

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

RZN HEX RECOMMENDATION 6-2024
Rendered October 2, 2024

DCD CASE # RZN24-000001

APPLICATION FOR: Privately initiated rezone of four parcels comprising 1.23 acres, from Single-Family Residential (R-1) to Commercial (C) Zoning District

NAME OF OWNERS/APPLICANTS: Joella M. Consolazio/ Richard and Linda Ricciani

APPLICANTS' REPRESENTATIVE: BJM Consulting, Inc.

LOCATIONS OF PROPERTY: 3303 and 3307 NE 16th Avenue, Cape Coral, FL
3302 and 3306 Averill Boulevard, Cape Coral, FL
Unit 84, Block 5614, Lots 9-18
STRAP Numbers:
193424C3056140090; 193424C3056140120;
193424C3056140140; 193424C3056140160

FUTURE LAND USE CLASSIFICATION: Commercial/Professional

CURRENT ZONING DISTRICT: Single-Family Residential (R-1)

APPLICANT'S PROPOSED ZONING: Commercial (C)

HEARING DATE: October 1, 2024

SUMMARY OF REQUEST:

Applicant requests a privately initiated rezone of four parcels comprising 1.23 acres, from the Single-Family Residential (R-1) to the Commercial (C) Zoning District

SUMMARY OF HEARING EXAMINER RECOMMENDATION:

The Hearing Examiner recommends that City Council **APPROVE** the requested rezone to the Commercial Zoning District.

I. **NOTICE OF HEARING**

Based on the testimony of City Staff Wyatt Daltry 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: Joe Mazurkiewicz ¹

CITY STAFF: Wyatt Daltry, AICP ²

PUBLIC TESTIMONY/CORRESPONDENCE: None

III. **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.”

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 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

¹ Based upon his C.V. which is of record and his prior testimony regarding issues similar to the issues presented by this Application, the Hearing Examiner found Mr. Mazurkiewicz to be a subject matter expert for purposes of this Hearing.

² Based upon his C.V. which is of record and his prior testimony regarding issues similar to the issues presented by this Application, the Hearing Examiner found Mr. Daltry to be a subject matter expert for purposes of this Hearing.

(Review Criteria), in addition to the standards and requirements set forth elsewhere in the LDC and the City Comprehensive Plan.

TESTIMONY AT HEARING

Incorporation of Staff Report/Recommended Findings of Fact

The Applicant's Representative incorporated the Staff Report into his presentation by reference. Attached Exhibit "A" utilizes a portion of that incorporation by reference. The Hearing Examiner recommends that City Council find 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.

IV. DISCUSSION

Site Information, Surrounding Properties, and Amendment of FLUC

The Applicant's Representative testified that the northeastern Cape Coral site under consideration is made up of four parcels, aggregating 1.23 +/- acres (53,570 square feet) under the same ownership. He further testified that the intent of the Owners is to combine them into one parcel, if City Council approves this rezoning.

He further testified that the site has 215 feet of frontage on Averill Boulevard and is 250 feet deep, and also has access to two local streets (NE 33rd Terrace and NE 16th Avenue). It is located at the northern end of Block 5614, and the City of Cape Coral owns the remainder of the block to the south, with the current intent to construct a future fire station. He testified that the parcel is surrounded on all four sides by parcels with a S/M future land use classification and R-1 zoning and that scattered residential uses are present.

Staff testified that the site was amended into the Commercial/Professional Future Land Use Classification (FLUC) via Ordinance 6-24.

Purpose of the Rezoning Request

By letter of April 2, 2024, the Applicant's Representative stated that the purpose of the request is to address the shortfall of commercial parcels in the Northwest-Gator Circle area and to allow the site to become a prime location for future commercial development in that area. Further, he testified during the Hearing that current zoning is not consistent with current FLUC and the property cannot be developed unless it is rezoned to a district other than residential.

V. COMPREHENSIVE PLAN CONSISTENCY

Both the Applicant's Representative and the Hearing Examiner found that Staff's analysis of Comprehensive Plan provisions (with Staff's concomitant recommended findings of fact of consistency) was thorough and impressive. The analysis

is set forth as Exhibit "A" to this Recommendation and is hereby incorporated into this HEX Recommendation by reference as though fully set forth herein.

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

VI. REZONING REQUIREMENTS AND CRITERIA: HEX RECOMMENDATIONS

A. Review Criteria

1. *The proposed zoning district is **consistent** with the City Comprehensive Plan. LDC § 3.4.6.B.1*

Staff testified that the proposed C zoning district would be compatible with the current CP FLUC. See recommended findings of fact and discussion attached as Exhibit "A".

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

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*

This criterion is addressed in criterion 3 below, as it is a duplicate.

For the reasons set forth under criterion 3 below, the Hearing Examiner recommends a finding by City Council that this standard is **met**.

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*

Both staff and the Applicant's Representative testified that the C district would allow retail, office, and service uses. They testified that, while there are nearby single-family home, the buffering and other standards for development of commercial property as set forth in the LDC would assist with compatibility with such residential uses. Further testimony was adduced that the uses allowed under this zoning district would be similar to uses present along Del Prado Boulevard, Santa Barbara Boulevard, and other major commercial corridors, but that more intrusive uses allowed by right under this zoning district would probably not be viable due to site limitations.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

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

In addition, staff testified that the City of Cape Coral has a well-documented need for further commercial development. When centralized utilities are available, staff testified that these properties would probably be developed with a neighborhood commercial use.

The current zoning is inconsistent with the properties' Future Land Use Classification, so no development permits can be issued for them unless the proposed rezone goes forward, a rezone to the Professional district is initiated, or their FLUC is changed.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

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*

The Hearing Examiner incorporates the Discussion section above, in addition to the analysis set forth under Criteria One through Four, and Criterion Six, into consideration of this Criterion Five. She also incorporates the discussion under the Comprehensive Plan provisions in Exhibit "A" by reference.

For all of the above reasons, the Hearing Examiner recommends a finding by City Council that this standard is **met**.

6. *A zoning district other than the district requested **would not** create fewer potential adverse impacts to existing uses in surrounding area.*

This FLUC would also permit a rezoning to the Professional zoning district. While the P district has fewer permitted uses and therefore would hypothetically create fewer potential adverse impacts to existing uses due to its more limited hours of operation (offices versus retail) and its other criteria, testimony was presented by the Applicant's Representative that the market for development under P zoning is not strong and accordingly such development would be unlikely. As set forth above, the LDC addresses the juxtaposition of Commercial with Residential uses to protect those residential uses. In addition, the Applicant's Representative testified that the site is too small for many of the more intensive uses allowed in the C zoning district.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

VII. **EXHIBIT "A"**

Exhibit "A" is attached here to and is hereby incorporated by reference.

VIII. **RECOMMENDED FINDINGS AND CONCLUSIONS**

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

1. That City Council find the requested rezone **is consistent** with the requirements of the Comprehensive Plan, the Land Development Code, City Code of Ordinances and all applicable laws of the State of Florida; and
2. That City Council **approve** the requested rezoning to the Commercial (C) Zoning District.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA



ANNE DALTON, ESQUIRE

October 2, 2024
DATE

ATTEST:



CITY CLERK

EXHIBIT A:
Staff's Analysis of Compliance with Comprehensive Plan Provisions

Comprehensive Plan:

The following Comprehensive Plan policy, while normally used for future land use map amendments, is applicable to RZN24-000001:

Policy 1.14:

Staff has reviewed Policy 1.14 of the Future Land Use Element to determine whether this proposed Commercial zoning district is appropriate for the subject properties. While there is no specific number of guidelines that need to be met, an area which fails to meet most of the guidelines is likely to not be a strong site for commercial development, in which case an amendment to a different future land use should be considered.

"Policy 1.14: The City of Cape Coral's commercial siting guidelines are based upon comparison of the locational characteristics of a property proposed for conversion to a commercial future land use classification with the ideal commercial node concept, as described in Policy 1.13, above. The guidelines are also based upon the need to maintain compatibility between commercial development and adjacent or nearby residential future land use classifications. Additional guidance for consideration of such properties is contained in Future Land Use Objectives 2 and 3 and Policy 1.12 of this comprehensive plan. Within this broad, general context, consideration of properties proposed for conversion to a commercial future land use shall be based upon the following commercial siting guidelines:

Commercial Siting Guidelines

Major Intersection

Preferred locations for commercial properties are in the vicinity of major intersections (i.e., intersections of two or more arterial and/or collector roadways). Development of a commercial node at such an intersection may involve multiple parcels and, sometimes, multiple quadrants of the intersection. The benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance, but the distance at which a property ceases to derive benefit from proximity to the intersection varies, based upon whether the subject property would represent a new, separate commercial property or an expansion of an existing commercial area. New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties."

Staff Response: *The properties are located near an intersection of major collector roadways. The site partially meets this guideline.*

"Adequate Depth

Ideally, a commercial property should extend not only along the adjacent collector or arterial roadway, but also should extend inward with adequate depth to accommodate the necessary parking, buffering, retention, and open area for the future commercial development. In Cape Coral,

most City blocks are rows of back-to-back lots approximately 250 feet deep. Therefore, adequate depth is achieved if any number of contiguous properties, occupy the entire 250 feet of depth."

Staff Response: The area has approximately full-block depth. The site meets this guideline.

"Compactness

Compactness measures the ability of a property proposed for a commercial future land use to take advantage of economies of scale. The shape of an ideal compact commercial property approaches that of a square or rectangle. This quality allows for an orderly arrangement of development on the subject property and acts to reduce adverse visual, noise or aesthetic impacts to neighboring properties."

Staff Response: The area is roughly rectangular in shape. The site meets this guideline.

"Integration

Integration, for the purposes of these guidelines, refers to the interrelatedness of development within a commercial node or area. The presence of features, such as internal access roads, shared parking, courtyards, walkways, or other features, binds the various commercial properties within the node together. This pattern of development reduces the traffic impacts associated with commercial development and often promotes a pedestrian-friendly environment. Integration of neighboring commercial properties should always be encouraged. Therefore, properties proposed for conversion to a commercial future land use should be evaluated for the likelihood that such properties would or could be integrated with adjacent existing commercial properties."

Staff Response: The area is adjacent to existing residential development to the north, west, and east. Public Facilities land, reserved for a future fire station, is south of the subject property. The site does not meet this guideline.

"Assembly

For commercial areas to provide the most benefit to the surrounding community, they must be of relatively large size. The majority of buildable lots within the City of Cape Coral are approximately 10,000 square feet (0.23 acre) in size. These lots were designed primarily for single family residential development and do not typically have adequate width or depth for larger commercial developments that might serve the City as shopping and/or employment centers. Therefore, it is important for the City to encourage commercial applicants to assemble relatively large parcels (properties comprising 3 acres or more). Assembly of pre-platted parcels into tracts of 3 acres or more will promote the development of commercial properties that do not express the indicators of strip commercial development. Assembly of larger parcels also allows the developer to provide a greater variety of commercial land uses, and to provide architectural and landscape features that result in a more attractive end-product.

Properties proposed for conversion to a commercial future land use, where such properties would represent an expansion of an existing commercial area may be considered "assembled," for the purposes of these guidelines if the proposed expansion properties are either owned by the landowner of one or more adjacent commercial properties, or if the expansion property is likely to be integrated with (see above) adjacent commercial properties."

RZN HEX RECOMMENDATION 6-2024
OCTOBER 2, 2024
DCD CASE # RZN24-000001

Staff Response: The development site consists of four parcels, approximately 1.23 acres in size. Staff looks to sites of 3 acres or greater, or opportunities to assemble with 3 acres of commercial or more. The site does not meet this guideline.

"Intrusion

"Intrusion," as defined for the purpose of these guidelines, is a measure of the objectionable qualities of the proposed commercial development. This guideline applies primarily to new commercial property (a property proposed for conversion to a commercial future land use in an area where it would not abut existing commercial properties). Intrusion evaluates the potential adverse impacts on surrounding properties that could be caused by converting a property from its existing future land use to a commercial use. There are no hard and fast guidelines for determining when a proposed commercial use would be intrusive to surrounding development. However, expansions of existing commercial areas are generally considered less intrusive than the establishment of new commercial areas. Commercial areas may be considered less intrusive to adjacent multi-family development than to adjacent single-family development. Commercial development that is separated from a residential area by a street, canal, a vegetative buffer, or other geographic features, may be considered less intrusive than commercial development that directly abuts a residential area. The degree of compactness (see above) of a commercial property can also reduce or increase its intrusion upon adjacent or nearby properties.

Typically, new commercial properties (properties proposed for conversion to a commercial future land use classification, which do not abut existing commercial properties) are less likely to be considered intrusive if the surrounding or adjacent residential areas are sparsely developed. While intrusion is subjective and depends on many factors, a rule of thumb is that the proposed commercial property would not likely be intrusive if adjacent residential areas are 25% or less developed. The area analyzed to determine the percentage of adjacent residential development may vary from 300 feet to 1,000 feet from the subject property, depending upon the degree to which streets, canals, landscaping or other geographic features separate the subject property from nearby residential areas."

Staff Response: Surrounding residential development is separated by streets and canals from this site. The relatively small size of the proposed change would decrease the likelihood of a large, intrusive commercial presence in the neighborhood. Finally, a non-residential use is already proposed for this area, a fire station, located south of the proposed amendment. Therefore, an intrusion already exists. The site partially meets this guideline.

"Access

In the City of Cape Coral there are two ideal access provisions for a commercial property. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged. These provisions are as follows:

- a) Access via a platted City parking area. The City of Cape Coral contains a number of dedicated commercial parking areas; some created by plat, and some deeded to the City by landowners. The Comprehensive Plan and City Land Development Code refer to these as "dedicated City parking areas." These parking areas are often surrounded by smaller platted lots originally intended for commercial development with access to these lots only, or primarily, from the dedicated City parking area. In implementing this provision, it may sometimes be in the City's interest to promote conversion of a dedicated City parking

area to a fully functional commercial development (i.e., a portion of the dedicated parking area would become a commercial building site) in return for the applicant's agreement to own and manage the site.

- b) Direct access onto an arterial or collector roadway having an adopted City access management plan. The City has adopted access management plans for certain arterial and collector roadways. Access management plans serve to facilitate mobility of the traveling public; therefore, such roadways more readily accommodate the impacts of commercial development than roadways without such access management plans."

Staff Response: This property has access to a roadway with an adopted City access management plan, in that the City now has citywide access management plans for all City roadways. The site meets this guideline.

"Ownership Pattern

An ideal commercial node is a cohesive, compact, interrelated network of commercial properties. Properties proposed for conversion to a commercial future land use, which properties consist of multiple parcels, or groups of parcels, under multiple ownership are unlikely to develop as a true "commercial node." Instead, these properties are more likely to develop as separate, small commercial developments with multiple access points, leading to adverse, unsafe traffic conditions. Each small development may also have its own stormwater management pond, dumpster, and an appearance and/or landscaping design that is inconsistent with surrounding development. This pattern is a characteristic of strip commercial development. Therefore, the City of Cape Coral encourages land owners and developers to assemble the properties involved in a commercial future land use request under common ownership. Multiple, small properties under separate ownership, even if such properties are included in a single future land use amendment request, may not be appropriate for the full array of commercial uses."

Staff Response: This amendment consists of four parcels with common ownership. The site meets this guideline.

Summary: This proposed rezone meets four guidelines, partially meets two guidelines, and fails to meet two guidelines of this policy. As a result, this area is a moderately-good candidate for commercial development and therefore may be suitable for commercial or professional development.

ECONOMIC DEVELOPMENT MASTER PLAN ANALYSIS

The rezone is supported by the City Economic Development Master Plan. The site is not within an Economic Opportunity Area, however, the rezone will ensure that commercial or mixed-use development is built in the future.

END OF EXHIBIT "A"