
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

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CONDITIONAL USE PERMIT

STAFF REPORT CUP24-001 (Exhibit 1)

Project Number: CUP24-001

Project Name: Herzl-Ner Tamid Conservative Congregation PreK-8 Project

Land Use

Review Type: Type IV

Description: A request for a Conditional Use Permit (“CUP”) for the repaving and reconfiguration of an existing parking area, and installation of utilities and pedestrian paths for the construction of a three story, mixed-use building, housing a preschool and K-8 private school on the lower levels and rental office space on the upper level and a half which would be located on the adjacent parcel in the Business (B) zoning designation. Parking, utilities, and pedestrian paths would be located on parcels in the Single-Family Residential (R-9.6) zoning designation owned by Herzl-Ner Tamid Conservative Congregation (HNT). The new school and office building relies on the approval of a CUP for the use of the parcels zoned R-9.6 for the associated parking, utilities, and pedestrian paths, which will be shared with the existing place of worship and the new PreK-8 private school and offices.

Applicant/ Owner: Anjali Grant (Grant Design, LLC) / Herzl-Ner Tamid Conservative Congregation

Site Address: 3700 E Mercer Way and surrounding properties, Mercer Island, WA 98040
Identified by King County Assessor tax parcel numbers: 1515600010, 2107000010, 151560TRCT.

Zoning District: Single-Family Residential (R-9.6)

Key Project Dates:

Date of Application:	April 3, 2024
Determined to Be Complete:	April 24, 2024
Bulletin Notice:	April 29, 2024
Date Mailed:	April 29, 2024
Date Posted on the Subject Property:	April 29, 2024
Comment Period Ended:	5:00 PM on May 30, 2024
Notice of Public Hearing Issued:	June 6, 2025
Notice of Public Hearing Bulletin Notice:	June 6, 2025
Notice of Public Hearing Date Mailed:	June 6, 2025

Notice of Public Hearing Date Posted on the Subject Property: June 6, 2025
Date of Open Record Public Hearing: July 9, 2025

Staff Contacts: Ryan Harriman, EMPA, AICP, Planning Manager
Molly McGuire, Senior Planner

Exhibits:

1. CUP24-001 Staff Report, dated July 9, 2025;
2. Development Application;
3. Project Narrative;
4. Memorandum;
5. Pre-Application Meeting Notes, dated March 5, 2024;
6. Determination of Complete Application, dated April 24, 2024;
7. Notice of Application, dated April 29, 2024;
8. Criteria Compliance Matrix;
9. Hazard Map, generated by the City of Mercer Island on June 11, 2025;
10. Plan Set, dated December 20, 2024;
11. Synagogue Seating Capacity Diagram;
12. Arborist Report, dated September 29, 2023;
13. Title Report, dated April 1, 2025;
14. Affidavit of Ownership, dated April 9, 2025;
15. Affidavit of Agent Authority, dated April 9, 2025;
16. Review Letters, issued by the City of Mercer Island;
 - 16.1 CUP24-001 Review Letter 1, dated July 25, 2024;
 - 16.2 CUP24-001 Review Letter 2, dated November 26, 2024;
17. Applicant Response to Review Letters;
 - 17.1 Applicant Response to CUP24-001 Review Letter 1, dated September 22, 2024;
 - 17.2 Applicant Response to CUP24-001 Review Letter 2, dated December 20, 2024;
18. Public Comments;
 - 18.1 Cartlund Monson received May 31, 2024;
 - 18.2 Jeff Davis received May 24, 2025;
 - 18.3 John Hall received May 21, 2024;
 - 18.4 Kelvin Lo received May 30, 2024;
 - 18.5 Matthew Goldbach received May 21, 2024;
 - 18.6 Matthew Goldbach received April 21, 2025;
 - 18.7 Merkys Gomez received May 30, 2024;
 - 18.8 Merkys Gomez received April 8, 2025;
 - 18.9 Michael Bundesmann received May 30, 2024;
 - 18.10 Ronil Mokashi received May 30, 2024;
 - 18.11 Sarah Fletcher received May 18, 2024;
 - 18.12 Sarah Fletcher received April 7, 2025;
 - 18.13 Sarah Fletcher received April 8, 2025;
 - 18.14 Winky Lai received May 28, 2024;
 - 18.15 Winky Lai received April 8, 2025;
19. Public Comment Response Letters;
 - 19.1 Cartlund Monson Response;
 - 19.2 Jeff Davis Response;
 - 19.3 John Hall Response;

- 19.4 Kelvin Lo Response;
- 19.5 Matthew Goldbach Response;
- 19.6 Merkys Gomez Response;
- 19.7 Michael Bundesmann Response;
- 19.8 Ronil Mokashi Response;
- 19.9 Sarah Fletcher Response;
- 19.10 Winky Lai Response;
- 20. Zoning Map;
- 21. Traffic Impact Analysis (TIA), prepared by Transpo Group, dated January 2025;
- 22. Transportation Concurrency Certificate, issued June 17, 2025;
- 23. Historic Records;
 - 23.1 Synagogue and Social Center Plans, approved by the City of Mercer Island on December 17, 1970;
 - 23.2 Certificate of Occupancy for Synagogue and Social Center, issued on December 14, 1971;
 - 23.3 Application for CUP, submitted on March 28, 1979;
 - 23.4 Planning Commission Meeting Minutes for Denial of CUP Application, dated June 20, 1979;
 - 23.5 Notice of Planning Commission Denial, issued on June 26, 1979;
 - 23.6 Appeal of Planning Commission Decision, filed by the Applicant on June 29, 1979;
 - 23.7 Letter from City Attorney to City Council, dated July 17, 1979;
 - 23.8 Letter from City Attorney to Applicant, dated July 19, 1979;
 - 23.9 Appeal Hearing with City Council Meeting Minutes, dated July 23, 1979;
 - 23.10 Appeal Hearing with City Council Record, dated July 23, 1979;
 - 23.11 Letter from the Applicant to the City, dated November 26, 1979;
 - 23.12 Letter from the City to the Applicant, dated November 26, 1979;
 - 23.13 Planning Commission CUP Public Hearing, December 5, 1979;
 - 23.14 City Council Approval of CUP, December 10, 1979;
 - 23.15 City Council Materials, December 10, 1979;
 - 23.16 Notice from the City to the Applicant, December 11, 1979;
 - 23.17 Building Permit for Care-taker's Cottage, approved December 27, 1979;
 - 23.18 FASPS SEPA MDNS SEP07-024, dated October 15, 2007;
 - 23.19 FASPS Parking Agreement, dated June 6, 2007;
- 24. SEPA Revised Mitigated Determination of Nonsignificance, issued April 7, 2025;
- 25. Critical Area Review 1 (CAO24-014), issued April 8, 2025;
- 26. Notice of Public Hearing, issued June 6, 2025.

I. APPLICATION OVERVIEW

Project Overview: The Applicant is proposing to revise an existing conditional use permit (CUP) through the approval of a new CUP (**Exhibits 2, 3, 10**). The existing CUP is further discussed in the Background section below. New pedestrian pathways, utilities, fencing, landscaping, and parking would be located on parcel numbers 151560TRCT, and 2107000010 and 1515600010 which are split zoned Business (B) and Single-Family Residential (R-9.6) (**Exhibit 20**). 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-0, TC, and B. Parcel numbers 2107000010 and 1515600010 are designated R-9.6. The aforementioned improvements would be used for the construction of a preschool and K-8 school with rental office space on parcel number 0824059045. This parcel is within the Business (B) zoning designation, which permits outright both public and private schools accredited or approved by the state for compulsory school attendance and office uses. The

proposed associated developments would be shared between the existing synagogue (place of worship) and the new preschool, K-8 school, and office building. MICC 19.02.010(C)(3) allows places of worship when authorized by the issuance of a conditional use permit. Due to the proposed changes to the property containing the place of worship, a new conditional use permit is required per MICC 19.15.200(B)(1) since the proposed revision to the existing conditional use permit results in substantial changes to the site. The construction of the proposed preK-8 school and office space building on parcel number 0824059045 does not trigger the requirement for a conditional use permit as the B zoning designation already permits outright the school and office uses (MICC 19.06.110(A)(5)(c)).

Background: The existing synagogue on parcel number 1515600010 was permitted in December of 1970 for a sanctuary and social center (**Exhibit 23.1**) and a Certificate of Occupancy was issued on December 14, 1971 (**Exhibit 23.2**). After July 1975, the development standards were revised to require a conditional use permit for a church use in a single-family zone. HNT submitted an application for a conditional use permit on March 28, 1979 for a non-commercial recreational area, including “occasional outdoor services, classes when appropriate, limited play area, occasional picnics, cottage for on-site custodian, garden meditation quiet areas” (**Exhibit 23.3**). On June 20, 1979, the Planning Commission denied the conditional use permit application for a portion of the property to be developed with a non-commercial recreational area (**Exhibit 23.4**). A Notice of Denial was issued on June 26, 1979 (**Exhibit 23.5**). The decision was appealed by the applicant on June 29, 1979, with the claim that the proposed improvements were accessory and incidental to the main buildings and should not require a conditional use permit (**Exhibit 23.6**). In letters from the acting city attorney dated July 17 and July 19, 1979, it was determined that a conditional use permit was required for the non-commercial recreational area as it was an expansion of the synagogue use, which was legally nonconforming due to the development code revision in 1975 (**Exhibits 23.7, 23.8**). During the appeal hearing on July 23, 1979, the City Council passed a motion to remand the application back to the Planning Commission to allow the applicant to apply for a conditional use permit for the entire property of the Herzl-Ner Tamid congregation, rather than a conditional use permit for a non-commercial recreational area (**Exhibits 23.9, 23.10**). The Planning Commission held a public hearing for a conditional use permit for the entire property on December 5, 1979. The request was recommended for approval to the City Council unanimously by the Planning Commission at this hearing (**Exhibit 23.13**). Records from the applicant and City on November 26, 1979 clearly state that the conditional use permit application is for the entire property (**Exhibits 23.11, 23.12**). The City Council affirmed the Planning Commission’s recommendation on December 10, 1979 (**Exhibit 23.14**). The application materials that were approved on December 10, 1979 can be found in **Exhibit 23.15**. A Notice to the applicant from the City was issued on December 11, 1979 explaining the next steps in the process for final approval from the Design Commission for the care-taker’s cottage. The Notice states that “This final review by the Design Commission does not jeopardize the approved Conditional Use Permit” (**Exhibit 23.16**). The granting of this conditional use permit brought the entire site into conformance with the then existing development regulations. A building permit for the construction of a building appurtenant to the synagogue for the use of a care-takers cottage was issued on December 27, 1979 (**Exhibit 23.17**).

In 2005, the French American School of Puget Sound (FASPS) located across E Mercer Way at 3795 E Mercer Way applied for a conditional use permit to increase their enrollment number. Within this conditional use permit approval was a SEPA Mitigated Determination of Nonsignificance (MDNS), File No. SEP07-024, contains a condition stating “A minimum of 66 parking spaces shall be available on-site. An additional 30 spaces shall be available at the [Herzl-Ner] Tamid for school staff and faculty. The French American School will submit a copy of the lease agreement with the [Herzl-Ner] Tamid for the use of 30 parking spaces at the [Herzl-Ner] Tamid property. If it is determined that additional parking is necessary for staff and faculty, the FASPS shall procure additional off-site parking spaces” (**Exhibits 23.18, 23.19**). This agreement has historically been renewed on an annual basis since 2005. However, the French American School has been notified that the agreement will not be renewed for the 2025-2026 school year due to the parking required as part of the preK-

8 school and offices development. The French American School will be required to locate additional parking spaces to account for the 30 spaces no longer available. This is enforced through the SEPA MDNS Condition No. 5, which states “If the City receives complaints regarding parking associated with the school or JCC uses at this location and determines the parking is problematic, the City shall require that all vehicle parking be accommodated on-site and/or otherwise mitigated to the City’s satisfaction. If this condition is implemented, overflow parking will not be allowed on public streets (weekdays, weeknights, and weekends)”.

Location: The subject property is located at 3700 E Mercer Way (King County parcel numbers 1515600010, 2107000010, 0824059045, 151560TRCT), 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.

Existing Conditions: The proposed preschool, K-8 private school, and offices would be located on parcel number 0824059045, which is currently undeveloped and contains vegetation including ground cover, trees, and shrubs. Parcel numbers 2107000010 and 1515600010 contain existing facilities, including parking and several buildings currently used by HNT. Parcel number 151560TRCT is a tract that contains an access road to the east parking lot, located on parcel number 1515600010. The Arborist Report, prepared by Davey Resource Group, Inc., identified 129 regulated trees across all properties owned by HNT (**Exhibit 12**). Pursuant to MICC 19.10.060(A), tree retention is not required for the portions of the proposed development located within the R-9.6 zoning designation. Tree removal for the proposed development located on the portions of the property located within the B zoning designation would be evaluated for compliance with MICC 19.10.060(B) at the time of building permit review.

Access: Access to the subject property is from Boat Launch Access Road off E Mercer Way.

Contact Information:

Contact:	Applicant:	Engineer:
Anjali Grant Grant Design, LLC 3427 Beacon Ave S Seattle, WA 98144 (206) 512-4209	Same as Contact	N/A

Terms used in this staff report:

Term:	Refers to, unless otherwise specified:
Applicant	Anjali Grant (Grant Design, LLC) / Herzl-Ner Tamid Conservative Congregation
Proposed development	Herzl-Ner Tamid Conservative Congregation PreK-8 Project
Subject property, site	The subject property or site where the proposed development is located as defined in this staff report
City	City of Mercer Island
MICC	Mercer Island City Code
Code Official	City of Mercer Island Community Planning and Development Director or a duly authorized designee
Conditional Use Permit approval	The application request by the Applicant
HNT	Herzl-Ner Tamid Conservative Congregation
CUP	Conditional Use Permit

II. PROCEDURE AND NOTICE REQUIREMENTS

1. Review Type: Applications for Conditional Use Permit (“CUP”) approvals are required to be processed as a Type IV land use review pursuant to MICC 19.15.030. Type IV land use reviews require a notice of application, a 30-day public comment period, and a notice of decision. Processing procedures and requirements for Type IV land use reviews are further detailed in MICC 19.15.030. CUP approval criteria are located within MICC 19.06.110(A) and place of worship conditions are located within MICC 19.02.010(C)(3).

Staff Finding: The application for the proposed development was correctly classified and processed as a Type IV land use review.

2. Application: The application for the proposed development (**Exhibit 2**) was submitted on April 3, 2024. On April 24, 2024, the application for the proposed development was deemed complete for the purpose of review, pursuant to MICC 19.15.070 (**Exhibit 6**).

Staff Finding: The application for the proposed development is consistent with the procedures of MICC 19.15.070.

3. Notice of Application: The City issued a notice of application for the proposed development on April 29, 2024, consistent with the provisions of MICC 19.15.090, which include the following methods: a mailing sent to neighboring property owners within 300-feet of the subject property; a notice sign posted on the subject property; publication in the City’s weekly permit bulletin; and made available to the general public upon request. The notice of application began a 30-day comment period, which took place on April 29, 2024 through May 30, 2024 (**Exhibit 7**).

Staff Finding: The notice of application and comment period are consistent with the provisions of MICC 19.15.090.

4. Preliminary Plan Set: The Applicant provided a preliminary plan set (**Exhibit 10**) for the proposed development.

5. Opportunities for Public Comment: The 30-day public comment period took place on April 29, 2024 through May 30, 2024.

Staff Finding: Several public comments were received during the public comment period contained in **Exhibit 18**, and summarized below:

Name:	Date Received:	Summary:
Carl Lund Monson	May 31, 2024	Concerns for a school located in their front yard and prolonged construction in the neighborhood, losing a properly community-sized facility, capacity of infrastructure, and traffic issues becoming worse.
Jeff Davis	May 24, 2024	Concerns for traffic backup and pedestrian crossing from the Stroum Jewish Community Center (SJCC) and opposes additional development in a residential neighborhood.
John Hall	May 21, 2024	Concerns that the traffic analysis did not include the preschool in the counts. Concerns for the Council’s understanding of the scale of school buildings allowed in the B zone following the rezone, onsite parking, intersection traffic impacts, intensity of use in the area

		related to parking, shared parking between the French American School, and accuracy of the TCC application.
Kelvin Lo and Sandra Lum	May 30, 2024	Concerns for traffic.
Matt Goldbach	May 21, 2024	Concerns that the traffic analysis did not include the preschool in the counts. Concerns for the Council's understanding of the scale of school buildings allowed in the B zone following the rezone, onsite parking, intersection traffic impacts, intensity of use in the area related to parking, shared parking between the French American School, and accuracy of the TCC application.
Matt Goldbach	April 21, 2025	Concerns for overflow parking from the SJCC French American School and HNT on E Mercer Way.
Merkys Gomez	May 30, 2024	Concerns for lack of public involvement and that increase in traffic, road noise, and other environmental impacts were not taken into consideration during the design of the project.
Merkys Gomez	April 8, 2025	Concerns for the application review process and issuance of the MDNS. Questions for staff regarding the appeal process.
Michael Bundesmann	May 30, 2024	Concerns for lack of public involvement and that increase in traffic, road noise, and other environmental impacts were not taken into consideration during the design of the project.
Ronil Mokashi and Kavita Dabke	May 30, 2024	Concerns for increased traffic, loss of privacy, commercialization of the neighborhood, and lack of parking.
Sarah Fletcher	May 18, 2024	Concerns for the impacts to mature trees on site, missing plan sheets, calculation of trees, traffic, parking, noise from the freeway impacting the kindergarteners and neighbors, and the location of the trash enclosure.
Sarah Fletcher	April 7, 2025	Concerns for application procedures and questions for staff regarding the Design Commission meeting for the study session. Also includes concerns for the allowed uses in the B zone.
Sarah Fletcher	April 8, 2025	Concerns for the attendees of the new school and office building, and traffic.
Winky Lai	May 28, 2024	Concern for the conditional use permit, traffic, lack of parking, change to the residential area destroying the neighborhood, overgrown trees, and location of the trash receptacles.

6. Response to Public Comment: While the City accepts public comments at any time prior to the closing of the record of an open record predecision hearing, common practice is to request that the applicant provide responses only to those public comments received within the 30-day public comment period. The code does not require the applicant to respond to any public comments received. The applicant provided responses to the public comments received during the public comment period, contained in **Exhibit 19**.
7. SEPA Review: A Mitigated Determination of Nonsignificance (MDNS) was issued on March 17, 2025. This MDNS was later withdrawn due to the City becoming aware that some parties of record were not provided notice. The City issued a Revised MDNS on April 7, 2025 (**Exhibit 24**) in order to provide adequate notice to all parties entitled to such notice. The Revised MDNS contained the following conditions:
 - a. Provide a left turn lane from southbound East Mercer Way to the Frontage Road serving the site. All lane widths (left and through) shall comply with American Association of State Highway and Transportation Officials (“AASHTO”) and Washington State Department of Transportation (“WSDOT”) standards. The turn lane length shall be designed to accommodate left turn demand during the AM and PM peak hour and site peak if it does not coincide with the AM and PM peak hour.
 - b. The addition of the southbound left turn lane may reduce the length of adjacent northbound left turn lane at the SE 36th Street/East Mercer Way intersection. Verify with a traffic operations analysis that, with the addition of the southbound left turn lane to the Frontage Road, the northbound left turn lane at the SE 36th Street/East Mercer Way intersection will have sufficient storage length to accommodate vehicles during the AM and PM peak hours.
 - c. Confirm adequacy of curb radii for right turning vehicles exiting from the Frontage Road onto northbound East Mercer Way based on lane width designed for East Mercer Way if lane width is narrower than existing condition. Modify curb radii if warranted.
 - d. The Transportation Impact Analysis states that the school bus unloading/loading will occur at the east end of the school. The site plan and circulation plan do not show the location of the bus loading zone or walkways along the east side of the building for students to access the bus loading zone. Revise the site plan and circulation plan to show the bus loading zone and how students will safely access the bus loading zone. Parent drop-off and pick-up traffic will also use the roadway east of the school. The Transportation Impact Analysis should describe how the school buses will safely interact with parent drop-off and pick-up queuing and traffic that is using the same roadway.

An appeal of the Revised MDNS was filed by the applicant on April 18, 2025, within the 14-day appeal period. Notice of the July 9, 2025 appeal hearing was provided to the public as required by MICC 19.15.100(D) on June 6, 2025 (**Exhibit 26**).

8. Critical Areas Ordinance Review: The subject properties contain geologically hazardous areas (**Exhibit 9**), which require authorization for alterations pursuant to MICC 19.0.020. The applicant applied for a Critical Area Review 1, demonstrating that the project is consistent with MICC 19.07.130(A) for an addition to or reconstruction of an existing legally established structure or building within a critical area and/or buffer constructed on or before January 1, 2005. The critical area authorization is required for the removal and replacement of the existing parking area, which was established prior to 2005. The alteration would not result in an expansion of the footprint or increase in impervious surfaces on the subject site. A Critical Area Review 1 authorization was issued on April 8, 2025 consistent with the procedures in MICC 19.15.030(H) Table A – Type I Land Use Reviews (**Exhibit 25**).

9. Public Hearing: Pursuant to MICC 19.15.030 Table D, a public hearing is required for a CUP. A Notice of Public Hearing (**Exhibit 26**), for the July 9, 2025 public hearing, was provided to the public as required by MICC 19.15.100(D) on June 6, 2025. This notice was combined with the appeal hearing for the Revised MDNS.

Staff Finding: The public hearing was noticed appropriately pursuant to the provisions of MICC 19.15.100.

III. ZONING AND COMPREHENSIVE PLAN DESIGNATIONS

10. Site Zoning & Land Use: The subject property is zoned Single Family Residential, R-9.6, per MICC 19.01.040(G)(2). According to MICC 19.02.010(C)(3), places of worship are permitted when authorized by the issuance of a CUP.

Staff Finding: The proposed development is consistent with the permitted uses provided in MICC 19.02.010.

11. Comprehensive Plan Policies: The City of Mercer Island Comprehensive Plan is a forward-looking plan for the development of the City, fulfilling the Washington Growth Management Act (GMA) requirements. The subject property is zoned R-9.6 and the use, though allowed by a CUP, is consistent with the MICC. The proposed development conforms to the MICC, which ultimately means it complies with the spirit of the comprehensive plan since these regulations have been created to ensure the vision of the plan is met. The proposed development is consistent and compatible with the Single Family Residential, R-9.6, land use designation and the following goals and policies of the City of Mercer Island Comprehensive Plan: Planning for Generations 2015-2035, adopted in 2016:

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.

2.V. Land Use Policies, 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.

2.V Land Use Policies, Goal 17.4: Social and recreational 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.

Staff Finding: The proposed development is consistent with the Comprehensive Plan.

12. Adjacent Zoning and Comprehensive Designations: The proposed development is compatible with the surrounding zoning and Comprehensive Plan designations as follows:

	Zoning Designation	Comprehensive Plan Designation
North	R-9.6	Single Family Residential R-12
South	R-9.6	Single Family Residential R-9.6
East	R-9.6	Single Family Residential R-9.6 and Lake Washington
West	B	Business

Staff Finding: The proposed development is consistent with the Comprehensive Plan.

IV. CONSISTENCY WITH CONDITIONAL USE PERMIT CRITERIA IN SINGLE-FAMILY ZONES

13. MICC 19.02.010(C) permits certain uses when authorized by the issuance of a conditional use permit when the applicable conditions set forth in the section and in MICC 19.15.040 have been met.

A. *MICC 19.02.010(C)(3)* Places of worship subject to the following conditions:

1. All structures shall be located at least 35 feet from any abutting property.

Staff Finding: The existing place of worship building was permitted in 1970 (**Exhibits 23.1, 23.2**) and is legally nonconforming. The existing building is allowed to remain pursuant to MICC 19.01.050(A)(4).

2. 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.

Staff Finding: The proposed parking on parcel numbers 2107000010 and 1515600010 would be used as cooperative parking to satisfy the parking requirements for the proposed private preK-8 school, and rental offices on parcel number 0824059045.

The existing place of worship requires 82 parking spaces, based on the Synagogue Seating Capacity Diagram (**Exhibit 11**). The proposed building contains a variety of uses which require different amounts of parking, summarized in the table below:

Code Requirement (MICC 19.04.040(C))	Proposed Development	Parking Spaces Required
(4) 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.	The gross floor area of the office use would require 33 parking spaces for 10,000 square feet of gross floor area.	33
(16) 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.	The proposed preK-8 school and existing school would contain 12 classrooms which would require 24 parking spaces.	24
Code Requirement (MICC 19.02.010))		

(C)(2) Private schools accredited or approved by the state for compulsory school attendance, subject to conditions set out in subsection (A)(4) of this section. (A)(4)(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.	This is included in the count above for classrooms in the B zone.	
(C)(3)(b) Off-street parking for places of worship 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.	The existing synagogue contains 408 seats, which requires 82 parking spaces.	82
Total Parking Spaces Required	139	
MICC 19.04.040(E) allows for cooperative parking between two or more adjoining property owners; 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. With this 25 percent reduction, a total of 105 parking spaces are required.		
Total Parking Spaces Required	Total Parking Spaces Required with 25 percent Reduction	Total Parking Spaces Provided
139	105	105

Staff Finding: The applicant has provided documentation intended to demonstrate that no adverse impact will occur due to the reduced number of parking spaces by establishing lease agreements for the school and rental spaces which limit hours of general use and, therefore, do not conflict with hours of worship (**Exhibit 8, Parking Requirements Sheet**). As conditioned, the 25 percent reduction shall be approved by the city engineer and the Design Commission. If it is found that the reduction in parking stalls will likely have adverse impacts, the applicant shall provide an additional 34 parking spaces either on-site, if space allows, or off-site to meet the total required parking of 139 spaces. A Transportation Demand Management Plan shall be submitted annually to the City, as conditioned, to ensure that site uses are managed to work within available parking capacity.

Staff Finding: On June 17, 2025, the City Council passed Ordinance No. 25C-14 to transfer all Design Commission review authority to the Hearing Examiner and dissolve the Design

Commission, effective June 30, 2025. The approval of the reduction in parking shall be approved by the Hearing Examiner during design review, as conditioned.

Staff Finding: The proposed reduction in parking is consistent with City of Mercer Island Comprehensive Plan 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.

V. CONSISTENCY WITH APPLICABLE RESIDENTIAL DEVELOPMENT STANDARDS

The proposed development is for appurtenances to a non-single-family use within a single-family zone, which include utilities, pedestrian pathways, and revisions to the existing parking area. The standards below are applicable to the proposed development. Standards that apply only to single-family development are omitted from this staff report.

14. MICC 19.02.020 – Development standards.

- A. *MICC 19.02.020(B) Street frontage.* No building will be permitted on a lot that does not front onto a street acceptable to the city as substantially complying with the standards established for streets.
- B. *MICC 19.02.020(C)(1) Minimum yard requirements.* This section contains minimum yard requirements for front, rear, and side yards on each lot.
- C. *MICC 19.02.020(C)(2) Yard determination.* This section establishes where the front, rear, and side yards are determined on each lot.
- D. *MICC 19.02.020(C)(3) Intrusions into required yards.* This section provides standards for minor building elements, hardscape and driveways, fences, retaining walls and rockeries, garages and other accessory buildings, heat pumps, air compressors, air conditioning units, and other similar mechanical equipment, architectural features, and other structures that may encroach into required yards.
- E. *MICC 19.02.020(D) Gross floor area.* This section establishes the maximum gross floor area for the sum of the floor area(s) bounded by the exterior faces of each building on a residential lot.
- F. *MICC 19.02.020(E) Building height limit.* This section establishes the maximum allowed building height based on both average building elevation and maximum façade height on the downhill side of a sloping lot.

Staff Finding: The proposed development that relies on the approval of the subject conditional use permit is for the use of parcels 2107000010 and 1515600010 as cooperative parking, pedestrian pathways, and utilities for the future proposed building on parcel number 0824059045, which is located entirely in the B zone. The place of worship was originally permitted in December of 1970, making it legally nonconforming. The building and use are allowed to continue pursuant to MICC 19.01.050(A)(4). No changes are proposed to the existing building and use that would be subject to the residential development standards above. The existing parking on parcel number 2107000010 is proposed to be reconfigured to meet the parking requirements for the various uses proposed in the new building on parcel number 0824059045 and the existing place of worship and religious school as cooperative parking at a 25 percent reduction from the total amount of parking as authorized by MICC 19.04.040(E), as conditioned and subject to Hearing Examiner and city engineer approval.

G. *MICC 19.02.020(G) Parking.*

- 1. 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, except as provided below.

2. Existing parking spaces that do not conform to the requirements of this section by June 6, 2024 are not required to be modified or resized, except for compliance with the Americans with Disabilities Act. Existing paved parking lots are not required to change the size of existing parking spaces during resurfacing if doing so will be more costly or require significant reconfiguration of the parking space locations.

Staff Finding: The proposed development would establish cooperative parking on parcels 2107000010 and 1515600010 for the existing place of worship and religious school, and future proposed preschool, K-8 school, and office building on parcel 0824059045. The various uses in the proposed development require 57 parking spaces, while the existing place of worship requires 82 parking spaces (**Exhibit 11**). Parking for the various proposed uses is summarized in the table in Finding of Fact 13.A.2. Cooperative parking is allowed pursuant to MICC 19.04.040(E); provided the code official, with approval from the Hearing Examiner 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. With this reduction, the total number of required parking spaces is 105 spaces. The school and rental office uses would not be in use at the same time as the place of worship, which would be further established in the required Transportation Demand Management Plan, as conditioned.

H. *MICC 19.02.020(H) Easements.* Easements shall remain unobstructed.

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 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.

Staff Finding: The proposed development on the properties in the single-family zones subject to these standards would not impact vehicular access, utility, or other existing easements. A six-foot-tall fence is proposed within the access easement on 151560TRCT (**Exhibit 10, Sheet A-012**). As conditioned, this fence would not be permitted, unless the applicant provides documentation that improvements are authorized within the easement.

15. MICC 19.02.050(E) establishes the maximum height allowed for fences or gates within required yards.

A. *Height limits.*

- a. *Side and rear yards.* Fences and gates are allowed to a maximum height of 72 inches within required side or rear yards, provided the combined height of a fence and retaining wall or rockery for a fill slope authorized pursuant to subsection (D)(5) of this section shall not exceed a total height of 72 inches.
- b. *Front yards.* Fences, gates, or any combination of retaining walls, rockeries and fences are allowed to a maximum height of 42 inches within required front yards.

Staff Finding: The proposed development includes the construction of a six-foot-tall (72 inches) steel picket fence and vehicle gate along the west side and a budget permitting six-foot-tall wire and steel fence along the south edge of the parking area on parcel number 2107000010 (**Exhibit 10, Sheet A-011**). Based on the yard determinations found in MICC 19.02.020(C)(2), the west side of parcel number 2107000010 would be the front yard as this is the yard abutting the improved street from which the lot gains primary access. As proposed, the six-foot-tall steel picket fence and vehicle gate would not be allowed in the location shown on the site plan. A condition of approval is recommended to either relocate the six-foot-tall steel picket fence and vehicle gate to outside of the front yard setback, or reduce the height to 42 inches (3.5 feet).

16. MICC 19.02.060 lists lot coverage standards for regulated improvements.
- A. *Applicability.* This section shall only apply to regulated improvements (for example, schools or religious buildings) in the residential zoning designations of R-8.4, R-9.6, R-12, and R-15.
 - B. *Maximum impervious surface limits for lots.* The total percentage of a lot that can be covered by impervious surfaces (including buildings) is limited by the slope of the lot for all single-family zones as follows: Less than 15% slope = 50%* lot coverage limit; 15% to less than 30% slope = 35% lot coverage limit; 30% to 50% slope = 30% lot coverage limit; greater than 50% slope = 20% lot coverage limit. *Public and private schools, religious institutions, private clubs and public facilities (including public parks or designated open space) in single-family zones with slopes of less than 15 percent may be covered by the percentage of legally existing impervious surface that existed on May 1, 2006, as determined by the code official.
 - C. *Exemptions.* This section lists improvements that will be exempt from the calculation of the maximum impervious surface limits set forth in subsection B.
 - D. *Variance.* Regulated improvements in the R-8.4, R-9.6, R-12, and R-15 zoning designations may request a variance to increase impervious surface pursuant to MICC 19.15.230(F).

Staff Finding: The existing development is legally nonconforming due to the existing impervious surface exceeding the maximum allowed pursuant to the above standards. The existing impervious surface is allowed to be maintained in legal nonconforming status as long as no new nonconformances are created, there is no expansion of any existing nonconformity, and legal nonconforming status is not lost per MICC 19.01.050. The proposed development does not create a new nonconformity, result in an increase in the existing nonconformity, and legal nonconforming status is not lost under MICC 19.01.050. As conditioned, new impervious surfaces would be offset by removed impervious surfaces to maintain existing impervious surface areas and not increase the nonconformity; therefore, these standards are met.

VI. CONSISTENCY WITH CONDITIONAL USE PERMIT APPROVAL CRITERIA

17. MICC 19.06.110(A) lists criteria for approval of Conditional Use Permits.
- A. *Purpose.* A use may be authorized by a conditional use permit for those uses listed in chapters 19.02 and 19.11 MICC. The intent of the conditional use permit review process is to evaluate the particular characteristics and location of certain uses relative to the development and design standards established in this title. The review shall determine if the development proposal should be permitted after weighing the public benefit and the need for the use with the potential impacts that the use may cause.
 - B. *Criteria for conditional use permits that are not located in Town Center.* An applicant must demonstrate how the development proposal meets the following criteria:

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

Staff Finding: Per MICC 19.02.010(C)(3), places of worship are permitted in the R-9.6 zoning designation subject to the authorization of a conditional use permit. Pursuant to Staff Findings in Section V, the proposed development is consistent with the regulations applicable to the zone in which the lot is located; therefore, this criterion is met.

- 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.

Staff Finding: The use of the property as a place of worship originally approved in 1979 will not change. The existing use continues to be acceptable in terms of the nature of the use and character of the surrounding development. The most significant change to the site would be from the construction of the preK-8 school and office building, which is located on an adjacent property from the property containing the original conditional use permit and subject conditional use permit application. These uses are permitted outright in the B zoning designation, and are, therefore, not subject to criteria for conditional use permits not in the Town Center. However, traffic impacts resulting from the proposed use have been evaluated under the associated TCC and SEPA Review applications and addressed through the MDNS, discussed below.

The portions of the proposed development subject to the conditional use permit criteria are limited to pedestrian pathways, utilities, fencing, landscaping, and parking. The applicant submitted a Transportation Concurrency Certificate application (TCC24-004), which requires a Traffic Impact Analysis (**Exhibit 21**) to identify potential traffic-related impacts associated with the proposed development. The Traffic Impact Analysis has been reviewed by the City's third-party transportation consultant, Psomas. Psomas provided recommendations for mitigation, which were established as part of the SEPA Mitigated Determination of Nonsignificance. The Transportation Concurrency Certificate was reviewed and approved on June 17, 2025 (**Exhibit 22**). Pursuant to MICC 19.20.100(B), the Transportation Concurrency Management System chapter establishes the minimum transportation concurrency requirements applicable to all development and is not intended to limit the city's authority under SEPA or to evaluate all transportation impacts resulting from new development, particularly safety and operation impacts. SEPA mitigation regarding intersection operation and/or safety may be included as conditions of the transportation concurrency certificate at the discretion of the code official.

The applicant also submitted a SEPA Review application (SEP24-003) to address impacts to the environment and adjacent properties. A Revised Mitigated Determination of Nonsignificance was issued on April 7, 2025 (**Exhibit 24**), which contained conditions related to traffic impacts to the intersection of E Mercer Way and the Frontage Road, consistent with the recommendations from Psomas. This intersection is identified in **Exhibit 21, Page 1 & Figure 1: Site Vicinity and Study Intersections**. The Traffic Impact Assessment also includes a Joint Transportation Management Plan which staggers pick-up and drop-off times of students at the proposed preK-8 school (**Exhibit 21, Appendix F**). As conditioned, a Transportation Demand Management Plan shall be required to be submitted annually to the City.

- c. The use is consistent with policies and provisions of the comprehensive plan.

Staff Finding: The proposed development is consistent with the following policies and provisions of the 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.

2.V. Land Use Policies, 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.

2.V Land Use Policies, Goal 17.4: Social and recreational 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.

- 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.

Staff Finding: Recommended conditions of approval have been included below.

VII. RECOMMENDED CONDITIONS OF APPROVAL

1. The project shall be in substantial conformance with (**Exhibit 10**) and all applicable development standards contained within Mercer Island City Code (MICC) Title 19.
2. The applicant shall obtain any permits from state and federal agencies that are applicable to this project. The applicant is also responsible for documenting any required changes in the project proposal due to conditions imposed by any applicable local, state, and federal government agencies.
3. The applicant shall apply for and obtain all required City of Mercer Island permits, including but not limited to a Building Permit for construction of this project proposal.
4. Construction of this project proposal shall only occur during approved construction hours by the City of Mercer Island and/or as otherwise restricted by the Building Official.
5. The Mitigated Determination of Nonsignificance (MDNS) for SEP24-003 includes the following conditions, which are hereby incorporated into the conditions of approval for the CUP:
 - a. Provide a left turn lane from southbound East Mercer Way to the Frontage Road serving the site. All lane widths (left and through) shall comply with American Association of State Highway and Transportation Officials ("AASHTO") and Washington State Department of Transportation ("WSDOT") standards. The turn lane length shall be designed to accommodate left turn demand during the AM and PM peak hour and site peak if it does not coincide with the AM and PM peak hour.
 - b. The addition of the southbound left turn lane may reduce the length of adjacent northbound left turn lane at the SE 36th Street/East Mercer Way intersection. Verify with a traffic operations analysis that, with the addition of the southbound left turn lane to the Frontage Road, the northbound left turn lane at the SE 36th Street/East Mercer Way intersection will have sufficient storage length to accommodate vehicles during the AM and PM peak hours.

- c. Confirm adequacy of curb radii for right turning vehicles exiting from the Frontage Road onto northbound East Mercer Way based on lane width designed for East Mercer Way if lane width is narrower than existing condition. Modify curb radii if warranted.
 - d. The Transportation Impact Analysis states that the school bus unloading/loading will occur at the east end of the school. The site plan and circulation plan do not show the location of the bus loading zone or walkways along the east side of the building for students to access the bus loading zone. Revise the site plan and circulation plan to show the bus loading zone and how students will safely access the bus loading zone. Parent drop-off and pick-up traffic will also use the roadway east of the school. The Transportation Impact Analysis should describe how the school buses will safely interact with parent drop-off and pick-up queuing and traffic that is using the same roadway.
6. The proposed 25 percent reduction in required 139 parking spaces under MICC 19.04.040(E) shall be reviewed and approved by the Hearing Examiner and city engineer during design review, prior to the issuance of construction authorization. The applicant shall provide documentation demonstrating that the reduction in parking spaces will not have adverse impacts. If the Hearing Examiner and/or city engineer finds that the reduction in parking spaces will have adverse impacts:
- a. A minimum of 105 parking spaces shall be available on-site. The applicant shall provide an additional 34 parking spaces for a total of 139 parking spaces. The parking spaces shall be located on parcel numbers 1515600010, 2107000010, 151560TRCT, and 0824059045, unless the applicant demonstrates that space does not allow for additional parking. If off-site parking is necessary, the applicant shall provide the City with a parking agreement prior to the issuance of the Certificate of Occupancy for the building permit. A parking agreement shall be submitted to the City on an annual basis, or at the time an existing parking agreement is renewed if the term is longer than one year, whichever is longer. If an existing parking agreement is not renewed, the additional parking shall be secured elsewhere and a parking agreement executed.
7. The applicant shall provide a Transportation Demand Management Plan (TDMP) prior to issuance of construction authorization which includes, at a minimum, measures to address the following:
- a. The parking capacity for each use and the time periods for which each parking space or section is authorized for the school, place of worship, and office uses. Each use shall have access to at least the following number of parking spaces during the time periods established for operation:
 - i. Office: 33 parking spaces
 - ii. School/classrooms: 24 parking spaces
 - iii. Place of worship: 82 parking spaces
 - b. The school and offices on parcel number 0824059045 shall not schedule overlapping events with the existing uses on parcel numbers 1515600010 and 2107000010 that exceed the number of on-site parking spaces at this facility.
 - c. If parking areas are not available during construction, a temporary parking plan must be submitted to the City for each phase of construction prior to issuance of construction authorization.
 - d. If an event is expected to draw visitors in excess of the number of on-site parking spaces, Herzl-Ner Tamid Conservative Congregation or office space occupant/lessee

shall make arrangements to procure off-site parking and provide a shuttle or other means to transport visitors to and from the site of the event.

- e. If the City receives complaints regarding parking associated with the Herzl-Ner Tamid Conservative Congregation school, place of worship, or office uses and determines the parking results in adverse impacts to the surrounding neighborhood, including impacts to public safety, the City shall require that all vehicle parking be accommodated on-site and/or otherwise mitigated to the City's satisfaction. If this condition is implemented, overflow parking will not be allowed on public streets (weekdays, weeknights, and weekends).
- f. If student drop-off and pick-up activities create congestion on any City streets, the City reserves the right to install "No Parking During School Days" signage and prevent vehicle parking on the roadway and its shoulders.
- g. The programming for each use.
 - i. Days and hours of each use.
 - ii. Description of activities and associated parking demand.
 - iii. Description of events that will likely exceed available parking.
 - iv. Description of planned methods for reducing parking demand such as carpools, shuttles, staggering high intensity uses, etc.
- h. A Transportation Coordinator shall be identified to implement the TDMP including:
 - i. Communications with each facility manager, neighbors, and the City related to traffic and parking management on the site.
 - ii. Responding to concerns related to traffic and parking impacts on the neighborhood.
 - iii. On-site traffic management
 - iv. Management of student drop-off and pick-up
 - v. Management of the overall site parking supply, including bike parking
- i. Within one month from the date of this approval, the applicant shall notify, by letter or postcard, all neighbors living within 300 feet of the school, with the name and contact information of the individual they have identified as the Transportation Coordinator who will respond to future neighborhood concerns related to traffic and parking impacts on the neighborhood.
- j. Identification of strategies and implementation of programs and policies to encourage ridesharing (carpooling/vanpooling), off-site parking and shuttle program, school bus activity, and safe pedestrian walk areas for all uses on parcels 0824059045, 1515600010 and 2107000010.
- k. Measures to mitigate unexpected traffic and parking impacts associated with activities and special events on parcels 0824059045, 1515600010 and 2107000010.
- l. Plans to educate school students, parents, staff, visitors, and office space occupants to abide by posted speed limits on the Island and practice safe driving practices as travel to and from the Herzl-Ner Tamid Conservative Congregation properties. All

traffic and parking policies and programs must be communicated to parents, faculty, staff, visitors, and office space occupants.

8. The Transportation Demand Management Plan shall be submitted to the City's Community Planning and Development Department annually on or before May 31.
9. The six-foot-tall fence proposed within the access easement on 151560TRCT is not allowed pursuant to MICC 19.02.020(H)(1), unless the applicant provides documentation that improvements are authorized within the easement.
10. The six-foot-tall fence proposed within the front yard setback of parcel number 2107000010 shall be relocated to be outside of the required 20-foot front yard, or reduced to 42 inches (3.5 feet) in height, as required by MICC 19.02.050(E)(1)(a)(ii).
11. The proposed development shall not result in an increase in impervious surfaces on the residentially zoned parcels. New impervious surfaces shall be offset by removed impervious surfaces to maintain existing nonconforming impervious surface areas.


VIII. DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. Compliance with all local, state, and federal regulations is required.
2. Per MICC 19.15.200, revisions that result in substantial changes, as determined by the code official, shall be treated as a new application for purposes of vesting. "Substantial change" includes the creation of additional lots, the elimination of open space, substantial changes in access, or changes to conditions of approval. Additionally, the need for the modification was not known and could not have been reasonably known before the approval was granted.
3. Per MICC 19.15.150, land use review approvals shall expire three years from the date of notice of decision if the development proposal authorized by the land use review is not commenced. For the purposes of this section, the development proposal shall be considered established if construction or substantial progress toward construction of a development proposal for which a land use review approval has been granted must be undertaken within two years of the date of notice of decision of the land use review. Where no construction activities are involved, the use or activity shall be commenced within three years of the date of notice of decision of the land use review.

VIII. RECOMMENDATION

Staff reviewed the proposed development application in accordance with standards for criteria for conditional use permits. The staff report and recommendations to the Hearing Examiner are based on the application and all supplemental information. The Hearing Examiner may approve, approve with conditions, or deny the proposal. Staff recommends that the Hearing Examiner **Approve with Conditions**, City File Number CUP24-001.

Recommended this 9th day of July 2025.



Molly McGuire
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City of Mercer Island
Community Planning & Development Department