement will be a topic of discussion.

Staff Comment: The proposed development shall be required to be consistent with the provisions of Chapter 19.10 MICC.

4. MICC 19.12.030 - BUILDING DESIGN AND VISUAL INTEREST

a. Tripartite articulation, façade modulation and roofline variation.

Staff Comment: The Applicant should review Chapter 19.12 MICC in its entirety to prepare the design for the Design Commission study session. The Applicant will need to ensure the proposed development is consistent with the provisions of Chapter 19.12 MICC. This will need to be demonstrated at the Design Commission study session. The Design Review Study Session is a separate part of the review process that takes place between the pre-application meeting and the formal application.

Design Review is separate from the consolidated permit process per MICC 19.15.220. Please also see MICC 19.15.220 as to the required timing for Design Review and how it interplays with the CUP Review processes.

The Design Commission review process length depends on the application, its complexity, its conformance with code requirements, the volume of public input, the deliberations of the Design Commission, etc. The Design Commission may decide to continue a proceeding in order to reconvene to finish one or more matters.

Staff Comment: The Applicant should review MICC 19.12.010 to ensure consistency with the Design Vision, the Design Review Process, and how the words “shall/should” are utilized. Pursuant to MICC 19.12.010(E), When a standard uses the word "shall," the standard is mandatory. When a standard uses the word "should," the standard is mandatory unless the applicant can demonstrate, to the satisfaction of the design commission or code official, an equal or better means of satisfying the standard and objective.

5. MICC 19.12.040 - LANDSCAPE DESIGN AND OUTDOOR SPACES

a. Averaging of perimeter screen widths per B.7.b.

i. PSE overhead power diagram

b. Trash & transformer screening expectations per B.11.g.

c. Fencing requirements (B.3.b. “ornamental metal or wood, masonry, or some combination of the three”) vs security needs

Staff Comment: Pursuant to MICC 19.12.040(B)(7)(b), Perimeter width averaging. Averaging of screen widths may be allowed, if the objectives of this section, the minimum landscape area requirements set forth in MICC 19.12.040(B)(4) and the following criteria are met:

- i. Plant material is clustered to more effectively screen parking areas and structures; and
- ii. Significant trees are retained.

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Staff Comment: Pursuant to MICC 19.12.040(B)(11)(g), Plantings near utilities. Trees shall not be planted within eight feet of a water or sewer pipeline. Shrubs shall be at least four feet from hydrants. A full screen will be required to screen above-ground utilities from adjacent uses and public rights-of-way. Perimeter plantings shall be clustered in areas to screen structures, utility structures, loading areas, trash enclosures, storage areas and mechanical equipment. This subsection shall not apply to utilities, structures, loading areas, enclosures or equipment unless the utility, structure, loading area, enclosure or equipment is being added as part of the regulated improvement being reviewed. Since this is part of the regulated improvement being reviewed, it is required.

Staff Comment: Pursuant to MICC 19.12.040(B)(3), Architectural features. The design of landscape architectural features should be in scale with and complement the architecture of site structures and the visual character of the neighborhood.

b. Fences should be made of ornamental metal or wood, masonry, or some combination of the three. **The use of razor wire, barbed wire, chain link, plastic or wire fencing is prohibited if it will be visible from a public way or adjacent properties, unless there are security requirements which cannot feasibly be addressed by other means.**

What is the Applicant proposing to use to justify security requirements?

6. MICC 19.12.050 - VEHICULAR AND PEDESTRIAN CIRCULATION

- a. Is a pedestrian connection to the public way required separate from the existing driveway?
- b. Any additional survey requirements for the ROW?
- c. Note egress to the north.

Staff Comment: Yes, a pedestrian connection to the public right of way is separate from the existing driveway. Pursuant to MICC 19.12.050(B)(a) Pedestrian improvements should be separated from vehicular areas by physical barriers such as curbs or landscaping. The Applicant will want to explore options, specifically with the pavers mentioned in question 2.

Review Comments:

PLANNING COMMENTS:

Planning Contact: ryan.harriman@mercerisland.gov or (206) 275-7717.

New construction:

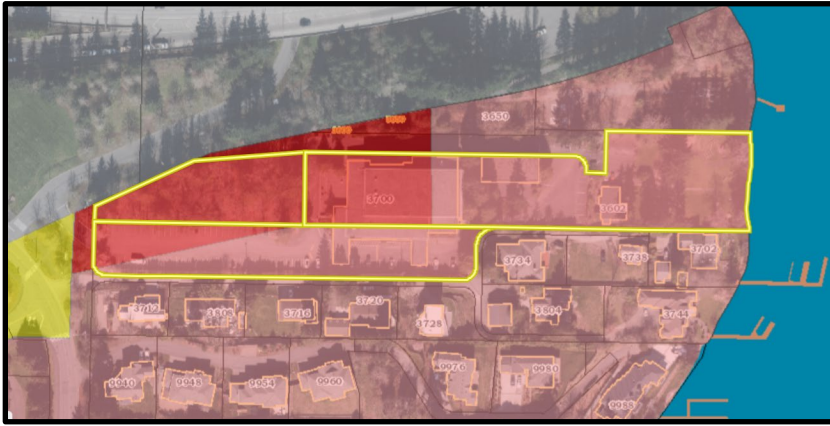
The applicant proposes to develop parcel 0824059045 with a 3-story building that would house administrative offices for the private school; a preschool; a chapel; and (leased) offices for affiliated groups, businesses & nonprofits.

Pursuant to MICC 19.01.040(G)(2): 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. The location of the zone boundary shall be determined by use of the scale appearing on the zone map unless the location of the boundary is indicated by dimensions.

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March 5, 2024

0036



Red is Zone B

Light Red: Zone R-9.6

Design Review: Design Review is separate from the consolidated permit process per MICC 19.15.220. Please also see MICC 19.15.220 as to the required timing for Design Review and how it interplays with the CUP Review process. The applicant should consider applying for a study session with the Design Commission early in the process. See MICC 19.06.120 - Criteria for approval—Design review.

Design Standards:

The proposed design shall be consistent with Chapter 19.12 MICC- Design Standards for Zones Outside Town Center.

Zoning:

Zone B – Permitted Uses:

- Office uses.
- Public and private schools accredited or approved by the state for compulsory school attendance.

Zone R-9.6 – Permitted Uses:

- Single-family dwelling.
- Accessory buildings incidental to the main building.
- Private recreational areas.
- Places of worship may have a stage theater program as an accessory use.

Zone R-9.6 – Conditional Uses:

- Private schools accredited or approved by the state for compulsory school attendance, subject to conditions set out in subsection (A)(4) of this section.
 - 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.

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March 5, 2024

0037

The Conditional Use Permit is needed for the entire property utilized in the parking plan. The new building needs Design Review. Ideally, the intent of the new Conditional Use Permit will supersede previous agreements, incorporating historical agreements as needed. The Applicant bears the burden of proof that the proposed development application is consistent with the requirements of the Mercer Island City Code. Staff does not approve Conditional Use Permits. The Applicant must present their case to the hearing examiner.

See MICC 19.04.050(A) Required Conditions

Design requirements:

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\(A\)\(3\)](#).

Parking:

Parking in the B Zone is subject to the provisions of MICC 19.04.040.

- Financial and insurance services, healthcare services, office uses and professional, scientific, and technical services shall provide one parking space for every 300 square feet of gross floor area of the building.
- Places of worship shall provide one parking space for every five seats in the chapel, nave, sanctuary, or similar worship area.
- 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.
- *Mixed use parking.* In the case of mixed uses, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately. Off-street parking facilities for one use shall not be considered as providing required parking facilities for any other use, except as hereinafter specified for cooperative use
- *Cooperative parking.* Cooperative parking between two or more adjoining property owners is allowed; provided, the code official, with approval from the design commission and city engineer, may reduce the total required spaces by 25 percent of the total combined required spaces when the applicant has demonstrated that no adverse impact will occur due to the reduced number of stalls.

Parking in the R-9.6 Zone is subject to MICC 19.02.020(G).

- Except as otherwise provided in this chapter, each lot shall provide parking deemed sufficient by the code official for the use occurring on the lot; provided, any lot that contains ten or more parking spaces shall also meet the parking lot requirements set out in appendix A of this development code.

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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.

The code official will want the applicant to complete a traffic impact analysis and parking analysis to determine if the proposed parking is sufficient. This will likely be a recommend condition of approval for the CUP. The applicant will need to provide operational details for a parking management plan associated with any agreement the city may approve. The applicant will need to show the math and demonstrate how the uses will work together during holidays, events, and general business hours.

Critical area constraints (on and off-site):

1. Geological hazardous areas – seismic and potential slide.
2. Critical area study
3. Geotechnical reports must address the criteria in MICC 19.07.160, which include an analysis documenting that the subject property, neighboring properties, and other critical areas will not be adversely impacted. A statement of risk must also be provided. Please review this code section for full details.

State Environmental Policy Act (SEPA) Review:

1. The proposed scope of work requires SEPA review.

Easements:

1. Vehicular Access Easements. No structures shall be constructed on or over any vehicular access easement. A minimum five-foot yard setback from the edge of any easement that affords or could afford vehicular access to a property is required for all structures; provided, that improvements such as gates, fences, rockeries, retaining walls and landscaping may be installed within the five-foot yard setback so long as such improvements do not interfere with emergency vehicle access or sight distance for vehicles and pedestrians.
2. Utility and Other Easements. No structure shall be constructed on or over any easement for water, sewer, storm drainage, utilities, trail or other public purposes unless it is permitted within the language of the easement or is mutually agreed in writing between the grantee and grantor of the easement.
3. Since multiple property owners share an interest in the easement, all parties with an interest must agree to the change.

Impact fees

1. Rates are available online and typically are adjusted from year to year.
2. Note that fees are due at the time they are assessed--they do not vest to the time of complete subdivision or building permit application.

Transportation Concurrency:

1. Please apply for a transportation concurrency certificate at the same prior to submittal of any of proposed land use application.

Vesting:

1. Please see the standards in MICC 19.15.170.

Application fees:

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1. Deposit due at time of application
2. Review time is billed hourly against the deposit; additional fees may be requested if additional review time is required.
3. When third-party technical review is required (e.g. geotechnical, wetland, watercourse etc.), this is billed separately, in addition to staff review time.

Other Items:

3. A robust traffic study and parking management plan will be needed to demonstrate complementary parking uses. Of particular concern is parking surges due to the confluence of events. Parking for existing uses will be under consideration as the new development and change of use may impact the existing parking.
4. The Conditional Use Permit will need to include both sites (Lot 1 and Lots 2+3) if parking on both sites is interdependent.
5. Design Review will be required for the new building. Design Review may also be needed for exterior alterations to existing buildings or the site. Please refer to MICC 19.15.220.
6. Both Design Review and the Conditional Use Permit have separate open record public hearings.
7. SEPA review is required as part of the Conditional Use Permit and Design Review processes.
8. Transportation Concurrency Application or Certificate. Submit prior to, or concurrent with, any development proposal that will result in the creation of one or more net new vehicle trips during peak hours.
9. The applicant will want to consider completing the parking analysis and traffic impact analysis before the city issues a recommendation to the Hearing Examiner. That way the Hearing Examiner would be able to review the materials as part of the public hearing process.

FIRE COMMENTS:

Fire Contact: Jeromy.Hicks@mercerisland.gov or 206-275-7966.

Vehicle Access:

Provide vehicle access per IFC Chapter 5 and Appendix D. Provide at least 20' around building and 26' by hydrants.

Provide Aerial Access points. Appears this may be achieved with the current plan, but verify access points conform with IFC Appendix D and Chapter 5.

Gates: Separate FIRE permit required. Must meet IFC Chapter 5 and Appendix D. Help sheet located at this link:

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/24371/auto_security_gates_2022.pdf

Hydrants:

Provide hydrants per IFC Appendix B and C. Appears that one additional hydrant may need to be installed.

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March 5, 2024

0040

Provide hydrant within 15' of FDC- FDC must be remote.

Fire Flow: Verify fire flow per IFC Appendix B. Use 25% reduction due to fire sprinkler system.

Systems/Permits Required:

NFPA 13 Fire Sprinkler System

NFPA 72 Voice Fire Alarm System

NFPA 80 Fire Rated Doors

NFPAUL Listed Kitchen Hood Suppression System

Knox Box: Provide approved Knox Box at main entryway with w-sets of stamped keys.

Fire Lane Marking/Speed Calming Devices- To be approved by Fire Marshal. Provide details on plan.

TREE COMMENTS:

Tree Contact: John.Kenney@mercerisland.gov or 206-275-7713.

1. Please refer to MICC 19.10 for our tree code.
2. Replacement is required for any trees that are removed, according to the replacement ratios in MICC 19.10.070.
3. For tree retention the following code and definition will apply for zone B. Also see the definition below that applies to zone B.

MICC 19.10.060(B). Commercial or multifamily zoning designations—Tree removal.1.

In the PI, B, C-O, PBZ, TC, MF-2, MF-2L, and MF-3 zoning designations a tree permit is required and will be granted if it meets any of the following criteria:

- a. It is necessary for public safety, removal of hazardous trees, or removal of diseased or dead trees;
- b. It is necessary to enable construction work on the property to proceed and the owner has used reasonable best efforts to design and locate any improvements and perform the construction work in a manner consistent with the purposes set forth in MICC [19.10.005](#);
- c. It is necessary to enable any person to satisfy the terms and conditions of any covenant, condition, view easement or other easement, or other restriction encumbering the lot that was recorded on or before July 31, 2001; and subject to MICC [19.10.090\(B\)](#);
- d. It is part of the city's forest management program or regular tree maintenance program and the city is the applicant;
- e. It is desirable for the enhancement of the ecosystem or slope stability based upon professional reports in form and content acceptable to the city arborist.

Reasonable best efforts: In cases where the code requires "reasonable best efforts" to comply with standards, the burden of proving that reasonable best efforts have been taken, and compliance is infeasible, is on the applicant. In determining whether reasonable best efforts have been taken the code official may weigh the applicant's actions to comply with the applicable standard and the action's relative costs to the applicant and public benefits, considered in the short- and long-term time frames.

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March 5, 2024

0041

The code official may also evaluate whether an applicant's prior actions have contributed to the applicant's inability to comply with the applicable standard.

For additional information please refer to this helpful webpage:

<https://www.mercerisland.gov/cpd/page/tree-permits>

CIVIL ENGINEERING COMMENTS:

Civil Contact: Ruji.Ding@mercerisland.gov or 206-275-7703.

1. Please refer to [MICC Title 15](#) for our Water, Sewers, and Public Utilities code.
2. The project will work on multiply parcels, the permit will need to be clear how all work together and which permit for which parcel.
3. The proposed 8" water line from E. Mercer Way will be a private water line, not a city water line.

For more information on Stormwater Permits please visit here:

<https://www.mercerisland.gov/cpd/page/stormwater-permits>

BUILDING COMMENTS:

Building Contact: gareth.reece@mercerisland.gov or 206-275-7710.

Mapping and Design Criteria: Complete information on codes adopted by Mercer Island and available City mapping is available here: <https://www.mercerisland.gov/cpd/page/codes-design-criteria-research>

Mercer Island City Code 19.07.160 requires a geotechnical engineer's assessment of this project. Please review city mapping to determine if landslide hazards, seismic hazards, or erosion hazards are mapped on the property.

ASCE-7 wind design for structures involves topographic and exposure effects. The City has mapping available for accepted values to be used in design. Please refer to the link above for design criteria. This site is mapped as wind exposure category C and Kzt speedup factor 1.6.

1. Applicant question 6a refers to pedestrian access to the ROW. Regardless of land use requirements, WSBC 1104.1 and 1104.2 require an accessible route to the public way and between accessible features on the property.
2. The pre-application meeting doesn't include plan review for construction codes, but the following items appear to need additional code analysis:
 - a. The preliminary plans show the building sited approximately 3' from an interior lot line and using Type IIB construction. WSBC Table 705.5 (formerly Table 602) requires a 1 hour exterior wall rating for Type IIB fire separation distance of less than 10'. This doesn't appear to have been incorporated into the design.
 - b. Due to fire separation distance noted above, some exterior walls may require parapets per WSBC 705.11. Please include parapet dimensions in all representations of the building for land use purposes.
 - c. On A-004, Basement level, the Assembly occupancy uses OLF of 15. The attached occupancies appear to suggest an OLF of 5 or 7 per WSBC Table 1004.5 for assemblies with chairs only, dances, etc. These values would increase OL to require either 3 or 4 exits.

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March 5, 2024

0042

- d. On A-004, L02, the occupants of classrooms plan-east of the stair marked with 141 occupants exceed 49, the limit of occupants permitted access to only a single exit (Table 1006.2.1)
- e. On A-004 L03, each business suite is served by a single exit. Third stories are prohibited from being served by a single exit per table 1006.3.4(2).

Sincerely,

Ryan Harriman

Ryan Harriman, EMPA, AICP
Planning Manager
Community Planning & Development
City of Mercer Island

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March 5, 2024

0043