

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

RZN HEX RECOMMENDATION 6-2025
Rendered April 1, 2025

DCD CASE # RZN25-000001

APPLICATION FOR: Rezone from Professional (P) and Single Family Residential (R1)
to Commercial (C) for 10 lots comprising 1.22 acres

NAME OF OWNER/APPLICANT: Providence Christian Church, Inc.

APPLICANT'S REPRESENTATIVE: Eric Feichthaler, Esquire

LOCATION OF PROPERTY: 701 Mohawk Parkway, Cape Coral, FL
Unit 45, Block 1750, Lots 1 through 22 and 49 through 72.
STRAP #: 02-45-23-c4-01750.0050

FUTURE LAND USE CLASSIFICATION: Commercial/Professional

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

APPLICANT'S PROPOSED ZONING: Commercial (C)

CITY WATER AND SEWER: Centralized water, sewer, and irrigation services available.

URBAN SERVICE AREA: Urban Services Transition

HEARING DATE: April 1, 2025

SUMMARY OF REQUEST:

Applicant requests a privately initiated zoning amendment from Professional (P) and Single Family Residential (R1) to Commercial (C) for one site in Block 1750, Lots 1 through 4 and 67 through 72, involving 10 lots which comprise 1.22 acres. The proposed rezone area constitutes the western portion of a larger parcel that is 5.4 acres.

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 Candise Forde 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: Eric Feichthaler, Esquire

CITY STAFF: Candise Forde

CLERK'S OFFICE: Sheri Rhine

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 (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 and staff testimony into his presentation by reference. The Hearing Examiner recommends that City Council find as facts all documentary and oral testimony set forth or referenced below, except to the extent (if any) that the Hearing Examiner specifically recommends otherwise.

Public Testimony

None.

IV. DISCUSSION

Site Information and Surrounding Properties

Staff testified that the proposed rezone area consists of the western portion of a parcel in Block 1750 in central Cape Coral, is approximately 53,173 square feet in size and is part of a larger 5.4-acre site. She further testified that the eastern part of the site is currently developed with a church. The site is currently vacant.

Staff further testified that the subject site has frontage along Mohawk Parkway (a major collector road) to the south and Skyline Boulevard (minor arterial road) to the west, as well as frontage along Southwest 39th Terrace, a local street, to the north.

Staff testified that surrounding uses include single family residences to the north, northeast, east and southeast of the site, with the parcel to the northwest and south being zoned Residential Multi-Family Low (RML). Directly west, across Skyline Boulevard, the property is zoned Commercial and supports a Walmart Neighborhood Market.

Zoning and Future Land Use History

Staff testified that Lots 1 through 3 were rezoned in 1988 from Multi-Family Residential (R-3) to Professional Office (P1) via ORD 22-88. The FLU was amended in 2008 from Commercial Professional (CP) to Public Facilities (PF) via ORD 62-08, and the FLU was amended from in 2024 from Public Facilities (PF) to Commercial/Professional (CP) via ORD 89-24.

Staff further testified that Lot 4 had been rezoned in 1988 from Single Family Residential (R-1B) to Professional Office (P1) via ORD 22-88. The FLU was amended from Commercial Professional (CP) to Public Facilities (PF) via ORD 62-08, and the FLU amended from Public Facilities (PF) to Commercial/Professional (CP) via ORD 89-24.

The zoning of Lots 67 through 68 remained as Single-Family Residential (R1), with the FLU being amended from Single Family (SF) to Public Facilities (PF) via ORD 62-08. The FLU was amended from Public Facilities (PF) to Commercial/Professional (CP) via ORD 89-24.

Finally, staff testified that Lots 69 through 72 had been rezoned from Multi-Family Residential (R-3) to Professional Office (P1) via ORD 22-88. The FLU was amended from Commercial Professional (CP) to Public Facilities (PF) via ORD 62-08, and the FLU was amended from Public Facilities (PF) to Commercial/Professional (CP) via ORD 89-24.

Purpose of the Rezoning Request

The Letter of Intent, dated January 28, 2025, from Applicant's Representative stated that the purpose of the request is to enable his client (Owner herein) to

“sell the property to help financially sustain the church....[thereby allowing] for an increase to the tax base for the City of Cape Coral and add[ing] desperately needed commercial lands to a commercial corridor.”

Anticipated Impact of the Proposed Rezone on Fire and Police Services

The below analysis is based upon staff's assumption that the site would be developed with one or more commercial uses.

Staff contacted City Fire and Police Department staff to determine the extent of the proposed impact of the rezone on fire and police services:

Fire Department personnel reported Fire Station #9 would be responding to service calls for the subject parcel. The number of calls generated annually is anticipated to be less than 15, however, it could be higher if the development for the site were to be a medical facility. In summary, Fire Department personnel opined that the proposed rezone would create a minor impact on fire services attributed to a call volume increase.

Police Department personnel confirmed to staff that the subject parcel is located within the Southwest District, Zone 1. A projected 2 to 4% rise in recorded service calls related to traffic incidents, theft, and disturbances would be expected in Zone 1. Increased foot and vehicle traffic in the area will require additional patrols. Police Department personnel opined that such a minor increase in calls, representing less than 1% citywide, would be considered statistically insignificant.

Staff testified that, since the rezone area consists of only one parcel, the impact to emergency services is anticipated to be minor.

V. **COMPREHENSIVE PLAN CONSISTENCY**

Staff testified that the following Comprehensive Plan policies support the proposed rezoning request.

Policy 1.15 Table 1:

Staff testified that the proposed rezoning to Commercial is consistent with this table which identifies compatible zoning districts for each Future Land Use classification. In addition, the Neighborhood Commercial (NC) and Professional (P) zoning districts are consistent with this FLUC.

Policy 1.15.C:

Intensities within the Commercial zoning designation are limited by a maximum Floor to Area ratio of 1.0.

Staff testified that the majority of the site has a full block depth (250 feet) and proposed development would need a site development plan (SDP) review, allowing staff to ensure the FAR will not exceed 1.0.

Policy 2.1

Goal: The City shall encourage commercial develop where it can efficiently use infrastructure, where their adverse impacts on adjacent uses are minimized and where they will effectively provide the community with desired products, services and employment opportunities.

Staff testified that residential sites are located north and south of the subject area. However, staff anticipated that any adverse impacts to these properties would be mitigated through right-of-way separation, standard construction practices, and LDC requirements including landscaping, screening, architectural, and lighting standards.

Staff further testified that the proposed amendment would add approximately 1.22 acres of commercial land to the City at a major intersection with full-block depth and centralized utilities present.

Based upon her review of the above Plan provisions and testimony from Staff, the Hearing Examiner recommends a finding that granting the requested rezone **would be 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 **would be 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.

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 non-residential uses are located to the east and west of the proposed rezone area, across Skyline Boulevard. Existing single-family homes are to the northeast and southeast, duplexes are to the southwest and vacant land that would support a duplex use is to the northwest.

However, staff testified that such residential properties are separated from the proposed rezone area by street rights-of-way (SW 39th Terrace and Mohawk Parkway).

Staff further testified that LDC provisions are designed to ameliorate the effects of commercial development on nearby residential properties, including architectural, landscape, lighting, and screening standards. The combination of right-of-way separation and LDC provisions, according to staff testimony, would promote development on the rezone site that, if granted by City Council, would be compatible with surrounding uses.

Staff testified that, while potential commercial development may be intrusive to the existing residential uses, potential commercial development could support the adjacent residential needs. Were the site to be developed for commercial uses compatible with the Commercial zoning, they would be required to include enhancements as outlined in the 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*

Staff testified that, if approved, the amendment would add approximately 1.22 acres of commercial land to the City at a major intersection. Accordingly, staff testified that the proposed rezone could support commercial development at a modest scale to provide goods and services within a walkable distance to those located within the surrounding neighborhood.

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 proposed rezone area has full block depth (250 feet) for most of the site; in addition, it is located at a major intersection with high visibility. Further, the site has multiple street frontages that could provide access options to the site and may enhance traffic circulation within the site once developed. Finally, centralized utilities are available to the site. The Hearing Examiner agrees that the above factors support commercial development on the site.

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.*

According to Policy 1.15 of the Comprehensive Plan, the Commercial/Professional future land use classification is consistent with three zoning districts: Commercial (C), Professional (P), and Neighborhood Commercial (NC).

Staff testified that, while the C zoning district would allow a wider variety of uses (including some uses that generate greater numbers of trips compared to the other two zoning districts), based on site specific factors set forth elsewhere in the staff report and in this Recommendation, it would be the most appropriate zoning district of the three available, based on Comprehensive Plan Policies.

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

VII. 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

April 1, 2025
DATE

ATTEST:



CITY CLERK