



BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

October 30, 2025

VIA USPS & EMAIL TO: ryan.harriman@mercercisland.gov

Attn: Ryan Harriman
Attn: City of Mercer Island Hearing Examiner
City of Mercer Island
Community Planning & Development
9611 SE 36th Street
Mercer Island, WA 98040

Re: Herzl-Ner Tamid Conservative Congregation PreK-8 Project Design Standard Review 25-009 for parking reduction/variance at 3700 E Mercer Way

Mr. Harriman and Hearing Examiner,

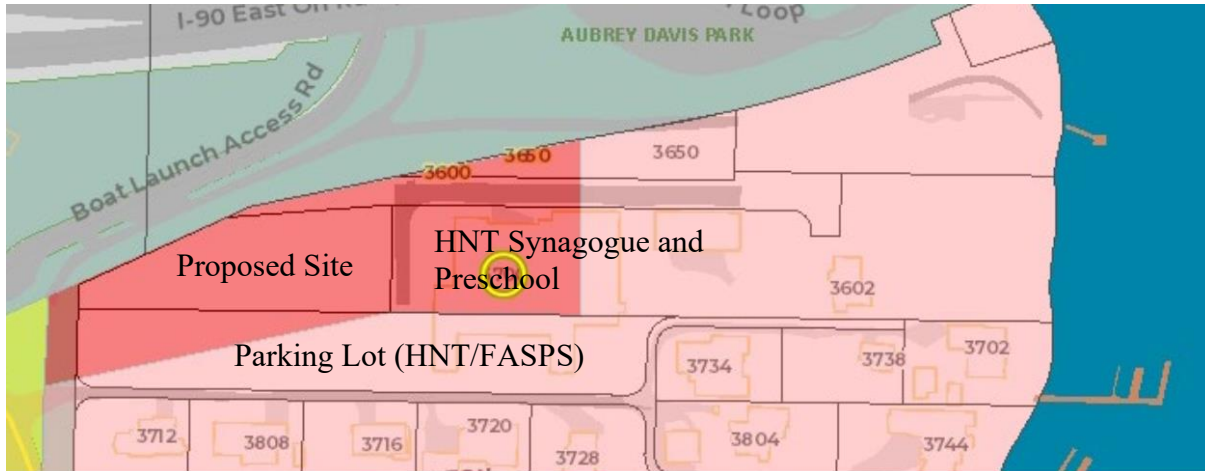
I am writing on behalf of my client, Matthew Goldbach, regarding the Design Standard Review (DSR)25-009. The Herzl-Ner Tamid (HNT) Conservative Congregation are proposing construction of a new mixed use Pre-K-8 and office building on a B zoned lot without providing any on-site parking. Instead, HNT seeks to use an adjacent undersized parking lot on an R9.6 zoned lot and seeks a deviation from the applicable parking requirements. For the reasons discussed below, we urge the City of Mercer Island and the Examiner to deny HNT's requested reduction/variance.

A. Background

HNT seeks to construct a 3-story mixed use building consisting of 14,051 sq ft pre-K-8 school and 12,300 sq ft of rental office space with no on-site parking nor on-site playfield. HNT plans to use an adjacent 105-stall parking lot that is used by the HRT Synagogue and the French American School of Puget Sound (FASPS) located across the street to the west. The synagogue requires 82 spaces. The FASPS leases 62 spaces for faculty and staff. *See Attachment A.* The new proposed use requires 33 parking spaces for the office and 24 spaces for the school for a total of 57 on-site parking spaces. There simply are not enough spaces and this is not an appropriate location to deviate from this requirement.

B. Inconsistent with Code

Deviation from the parking requirements in a residential zone is inconsistent with the code. The proposed use is on a B-zoned lot. The parking for the proposed use is on an adjacent lot that is split zoned B and R 9.6. Annotated zoning and aerial map images are provided below.



Blue-Green = Public Institutional
Red = B
Gray = Highways/streets

Pink = R-9.6
Yellow = C-O



The code provides that “[w]here 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, OS, PI, PBZ, CO, TC, and B.” MICC 19.01.040.G.2. Lots 2 and 3 are split between R-9.6 and B. Therefore, pursuant to MICC 19.01.040.G.2, both are treated as R-9.6-zoned parcels. R-9.6 zone is primarily a single-family

residential zone where permitted uses include single-family residences, private recreational areas, public schools, home businesses, public parks, and some types of group housing. MICC 19.02.010.A. Private schools and places of worship are conditional uses in R-9.6. MICC 19.02.010.C.2. The development standards for residential lots state,

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.

MICC 19.02.020.G.4. The uses require 139 spaces. The lot has 105 spaces. Chapter 19.02 MICC does not provide for variances or deviations from parking requirements in residential zones. Therefore, any such parking variance or deviation is inconsistent with the code and cannot be approved.

HNT's request for a reduction from parking requirements in this residential zone is a variance, which is a more rigorous standard set forth in MICC 19.06.110.B than the "no adverse impact" standard discussed below. Furthermore, the city has determined that a CUP on residential zoned property cannot obtain a variance from the regulatory limits other than impervious surface limits. *See* Attachment B (AI 22-004 concluding, "The MICC prohibits other variances from numerical standards for non-residential structures in residential zones."). Therefore, a variance to reduce parking on a residential lot is contrary to the code and the city's own interpretation of the code.

C. Design Commission/Hearing Examiner Discretion Demands Denial of Parking Reduction.

We maintain that the code does not provide for parking variances and deviations in residential zones. However, should the Examiner proceed under MICC 19.04.040, the Examiner should exercise their discretion to deny the permit. The proposed location is simply one of the worst places to approve a reduction in on-site parking and the applicant cannot demonstrate that no adverse impact will occur.

The city's commercial development code, which applies to uses in B zones states,

Notwithstanding any of the minimum parking requirements set out in subsection C of this section, the code official **may** grant variances from the minimum parking requirements with the approval of the city engineer and the design commission for projects reviewable by the design commission.

MICC 19.04.040.B.9 (emphasis added). It goes on to state,

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.

MICC 19.04.040.E (emphasis added).¹ While the much of the applicable city code still reflects that such decisions are made by the design commission, Mercer Island City Ordinance 25C-14 delegated all design commission authority to the Hearing Examiner effective June 30, 2025.

The city and Examiner should deny the parking reduction. As my client has explained in previous communications about the proposal, the area around the proposed use and adjacent parking lot is already a high traffic problem area with parking issues. *See* Attachment C (showing consistently full street parking and illegal parking maneuvers next to school buses). Despite residential zoning and comprehensive plan goal 7 that “Mercer Island should remain principally a low-density, single-family residential community,” this area has a number of high activity land uses. These uses include HNT Synagogue, Stroum Jewish Community Center, FASPS, Oranjeschool, Yellow Wood Academy, etc. The proposed site abuts East Mercer Way right next to one of two westbound exits from I-90. Another school, office, and preschool would adversely impact an already challenging situation. Inadequate on-site parking for schools and pre-schools next to a

¹ Note that recent proposed planning commission amendments to this provision provides further support that parking variances are not intended in residential zones.

Notwithstanding any of the minimum parking requirements set out in subsection C of this section, the code official may grant variances from the minimum parking requirements with the approval of the city engineer and the design commission for projects reviewable by the design commission based on review of detailed information provided by the applicant that includes a description of the physical structure(s), identification of potential uses, and analysis of parking demand provided the parking variance is not applied on a parcel in the R-8.4, R-9.6, R-12, and R-15 zones.

PC Amendment Log #39.

Cooperative parking between two or more adjoining property owners is allowed; provided, the code official. The hearing examiner, 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 provided that no adverse impact will occur due to the reduced number of stalls based on review of detailed information provided by the applicant that includes a description of the physical structure(s), identification of potential uses, and analysis of parking demand and the cooperative parking is not applied on a parcel in the R-8.4, R-9.6, R-12, and R-15 zones.

PC Amendment Log #71.

highway exit arterial is a recipe for disaster. The safety risks of adding more activity and less parking to this already busy area are too high.

Additionally, approving the parking reduction to allow for one school would result in adverse impacts for another. FASPS has had cooperative agreements with HNT for 25 years, including leasing 62 parking spaces from HNT for FASPS faculty and staff. *See* Attachment A. FASPS's conditional use permit requires that FASPS have access to 30 parking spots at HNT. However, the proposed use and parking reduction request—which does not factor in FASPS's parking needs—will adversely affect FASPS. Faculty and staff will have to travel far to find available street parking which is often already full. *See* Attachment C. Faculty and staff may resort to on-site parking, taking spots from children, or FASPS may be forced to relocate. It will render FASPS unable to comply with conditions of its own CUP. That would certainly be an adverse impact warranting denial of HNT's parking reduction request.

D. Conclusion

For the reasons outlined above, the Examiner should deny the parking reduction. Please include me as an interested party to receive any notices or decisions related to this matter.

Sincerely,

BRICKLIN & NEWMAN, LLP



Audrey Clungeon
Counsel for Matthew Goldbach

cc: Matthew Goldbach

ATTACHMENT A

Skip to main content

City of Mercer Island

NextRequest

Request Visibility: Published



Request 25-558



Closed



21 of 587

Dates

Received

August 01, 2025 via web

Requester

Matthew T Goldbach

matt@bitmax.net

9980 Southeast 40th Street, Mercer Island, US-0-WA, 98040

9548062489

Request

I would like a copy of the most recent "parking management plan" the French American School is required to annually provide the City as part of their CUP. Please include a copy of the lease between the French American School and the Herzl-Ner Tamid Congregation which is a key element of the plan.

Timeline

Documents

Request published Anyone with access to this request

August 19, 2025, 12:46pm by Mary Swan, Paralegal/PRO (Staff)

Request closed Anyone with access to this request

Mr. Goldbach,

The City completed its response to your public records request for a copy of the most recent parking management plan the French American School and a copy of the lease between the French American School and the Herzl-Ner Tamid Congregation. All records in response to your request were

Invoices

No invoices due

Staff assigned

Departments

CPD (Community Planning and Development)

Point of contact

Mary Swan

provided to you on August 8, 2025. The City does not have a more recent copy of the Lease.

This request is now closed because the City does not intend to address it further. The 1-year statute of limitations to seek judicial review of this request has now begun.

If you have any questions, require assistance, believe that we have not provided all the records you were seeking, or if you believe your request was misinterpreted in any way, please reply to this email or call the number below within 10 business days of the date of this email.

You are welcome to submit a new request for records at any time: <https://mercerisland.nextrequest.com/>

Thank you,

Mary Swan, Public Records Officer/Paralegal

206.275.7651

August 19, 2025, 12:46pm by Mary Swan, Paralegal/PRO (Staff)



Message to requester

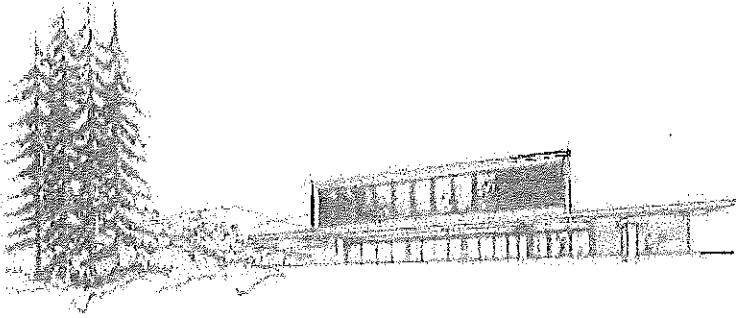


Requester + Staff

Mr. Goldbach,

I need to check with another staff person about the lease; however, they are out of the office this week.

Due to workload considerations, the City requires an additional five (5) business days from the date of this email to respond to your request pursuant to RCW 42.56.520. This is based upon the need to



HERZL-NER TAMID
CONSERVATIVE CONGREGATION
 Affiliated with the United Synagogue of Conservative Judaism

Rabbi Barry Leff Rabbi Miriam Green Cantor Bradlee Kurland

July 17, 2019

To: French American School
 From: Nadine Strauss, Executive Director, Herzl-Ner Tamid

We look forward to continuing to provide parking places for FASPS in the coming academic years. We have appreciated how considerate you have been in respecting the designated slots and in vacating them when we have needed them.

For the academic years 2019-20 and 2020-21, we have allotted numbers #1-62 to FASPS. For security reasons, please continue to place a placard on the dashboard for each car. As in past years, Herzl-Ner Tamid is not responsible for any damage or loss to cars parked in our lot.

The cost for 2019-20 will be \$62 per month for 10 months.
 The cost for 2020-21 will be \$62 per month for 10 months.

If you find that you need more slots on a regular basis, please let us know so we can alter the arrangement as we are finding our lot very full these days.

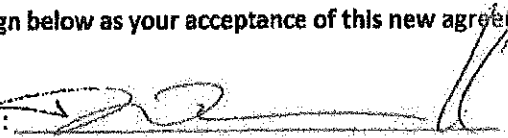
Please find below the list of times we will need you to park elsewhere due to our holiday traffic for 2019-20, we will send you an updated Jewish Holiday list for 2020-21 next July.

In the unlikely event of a funeral, we may ask you to park elsewhere for a short amount of time.

Holiday Name	Jewish Holidays 2019-20
Rosh Hashanah	Monday, September 30 & Tuesday, October 1
Yom Kippur	Wednesday, October 9
Sukkot	Monday, October 14 & Tuesday, October 15
Shemini Atzeret	Monday, October 21
Simchat Torah	Tuesday, October 22
Passover	Thursday, April 9 & Friday, April 10, Wednesday, April 15 & Thursday, April 16
Shavuot	Friday, May 29

Thank you and we look forward to our continued relationship.

Please sign below as your acceptance of this new agreement.

Signature:  Date: 7-17-19
 Debbie Newell
 Chief Operating Officer

Coordinated Transportation Management Plan (TMP)
for the
French American School of Puget Sound and Stroum Jewish Community Center
May 2025

The French American School of Puget Sound (FASPS) and Stroum Jewish Community Center (SJCC) have enjoyed a collaborative and mutually beneficial partnership for nearly 25 years. Together we foster education, enrichment, and community building for thousands of people.

As is outlined in the pages below, FASPS and SJCC have continued to work together to address transportation safety and improve traffic circulation on our property. Our teams meet at all levels of the organizations, to evaluate how property activities, traffic, and capacity are going, identify any complications that may have developed, and adjust to ensure we are operating safely, efficiently, and in compliance with the conditions of the Conditional Use Permit (CUP).

This Transportation Management Plan (TMP) and parking plan is submitted to the City of Mercer Island by FASPS and SJCC as required by the conditions of the Conditional Use Permit (CUP). This TMP reflects the efforts FASPS and SJCC are taking to address pedestrian, bicycle, and vehicular safety on our property and to mitigate traffic delays on our property and around the surrounding vicinity, namely along East Mercer Way.

It's helpful to briefly outline the daily activity happening on our properties to provide context for traffic and trip management, parking, and overall site activity.

With school running daily during the school year, FASPS and SJCC coordinate school schedules to attenuate the traffic flow over a time period compatible with site parking. We have also adapted the traffic patterns through the lots to make it easier for visitors to more directly access and depart from the building they are visiting. During peak hours there is also a person directing traffic on the site.

This same schedule, traffic, and visitor parking coordination continues in the summer when summer camp programs are in operation.

Key program elements are detailed in the table below.

Program Element	Action to be Taken
Ridesharing - FASPS	The FASPS website allows parents from the school to find families that live nearby to organize carpooling. It is encouraged regularly in FASPS communications.
Bus Program - FASPS	<p>FASPS has almost 100 riders registered into the bus program, up significantly from the limited service FASPS was able to provide during Covid.</p> <p>The current bus fleet includes one 30-passenger bus and three 14-passenger buses.</p>

Site circulation and safety plan

The image below depicts the current traffic flow, showing a single lane on to the property from East Mercer Way, immediately splitting into two lanes, providing relief to cars entering the SJCC and FASPS from East Mercer Way. The two lanes add further value by enabling queueing to happen on the property, not on East Mercer Way. The coordinated traffic flow through both parking lots also streamlines on-site traffic flow.

Yellow is the on-site circulation for FASPS. Blue is SJCC flow, and green is shared entry/egress.



FASPS posts a staff member to guide traffic onto the campus daily, during both the morning drop-off and the afternoon pick-up windows. Their main responsibility is to enable incoming vehicle traffic to flow smoothly from East Mercer Way onto campus. They do this by utilizing the campus roads as a buffer to prevent backups from East Mercer Way, watching for potential delays and advancing vehicles along the buffer roads accordingly.

Additionally, FASPS and SJCC have elongated our pick-up and drop-off windows to reduce congestion and smooth the number of vehicles entering the campus from East Mercer Way at any one time.

- The entire FASPS middle school (~100 students) is scheduled to be in their classrooms by 8:15am and can enter the building as early as 7:45am.
- FASPS has also a very popular after school care for the entire school with pickup between 3:50-6:00pm.
- FASPS also offers before-school care program for students. Drop-off occurs as early as 7:30am.
- SJCC Early Childhood School runs various programs throughout the day with several start and end times:
 - Drop-offs: 7:30-8:30 am, 8:30-9:00 am 9:30 am.
 - Pick-ups: 12:30 pm, 3:00 pm, 4:30-4:45 pm

The FASPS Parent Handbook details the established program, identifies loading areas, drop-off and pick-up procedures, and staggered schedules for

	<p>student arrivals, departures, and after-school activities that reduce peak traffic volumes on-campus. The Parent Handbook also addresses safety issues for parents operating vehicles on-campus.</p> <p>SJCC communicates regularly throughout the year to inform and remind parents and caretakers of the various parking procedures.</p>
Parking	<p>Off-site parking for FASPS faculty and staff is provided at Herzl-Ner Tamid (Herzl) to reduce on-site parking demand, enhance site safety, and reduce circulation conflicts. FASPS continues to maintain an agreement with Herzl to provide parking spaces for faculty and staff. FASPS has leased two additional administrative office spaces at The Globe building, and school administration in addition to staff working at the Globe use parking spaces in the Globe Building parking lot.</p> <p>SJCC's on-site parking meets current SJCC activity levels, resulting in no need for off-site or on-street parking. Employees are directed to park in the east lot, while patrons/visitors park in the main lot. During the summer, SJCC leases parking spots from Herzl to accommodate parking for seasonal staff.</p>
Special Events	<p>During a limited set of special events, SJCC and FASPS coordinate with nearby partners to arrange off-site parking.</p>
FASPS Student Enrollment/SJCC Programming	<p>FASPS is managing student enrollment and staffing between two campuses, one on Mercer Island and one in Capitol Hill in anticipation of opening its permanent home in Seattle during 2026-2027 school year. Once the Permanent home building opens, grade 4 to 8 will be relocated to the Seattle campus. This will decrease the enrollment and employees on Mercer Island.</p> <p>All SJCC programs are coordinated to manage on-site traffic and parking capacity, with special attention paid to the Early Childhood School drop-off and pick-up times noted above. During summer months, this is further coordinated with J Camp, so that camp and ECS traffic— which is reduced in summer months—harmonize to mitigate traffic impacts on East Mercer Way. SJCC Summer J Camp also operates a bus route from N Seattle for J Camp families. This reduces on-site activity for dozens of families each day as well. Again, the SJCC coordinates schedules, and traffic flow, with the French American School of Puget Sound (FASPS) to smooth traffic patterns.</p> <p>In Summer 2024, SJCC asked WSDOT to assess nearby traffic activity at the SE 36th/East Mercer Way intersection and I-90 ramps. WSDOT determined that the SJCC was not adversely impacting daily flow in a substantive way.</p>
Communication	<p>Traffic and parking policies will continue to be communicated through the organizations' Parent Handbooks, Staff Handbooks, event announcements, their respective web sites, and email messages sent to parents, patrons, and staff.</p>

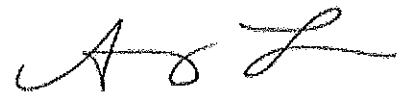
Community liaison/ contact person	FASPS: Susan Griesse, COO/CFO Email: susang@fasps.org Office Phone: 206-275-3533 ext 232 Cell Phone: 206-617-2473 SJCC: Amy Lavin, CEO Email: AmyL@sjcc.org Phone: 206-232-7116
Program Review	A letter summarizing TMP program activity and recommendations to add new elements or refine current plan elements will be submitted to the city by December 31 st of each year.

Resubmitted by request on May 21, 2025, by



Eric Thuau, FASPS Head of School

and



Amy Lavin, SJCC CEO

ATTACHMENT B

**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).

ATTACHMENT C



Elementary school bus stops along East Mercer Way between 38th and 40th Ave SE.



Parking on East Mercer Way week of October 24, 2024



Parking on East Mercer Way week of October 14, 2024



Parking on East Mercer Way week of October 14, 2024



Parking on East Mercer Way week of October 14, 2024

5



Parking on East Mercer Way week of July 2024

6



Herzl parking lot week of October 14, 2024 noting empty parking lot