



# PLANNING COMMISSION

## REGULAR HYBRID MEETING AGENDA

Wednesday, February 22, 2023 at 6:00 PM

### PLANNING COMMISSIONERS

**Chair:** Daniel Hubbell  
**Vice Chair:** Michael Murphy  
**Commissioners:** Kate Akyuz, Carolyn Boatsman  
Michael Curry, Victor Raisys, and Adam Ragheb

### LOCATION

Mercer Island City Hall and via Zoom  
9611 SE 36<sup>th</sup> Street | Mercer Island, WA 98040  
(206) 275-7706 | [www.mercerisland.gov](http://www.mercerisland.gov)

*We strive to create an inclusive and accessible experience. Those requiring accommodation for Planning Commission meetings should notify the Deputy City Clerk's Office 3 days prior to the meeting at (206) 275-7791 or by emailing [deborah.estrada@mercerisland.gov](mailto:deborah.estrada@mercerisland.gov).*

**Registering to Speak:** Individuals wishing to speak live during Appearances, must register with the Deputy City Clerk by 4pm on the day of the Planning Commission meeting. Register at (206) 275-7791 or email [deborah.estrada@mercerisland.gov](mailto:deborah.estrada@mercerisland.gov). Each speaker will be allowed three (3) minutes to speak.

Please reference "Appearances" on your correspondence and state if you would like to speak in person at City Hall or remotely using Zoom. If providing comments using Zoom, staff will permit temporary video access when it is your turn to speak. Please activate the video option on your phone or computer, ensure your room is well lit, and kindly ensure that your background is appropriate for all audience ages. Screen sharing will not be permitted, but documents may be emailed to [planning.commission@mercergov.org](mailto:planning.commission@mercergov.org).

**Join by Telephone at 6:00 pm:** To listen to the meeting via telephone, please call **253.215.8782** and enter **Webinar ID 894 9151 7378**.

**Join by Internet at 6:00 pm:** To observe the meeting via your computer, follow these steps:

- 1) Click this [Link](#)
- 2) If the Zoom app is not installed on your computer, you will be prompted to download it.
- 3) If prompted for Meeting ID, enter **894 9151 7378**.

**Join in person at 6:00 pm:** Mercer Island City Hall, Council Chambers - 9611 SE 36<sup>th</sup> Street

### CALL TO ORDER & ROLL CALL, 6 PM

### PUBLIC APPEARANCES

This is the opportunity for anyone to speak to the Commission about issues of concern.

### REGULAR BUSINESS

1. Planning Commission Meeting Minutes  
**Recommended Action:** Approve the minutes of the January 25, 2023 Meeting.
2. ZTR22-001: Add Schools as Allowed Use in Business Zone
3. ZTR23-001: Allow SCUP for Review of Marina and Swim Facilities

### OTHER BUSINESS

4. Deputy Director's Report
5. Planned Absences for Future Meetings
6. Next Scheduled Meeting – March 22, 2023

### ADJOURNMENT



# PLANNING COMMISSION SPECIAL HYBRID MEETING MINUTES

Wednesday, January 25, 2023

## CALL TO ORDER

The Planning Commission was called to order by Chair Hubbell at 6:04 pm.

## PRESENT

Chair Daniel Hubbell, Commissioners Kate Akyuz, Carolyn Boatsman, Victor Raisys, and Adam Ragheb were present in the Council Chambers.

Vice Chair Michael Murphy and Commissioner Michael Curry participated remotely.

## STAFF PRESENT

Council Chambers: Adam Zack, Senior Planner and Deborah Estrada, Deputy City Clerk

**PUBLIC APPEARANCES** – There were no public appearances.

## REGULAR BUSINESS

### 1. Approve the November 9 and December 14, 2022, Meeting Minutes

A motion was made by Raisys; seconded by Akyuz to:

**Approve the minutes of the November 9, 2022, meeting.**

Approved 7-0

A motion was made by Raisys; seconded by Boatsman to:

**Approve the minutes of the December 14, 2022, meeting.**

Approved 7-0

### 2. Capital Facilities Element and Utilities Element (Second Reading)

Senior Planner Adam Zack reviewed the Capital Facilities Element and Utilities Element with the commissioners and requested feedback. The commission provided policy feedback.

A motion was made by Boatsman; seconded by Akyuz to:

**Propose a new policy 4.3 – consider implementation of programs and project to reduce nonpoint source pollution from existing development.**

Approved 6-1, with Curry voting against.

Capital Facilities Element, Policy 4.2 Amended as follows:

The City should provide affordable and equitable access to public services to all communities, especially the historically underserved.

Capital Facilities Element, Page 2, Paragraph 2 (see staff memo):

The Planning Commission considered whether to delete this paragraph. The Commission agreed by consensus to keep this paragraph in the draft as presented.

Utilities Element, New Policy 4.2:

The City should collaborate with King County to support implementation of regional water quality planning strategies, such as the Clean Water, Healthy Habitat strategic plan.

Utilities Element, New Policy 4.3 (note: this was decided by motion/vote):

Consider Implementation of programs and projects to reduce nonpoint source pollution from existing development.

Utilities Element, Proposed Policy 5.10:

Proposed by Commissioner Boatsman in her January 13, 2023 comment letter. Commissioner Boatsman withdrew the proposal after discussion.

Utilities Element, Amended Policy 8.8:

Establish WCF regulations to minimize noise and visual impacts and ~~or~~ mitigate aesthetic or off-site impacts.

Utilities Element, Amended Policy 3.3:

Require ~~Any~~ septic system serving a site being re-developed ~~must~~ be decommissioned according to county and state regulations, and that the site must be connected to the sewer system.

Utilities Element, New Policy 1.6:

Consider natural asset management as a part of utilities management.

### 3. Docketing Process Discussion (7:45 PM)

Commissioners discussed the proposed docketing process at length. While there was consensus that improvements were needed, there was no consensus on what should be included at this time.

## OTHER BUSINESS

### Planned Absences for Future Meetings

There were no planned absences.

### Next Scheduled Meeting

The next scheduled meeting of the Planning Commission is a February 22, 2023, at 6:00pm.

## ADJOURNED

The meeting adjourned at 8:45 pm

# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercerisland.gov](http://www.mercerisland.gov)



## PLANNING COMMISSION

**TO:** Planning Commission

**FROM:** Alison Van Gorp, Deputy Director

**DATE:** February 15, 2023

**SUBJECT:** ZTR22-001

**ATTACHMENTS:** 1. Herzl Ner-Tamid Docket Request dated September 30, 2021

### SUMMARY

The purpose of this memo is to provide the Planning Commission with the staff recommendation for ZTR22-001. This zoning code amendment was proposed in a Docket Request dated September 30, 2021 (Attachment 1). The docket request proposed amending the Business Zone to allow schools. At the February 22 meeting, staff seeks initial guidance from the commission on the proposed code amendment. Specifically, whether the commission would like to proceed with the amendment as proposed, pursue a revised amendment, or recommend no further action.

### BACKGROUND

Anjali Grant, on behalf of Herzl Ner-Tamid, submitted a docket request for an amendment to Title 19 MICC on September 30, 2021 (Attachment 1). The City Council considered whether to add the proposed amendments to the Community Planning and Development (CPD) work program during a public meeting on December 7, 2021. The City Council approved [Resolution No. 1615](#), which added legislative review of the proposed Business Zone amendment to the final docket.

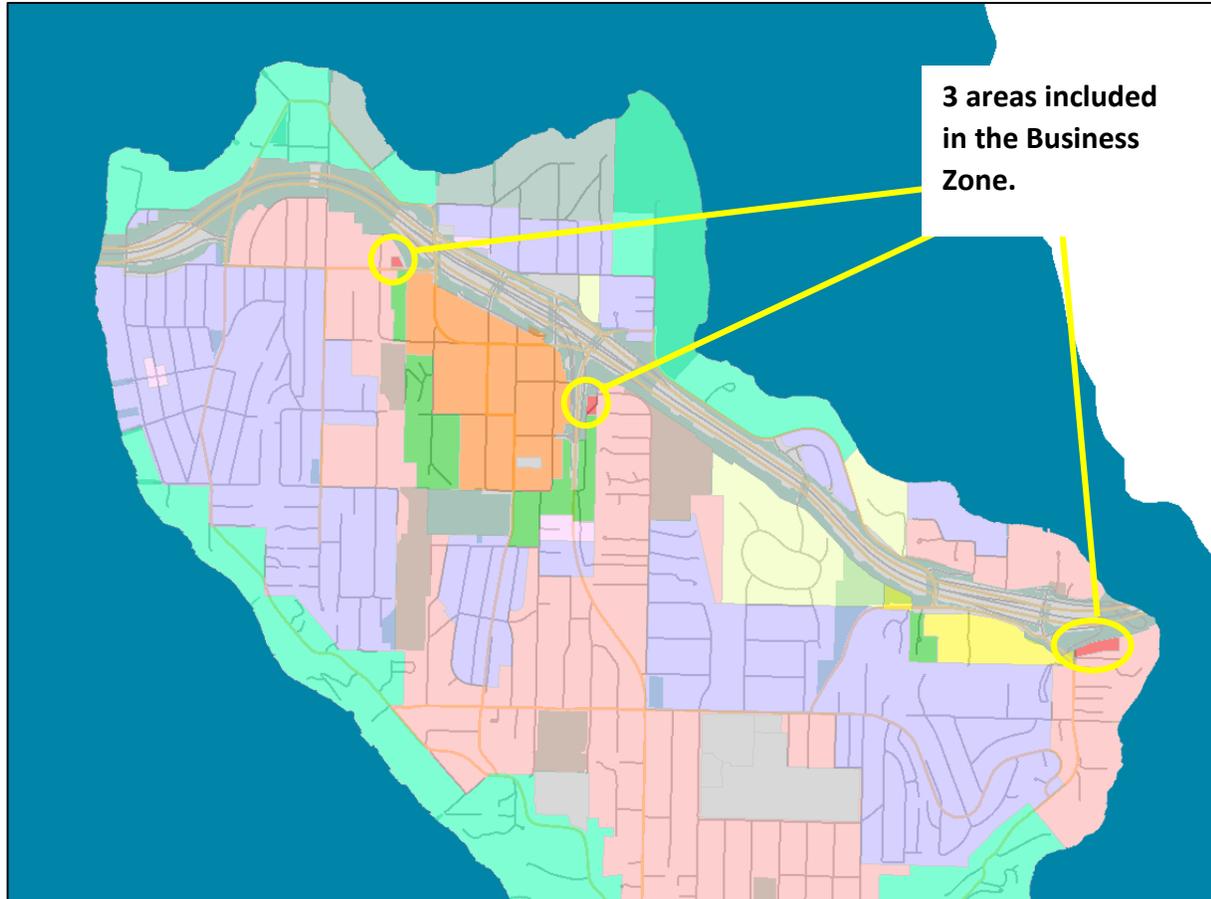
The docket request proposed an amendment to [MICC 19.04.050 Business – B](#). The proposed amendment of MICC 19.04.050 would add public and private schools to the list of permitted uses in the Business Zone. The application states that the proposed amendment would improve the consistency between the development regulations and the Comprehensive Plan (see attachment 1 for details).

### MICC 19.04.050 Business – B

MICC 19.04.050 establishes the permitted uses and other zoning regulations for the Business Zone (B Zone). The B Zone currently permits a variety of commercial uses, including preschools and daycares, but does not allow public or private K-12 schools. The regulations related to setbacks and lot coverage in the B zone are minimal; only a 10-foot setback from public rights-of-way is required. There are no lot coverage or landscaping requirements.

Three areas in Mercer Island are included in the B Zone; all are located just to the south of I-90, with two being adjacent to the Town Center Zone and one being on a portion of the Herzl Ner-Tamid properties and an adjacent Puget Sound Energy (PSE) property near the eastern tip of the Island, as shown in Figure 1 below.

**Figure 1: Zoning Map for Northern Mercer Island**



#### **HERZL NER-TAMID**

The Herzl Ner-Tamid (Herzl) property consists of four parcels, all of which are wholly or partially included in the Business Zone (see Figure 2, below). As shown in Figure 2, three of the subject parcels are split zoned with both the B zone and the R-9.6 zones. [MICC 19.01.040\(G\)\(2\)](#) states:

“Where a boundary between zones divides a lot into two or more pieces, the entire lot shall be deemed to be located in the first zone on the following list in which any part of the lot is located: R-15, R-12, R-9.6, R-8.4, MF-2L, MF-3, MF-2, PI, PBZ, C-O, TC, and B.”

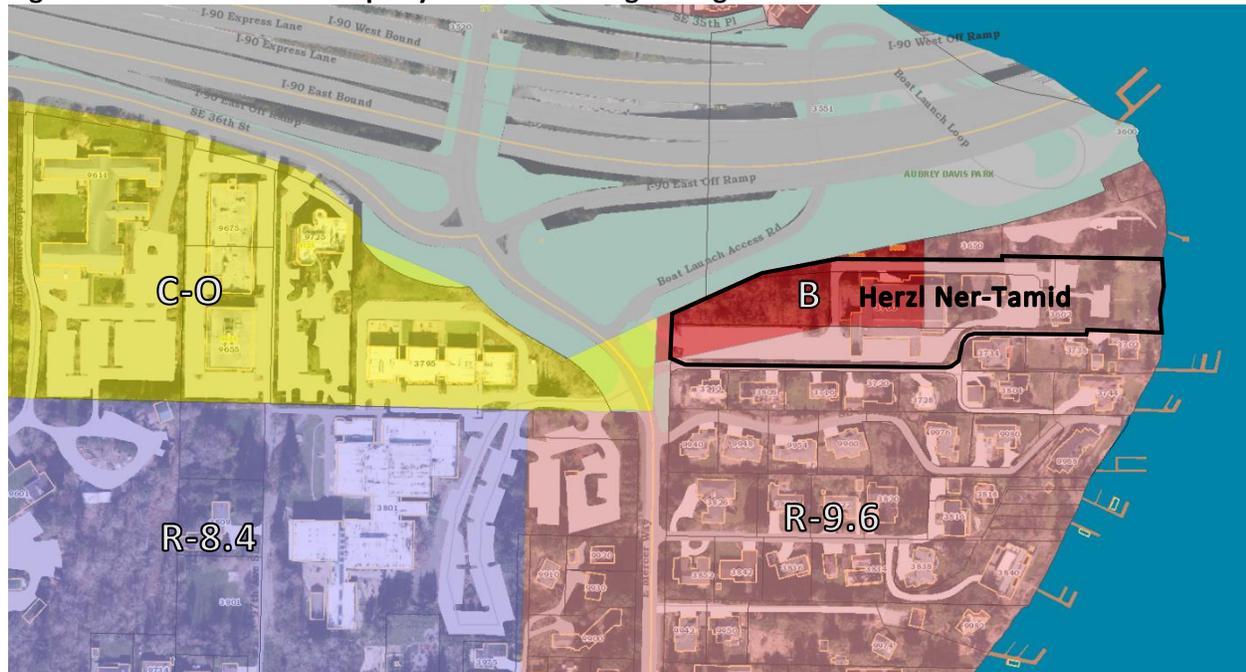
Thus, these lots are subject to the regulations for the R-9.6 zone, including allowed uses. The allowed uses in the R-9.6 zone are established in MICC 19.02.010. Private schools are allowed in the R-9.6 zone by conditional use permit by MICC 19.02.010(C)(2), which states: “Private schools accredited or approved by the state for compulsory school attendance, subject to conditions set out in subsection (A)(4) of this section.” MICC 19.02.010(A)(4) states:

“4. Public schools accredited or approved by the state for compulsory school attendance, subject to design commission review and all of the following conditions:

- a. All structures shall be located at least 35 feet from any abutting property and at least 45 feet from any public right-of-way.
- b. Off-street parking shall be established and maintained at a minimum ratio of one parking space per classroom with high schools providing an additional one parking space per ten students.
- c. A one-fourth acre or larger playfield shall be provided in one usable unit abutting or adjacent to the site.”

In addition to the land use controls in MICC 19.02.010, development in the R-9.6 zone is subject to the development standards in MICC 19.02.020 – Development Standards. This section establishes setbacks, a building height limit, and other standards to ensure that development of different land uses within the zone do not conflict with residential uses.

**Figure 2: Herzl Ner-Tamid Property and Surrounding Zoning**



Herzl has applied for, and the City has conducted, a pre-application meeting for the purpose of providing information related to the feasibility of a potential development proposal under current zoning. The proposal includes the construction of a new office and preschool building on the B-zoned parcel on the northwest portion of the property and a change of use to allow K-12 educational classrooms within the existing structures. Under MICC 19.04.050(B)(25), preschools, nursery schools and day care centers are allowed uses in the B zone. The change of use to allow K-12 classrooms would require a CUP per MICC 19.02.010(C)(2), which allows private schools in the R-9.6 zone by CUP.

The City understands that Herzl is interested in developing their property to accommodate a private school use, in addition to the current religious uses. This proposal is likely to be feasible in some form or fashion

under either scenario (amending the permitted uses in the B zone or pursuing a CUP with existing zoning), subject to meeting the applicable development standards.

## PRIMER ON DEVELOPMENT REGULATIONS

### Permitted Uses

Permitted uses are allowed outright, and do not require a land use permit in addition to other permits required such as a building permit. For example, single-family homes are allowed by right in the R-8.4 zone and they require a building permit, but a separate land use permit is not required.

When a permitted use requires another City authorization (i.e., a building permit), a planner reviews the application for compliance with Title 19 MICC. Authorization of that other permit can be conditioned to ensure that the proposal will conform to the standards established in the development code. Permitted uses can be conditioned or subjected to specific performance standards to offset the potential impacts that use might have on surrounding land uses. A planner's markup on the approved site plan for a building permit application is a common way for building permit approval to be conditioned.

### Conditional Uses

Conditional uses are allowed in a zone but require an additional land use permit application and additional process for review. Conditional uses are subject more requirements or "conditions" that apply to the approval of the use. Conditional use permits require a public hearing before the Hearing Examiner prior to the Hearing Examiner issuing a decision. Typically, conditional land uses are those that are expected to have unique impacts based on the complexity of the proposal. Conditional use permits enable the City to adopt more specific requirements for a particular land use and flexibility to tailor those requirements to address the unique details of a given proposal. However, review of conditional use permits entails a longer permit review process and more staff time than a permitted use.

Conditional uses are sometimes misunderstood as uses that the City can deny authorization for because neighbors oppose the proposed development. If a use is allowed by conditional use and the applicant meets the requirements of the development code and satisfies the conditions of approval, the application cannot be denied. Allowing a land use by conditional use permit does not give the City the discretion to deny authorization of a proposal provided it meets the conditions of approval.

## RECOMMENDATION

There are three alternatives the Planning Commission can consider. At the meeting on February 22, staff would like the Planning Commission to provide input on which of these alternatives is preferred. Once the Planning Commission has provided this input, staff will prepare a draft code amendment and the Planning Commission will hold a public hearing. The three alternatives are provided below.

### **Alternative A: Amend the B Zone to allow public and private schools as a permitted use.**

This alternative was proposed in the docket application submitted by Herzl in 2021 (Attachment 1). The proposal would amend MICC 19.04.050 by adding "Public and private schools" to the list of permitted uses. As a permitted use, schools would be allowed outright, without the need for an additional land use permit. The submitted proposal does not include any special conditions or performance standards for public and private schools. The Planning Commission can propose conditions or performance standards if it expects there to be impacts to neighboring land uses (see Alternative B).

Alternative A Discussion

Alternative A is the least restrictive option considered in this memo because it would allow private schools with minimal development standards. If the City allows public and private schools in the B zone, that use would be allowed in all three of the areas designated B zone (see Figure 1). As proposed by the applicant, the use would be allowed without specific conditions or performance standards.

**Alternative B: Add additional conditions or performance standards.**

This alternative would amend the B zone to allow schools as in Alternative A and would also add conditions and performance standards to mitigate the impacts of these facilities.

As mentioned above, the development standards in the B-zone are very minimal, whereas the neighboring Commercial-Office (C-O) zone provides more robust regulations. The permitted uses in the C-O zone and B Zone are similar, with a variety of commercial and offices uses allowed outright. The C-O zone also permits schools.

An example of a condition that could be added can be found in the (C-O) zone, per MICC 19.04.020(A)(13)(a) public and private schools are permitted subject to the following condition “A one-fourth acre or larger playfield, play surface or open space shall be provided in one usable unit abutting or adjacent to the site.” The C-O zone also requires Design Commission review and contains larger setbacks as well as lot coverage and landscaping standards. A Comparison of the development standards in the B and C-O zones is provided in Figure 3, below. The Planning Commission may want to consider applying similar performance standards to schools if they are to be allowed in the B zone.

**Figure 3. Comparison of Development Standards in B and C-O Zones.**

B Zone MICC 19.04.050	C-O Zone MICC 19.04.020
<p><i>Structure setback requirements.</i> All structures shall have a minimum <b>setback from any public right-of-way of ten feet</b>; except, service station pump islands which shall have a setback from the street line of at least 15 feet to provide for safe access or egress to or from such street. [Emphasis Added]</p>	<p><i>Yard requirements.</i> The minimum <b>setback from all rights-of-way shall be 50 feet</b>. The minimum rear yard setback shall be 50 feet. The sum of the side yards shall be at least 75 feet, with no side yard less than 25 feet; provided, however, that a minimum <b>50-foot setback shall be required from the property line of any adjacent property that is zoned residential or multifamily and developed for such use and no parking or driveways shall be allowed within this setback</b>. The setbacks shall be clearly set out in the site and building plans and upon the building permit application. [Emphasis Added]</p>
<p><i>Building height limit.</i> Maximum allowable building height shall be the lesser of (1) three stories or (2) <b>36 feet</b>, calculated using the method described in MICC <a href="#">19.11.030(A)(3)</a>. [Emphasis Added]</p>	<p><i>Building height limit.</i></p> <ol style="list-style-type: none"> <li>1. Structures shall not exceed <b>36 feet</b> in height, calculated using the method described in MICC 19.11.030(A)(3).</li> <li>2. Outdoor storage facilities shall not exceed 20 feet in height.</li> <li>3. Rooftop building appurtenances, including but not limited to mechanical equipment, chimneys, and roof access structures, may</li> </ol>

	<p>extend up to ten feet above the maximum building height allowed. Rooftop appurtenances shall be located at least ten feet from the exterior edge of any building and shall not cover more than ten percent of the rooftop area. [Emphasis Added]</p>
n/a	<p>Not more than 60 percent of a lot may be covered by buildings, structures, and other impervious surfaces, including outdoor storage areas, provided the exemptions for decks, pavers, patios and walkways detailed in MICC <a href="#">19.02.060(C)</a> shall apply. The building footprint shall occupy no more than 35 percent of the gross lot area.</p>
n/a	<p>A plot, landscape, and building plan showing compliance with these conditions shall be filed with the design commission for its approval, and the construction and maintenance of building and structures and the establishment and continuation of uses shall comply with the approved plot landscape, and building plan.</p>
n/a	<p>A strip of land adjacent to all external boundaries of the site, including any frontage on public rights-of-way, shall be devoted exclusively to the planting, cultivation, growing and maintenance of sight-obscuring trees, shrubs and plant life.</p> <p>If required by the design commission, the maintenance of such protective strips and landscaping shall be guaranteed through a bond or assignment of funds as set out in MICC <a href="#">19.01.060(C)</a>. In lieu of such protective strips, under appropriate circumstances, there may be substituted a use classification of the outer margin of this zone consistent with the use classification of the surrounding area.</p>

If the Planning Commission would like to propose conditions or performance standards in conjunction with permitting schools in the B zone, specific suggestions can be offered at the meeting on February 22. Providing high level input (i.e., “increase the setback for schools” rather than “the setback should be X feet”) would be most helpful at this stage. The Planning Commission should give consideration to appropriate standards for playfields, setbacks, lot coverage, landscaping and whether to require design review. With the Planning Commission’s direction, staff can prepare draft conditions and performance standards for the Commission to consider at the next meeting.

### Alternative B Discussion

Alternative B is more restrictive than Alternative A because it would add additional development standards beyond what is currently required in the B zone. The added development standards could help to offset impacts to neighboring land uses by requiring landscaping, screening, design commission review, and larger setbacks from neighboring residential properties.

### **Alternative C: No Change.**

The City is not required to make an amendment. Making no change would maintain the existing zoning and land use controls for the subject property.

### Alternative C Discussion

Alternative C is the most restrictive option discussed in this memo. With no change to the permitted uses in the B zone, the Herzl parcel that is entirely zoned B could not be developed with a private school. The other split zoned parcels would be subject to the regulations for the R-9.6 zone, which require more conditions and include more detailed development standards as well as a conditional use permit. This alternative has the added benefit of not making any changes to the regulations that apply to other B-zoned properties elsewhere in the City.

### Alternative C-2 Discussion

As an optional follow-on action to Alternative C, the City could also consider a future rezone to the B-zoned parcels on the Herzl property. Changing this zoning to be more consistent with the neighboring C-O and/or R-9.6 zones could have several benefits as outlined below.

- **Rezoning the B-zoned areas to C-O:** Public and private schools are a permitted use with conditions in the C-O zone by MICC 19.04.020(13). The adjacent commercial area across East Mercer Way is zoned C-O and currently contains two private schools. Rezoning the B-zoned Herzl property to C-O would provide consistent development standards across neighboring properties. Furthermore, the C-O zone has additional development standards that would help to offset the impacts to neighboring land uses.
- **Rezoning the B-zoned areas to R-9.6:** Private schools are a conditional use in the R-9.6 zone per MICC 19.02.010(C)(2). The property immediately adjacent to Herzl, across East Mercer Way, has split zoning with C-O and R-9.6, and the private school currently located on the property was permitted via a CUP according to the standards of the R-9.6 zone. Rezoning the B-zoned area to R-9.6 would result in similar private school uses being held to consistent development standards.

If the City would like to pursue rezoning the subject area, it should be proposed for the 2024 docket as a part of the annual docket request process in September 2023.

### **FEEDBACK REQUESTED**

The Planning Commission should indicate which of the three alternatives is preferred. If the Planning Commission prefers Alternative B, they should propose the desired high level development standards or conditions. An example of a high-level proposed development standard would be to include a larger setback. With that level of input, staff can draft options for the Planning Commission to consider during the next discussion of this topic.

**NEXT STEPS**

At the March 22 meeting, the Planning Commission will hold a public hearing and receive public comment. After hearing public comments on the proposed alternatives, the Commission should make a recommendation to the City Council. The recommendation will be transmitted to City Council for review later in the spring.

# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

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PHONE: 206.275.7605 | [www.mercerisland.gov](http://www.mercerisland.gov)



### DOCKET REQUEST FORM

#### PURPOSE

The City of Mercer Island is accepting requests for amendments to its comprehensive plan and development code, to be considered in 2022. Requests to amend the comprehensive plan and development code are placed on a preliminary docket of suggested amendments to be reviewed for initial consideration by the Planning Commission and City Council in the fall of 2021. Requests that are added to the final docket by the City Council will receive additional analysis and consideration in 2022. Comprehensive plan and development code amendment requests require a Docket Request Form.

A complete Docket Request Form shall be submitted to the City of Mercer Island by Friday, October 1st at 5:00 PM via email to [alison.vangorp@mercerisland.gov](mailto:alison.vangorp@mercerisland.gov) or mailed to the City of Mercer Island, Attention Alison Van Gorp, 9611 SE 36th Street, Mercer Island, WA 98040.

Prior to submitting a Docket Request Form, the applicant should meet with planning staff to ensure that applicable decision criteria are adequately addressed, and all necessary information is submitted. Docket Request forms that are determined to be incomplete will not be included in the public review process. If a request is accepted for review on the final docket, a State Environmental Policy Act (SEPA) Checklist may be required to be submitted for review.

For more information regarding this process, please review Mercer Island City Code [19.15.230](#), [19.15.250](#) and [19.15.260](#) or contact Alison Van Gorp, Deputy Director, at [alison.vangorp@mercerisland.gov](mailto:alison.vangorp@mercerisland.gov).

#### CONTACT INFORMATION

Name: Anjali Grant

Address: 3427 Beacon Ave S

Phone: 2065124209

Email: anjali@agrantedesign.com

#### REQUEST INFORMATION

*Please complete a separate Docket Request Form for each item you are requesting to be added to the Docket.*

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner: Herzl Ner-Tamid

Address: 3700 East Mercer Way

County Assessors Parcel No.: 0824059045

Parcel Size (sq. ft.): 26,774 sf

Is this request for a Comprehensive plan amendment or a development code amendment?

Comprehensive Plan amendment

Development Code amendment

Would you like to submit a suggestion for a comprehensive plan or development code amendment, or is this an application for a specific amendment (see [MICC 19.15.250\(C\)\(2\)](#) for more information)?

Suggestion

Application

*Please note:* applications are subject to applicable permit fees. Please see our [Land Use Approval fee schedule](#) for applicable fees.

**REQUEST DESCRIPTION**

Please provide a clear description of proposal (please add additional paper or attachments if needed):  
Please see attached document.

Signature: 

Anjali Grant  
2021.09.30 08:29:42-07'00'

Date: 9/30/2021

## **DOCKET REQUEST FORM REQUEST DESCRIPTION**

***This Code Amendment proposes that the Mercer Island Municipal Code, Chapter 19 be amended to be consistent with the Mercer Island Comprehensive plan by allowing public and private schools as a permitted use in the B Business zone. (19.04.050 Business – B; B. Uses Permitted).***

There are three areas of Mercer Island where the B zone exists, all just south of the I-90 corridor: at SE 24th Street near 74th Avenue SE; at 81st Place SE and SE 28th Street; and at East Mercer Way, near SE 38th Street. The first two areas are on the borders of the Town Center; the third area is an extension of the Commercial CO zone to the west.

***Per 19.15.250, D of the Mercer Island Municipal Code, the city may approve or approve with modifications a proposal to amend this code only if:***

1. The amendment is consistent with the comprehensive plan; and
2. The amendment bears a substantial relation to the public health, safety, or welfare; and
3. The amendment is in the best interest of the community as a whole.

## **CONSISTENCY WITH COMPREHENSIVE PLAN**

Section 19.04.050 of the Mercer Island Municipal Code, as written, is in conflict with the Comprehensive Plan.

The current Comprehensive Plan explains the CO and B designations as follows (emphasis added):

*The commercial office land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land use will be predominantly commercial office.*

**Complementary land uses (e.g. healthcare uses, schools, places of worship, etc.) are also generally supported within this land use designation.**

Current Mercer Island Code Section 19.04.050 conflicts with this designation as it does not allow for schools.

In addition, the Comprehensive Plan includes the phrase "Education is the Key" as one of its community values and states both that Mercer Island will continue to

provide a wide range of educational services for the community's varied population, and that ***educational and religious organizations are important and integral elements of the community character and fabric***. Uses in commercial zones outside the town center are meant to be compatible with the residential character of the community; education is described as a compatible use that is encouraged.

As such, the proposed Code Amendment is consistent with the description of the Land Use designation 'Commercial Office,' as described in the Comprehensive Plan, which supports schools as a complementary use to commercial offices, as well as the educational values outlined in the Comprehensive Plan. The commercial office land use designation, as described in the comprehensive plan and accompanying map, includes both CO and B zones. Further information supporting this amendment is included as ***Appendix A*** to this document.

***SUBSTANTIAL RELATION TO THE PUBLIC HEALTH, SAFETY, OR WELFARE***

Education is vital to the health, safety and well-being of our families and is one of Mercer Island's stated community values. Similar permitted uses in the B zone include theaters; commercial recreational areas; preschools and day care centers for children up to age 12. Allowing K-12 schools in this zone increases the likelihood that future development will support the health, safety and well-being of the public.

***IN THE BEST INTEREST OF THE COMMUNITY AS A WHOLE***

The proposed Code Amendment will retain the residential character of the neighborhood. Similar permitted uses in the B zone include theaters; commercial recreational areas; preschools and day care centers for children up to age 12. Adding K-12 schools to the list of permitted uses will bring this zone into alignment and consistency with the comprehensive plan and will likely have less environmental impact on the neighborhood than many of the uses already permitted. A school community is able to implement traffic reduction strategies, such as carpooling, bus and van use, and staggered start times, and make lasting community connections.

## **APPENDIX A: ADDITIONAL INFORMATION TO SUPPORT THE REQUESTED CODE AMENDMENT**

Applicable sections of the *Mercer Island Comprehensive Plan 2015-2035* are excerpted below, with added emphasis:

### **II. LAND USE ELEMENT**

Community Values

#### **Education is the Key**

**The community and its public and private institutions are committed to provide excellence in education.**

How the Values Are Manifested

Community Services: Pride & Spirit; Excellence in Education; Recreational & Cultural Opportunities

Mercer Island will continue to provide a **wide range of education, cultural and municipal services for the community's varied population. Balanced and flexible programs will be necessary to meet the community's evolving needs in education, recreation and cultural enjoyment.** The community will maintain its broad range of quality basic services, including public safety, human services, physical development and utilities. At the same time, community leaders recognize that delivery of these services will take place in an arena of limited resources and heightened competition for tax revenues.

Residential Land Use: Residential; Environmental Stewardship; Leadership; Citizen Involvement; Neighborhood Pride

**Civic, recreation, education and religious organizations are important and integral elements of the community character and fabric. Their contribution and importance to the established community character should be reflected and respected in land use permit processes.**

**IV. LAND USE ISSUES**

Outside the Town Center

(3) Commercial Office and PBZ zones must **serve the needs of the local population while remaining compatible** with the overall residential character of the community.

**V. LAND USE POLICIES**

Outside the Town Center

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**.

15.4 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**.

**VII. LAND USE DESIGNATIONS**

Table

Land Use Designation	Implementing Zoning Designations	Description
Commercial Office	CO B	The commercial office land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land use will be predominantly commercial office. <b><u>Complementary land uses</u></b> (e.g. healthcare uses, <b><u>schools</u></b> , places of worship, etc.) <b><u>are also generally supported within this land use designation</u></b> .

**EXISTING SCHOOLS AND ZONING**

**K-12 SCHOOLS ON MERCER ISLAND**

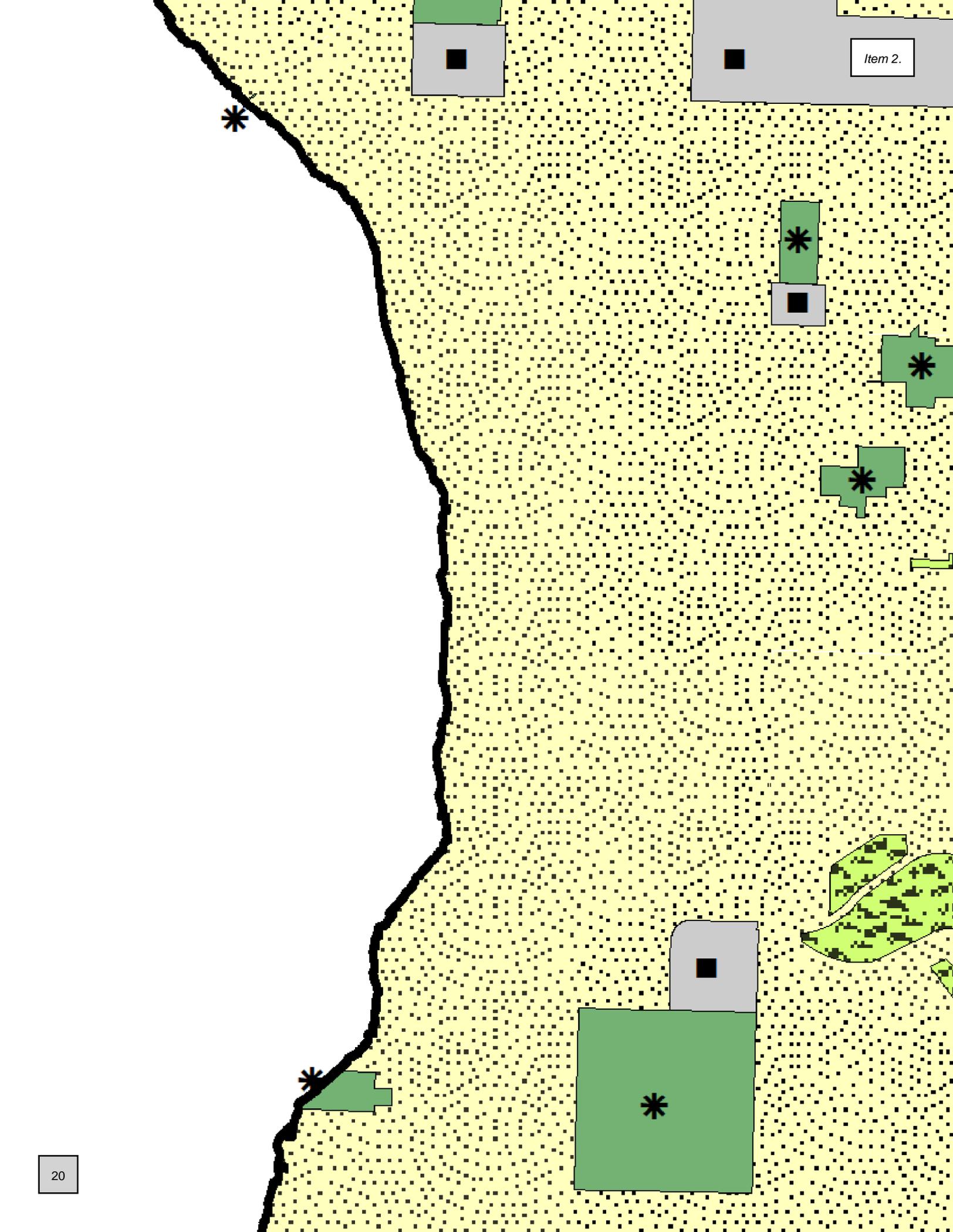
Approximately 5,200 students currently attend school on the island.

- Northwest Yeshiva High School  
50 students, private co-ed college prep
- West Mercer Elementary School  
428 students, public (MISD)
- Lakeridge Elementary  
404 students, public (MISD)
- Northwood Elementary School  
414 students, public (MISD)
- Islander Middle School  
1,030 students, public (MISD)
- French American School of Puget Sound  
426 students, private preK-8
- Island Park Elementary School  
367 students, public (MISD)
- Yellow Wood Academy  
123 students, private K-12
- St. Monica School  
201 students, private preK-8
- Privett Academy  
180 students, private 6-12
- Mercer Island High School  
1,557 students, public (MISD)

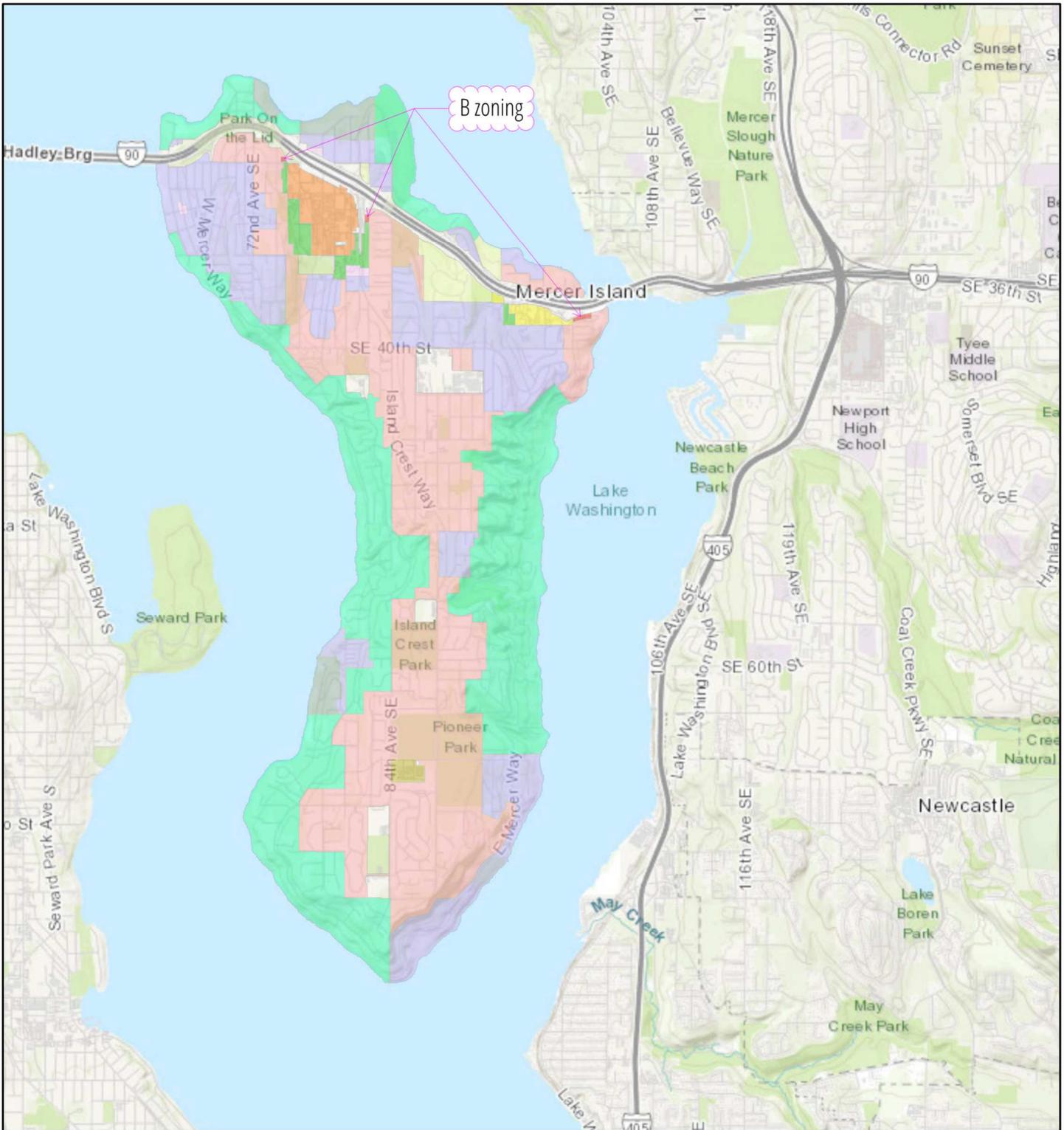
Of those, the French-American School is in the CO zone; the MISD schools are in dedicated Public Institution zones within residential neighborhoods; and the rest are in residential zones.

Below is a table showing where K-12 schools are a permitted use, where a conditional use, and where they are not allowed. They are allowed as a conditional use in all residential zones, which supports the Comprehensive Plan definition of a **compatible use**. They are not allowed in the Town Center or in the Planned Business Zone, as more dense retail environments are encouraged. They are allowed in CO commercial office zones, supporting the Comprehensive Plan definition of a **compatible use**, subject to design commission review and providing ¼ acre of usable open space abutting or adjacent to the site. We are seeking to add schools as a permitted use in the B Business zone.

Zones	Public schools	Private schools
R-8.4, R-9.6, R-12, and R-15	<p>19.02.010 A. PERMITTED</p> <p>4. Public schools accredited or approved by the state for compulsory school attendance, subject to design commission review and all of the following conditions:</p> <p>a. All structures shall be located at least 35 feet from any abutting property and at least 45 feet from any public right-of-way.</p> <p>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 10 students.</p> <p>c. A one-fourth acre or larger playfield shall be provided in one usable unit abutting or adjacent to the site.</p>	<p>19.02.010 C. CONDITIONAL</p> <p>C. Conditional Uses. The following uses are permitted when authorized by the issuance of a conditional use permit when the applicable conditions set forth in this section and in MICC 19.15.040 have been met:</p> <p>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.</p>
MF-2, MF-2L, MF-3	<p>19.03.010 B.1., C1., D.1.</p> <p>Any use permitted in zones R-8.4, R-9.6, R-12, and R-15.</p>	
PBZ	<p>19.04.010 B. Uses Permitted.</p> <p>Not listed as a Permitted Use.</p>	
CO	<p>19.04.020 A. Uses Permitted.</p> <p>13. Public and private schools accredited or approved by the state for compulsory school attendance, subject to design commission review and the following conditions:</p> <p>a. A one-fourth acre or larger playfield, play surface or open space shall be provided in one usable unit abutting or adjacent to the site.</p>	
B	<p>19.04.050 B. Uses Permitted.</p> <p>Not listed as a Permitted Use.</p>	
Town Center (all subareas)	<p>19.11.020 Land uses, Use Table by Subarea</p> <p>Neither a Permitted nor a Conditional use.</p>	



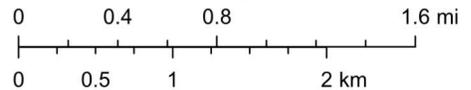
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Zoning	R-12	MF-3	P
B	R-15	R-8.4	
C-O	MF-2	R-9.6	
PBZ	MF-2L	TC	



Mercer Island GIS, City of Bellevue, WA, Bureau of Land Management, Esri Canada, Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS

# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercerisland.gov](http://www.mercerisland.gov)



## PLANNING COMMISSION

**TO:** Planning Commission

**FROM:** Molly McGuire, Planner

**DATE:** February 15, 2023

**SUBJECT:** ZTR23-001

**ATTACHMENTS:** A. Mercer Island Beach Club (MIBC) Docket Request dated September 29, 2022

### SUMMARY

The purpose of this memo is to provide the Planning Commission with the staff recommendation for ZTR23-001. This zoning code amendment was proposed in a Docket Request dated September 29, 2022 (Attachment A). The docket request proposed an amendment to the [Shoreline Master Program \(SMP\) Chapter 19.13 Mercer Island City Code \(MICC\)](#). This staff report focuses on and provides the staff recommendation regarding the request, and an additional proposed amendment to MICC 19.13.010(E), Relationship to other federal and state law. The proposed amendments would establish consistency between the SMP and state law, specifically [Chapter 173-27 WAC](#) for Shoreline Management Permit and Enforcement Procedures, and allow uses not classified to be authorized subject to approval of a shoreline conditional use permit consistent with the requirements in [WAC 173-27-160](#). At the February 22 meeting, staff seeks initial guidance from the commission on the proposed code amendment. Specifically, whether the commission would like to proceed with the amendment as proposed, pursue a revised amendment, or recommend no further action.

### BACKGROUND

Mercer Island Beach Club (MIBC) submitted a docket request on September 29, 2022. This proposal, along with several other docket requests were considered by the Planning Commission and City Council. The City Council considered whether to add the proposed amendments to the Community Planning and Development (CPD) work program during a public meeting on December 6, 2022. The City Council approved [Resolution No. 1641](#), which added legislative review of the proposed SMP amendment to the final docket.

The docket request proposed an amendment to a footnote in MICC 19.13.040 - Table B Shoreland Uses Waterward of the Ordinary High Water Mark. The purpose of the amendment proposed by the MIBC is to allow for any existing private club or residential community serving more than 10 families to use a shoreline conditional use permit for the redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses. The MIBC desires to substantially update and reconfigure their moorage and swimming dock facilities, however the current Note

in MICC 19.13.040 Table B does not allow a path forward for permitting the proposed project as currently designed. The proposed code amendment would enable the MIBC and similar organizations to apply for a shoreline conditional use permit for permitting these types of uses.

Staff recommend adding a second proposed amendment to correct an inconsistency with state law, which is directly tied to the amendment proposed by the MIBC. The proposed amendments to the SMP would result in the following changes:

- Revision of MICC 19.13.040 - Table B Shoreland Uses Waterward of the Ordinary High Water Mark Notes, “A use not listed in this table is not permitted within shorelands”.
- Adoption of a reference to Chapter 173-27 Washington Administrative Code (WAC) Shoreline Management Permit and Enforcement Procedures to MICC 19.13.010(E), Relationship with other federal and state law.

The purpose of the amendments proposed by city staff is to provide consistency between the SMP and state law on shoreline permit processing procedures and requirements. The SMP does not currently include permitting requirements or procedures for shoreline permits, such as shoreline conditional use permits and shoreline variances. Establishing the relationship between the SMP and the Washington Administrative Code creates clear requirements for reviewing and processing all shoreline permits, consistent with state law.

#### Shoreline Management Act

The WA Legislature adopted the Shoreline Management Act (SMA) in 1971. The SMA requires cities and counties to establish local SMPs to regulate development in areas within 200 feet of the waters of the state. The SMA is intended to address three major policy goals: 1) encourage water-dependent uses; 2) protecting the shoreline natural resources; and 3) promoting public access to the shoreline. One of the primary requirements of the SMA is to ensure no net loss of shoreline ecological functions and values, meaning regulations are designed to preserve the shoreline environment and allow for mitigating potential environmental impacts.

Adoption of local SMPs is subject to review by the WA Department of Ecology (Ecology). Ecology assists local governments throughout the drafting of SMP amendments to ensure that the proposed amendments are consistent with the SMA. Staff is working with Ecology to review the currently proposed SMP amendments. This will include a joint public hearing with the Mercer Island Planning Commission and Ecology prior to the Planning Commission making a recommendation to the City Council.

#### **CHAPTER 19.13 MICC - Shoreline Master Program**

The current Shoreline Master Program (SMP) was adopted by the City of Mercer Island in 2015 following an extensive update between 2009 and 2015. The SMP regulates development in the shoreline jurisdiction, that area within 200 feet of the ordinary high water mark (OWHM) of Lake Washington. The OWHM is defined in MICC 19.16.010 as, “The point on the shore [ ... ] where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland [ ... ].”

**MICC 19.13.040 Table B – Shoreland Uses Waterward of the Ordinary High Water Mark**

MICC 19.13.040 establishes what uses are allowed in the shoreline jurisdiction and the shoreline permits required for each use. Table B specifies the shoreline uses and developments which may take place or be conducted waterward of the OHWM within the designated environments of the shoreline jurisdiction. Shoreline uses are classified by one of the following:

- CE: Permitted via shoreline categorically exempt
- P: Permitted use
- P-1: Uses permitted when authorized by a conditional use permit for the applicable zone shall also require a shoreline substantial development permit and a shoreline plan in compliance with MICC 19.13.020(C)
- SCUP: Shoreline conditional use permit
- NP: Not a permitted use

The uses classified in Table B - Shoreland Uses Waterward of the Ordinary High Water Mark are as follows:

SHORELAND USE WATERWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Moorage facilities and covered moorages 600 square feet or less	P	P
Covered moorage larger than 600 square feet	SCUP	SCUP
Floating platforms	P	P
Mooring piles, diving boards and diving platforms	P	P
Boat ramp	P	P
Boat houses	NP	NP
Floating homes	NP	NP
Public access pier, dock, or boardwalk	P	P
Utilities	P	P
Public transportation facilities including roads, bridges, and transit	P	P
Transit facilities including light rail transit facilities	P	NP
Dredging and dredge material disposal	P	P
Breakwaters, jetties, and groins (except those for restoration of ecological functions)	NP	NP
Restoration of ecological functions including shoreline habitat and natural systems enhancement	P	P
<p>Notes:                      A use not listed in this table is not permitted within shorelands.                      A use permitted by this table shall meet all other applicable regulations, including, but not limited to, being an allowed use in the applicable zone.</p>		

The amendment proposed by MIBC is related to the footnote: “A use not listed in this table is not permitted within shorelands” and would allow the MIBC, and other similar facilities, to redevelop their existing moorage and swimming dock facilities. The proposed footnote amendment would read:

A use not listed in this table is not permitted within shorelands, provided, however, that this footnote does not preclude any existing private club or residential community serving more than 10 families from using a Shoreline Conditional Use Permit process for

redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses, all where the applicable development standards are to be determined on a case-by-case basis.

The amendment as proposed would not be consistent with the state law. This amendment would end up allowing any existing private club or residential community to redevelop unlisted uses by SCUP without establishing a necessary link to the state law. Staff proposes an alternative amendment to the footnote that would allow the types of shoreline developments proposed and ensure that the SMP remains consistent with state law. The further discussion of the staff proposed alternative is included under alternative B below. The staff alternative would read:

A use not listed in this table is not permitted within shorelands. Other uses which are not classified or set forth in this chapter may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of WAC 173-27-160 and the shoreland development standards contained in this chapter.

#### **MICC 19.13.010(E) – Relationship with other federal and state law.**

MICC 19.13.010(E) establishes the Shoreline Master Program’s authority and relationship with federal and state law. The relationship is currently described as follows:

“The provisions of this chapter shall not relieve any responsibility to comply with other federal and state laws or permits. All work at or waterward of the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources or Washington Department of Ecology.”

The relationship does not explicitly provide a connection to Chapter 173-27 WAC for Shoreline Management and Enforcement Procedures. The Mercer Island SMP does not currently contain local standards for processing shoreline permits, therefore, clarifying this connection is necessary to provide a clear path forward on reviewing various shoreline permit applications, such as shoreline conditional use permits resulting from the amendment to MICC 19.13.040 Table B - Notes above.

Staff proposes the following amendment to MICC 19.13.010(E) to clarify the relationship between the City’s SMP and state law:

The provisions of this chapter shall not relieve any responsibility to comply with other federal and state laws or permits. The shoreline management permit and enforcement procedures contained within Chapter 173-27 WAC as presently constituted or hereinafter amended, are adopted by reference. All work waterward of the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, or Washington Department of Ecology.

#### **ALTERNATIVES**

There are three alternatives the Planning Commission can consider for ZTR23-001:

#### **Alternative A: Amend MICC 19.13.040 Table B – Shoreland Uses Waterward of the Ordinary High Water Mark as proposed.**

Alternative A would revise the footnote for MICC 19.13.040 Table B “A use not listed in this table is not permitted within shorelands” as proposed by the MIBC to allow existing private clubs or residential communities serving more than 10 families to use the SCUP process for redevelopment of moorage facilities, floating platforms, mooring piles, diving boards, diving platform, swim areas and other accessory uses. The proposed footnote amendment would read:

A use not listed in this table is not permitted within shorelands, provided, however, that this footnote does not preclude any existing private club or residential community serving more than 10 families from using a Shoreline Conditional Use Permit process for redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses, all where the applicable development standards are to be determined on a case-by-case basis.

**Benefits:** Existing private clubs or residential communities serving more than 10 families would be authorized to redevelop their facilities with the approval of a shoreline conditional use permit.

**Drawbacks:** Alternative A does not contain language that is consistent with existing state law for processing uses not listed in the SMP. See Alternative B, which would provide a similar outcome for facilities like the MIBC, but also includes the language needed to remain consistent with state law.

### **Alternative B: Amend MICC 19.13.040 Table B - Shoreland Uses Waterward of the Ordinary High Water Mark Note and Amend MICC 19.13.010(E) as proposed by City Staff (Staff Recommended).**

Alternative B would revise the footnote “A use not listed in this table is not permitted within shorelands” as proposed by Staff to language that is consistent with existing state law. WAC 173-27-160(3) states that “other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program”. The proposed staff alternative amendment would read:

A use not listed in this table is not permitted within shorelands. Other uses which are not classified or set forth in this chapter may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of WAC 173-27-160 and the shoreland development standards contained in this chapter.

Alternative B would also amend MICC 19.13.010(E) to include an adoption by reference to Chapter 173-27 WAC Shoreline Management and Enforcement Procedures to establish the relationship with existing state law and provide clear procedures for processing various shoreline permits. The amendment to MICC 19.13.010(E) would read:

The provisions of this chapter shall not relieve any responsibility to comply with other federal and state laws or permits. The shoreline management permit and enforcement procedures contained within Chapter 173-27 WAC as presently constituted or hereinafter amended, are adopted by reference. All work waterward of the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers, Washington Department of

Fish and Wildlife, Washington Department of Natural Resources, or Washington Department of Ecology.

**Benefits:** Amending the Table B Notes and MICC 19.13.010(E) to be consistent with existing state law would result in the same outcome for the applicant and other similar facilities and provide a clear path forward for permit processing. The amendment would also provide flexibility in the application of use regulations in a manner consistent with the policies of RCW [90.58.020](#).

**Drawbacks:** Amending the Table B Notes to allow for uses not classified or listed in the SMP to be authorized subject to a shoreline conditional use permit could result in proposed uses that the City has not considered. Any proposed use that is not listed would however need to go through the conditional use permit process to ensure there are no detrimental impacts to surrounding uses and that the proposal is consistent with the City's comprehensive plan, per the requirements in WAC 173-27-160. Staff cannot identify any drawbacks to adopting by reference state law for shoreline management and enforcement procedures.

### **Alternative C: Do not amend MICC 19.13.040 Table B Notes or MICC 19.13.010(E).**

Making changes to MICC 19.13.040 Table B Notes and MICC 19.13.010(E) is a local choice. Amending this code section is not required by state or local law. The City can elect to make no changes at this time.

**Benefits:** Alternative C would not allow for unforeseen uses to be authorized subject to a shoreline conditional use permit and would not establish a relationship between the SMP and state law for shoreline permit processing procedures.

**Drawbacks:** Making no change to MICC 19.13.040 Table B Notes or MICC 19.13.010(E) would not provide consistency with state law or clarity on shoreline permit processing. It would also prevent the MIBC from proceeding with reconfigurations to their docks as currently designed.

## **STAFF RECOMMENDATION**

**Alternative B to amend MICC 19.13.040 Table B Footnote and 19.13.010(E) as proposed by City Staff.** MICC 19.13.040 Table B - Shoreland Uses Waterward of the Ordinary High Water Mark Footnote does not currently allow for uses not listed to be permitted through any means. The proposed amendment would provide flexibility in the application of use regulations in a manner consistent with state law, including the policies of RCW [90.58.020](#).

MICC 19.13.010(E) does not currently establish a relationship with shoreline management and enforcement procedures. The purpose of this proposed amendment is to provide clarity for City staff and future applicants for reviewing shoreline permits such as shoreline conditional use permits and shoreline variances, that do not have local requirements through the City's SMP. Taken together, the amendments proposed in Alternative B would better articulate the relationship between the City's SMP and state law while also allowing the MIBC to redevelop their aquatic facilities in a manner consistent with the City's SMP.

# DOCKET REQUEST FORM

The following information is required to be included. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

### APPLICANT INFORMATION

Name: Mercer Island Beach Club

Address: 8326 Avalon Drive

Phone: (206) 232-3125

Email: gardner.morelli@gmail.com (using my email for purposes of this application vs. General Mgrs.)

### AGENT/CONSULTANT/ATTORNEY: (COMPLETE IF PRIMARY CONTACT IS DIFFERENT FROM APPLICANT)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### REQUEST INFORMATION

*Please complete a separate Docket Request Form for each item you are requesting to be added to the Docket.*

Is this request related to a specific property or zone? Yes  No

If yes, please complete the following information:

Property Owner: Mercer Island Beach Club

Address: 8326 Avalon Drive

County Assessors Parcel No.: 312405-9003

Parcel Size (sq. ft.): 327518

If the application is submitted by an agent/consultant/attorney, please demonstrate that that the application has been submitted with the consent of all owners of the affected property. For example, attach a signed letter providing consent.

Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan amendment  Development code amendment

Would you like to submit a suggestion for a comprehensive plan or development code amendment, or is this an application for a specific amendment (check boxes)? Please note: applications are subject to [applicable permit fees](#).

Suggestion  Application

**DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS**

Please attach a narrative responding to the following questions. Attach any additional sheets, supporting maps or graphics. Answer each question separately and reference the question number in your answer. **The application will be considered incomplete without a narrative answering all of the following questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
  - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
  - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
  - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: how does the proposal align with the goals of the City's Comprehensive Plan?

Signature: Gardner Merelli Date: 9/29/2022

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**DOCKETING CRITERIA (MICC 19.15.230 (E)):**


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*Docketing criteria.* The following criteria shall be used to determine whether a proposed amendment is added to the final docket in subsection D of this section:

1. The request has been filed in a timely manner, and either:
  - a. State law requires, or a decision of a court or administrative agency has directed, such a change; or
  - b. All of the following criteria are met:
    - i. The proposed amendment presents a matter appropriately addressed through the comprehensive plan or the code;
    - ii. The city can provide the resources, including staff and budget, necessary to review the proposal, or resources can be provided by an applicant for an amendment;
    - iii. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;
    - iv. The proposal will serve the public interest by implementing specifically identified goals of the comprehensive plan or a new approach supporting the city's vision; and
    - v. The essential elements of the proposal and proposed outcome have not been considered by the city council in the last three years. This time limit may be waived by the city council if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment.

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**COMPREHENSIVE PLAN DECISION CRITERIA (MICC 19.15.230 (F)):**


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*Decision criteria.* Decisions to amend the comprehensive plan shall be based on the criteria specified below. An applicant for a comprehensive plan amendment proposal shall have the burden of demonstrating that the proposed amendment complies with the applicable regulations and decision criteria.

1. The amendment is consistent with the Growth Management Act, the countywide planning policies, and the other provisions of the comprehensive plan and city policies; and
  - a. There exists obvious technical error in the information contained in the comprehensive plan; or
  - b. The amendment addresses changing circumstances of the city as a whole.
2. If the amendment is directed at a specific property, the following additional findings shall be determined:
  - a. The amendment is compatible with the adjacent land use and development pattern;
  - b. The property is suitable for development in conformance with the standards under the potential zoning; and
  - c. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.

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**DEVELOPMENT CODE AMENDMENT DECISION CRITERIA (MICC 19.15.250 (D)):**


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*Criteria.* The city may approve or approve with modifications a proposal to amend this Code only if:

1. The amendment is consistent with the comprehensive plan; and
2. The amendment bears a substantial relation to the public health, safety, or welfare; and
3. The amendment is in the best interest of the community as a whole.

**Narrative – Attached to Mercer Island Beach Club Docket Request  
September 23, 2022**

Listed below in *Italics* are the criteria stated on the City’s Docket Request form, followed by the Mercer Island Beach Club’s response.

*Please attach a narrative responding to the following questions. Attach any additional sheets, supporting maps or graphics. Answer each question separately and reference the question number in your answer.*

*The application will be considered incomplete without a narrative answering all of the following questions.*

1. *Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.*
  - a. *Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.*

**RESPONSE:** The Mercer Island Beach Club (MIBC or Club) seeks to update and rebuild its current marina to meet modern, more environmentally friendly standards. While the MIBC could, and still may, file permit applications under current codes, the City Staff has suggested that pursuing a code amendment is also a good option. Therefore, MIBC requests an amendment to a note found at the end of MICC 19.13.040, Table B, Shoreland Uses Waterward of the Ordinary High Water Mark.

- b. *If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with strikeouts.*

**RESPONSE:** The MIBC seeks to amend one footnote found at the end of MICC 19.13.040, Table B, Shoreland Uses Waterward of the Ordinary High Water Mark as follows:

Notes:

A use not listed in this table is not permitted within shorelands, provided, however, that this footnote does not preclude any existing private club or residential community serving more than 10 families from using a Shoreline Conditional Use Permit process for the redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses, all where the applicable development standards are to be determined on a case-by-case basis.

A use permitted by this table shall meet all other applicable regulations, including, but not limited to, being an allowed use in the applicable zone.

*c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.*

RESPONSE: The MIBC does not seek a map amendment.

2. *How does the proposal benefit the community or the environment?*

RESPONSE: The MIBC's project proposal as well as this code amendment will benefit both the community and the environment. For example, the marina renovation and reconfiguration will benefit the community, including the significant portion of the Island's families who are MIBC members, by repairing damaged and inaccessible portions of the marina and updating other portions of the marina so as to better protect moored boats, and improve access to the Club's swim area, while at the same time benefitting the Island and surrounding communities by opening and enhancing fish habitat along the shoreline and throughout the marina. However, in direct response to this Docket Request criterion, only the benefits to the community and the environment from the proposed code amendment are described below.

The primary benefit of this code amendment is to clarify the City's Shoreline Master Program (SMP) for all of the community and to ensure that the SMP code provisions are consistent with the City's Comprehensive Plan and State law.

The City of Mercer Island's SMP Comprehensive Plan policies and regulations combine and treat together two similar shoreline uses that are provided for in State law. Under State law, "recreational development" is a type of shoreline use that includes "commercial and public facilities designed and used to provide recreational opportunities to the public." WAC 173-26-241(3)(i). In contrast, "boating facilities" are a separate type of private dock and moorage, albeit specifically excluding docks serving four or fewer single-family residences. WAC 173-26-241(3)(c).

MIBC representatives and City staff have met, separately, with the Washington State Department of Ecology (Ecology). As the Club understands the situation, a use like the MIBC's marina would typically be regulated in a local SMP as a "boating facility," and all development standards would be set on a case-by-case basis. Case-by-case determination of development standards is used because it is difficult to craft regulations to govern the wide variety in marina design resulting from unique shoreline geography, wave action and weather patterns. Since "boating facilities" were not separately described in the SMP regulations, MIBC presumes that its redevelopment was intended to be permitted using the catchall State law allowances for Shoreline Conditional Use Permits.<sup>1</sup> Specifically, WAC 173-26-241(2)(b) calls for conditional use permits to be used to

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<sup>1</sup> The opposite presumption that the use is prohibited is not consistent with State law, because State law, RCW 90.58.020, sets a policy to prefer water-dependent uses, not prohibit them.

permit unanticipated uses that are not otherwise classified in that SMP, and WAC 173-27-160(3) also allows uses not classified in the SMP to be authorized as conditional uses.

However, when the City's current Shoreline Master Program was adopted, MICC 19.13.040, Table B, Shoreland Uses Waterward of the Ordinary High Water Mark, included a footnote stating "a use not listed in this table is not permitted within shorelands." Due to that footnote, City Staff is concerned now about how to process the MIBC's desired redevelopment permits and whether or not a Shoreline Conditional Use Permit can be used, as MIBC contends it must under State law. MIBC anticipates similar concerns may be raised in the event the Mercerwood Shore Club, or Covenant Shores seeks to redevelop their favored, water-dependent uses.

Thus, community benefits of the proposed code amendment include not only assisting the permitting process for the MIBC and the significant number of residents who are its members, but also assuring that other private marinas on the island which serve a significant number of residents, such as the marina at the Mercerwood Shore Club and the marina at Covenant Shores, will now have the same clarified permitting process described in code.

The scope of the amendment includes reference to facilities used by more than 10 families. The reason for the dividing line at more than 10 families, is because the City's current SMP code provisions applicable to uses that are landward of the ordinary high-water mark creates different categories for "semi-private waterfront recreation areas" serving either 10 or fewer families, or more than 10 families. Because 10 families is set as a dividing line for those upland uses, the MIBC's proposed code amendment for shoreland uses also sets the dividing line at more than 10 families.<sup>2</sup> MIBC crafted its code amendment proposal to ensure that the MIBC code amendment provides the community benefit of not altering the existing permitting process and standards for any private moorage facility serving 10 or fewer families.

The environmental benefits of the code amendment are to clarify that redevelopment of the Island's several private marinas is possible, and to expressly state that all development standards (e.g., dock width) for these marinas will be set on a case-by-case basis. This ensures that the facilities can upgrade to today's environmentally friendly designs, rather than be forced to continue to simply repair and replace decades old facilities.

Finally, we again note that all of the component parts of the MIBC's marina are listed as permitted shoreland uses on MICC 19.13.040, Table B, including "moorage facilities," "floating platforms", and "mooring piles, diving boards and diving platforms." Given that reality, the MIBC contends that its planned reconstruction already is permitted under the current code. However, in response to City Staff suggestion, the Club is seeking this code

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<sup>2</sup> This is intentionally different from the State law definition of boating facilities, which sets a dividing line at all docks that serve four or fewer families. Importantly, the State law definition of boating facilities "excludes" docks serving four or fewer families but does not preclude a local City from regulating boating facility docks serving between four and 10 families differently, from boating facilities serving more than 10 families.

amendment so as to emphasize the permissibility of the planned reconstruction and to better clarify the permit process.

3. *Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).*

RESPONSE: The criteria for a code amendment stated in MICC 19.15.250(D) are:

- D. *Criteria.* The city may approve or approve with modifications a proposal to amend this Code only if:
1. The amendment is consistent with the comprehensive plan; and
  2. The amendment bears a substantial relation to the public health, safety, or welfare; and
  3. The amendment is in the best interest of the community as a whole.

The MIBC code amendment proposal meets these criteria. First, consistency of the proposed code amendment with the Comprehensive Plan is described in item 5, below.

Second, this code amendment bears a substantial relation to the public health, safety, or welfare. As described above under item 2, the City's adopted SMP is unusual and should be implemented in a manner that ensures continued support for water dependent uses. For a City like Mercer Island that includes several private marinas used by many island residents, as well as other potential shoreland uses that include many of the various component parts listed as permitted uses in the shoreland use table, a Shoreline Conditional Use Permit should be an available tool. This code amendment ensures this and retains all of the existing environmental and private property protections of the existing SMP. Finally, this amendment assures that those older marinas can redevelop so as to provide enhancements and improvements to the aquatic environment.

Third, this amendment is in the best interests of the community as a whole, because it (a) retains the prohibition of any unlisted shoreland uses the community originally adopted into the shoreland uses table to assure whatever protection was then desired remains in place, but (b) clarifies that all community club and similar marinas serving 10 or more families may pursue a Shoreline Conditional Use Permit to modify existing facilities to meet the community interests of continued access to marina facilities and protection of the shoreline aquatic environment.

4. *For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?*

RESPONSE: This criterion is not applicable, because MIBC does not propose a Comprehensive Plan amendment.

5. *For development code amendments: how does the proposal align with the goals of the City's Comprehensive Plan*

RESPONSE: The MIBC's proposed code amendment aligns with the goals of the City's Comprehensive Plan.

First, the Comprehensive Plan Shoreline Management Program management policies include that within the Urban Residential Shoreline Environment, "non-commercial recreational areas" should be allowed. The MIBC land is within the Urban Residential Shoreline Environment and provides a non-commercial recreational area.

Next, goals and policies for new recreational development and new boating facilities are included in the Comprehensive Plan.<sup>3</sup> Because these policies apply to new development, they are not applicable to the current code amendment affecting redevelopment. Within the discussion of Recreational Development, the Comprehensive Plan explains that "Covenant Shores, a continuing care retirement community, owns approximately 650 feet of shoreline which serves as open space, swimming, picnicking, and moorage for its residential units," and expressly acknowledges the MIBC and the Mercerwood Shore Club stating, that "there are two private waterfront clubs owning a combined 1,194 feet of frontage. They provide swimming, moorage, and boat launching facilities to a significant portion of the Island's families." Redevelopment of these existing uses is addressed in different goals and policies of the Comprehensive Plan.

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<sup>3</sup> The Comprehensive Plan provides one Goal and three Policies regarding new Recreational Development:

GOAL: Water-dependent recreational activities available to the public are to be encouraged and increased on the shoreline of Mercer Island where appropriate and consistent with the public interest.

POLICIES:

- (1) Provide additional public water-oriented recreation opportunities.
- (2) Locate public recreational uses in shoreline areas that can support those uses without risks to human health, safety, and/or security, while minimizing effects on shoreline functions, private property rights, and/or neighboring uses.
- (3) Priority should be given to recreational development for access to and use of the water.

The Comprehensive Plan also includes a single policy, without a goal and with no discussion, regarding new Boating Facilities:

POLICY:

New boating facilities should be designed to meet health, safety, and welfare requirements; mitigate aesthetic impacts; minimize impacts to neighboring uses; provide public access; assure no net loss of ecological functions and prevent other significant adverse impacts; and protect the rights of navigation and access to recreational areas.

The General Goals and Policies of the City's Comprehensive Plan Shoreline section include a goal to "Increase and enhance public access to and along the Mercer Island Shoreline where appropriate and consistent with public interest, provided public safety, private property rights, and unique or fragile areas are not adversely affected." Among the implementing policies for this goal are that "when substantial modifications or additions are proposed to substantial developments, the developer should be encouraged to provide for public access to and along the water's edge if physically feasible provided that no private property be taken involuntarily without due compensation." In addition, the Conservation and Water Quality provisions set a goal that the "resources and amenities of Lake Washington are to be protected and preserved for use and enjoyment by present and future generations," with an implementing policy to conserve existing natural resources, so long as consistent with private property rights, including that "aquatic habitats, particularly spawning grounds, should be protected, improved and, if feasible, increased." These goals and policies are fostered by the proposed code amendment because the code amendment clarifies that the three larger private marinas on the island: the Beach Club, the Shore Club and Covenant Shores, as well as any other private marina serving more than 10 families can redevelop, while respecting private property rights, and while ensuring that when redevelopment occurs, aquatic habitat areas should be improved, when feasible.

The Comprehensive Plan also sets policies for shoreline modifications, that is, the physical work needed to achieve redevelopment. Those policies include that the "repair, renovation, and replacement of existing piers and docks should be allowed." Similarly, the Plan sets a goal for shoreline uses to "ensure that the land use patterns within shoreline areas are compatible with shoreline environment designations and will be sensitive to and not degrade habitat, ecological systems, and other shoreline resources," supported by a policy to ensure that all "development and redevelopment" be designed to ensure no net loss of shoreline ecological functions. The MIBC code amendment aligns with these goals and policies because it clarifies that redevelopment, renovation and replacement of existing piers and docks at larger private marinas is allowed.