

OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL
HEARING EXAMINER RECOMMENDATION

RZN HEX Recommendation 8-2023
Rendered September 19, 2023

DCD CASE # RZN23-000003

APPLICATION FOR: Rezoning from Residential Multi-Family Low (RML) to Residential Multi-family Medium (RMM) Zoning District for +/-24.67 acres

NAME OF OWNER/APPLICANT: Duplexes Resort Park LLC

NAME OF APPLICANT'S REPRESENTATIVE: Joseph Mazurkiewicz, Jr., BJM Consulting

LOCATION OF PROPERTY: 1322 NE 12th Avenue, Cape Coral, FL 33909
Unit 31 Block 2072
PB 14, P 161, Cape Coral Subdivision

CURRENT ZONING DISTRICT: Residential Multi-Family Low (RML)

APPLICANT'S PROPOSED ZONING: Residential Multi-Family Medium (RMM)

HEARING EXAMINER'S RECOMMENDATION: Residential Multi-Family Medium (RMM)

FUTURE LAND USE CLASSIFICATION: Multi-Family Residential (MF) Future Land Use Classification (FLUC)

URBAN SERVICE AREA: Transition

RIGHT-OF-WAY ACCESS: The property has frontage on four local streets: NE 14th Terrace to the north; NE 12th Avenue to the east; NE 13th Street to the south, and NE 10th Avenue to the west.

HEARING DATE: September 19, 2023

SUMMARY OF REQUEST: Applicant requests rezone of approximately 24.67 acres from Residential Multi-Family Low (RML) to Residential Multi-Family Medium (RMM) for Block 2072 at 1322 NE 12th Avenue.

SUMMARY OF HEARING EXAMINER RECOMMENDATION

The Hearing Examiner recommends that City Council **GRANT** the Rezoning application.

I. **NOTICE OF HEARING**

Based on the testimony of City Staff Patrick Carlton White at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article 3 (Development Review), Chapter 1, § 3.1.10 ("Public Hearing Scheduling and Notice Requirements") of the City of Cape Coral Land Development Code ("LDC").

II. **PARTICIPANTS IN HEARING**

APPLICANT'S REPRESENTATIVE: Joseph Mazurkiewicz, Jr., BJM Consulting, Inc.¹

CITY STAFF: Patrick Carlton White ²

CITY CLERK'S OFFICE: Sheri Rhine

TESTIMONY, EMAILS AND TELEPHONE CALLS BY MEMBERS OF PUBLIC: Jean Philips, John Howel, Jennifer Salia, Jeff Hendley, and Mr. Smith,³ neighbors to the site, spoke in opposition to the proposed rezoning. In addition, staff received one telephone call of opposition and five emails of opposition prior to the Hearing. At the Hearing, a petition in opposition was provided, signed by over 50 neighbors. Staff read the petition (but not the signatures) into the record at the hearing. All public comment was in opposition to the proposed rezoning.

III. **EXHIBITS**

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted.

IV. **REVIEW OF STATUTORY AND LDC REQUIREMENTS**

Authority. The Hearing Examiner has the authority to recommend the approval or denial of an application for a rezone, pursuant to LDC Article 2 (Decision Making and Administrative Bodies), Chapter 2 (Hearing Examiner), §2.2.3B.5:

A Hearing Examiner shall hear and decide, or, when applicable, make Recommendations, on the following....

.... 5. Applications for rezoning property."

¹ Mr. Mazurkiewicz was accepted as an expert witness in land planning issues, on the basis of his prior testimony before the Hearing Examiner on similar matters and his C.V. which was previously provided and which sets forth his education, experience, and other qualifications.

² Mr. White was accepted as an expert witness in land planning issues, on the basis of his prior testimony before the Hearing Examiner on similar matters and his C.V. (on file with the Clerk's Office) which sets forth his education, experience, and other qualifications.

³ All spellings are phonetic.

Entirety of the Record/Standard of Review of Evidence. The Hearing Examiner's Recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LDC, based upon the entirety of the record before the Hearing Examiner. The Recommendation of the Hearing Examiner must be based upon competent substantial evidence in the record. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11E.

Presumption of Relevance and Materiality. Matters related to an Application's consistency with the Comprehensive Plan, the City Code of Ordinances, or the LDC will be presumed to be relevant and material. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11F.4.

Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11F.5.

LDC Standards for Rezoning. The Hearing Examiner reviewed the application in accordance with the standards for rezonings set forth in LDC §3.4.6 and specifically set forth in LDC § 3.4.6.A (Manner of Initiation) and LDC § 3.4.6.B (Review Criteria), in addition to the general standards set forth elsewhere in the LDC and the City Comprehensive Plan.

TESTIMONY AT HEARING

Hearing Examiner's Recommended Findings of Fact

The Hearing Examiner recommends that City Council finds as facts all documentary and oral testimony set forth or referenced herein, except to the extent (if any) that the Hearing Examiner specifically recommends otherwise.

Incorporation of Staff Report and Staff Testimony by Staff and Partial Incorporation by Applicant's Representative

Staff incorporated his Case Report into his testimony by reference. The Applicant's Representative incorporated the Staff Case Report into his presentation by reference, except for Standards 5 and 6, ⁴ which he did not incorporate.

V. DISCUSSION

Site Information

⁴ These two conditions drew inferences unfavorable to Applicant.

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The tract is located in eastern Cape Coral, approximately 2,670 feet southwest of the nearest major intersection at Del Prado Boulevard North and Diplomat Parkway East. Staff testified that the subject block is undeveloped and that all properties within 500 feet of the subject property are zoned Single Family Residential (R1) with a Single Family (SF) FLUC. Many are improved with single family dwellings. Generally, the properties near the subject block exhibit a low density residential development pattern.

The Applicant's Representative testified that at this time, the RML District allows a maximum of 394 dwelling units and 16 dwelling units per acre. If the request is granted by City Council, the property could be developed with a maximum of 616 dwelling units and 25 dwelling units per acre. This represents an increase of 222 units above the maximum allowable under the current zoning district.

Applicant's Representative testified that City development standards regarding parking, landscaping, and other requirements would reduce the number of units that could be located on the subject property below the maximum specified herein. The Hearing Examiner observes that site plan development issues, of course, cannot be considered as part of her consideration of Applicant's request.

Public Comment/Testimony.

Public comment was received through testimony at the Hearing, emails received prior to the Hearing, and the Petition, with all public input being opposed to the rezoning.

These comments can be summarized as follows. Most of the testimony expressed concerns about increase in traffic on local streets, including the current difficulty in getting onto local arteries being exacerbated by the additional traffic that would be caused by this development; and concerns for safety of children who are accustomed to playing in the middle of local streets. Several persons expressed concerns about losing their view of sunsets or loss of privacy with persons living in the high rise looking into their backyards. Many of the speakers stated that they had been told (by realtors or others) that a park would be located there. As the Applicant's Representative stated, and the Hearing Examiner agrees, the property was never owned by the City so the probability of its development as a park was virtually non-existent. Others expressed concern that their property values would be lowered by such a development.

While the Hearing Examiner is not unsympathetic to the concerns expressed by the Public, she observes that it apparently is not common knowledge in the neighborhood that, at this time without the proposed rezoning being granted, the property could be developed with 394 dwelling units, as set forth above.

Purpose of the Rezoning Request

The letter of February 3, 2023, from Applicant's Representative stated that it was Applicant's goal in the rezoning to "allow for a project to be built that is compatible

with the surrounding community” and that “the location of the parcel along with its ‘large for Cape Coral size’ makes it a well-qualified candidate for the RMM Zoning.”

Further, the letter stated that:

“The existing zoning of RML allows for duplexes and single-family homes, both of which have an excess of available parcels within the City. The requested RMM zoning only allows for larger multifamily projects that are better able to be maintained properly by a professional property management company therefore having a better impact on the surrounding community.”

The Applicant's Representative testified to this at the Hearing, and added that, were the property to be developed with duplexes (which is allowed under the existing zoning), the property values of the surrounding single family homes would plunge, contrary to the public testimony.

Further, he testified that *“having the parcel developed as one project would allow for less driveways along the residential streets, providing a development with fewer potential adverse impacts on the surrounding uses.”*

Entitlement History

Staff testified that Block 2072 is currently zoned Residential Multi-Family Low (RML) with a Multi-Family Residential (MF) Future Land Use Classification (FLUC).

The property was rezoned from Multi-Family (R-3) to RML by Ordinance 4-19. The Future Land Use has continuously been MF since 1989.

VI. COMPREHENSIVE PLAN CONSISTENCY

Staff testified that the proposed rezone is consistent with the following Policies and Goals in the Comprehensive Plan.

Future Land Use Element

Policy 1.15, Table 1.

Staff testified that both the RML and RMM Districts are identified in Table 1. as being consistent with the Multi-Family Residential FLUC.

Policy 1.15.b: Multi-Family Residential: Densities up to 25 units per acre are permitted in this future land use map classification.

Staff testified, as set forth above, that the proposed rezone would increase the maximum density of the site from 16 units/acre in the RML District to a maximum of 25 units/acre in the RMM District.

Housing Element

GOAL: To provide good quality housing in safe, clean neighborhoods, offering a broad choice of options in both type (single family and multi-family) and tenure (owner and renter occupied) to meet the needs of present and future residents of the City, regardless of age or income status.

Staff testified that the only residential use allowed in the RMM District is multi-family, providing housing options other than single-family homes.

Policy 2.1: Pursuant to S. 163.3202 (1), F.S., the City will continue to incorporate provisions into its Land Development Code that assist in lowering the costs for residential development, while maintaining housing quality in accordance with the City's minimum building standards.

Staff testified that the City has recently adopted several new zoning districts in the LDC which allow for greater density than the respective companion zoning districts in the former Land Use and Development Regulations positing the RMM District as one example.

Staff further testified that the former R-3 District had been replaced with the RML and RMM Districts. The density of the RMM District was increased to a maximum of 25 units/acre, greater than the 16 units/acre allowed in the former R-3 District. Staff testified that this increase in density in part was intended to incentivize new multi-family development by theoretically lowering land costs on a per unit basis.

Based upon her review of the foregoing Policies and testimony by the Applicant's Representative and Staff, the Hearing Examiner recommends a finding that granting the requested rezone **is in compliance with, and is in furtherance of**, the requirements of all applicable provisions of the Comprehensive Plan.

VII. **REZONING REQUIREMENTS AND CRITERIA: HEX RECOMMENDATIONS**

A. *Review Criteria*

1. *The application **is consistent** with the Comprehensive Plan.*
LDC § 3.4.6.B.1

See above recommended findings of fact with discussion regarding the Comprehensive Plan. Both the requested RMM zoning and RML zoning are consistent with current Future Land Use Classification.

2. *The full range of uses allowed in the proposed zoning district **would be** compatible with existing uses in the area under consideration.*
LDC § 3.4.6.B.2

See discussion under Standard 3, below, which incorporates an analysis of the requirements of this Standard 2.

3. *The range of uses allowed in the proposed zoning district **would be** compatible with existing and potential uses in the area under consideration. LDC § 3.4.6.B.3*

Staff testified that the current RML District requires a minimum area of 10,000 square feet and allows a maximum building height of 50 feet. Uses allowed in this district include single-family dwellings, duplexes, multi-family dwellings (buildings with three or more residential units), and model homes.

Conversely, the RMM District would require a minimum area of one acre. This district would allow the site to be developed with multi-family dwellings, prohibiting single-family dwellings, duplexes, and model homes. Nonresidential uses allowed in this district are limited in number and similar to those allowed in the RML District.

Staff testified that, in addition to allowing for greater density, the RMM District allows for greater building height than the RML District, i.e., a maximum of 60 feet.

Staff testified that, while differences in degree obviously exist, different types of residential uses exhibit similar land use characteristics: residential uses, for example, typically generate low numbers of peak hour trips on a per unit basis, generate low noise levels, and lack loading areas often associated with commercial projects. Accordingly, staff testified, various types of residential uses are generally considered to be compatible with one another and the range of uses allowed in the proposed RMM District should be compatible with the existing uses in the surrounding area.

4. *The proposed zoning district **would serve** a community need or broader public purpose. LDC§ 3.4.6.B.4*

Staff testified that the proposed RMM District would serve a community need by ensuring a type of housing other than single-family homes as neither single-family homes nor duplexes may be constructed in the proposed district.

The Applicant's Representative testified that the proposed zoning would help to meet the identified need for market priced residential units in the Cape, and observed that it is commonly known that current rental properties are priced out of the price range available to most working people locally.

5. *The characteristics of the proposed rezone area **are suitable** for the uses permitted in the proposed zoning district? LDC§ 3.4.6.B.5*

Staff testified that the proposed rezone area is suitable for RMM Zoning for the following reasons:

- a. The proposed RMM District is consistent with the Multi-Family Residential FLUC.
- b. The area of the site (24.67 acres) substantially exceeds the one acre minimum required by the LDC for RMM-zoned properties.
- c. The site exhibits full block depth to accommodate parking, landscaping, stormwater management, and varying access options increasing the likelihood of a high-quality design.

Staff testified that it is not suitable for the proposed RMM zoning because:

- a. Centralized utilities are not currently available to the site but will be available by 2025. However, since the Applicant's Representative testifying that 2025 is the target year for Applicant's development of the property, the Hearing Examiner does not consider this as a detriment to the proposed rezoning.
- b. Streets serving the subject property provide access to multiple single-family residences or properties with a single-family zoning designation. Multiple turning movements are required to access major roads due to the property's location within the existing residential neighborhood. The subject property is not located along a major roadway; all estimated additional trips would access the property via local streets within the neighborhood. Staff testified that the estimated trips for development of the property at (the current zoning) RML's maximum density of 16 units per acre is 132 AM and 142 PM Peak Hour Trips per the ITE Trip Generation Book. Estimated trips for development at the (proposed zoning) RMM's maximum density of 25 units per acre is 203 AM and 213 PM Peak Hour Trips, an increase of 71 additional AM and PM trips, or approximately 50% beyond that which are anticipated with the RML zoning.

While the Hearing Examiner agrees this is of concern, as expressed by those participating in public comment, she recommends a finding by City Council that the positive aspects of the proposed rezoning outweigh the concerns about traffic.

6. *A zoning district other than the district requested **would not** create fewer potential impacts to existing uses in the surrounding area.*
LDC§ 3.4.6.B.5

After considering all the proposed findings of fact set forth elsewhere herein, the Hearing Examiner recommends that the Council find that development under the proposed RMM zoning would create fewer impacts than development under the existing RML zoning.

VIII. RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the testimony set forth above and the documentary exhibits presented prior to the Hearing, the Hearing Examiner recommends as follows:

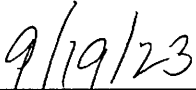
1. City Council find that the requested rezone **is consistent** with the requirements of the Comprehensive Plan, the Land Development Code, the City Code of Ordinances and all applicable laws of the State of Florida; and
2. City Council **approve** the requested rezoning to the Residential Multi-Family Medium (RMM) Zoning District.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA

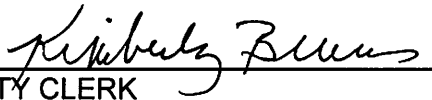


ANNE DALTON, ESQUIRE



DATE

ATTEST:



CITY CLERK