

**BEFORE the HEARING EXAMINER for the
CITY of MERCER ISLAND**

DECISION

FILE NUMBER: CUP24-001

APPLICANT: Herzl-Ner Tamid Conservative Congregation
C/o Hillis Clark Martin & Peterson P.S.
ATTN: Josh Friedmann
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Seattle, WA 98104
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TYPE OF CASE: Conditional Use Permit Revision for a church facility (synagogue) to share its parking, circulation system, utility lines, and pedestrian paths with the uses to be located in a new PK-8 school and related offices to be built on an adjoining parcel owned by the applicant

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: July 18, 2025

INTRODUCTION ¹

Herzl-Ner Tamid Conservative Congregation (“HNT”) seeks approval of a Conditional Use Permit (“CUP”) Revision to allow its church facility (synagogue) to share its parking, circulation system, utility lines, and pedestrian paths with the uses to be located in a new PK-8 ² school and related offices to be built on an adjoining parcel owned by HNT. (See Findings of Fact 7 & 8, below, for a description of the proposal.)

HNT filed the CUP application on April 3, 2024. (Exhibit 2 ³) The Mercer Island Department of Community Planning & Development (“CP&D”) deemed the application complete on April 22, 2024. (Exhibit 6)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² “PK-8” means “Pre-Kindergarten through 8th Grade.”

³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

The HNT property is located at 3700 East Mercer Way. The HNT property is composed of four abutting Assessor's Parcels: 0824059045 ("Lot 1"); 2107000010 ("Lot 2"); 1515600010 ("Lot 3"); and 151560TRCT (the "Tract") depicted on the following graphic:



(Exhibit 1, PDF 12; see also Exhibit 10, PDF 6) The Tract boundary is faintly visible (a black line) north of and generally parallel with the north line of Lot 1 and the western two-thirds of Lot 2; it ends where the jog in the north boundary of Lot 2 is located.⁴ The requested CUP Revision would apply to Lot 2, Lot 3, and the Tract.

The Mercer Island Hearing Examiner ("Examiner") viewed the subject property via Google Earth imagery: Overhead imagery captured October 6, 2024; Street View imagery captured July 2018 (Frontage Road; a.k.a. Boat Launch Access Road), August 2024 (East Mercer Way).

The Examiner held a remote predecision open record hearing pursuant to MICC 3.40.060 on July 9, 2025, using the "Zoom" platform.⁵ The City gave notice of the hearing as required by the MICC. (Exhibit 26)

The following exhibits were entered into the hearing record during the hearing:

Exhibits 1 - 26: As enumerated in Exhibit 1, the CP&D Staff Report

⁴ The Tract boundary is more clearly apparent on the figure in Finding of Fact 1, below.

HNT's application lists all four parcels, including the Tract. (Exhibit 2) The Staff Report lists only three parcels, one of which is the Tract, omitting Lot 1. Because the proposed activity on Lot 1 is permitted outright under the zoning regulations, it is appropriate to omit Lot 1 from the legal description of the property subject to the CUP Revision.

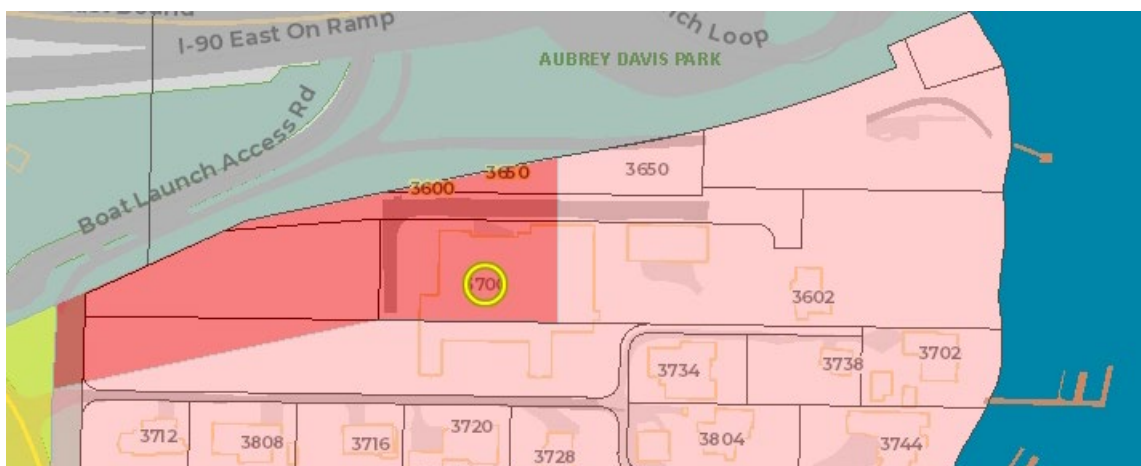
⁵ The CUP Revision application and a related SEPA Appeal were heard at one open record hearing. A Decision on the SEPA Appeal has been issued this date under separate cover.

- Exhibit 18.16: Public Comments by Concerned Neighbors for the Protection of the Neighborhood to Proposed CUP, received July 2, 2025
Exhibit 18.17: Winky Lai received July 9, 2025

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. The HNT property has “split zoning.” Split zoning is the situation where the boundary between two or more zones divides a parcel. It may be difficult for the reader to locate the subject property on the following graphic, but Lots 2 and 3 each have split zoning.



LEGEND: Blue-Green = Public Institutional Pink = R-9.6
Red = B Yellow = C-O
Gray = Highways/streets

(Exhibit 20) Lot 1 is zoned B; Lots 2 and 3 are split between B zoning and R-9.6 zoning. Subsection 19.01.040(G)(2) MICC 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, C-O, TC, and B.” 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.

2. The B zone is a Business zone allowing a wide range of business activities as uses permitted outright including offices, retail stores, schools, pre-schools, day cares, and adult entertainment facilities. [MICC 19.04.050(B)]

The C-O zone is the Commercial Office zone allowing offices, government services, places of worship, public and private schools, etc. [MICC 19.04.020(A)]

The R-9.6 zone is primarily a single-family residential zone where the minimum allowed lot size is 9,600 square feet per residence. Uses permitted as a matter of right in the R-9.6 zone include single-family residences, private recreational areas, public schools, home businesses, public parks, accessory dwelling units (“ADUs”), some types of group housing, middle housing, etc. [MICC 19.02.020(A)] In addition, the following uses are allowed in the R-9.6 zone upon issuance of a CUP: Government services, private schools, places of worship, retirement homes, bed & breakfasts, day cares, etc. [MICC 19.02.020(C)]

3. The HNT property lies just south of the I-90 corridor on the east side of East Mercer Way. The East Mercer Way/I-90 interchange lies just to the north. Between the interchange and the HNT property is Frontage Road (a.k.a Boat Launch Access Road) from which HNT takes access to its property. The Frontage Road continues on a short distance to the northeast to provide access to a park/boat launch located beneath the I-90 elevated lanes. (See the figures in the Introduction and Finding of Fact 1, above,)

The eastbound I-90 on-ramp is part of a compound intersection: SE 36th Street forms the west leg, the eastbound on-ramp forms the east leg, and East Mercer Way forms the north and south legs. That interchange is about 340 feet north of the East Mercer Way/Frontage Road intersection. East Mercer Way is a designated Collector Arterial. The Stroum Jewish Community center (“SJCC”) complex is located on the west side of East Mercer Way opposite the HNT property. The SJCC’s entrance driveway intersects East Mercer Way approximately 130 feet south of the East Mercer Way/Frontage Road intersection. The French American School of Puget Sound (“FASPS”) is a tenant within the SJCC complex. Single-family residences dominate the remainder of the neighborhood to the south and southeast. (Exhibits 20; 21, PDF 5 & 7; testimony; Google Earth Overhead imagery; King County on-line iMap imagery; distances obtained using the Google Earth measurement tool)

4. The Town of Mercer Island (a 70-acre business district) and the City of Mercer Island (the remainder of the island) were separately incorporated in 1960. On May 19, 1970, the two merged to become the current City. [https://en.wikipedia.org/wiki/Mercer_Island,_Washington, last visited July 15, 2025]
5. In December 1970 the new City issued permits for HNT to construct a synagogue and social center on Lots 2 and 3 and the Tract. That building was completed and a Certificate of Occupancy was issued on December 14, 1971. (Exhibits 10, PDF 5; 23.1; 23.2) City regulations at that time did not require a CUP to locate a place of worship on Lot 2, Lot 3, or the Tract. (Exhibit 1, PDF 4)

In July 1975 City zoning regulations were changed to require a CUP for places of worship and other uses in single-family residential zones. (Exhibit 23.8, PDF 1)

In 1979 HNT applied for a CUP to further develop its property with a non-commercial recreation area for occasional worship services, a meditation area, and a custodian’s residence. (Exhibit 23.3)

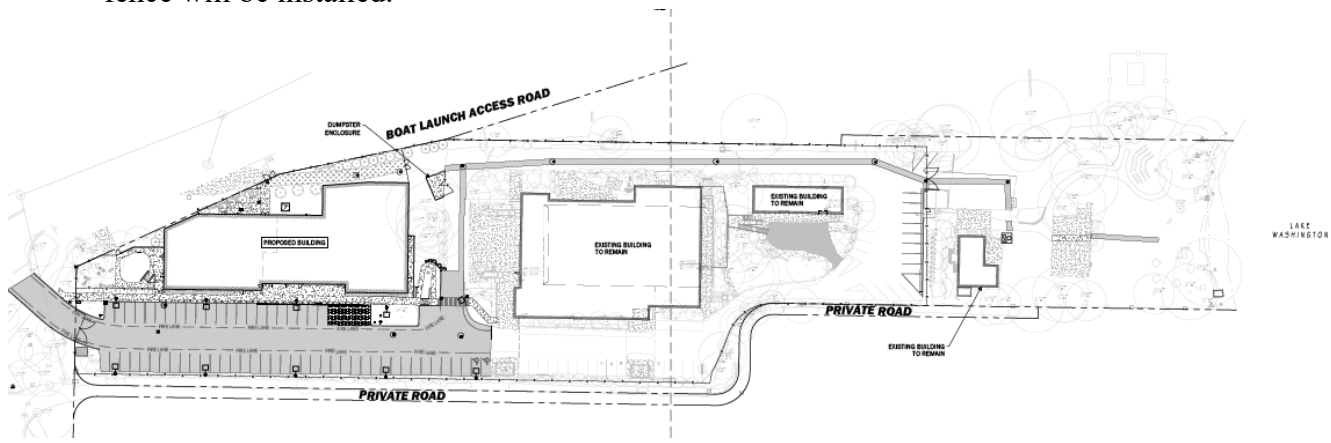
That application bounced back and forth between the Planning Commission and the City Council. On July 19, 1979, the then City Attorney advised HNT's counsel that a CUP was required for the additions it sought to establish because they were related to a place of worship which, by then, required a CUP. (Exhibit 23.8) On July 23, 1979, the City Council sent the application back to the Planning Commission with directions to apply for a CUP for the entire property. (Exhibit 23.9, PDF 3) On November 26, 1979, HNT sent a letter to the City stating that "[t]his application for a Conditional Use Permit covers the entire properties of the Synagogue" (Exhibit 23.11, PDF 1) also on November 26, 1979, the City advised HNT that it needed to "bring the entire Herzl property into conformance through a Conditional Use Permit." (Exhibit 23.12, PDF 1) On December 5, 1979, the Planning Commission recommended approval of the requested CUP. (Exhibit 23.13) On December 10, 1979, the City Council held a hearing to consider HNT's CUP application. (Exhibit 23.15) The site plan presented to the City Council included the entirety of Lots 2 and 3 and the Tract. (Exhibit 23.15, PDF 3) The Council approved the requested CUP that evening. (Exhibit 23.16, PDF 2) ⁶ The Examiner finds and concludes that the preponderance of the evidence demonstrates that HNT has had a CUP for its religious facilities on Lots 2 and 3 and the Tract since December 10, 1979.

6. HNT currently operates a small PK-6 after-school Jewish education program in its facilities (the "Lott" building east of the synagogue) two days a week and Sunday mornings. Once the new building has been completed, HNT will move its PK-6 program into some of the new classrooms when they are not in use. (Testimony)
7. HNT proposes to build a combination school/office building on Lot 1. (Referred to as the *Barnabie Point Project*.) Since both schools and offices are uses permitted as of right in the B zone, neither a CUP nor any other quasi-judicial permit from the City is required for that project. However, HNT wants to share the synagogue parking lots, circulation drives, and open space facilities on Lots 2 and 3 and the Tract with the new building. Sharing some of those facilities amounts to changes to the approved CUP site plan. Thus, this CUP Revision application has been filed. The proposed building on Lot 1 will be described solely to provide a context for the proposed sharing of spaces.
8. The proposed school/office building will be a three-story structure:

⁶ The current hearing record contains assertions that HNT has never had a CUP for its facilities and, therefore, cannot receive a CUP to share use of its facilities with anyone as its facilities are not legal. (Exhibit 18.16; John Hall and Matthew Goldbach testimony) The Examiner recognizes that a document entitled "HNT CUP" (or something similar) does not seem to exist from the 1979 time period. But the facts are that the HNT synagogue was legally constructed in 1970 before the City required a CUP for a place of worship in a residential neighborhood, the synagogue became nonconforming in 1975, the City Council directed that HNT's 1979 application be revised to encompass its entire facilities, that the site plan HNT presented to the City Council on the night it voted to approve a CUP for HNT depicted the entirety of Lots 2 and 3 and the Tract with their existing and then-proposed new facilities, and that the City Council voted to approve a CUP. That nobody in 2025 can find a piece of paper from 1979 saying "HNT CUP" is not particularly surprising. (The undersigned was a Snohomish County Planner from 1971 through September of 1978 when he became Snohomish County's first Hearing Examiner. The undersigned could not testify as to Mercer Island's record keeping during that time period, but he could vouch for the reality that land development records in the 1970s were not nearly as detailed and orderly as they typically are now.

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

(Exhibit 3, PDF 1) Building and site development plans are contained in Exhibit 10. In addition to shared parking and vehicle circulation (described in greater detail below), other changes to Lots 2 and 3 and the Tract are: the sewer line from the new building will be placed beneath the driveway in the Tract and beneath the lawn near the caretaker's residence to connect to the existing sewer line; some pavement north of the caretaker's residence will be removed, the portion of the parking lot on Lot 3 south of Lot 1 will be repaved, the repaved portion of the parking lot will have night lights installed, 8 parking stalls in front of (west of) the caretaker's residence will be realigned, an ADA compliant walkway will be installed between the new building and the synagogue, and a perimeter fence will be installed.



(Exhibit 10, PDF 16)

9. The MICC has a series of formulas by which to determine the number of on-site parking spaces required for various uses. [MICC 19.02.010(C)(3)(b) for places of worship in single-family zones; MICC 19.02.020(G) for single-family residential zones; MICC 19.03.020 for multiple-family zones; MICC 19.04.040(C) for the B and C-O zones and non-residential uses in the PBZ; and Chapter 19.05 MICC for the PI zone]

The existing synagogue located in a single-family residential zone requires 82 on-site parking spaces. (Exhibit 1, PDF 10; MICC 19.02.010(C)(3)(b)) Lots 2 and 3 and the Tract currently have a total of 105 parking spaces. (Exhibit 1, PDF 11; 10; 11)

The proposed uses for the new building on Lot 1, located in the B zone, require 57 on-site parking spaces: 33 for the office uses based on square footage; and 24 for the private school based on two spaces per classroom. (Exhibit 1, PDF 10) HNT does not propose to provide any on-site parking spaces on Lot 1. (Exhibit 10)

The total number of required parking spaces is 139. ($82 + 57 = 139$)

10. Since before 2007, the FASPS has had an arrangement with HNT by which up to 30 FASPS staff and faculty could park in HNT's parking lot. The MDNS issued in 2007 for an increase in FASPS enrollment from 300 to 425 required it to have access to 30 parking spaces on HNT's site. (Exhibits 23.18; 23.19) HNT intends to advise FASPS that it can no longer provide it with parking. There is some indication in the record that FASPS may be considering or is in the process of moving its school to a location outside of Mercer Island. (Exhibit 19.5, PDF 3)
11. Subsection 19.04.040(E) MICC allows cooperative parking arrangements:

Cooperative parking between two or more adjoining property owners is allowed; 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.

[MICC 19.04.040(E) The bracketed words are "design commission" in the currently published code. The City Council amended the MICC effective June 30, 2025, to eliminate the design commission and transfer its functions to the Examiner. [Official notice]]

The office and school hours will not conflict with synagogue hours of use. (Exhibit 8, PDF 1 & 2) Thus, HNT's proposal assumes approval of the allowed 25 percent parking spaces reduction. Twenty-five percent of 139 is 34.75; rounded up, it would be 35. 139 spaces required minus the 25% reduction is 104 on-site parking spaces, one less than the number of spaces currently available.

CP&D has recommended a condition requiring approval of the parking reduction through the design review process. (Exhibit 1, PDF 17, Recommended Condition 6)

12. HNT proposes to allow cars dropping off and picking up students from the school on Lot 1 to loop counterclockwise around the synagogue on the existing paved drive (on Lots 2 and 3 and the Tract) before arriving at the front of the school. The result is a drop-off/pick-up queue capacity of 68 vehicles in a 1,800-foot-long on-site loop. (Exhibit 10, PDF 2; 21, PDF 26) The maximum estimated queue length needed is 350 feet (in the afternoon), well less than the available on-site queue length. (Exhibit 21, PDF 28)

The traffic impact study predicts that with a maximum student enrollment of 150, the school will generate 126 vehicle trips in the weekday morning street peak traffic hour, 94 in the school's afternoon peak traffic hour, and 39 in the weekday afternoon street peak traffic hour. (Exhibit 21, PDF 17) The traffic study estimates that the peak parking demand for the school will be 21 spaces and for the offices 23 spaces. (Exhibit 21, PDF 25)

13. Mercer Island’s State Environmental Policy Act (“SEPA”) Responsible Official issued a Revised Mitigated Determination of Nonsignificance (“RMDNS”) on April 7, 2025.⁷ (Exhibit 24) The RMDNS was appealed. The result of that appeal is contained in the Examiner’s companion Decision in APL25-003. That Decision revised Mitigation Measures 1 and 3. CP&D included the four original mitigation measures as Recommended Condition 5 in its recommendation in this case. (Exhibit 1, PDF 16 & 17) If this application is approved, Recommended Conditions 5.a and 5.c will have to be changed to match the text resulting from the SEPA appeal.
14. The hearing record contains numerous written public comments and some oral public testimony. (Exhibits 18.1 – 18.17; John Hall, Winky Lai, and Matthew Goldbach testimony) The majority of the written comments were submitted in 2024, shortly after the CUP application was filed and before the SEPA threshold determination process had been completed. Most of those comments expressed concern about increased traffic in the area and opposition to additional institutional development in the area. Some expressed concern about the adequacy of on-site parking. The Concerned Neighbors group (Hall and Goldbach, spokespersons) assert that this CUP cannot legally be granted because there is no legal, existing CUP for HNT’s facilities. (Exhibit 18.16; testimony)
15. CP&D recommends approval of the CUP subject to 11 conditions. (Exhibit 1, PDF 16 – 19)
16. HNT is “happy to comply” with all CP&D recommended conditions. (Testimony)
17. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK⁸

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A CUP is a Type IV application. The Examiner conducts an open record hearing and renders a final decision on Type IV applications which is subject to the right of reconsideration and appeal to Superior Court. [MICC 19.15.030(E), Tables A and B; MICC 19.15.140; Chapter 3.40 MICC]

The Examiner may “1. Approve; 2. Conditionally approve; 3. Continue the hearing; 4. Remand the application to staff; or 5. Deny the application.” [MICC 19.15.140(C)]

Review Criteria

The review criteria for a CUP application depend upon the zone in which the subject property is located. For sites not located in Town Center, the criteria are set forth at MICC 19.06.110(A)(2):

⁷ See the companion appeal Decision (APL25-003) for an explanation of why the MDNS was revised.

⁸ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

- a. The permit is consistent with the regulations applicable to the zone in which the lot is located;
- 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;
- c. The use is consistent with policies and provisions of the comprehensive plan; and
- 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.

Additional review criteria apply to government services, public facilities, utilities, and museums and art exhibitions located in single-family residential zones:

- a. All structures shall be located at least 20 feet from any abutting property;
- b. Off-street parking shall be established and maintained at a minimum ratio of one parking space for each 200 square feet of gross floor area; and
- c. Utilities shall be shielded from abutting properties and streets by a sight obscuring protective strip of trees or shrubs.

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

The City has adopted local regulations governing vesting of land use applications.

Complete applications for land use review of Type I land use reviews, building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall vest on the date a complete application is filed. The department’s issuance of a letter of completion for Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[MICC 19.15.170(B)] The vesting date of HNT’s CUP Revision application is April 22, 2024.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [MICC 19.15.060(A)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. This CUP Revision application is not about the *Barnabie Point Project* – the combination school and offices to be built on Lot 1. Lot 1 is zoned B; offices and schools are permitted uses in the B zone. This CUP modifies the CUP for HNT that was granted by the City Council in 1979. Fundamentally, the question before the Examiner is: May HNT’s facilities on Lots 2 and 3 and the Tract be shared with the school/offices on Lot 1? To wit: May HNT’s parking and circulation system be shared with the Lot 1 school/offices; may persons associated with the school/offices on Lot 1 use paths and open spaces subject to HNT’s CUP; may Lot 1’s sewer line traverse Lot 2 and the Tract?
2. Questions and concerns about the impacts of the proposed school/offices on Lot 1 are not proper considerations in this proceeding. Most of the public comments in the record relate to impacts associated with building a new school/office building on Lot 1. Since a school/office building is a use permitted as of right in the B zone, and since Lot 1 is zoned B, this CUP proceeding has no authority to impose conditions on or pass judgment on that project.⁹
3. The public comments about traffic increases, institutional growth in the area, etc. are beyond the scope of anything directly regulated by is CUP Revision. They address concerns about the new school/offices building which is not subject to this CUP. Those concerns could have been raised through a challenge to the SEPA threshold determination, but they weren’t.¹⁰ It is too late now to raise any such challenges.
4. As has been noted in Footnote 6, above, the argument from Concerned Neighbors that HNT does not have a CUP for its facilities on Lots 2 and 3 and the Tract is simply not persuasive. The Examiner will not repeat the facts here, but they lead beyond a reasonable doubt to the conclusion that a CUP was not required by City code when the synagogue was initially established in 1970 but that a CUP was issued in 1979 for the entire facility on those three parcels. Thus, the argument that this CUP is improper because there is no underlying CUP to modify is without merit.

⁹ The SEPA threshold determination covered all proposed developments on Lots 1, 2, and 3 and the Tract, as required by state SEPA rules. It did not distinguish between which activities were covered by a CUP Revision and which were not subject to a CUP. CP&D has, to a certain extent, used this CUP Revision as a vehicle to formalize conditions that technically might be better considered as associated with the building permit for the Lot 1 development. This CUP provides a public record vehicle to document all conditions associated with the proposals for Lots 1, 2, and 3 and the Tract. HNT has not objected to that approach – neither does the Examiner. In following that path, however, it is important to not forget the distinction between what is legally subject to CUP regulation and what is not.

¹⁰ HNT timely challenged the wording of two of the four mitigation measures imposed by the RMDNS. That was the only appeal from the RMDNS. That challenge was heard during the hearing for this CUP, as required by state rule; a separate, companion Decision has been issued this date for that appeal.

5. One neighbor (Lai) complained that HNT has never properly maintained the area between the edge of its parking lot and the south boundary of Lot 3. The south 10 feet of Lot 3 are encumbered by a recorded water line easement. (Exhibit 10, PDF 6, 8, & 9) The proposed landscape plan does not show any new landscaping in that area (perhaps simply because it is not within Lot 1, the building lot). (Exhibit 10, PDF 22 & 23) Be that as it may, lack of maintenance or simply poor maintenance is not grounds to deny an otherwise compliant permit. Lack of maintenance is an enforcement issue.
6. One witness (Hall) opined that commercial and residential uses should not be co-mingled. Where and under what circumstances different uses may be located in the City depends in large measure upon zoning regulations. Adopted City zoning places Lot 1 in the B zone, a commercial use zone. That it abuts residentially zoned property does not change the fact that it is zoned for commercial uses. The SJCC and the FASPS are located on C-O-zoned property, another commercial zoning district. That residential zoning abuts the C-O district does not change the fact that it is zoned for office-type uses.

A number of non-residential uses are allowed in the R-9.6 zone subject to issuance of a CUP. Private schools are one such non-residential use allowed in the R-9.6 zone. The City's decision to allow schools in a residential zone subject to a CUP review is a legislative choice which cannot be disturbed when reviewing a project permit application.

7. The school/offices building proposal for Lot 1 depends upon shared parking and the 25% stall reduction that is contingently available in shared parking situations. While it is the Examiner (as the new replacement for the former Design Commission) who, along with the City Engineer, has authority to grant the 25% reduction, that authority must be exercised in the context of a design review proceeding, not in the context of the present CUP Revision hearing. CP&D recognizes that "chicken-and-the-egg" situation and has recommended a condition to address it. (Exhibit 1, PDF 17, Recommended Condition 6)
8. HNT's CUP Revision applies to Lots 2 and 3 and the Tract. It is the changes to those lots that are the proper subject of this CUP Revision proceeding. The changes proposed for those lots are quite minimal as described/shown in Findings of Fact 7 & 8, above. The only above-ground changes are the parking lot lights, restriping the parking area in front of the caretaker's residence, repaving the parking lot south of Lot 1, and a short ADA compliant walkway between the new building and the synagogue. None of those changes alter the character of the approved CUP site plan or uses allowed under the CUP.
9. The Examiner finds and concludes that CP&D's analysis of code compliance is thorough and accurate. Since that analysis was not directly challenged by any participant, there is no reason to repeat that analysis here. Rather, the Examiner adopts by reference as if set forth in full CP&D's analysis contained in Exhibit 1 at PDF 3 – 16.
10. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:

- A. The word “applicant” in the recommended conditions will be replaced with “Permittee.” A land use approval, including a variance, “runs with the land.” That means that the approval remains valid regardless of whether the land is subsequently sold. Many people interpret the word “applicant” to refer only to the party which initially sought the approval. In order to ensure that no confusion occurs in the future, a word which means the holder of the approval will be substituted for the word “Applicant” in the conditions (except where Recommended Condition 5 quotes RMDNS mitigation measures whose wording cannot be changed in the context of this application).
- B. Recommended Condition 5 must be revised to contain the language resulting from the companion SEPA appeal.

11. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner **GRANTS** the requested Conditional Use Permit Revision for Lots 2 and 3 and the Tract (as delineated herein) to allow HNT’s church facility (synagogue) to share its parking, circulation system, utility lines, and pedestrian paths with the uses to be located in a new PK-8 school and related offices to be built on the adjoining Lot 1 **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued July 18, 2025.

John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹¹

Joshua Friedmann, unsworn counsel
Audrey Covner
John Hall
Matthew Goldbach

Anjali Grant
Molly McGuire
Winky Lai
Ryan Harriman

¹¹ The official Parties of Record register is maintained by the City’s Hearing Clerk.

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Department of Community Planning & Development a written request for reconsideration within ten calendar days following the issuance of this Decision in accordance with the procedures of MICC 3.40.110. Any request for reconsideration must allege one or more of the following errors: “1. The decision was based in whole or in part on erroneous facts or information; 2. The decision when taken failed to comply with existing laws or regulations applicable thereto; or 3. An error of procedure occurred that prevented consideration of the interests of persons directly affected by the decision.” [MICC 3.40.110(A)] See MICC 3.40.110 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

“Any judicial appeal of the hearing examiner’s decision shall be filed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act (‘LUPA’). The land use petition must be filed within 21 days of the issuance of the hearing examiner’s decision.” [MICC 3.40.100, ¶ 2]

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

CONDITIONS OF APPROVAL CUP24-001 HERZL-NIR TAMID CONSERVATIVE CONGREGATION PERMIT REVISION

This Conditional Use Permit Revision is subject to compliance with all applicable provisions, requirements, and standards of the Mercer Island City Code, standards adopted pursuant thereto, and the following special conditions:

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 Permittee shall obtain any permits from state and federal agencies that are applicable to this project. The Permittee 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 Permittee 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 Revised Mitigated Determination of Nonsignificance (“RMDNS”) for SEP24-003, as amended through the companion appeal process, includes the following Mitigation Measures (numbered as in the RMDNS) which are hereby incorporated into the conditions of approval for the CUP:
 1. Provide a left turn lane from southbound East Mercer Way to the Frontage Road serving the site. The turn lane length shall be designed to accommodate left turn demand during the AM and PM peak hour, and during site peak if it does not coincide with the AM and/or PM peak hour. Where the Washington State Department of Transportation (WSDOT) has permitting authority over the right-of-way, the widths of all lanes of East Mercer Way shall comply with Washington State Department of Transportation (“WSDOT”) standards and procedures (including, without limitation, standards and procedures for deviations). The applicant shall apply for and obtain all necessary approvals that WSDOT may require. To the extent any improvements are within solely City right-of-way (not subject to WSDOT authority, design or otherwise), the widths of all lanes of East Mercer Way shall comply with applicable American Association of State Highway and Transportation Officials (“AASHTO”) standards. Requests for deviations from AASHTO design guidelines shall be supported with written justification that has been stamped and signed by a licensed civil engineer; the City shall have the sole discretion to approve or deny such requests.

The addition of the southbound left turn lane may reduce the length of the adjacent northbound left turn lane at the SE 36th Street/East Mercer Way intersection. If such a reduction in the length of said northbound left turn lane is necessary, the analysis called for by Mitigation Measure 2 shall be undertaken.

2. 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.
3. The left turn lane from southbound East Mercer Way to the Frontage Road serving the site may consequently require narrowing of the northbound lane on East Mercer Way, especially as approaching the Frontage Road serving the site. 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 said East Mercer Way lane width is narrower than existing condition. The design vehicle shall be a S-BUS-40 (school bus). Modify curb radii if reasonably warranted.

4. 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 Permittee 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 minimum of 105 parking spaces shall be available on-site. The Permittee 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 Permittee demonstrates that space does not allow for additional parking. If off-site parking is necessary, the Permittee 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 Permittee 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 Permittee 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 Permittee 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.

DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. Compliance with all local, state, and federal regulations is required.
2. Pursuant to 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. Pursuant to 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.