

OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL

HEARING EXAMINER RECOMMENDATION
RZN HEX RECOMMENDATION 5-2024

Rendered September 17, 2024

DCD CASE # RZN24-000004

APPLICATION FOR: rezoning from Commercial Corridor (CC) to Single-Family Residential (R-1) for one parcel to align the zoning with the property's future land use classification.

NAME OF OWNER/APPLICANT: Synergy Homes, LLC/Ryan Davis, Authorized Agent

APPLICANT'S REPRESENTATIVE: Dylan Curry

LOCATION OF PROPERTY: 1011 SW 4th Terrace, Cape Coral, FL 33991
STRAP #15-44-23-C2-03623.0460
Unit 49, Block 3623, Lots 46+47
Plat Book 17, Page 153

ACCESS: The site has frontage on Southwest 4th Terrace, a local street

IS CITY WATER/SEWER AVAILABLE? Yes

URBAN SERVICE AREA: Transition

FUTURE LAND USE CLASSIFICATION: Single-Family Residential (SF) ¹

CURRENT ZONING DISTRICT: Commercial Corridor (CC)

APPLICANT'S PROPOSED ZONING: Single-Family Residential (R-1)

HEARING DATE: September 17, 2024

SUMMARY OF REQUEST: The applicant is requesting a rezone from Commercial Corridor (CC) to Single-Family Residential (R-1) for one site in Block 3623, Lots 46 and 47. The requested zoning change involves one parcel that is 10,624 square feet in size.

SUMMARY OF HEARING EXAMINER RECOMMENDATION:

The Hearing Examiner recommends that City Council **APPROVE** the requested rezone to the Single-Family Residential Zoning District.

¹ The property's Future Land Use Classification was amended to Single Family Residential (SF) by Ordinance 79-23.

I. **NOTICE OF HEARING**

Based on the testimony of City Staff Candise Forde, the Hearing Examiner finds that proper notice of the prior Hearing, scheduled for August 20, 2024, 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").

At the Hearing on August 20, 2024, City Staff requested a continuance to September 17, 2024, to allow the Owner/Applicant to have a representative present.

The Hearing Examiner granted the request, and an Order of Continuance was entered on August 20, 2024, to have this matter heard as part of the regular Cape Coral Hearing Examiner agenda commencing at 9:00 am on September 17, 2024, with hearings to be held at the Cape Coral City Council Chambers, 1014 Cultural Park Boulevard, Cape Coral, Florida 33990.

II. **PARTICIPANTS IN HEARING**

APPLICANT'S REPRESENTATIVE: Dylan Curry

CITY STAFF: Candise Forde

CLERK'S OFFICE: Sheri Rhine, Recording Secretary; Stacey Pasek, Recording Secretary

PUBLIC TESTIMONY: Alex Mayus and John Moffatt testified in opposition to the proposed rezoning. Their testimony is discussed *infra*.

TELEPHONE CALLS: Staff testified that she received three telephone calls prior to the Hearing. Two callers were in favor and the third was initially opposed but upon clarification of the location of the parcel, that person withdrew their opposition.

III. **EXHIBITS**

APPLICANT'S/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."

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 standards and requirements set forth elsewhere in the LDC and the City Comprehensive Plan.

TESTIMONY AT HEARING

Incorporation of Staff Report

Both the Applicant's Representative and staff incorporated the Staff Report into his/her presentation by reference.

Hearing Examiner's Recommended Findings of Fact

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.

V. DISCUSSION

Site Information and Surrounding Properties

Staff testified that the proposed rezone area is located in central Cape Coral and consists of one site of approximately 10,624 square feet. It contains little to no

vegetation and is located on Southwest 4th Terrace, approximately 900 feet north of Pine Island Road.

Staff testified that surrounding uses include single family residences to the north of the site and vacant parcels to the east, south and west.

Building permits for a single-family home were filed with the City in 2022 and 2024 (BLDR22-001533 and BRC24-000413, respectively). Neither permit was reviewed, however, because new single-family homes are prohibited in the currently-existing CC Zoning District.

Purpose of the Rezoning Request/Letter of Intent

Staff testified that the purpose of the rezoning request is to bring the zoning of the Property into compliance with its Future Land Use Classification, which would allow the development of the parcel.

Entitlement History

Staff testified that the site had a Single-Family/Multi-Family (SM) future land use classification until 2000, at which time its Future Land Use Classification was amended to Commercial/Professional (CP).

In 2002, the FLUC was amended to the Pine Island Road District (PIRD).

In 2023, the FLUC was amended again, this time from the Pine Island Road District (PIRD) to Single Family Residential (SF) by ORD 79-23, its current FLUC.

The property has been zoned Corridor (CORR) or Commercial Corridor (CC) dating back to 2004.

Public Testimony at Hearing

Alex Mayus testified that he is a developer in Cape Coral and that if the proposed rezoning is approved by City Council, it would effectively prevent the commercial development of adjacent parcels, to the detriment of City interests.

He further testified that it is well-known that Cape Coral lacks sufficient commercial development and, accordingly, that it is important not to change the commercial character of those parcels with that designation.

John Moffatt testified that he is also a developer in Cape Coral and also opposed the rezoning, for the same reasons as Mr. Mayus.

While the Hearing Examiner has considered the testimony of both persons, the fact that the property cannot be developed under its current zoning designation

overrides the considerations raised by Messrs. Mayus and Moffatt. Accordingly, she does not accept this testimony as findings of fact.

Impact Assessment

It is reasonable to assume that the subject property would be developed with a single-family dwelling, were City Council to grant the rezoning.

Staff contacted both the Fire and Police Department representatives to ascertain the impact of the proposed rezone on their respective services.

Staff testified that City Fire Department personnel reported Fire Station #8 would be responding to service calls for the subject parcel, with an anticipated annual call volume of less than 15. These personnel concluded that the proposed rezone would create a low impact on fire services, attributed to a call volume increase.

Staff testified that the subject parcel is part of the Police Department's Southwest District, Zone 3 and that Police personnel advised that minimal impact to service demands would be anticipated, with less than a 1% increase to recorded calls for service in Zone 3. Staff testified that such a small increase in the number of calls would be statistically insignificant citywide. Further, it is anticipated that the impact to emergency services would be minimal due to small size of the parcel.

VI. **COMPREHENSIVE PLAN CONSISTENCY**

Staff testified that the proposed rezone would be consistent with the following goals and policies in the Comprehensive Plan.

Future Land Use Element

Policy 1.15, Table 1.

Staff testified that both the Single-Family Residential (R-1) and Residential Estate (RE) Districts are identified in Table 1 as being consistent with the Single Family FLUC. However, the RE district requires minimum size requirements which are in excess of this parcel, as set forth below. Accordingly, a rezone to the RE district would not be consistent with the requirements of the Comprehensive Plan.

Policy 1.15.b: Single-Family Residential: Densities up to 4.4 units per acre are permitted in this zoning district.

Staff testified that the R-1 District only permits a maximum density of 4.4 units per acre and the RE District only permits a maximum density of 1.1 units per acre.

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, although the City has many single-family homes and numerous undeveloped lots zoned for such development, adding another single-family residential lot would offer a minimal benefit to the community.

Staff further testified that the site's small size would make it unsuitable for commercial development.

ECONOMIC DEVELOPMENT MASTER PLAN ANALYSIS

Staff testified that the proposed rezone would neither be supported by or be in conflict with the City Economic Development Master Plan, as the site is not within an Economic Opportunity Area.

Based upon her review of the above 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.

VII. 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*

See recommended findings of fact and discussion above.

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*

Staff testified that the proposed R-1 District allows single-family uses. As set forth above the site is currently vacant, as are parcels to the east, south and west. Development of the site in question will be a single-family residence, and staff opined that properties to the east, south and west would probably have commercial development.

If those adjacent parcels were to be developed for commercial uses compatible with the CC zoning, they would include enhancements as set forth in the relevant LDC sections for architecture, lighting, landscaping, and screening requirements.

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*

The Hearing Examiner acknowledges that the proposed rezoning would result in less commercial property available for development within the City. However, as staff testified, the subject parcel is a poor candidate for commercial development due to its small size and lack of collector and arterial frontage.

Further, since the current zoning of this property is inconsistent with its current (and recently acquired) Future Land Use Classification, no development permits could be issued for it unless the proposed rezone goes forward or the 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*

Staff testified that the subject property is relatively small and is located adjacent to existing single-family dwellings to the north. As set forth elsewhere, the subject site is located on a local street with poor visibility and lacks convenient access for the public. Staff opined that the likelihood of property assembly inclusive of this parcel occurring in the future appears poor. For these reasons, staff testified that the site appears best suited for the development of a single-family home.

In addition, the Hearing Examiner incorporates the discussion under the Comprehensive Plan section, Criteria One through Four, and Criterion Six, into consideration of this Criterion Five.

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 the surrounding area.

The Residential Estate (RE) zoning district is also consistent with the SF Future Land Use Classification. However, this property would not qualify for rezoning to the RE district, as that district requires a minimum of 40,000 square feet. The subject parcel does not have that square footage.

Accordingly, the only district eligible for this rezone would be the one requested by the Applicant, e.g., the R-1 district.

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

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 Single-Family Residential (R-1) Zoning District.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA



ANNE DALTON, ESQUIRE

September 17, 2024
DATE

ATTEST:

CITY CLERK