

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

RZN HEX Recommendation 3-2025

Rendered March 4, 2025

DCD CASE # RZN24-000008

APPLICATION FOR: Rezoning of one (1) parcel, comprising approximately 0.8 acres, from the Professional (P) zoning district to the Residential Multi-Family Low (RML) zoning district.

NAME OF OWNER: Gasparilla Investments LLC

NAME OF APPLICANT AND REPRESENTATIVE: Joe Mazurkiewicz/BJM Consulting

PROPERTY LOCATION: 1207 SE 8th Place, Cape Coral, FL 33990
STRAP #: 19-44-24-C4-00809.0010

CURRENT ZONING DISTRICT: Professional (P)

APPLICANT'S PROPOSED ZONING: Residential Multi-Family Low (RML)

FUTURE LAND USE CLASSIFICATION: Mixed Use (MX)

URBAN SERVICE AREA: Infill

CITY SEWER AND WATER: Available

STREET ACCESS: The subject property has access along Nicholas Parkway East, a minor arterial road, and fronts SE 8th Place, a local roadway.

HEARING DATE: March 4, 2025

SUMMARY OF REQUEST: Applicant has requested a rezone from the Professional (P) zoning district to Residential Multifamily Low (RML) zoning district for one parcel totaling +/- 34,863 SF or +/-0.85 acres.

PUBLIC CONCERNS: No testimony, emails or telephone calls.

SUMMARY OF HEARING EXAMINER RECOMMENDATION: The Hearing Examiner recommends that City Council **GRANT** the Rezoning application as requested.

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").

PARTICIPANTS IN HEARING

APPLICANT'S REPRESENTATIVE: Joe Mazurkiewicz ¹

CITY STAFF: Patrick Carlton White, Senior Planner ²

CITY CLERK'S OFFICE: Sheri Rhine and Stacey Pasek, Recording Secretaries

TESTIMONY FROM MEMBERS OF THE PUBLIC: None.

I. **EXHIBITS**

APPLICANT'S/STAFF'S EXHIBITS: previously submitted.

II. **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.

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 in Hearing Examiner Hearings and his C.V. which has been previously provided to the Hearing Examiner 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 in Hearing Examiner Hearings and his C.V. which has been previously provided to the City Clerk and which sets forth his education, experience, and other qualifications.

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 below, except to the extent (if any) that the Hearing Examiner specifically recommends otherwise.

Staff Incorporation of Staff Report

Staff incorporated his staff report by reference into his presentation.

III. DISCUSSION

Site Information/Surrounding Areas

The Letter of Intent dated September 26, 2024, from Applicant's Representative stated that the site, fronting on SE 8th Place, is on the eastern end of Block 809, at the intersection of SE 8th Place and Nicholas Parkway. He further stated that it is across the street from the Cape Coral City Hall Complex and close by the Mid Cape Industrial Park and Cape Coral Hospital.

He further testified that the site has 295 feet of frontage and is one hundred twenty-five feet deep, with a total site size of approximately 36,875 square feet (approximately 0.85 acres).

The areas surrounding the subject property are a mix of offices, duplexes, and government facilities, with the following Zoning and Future Land Use Classifications (FLUC): Residential Multi-Family Low Zoning (with a FLUC of Mixed Use) to the South, Professional Zoning (with a FLUC Mixed Use) to the East, Professional and Residential Multi-Family Low Zoning (with FLUCs of Mixed Use and Commercial/Professional) to the West, and Commercial (with a FLUC of Public Facilities) to the North.

Staff testified that the surrounding development is a mix of offices, duplexes, and government facilities and that multiple properties within the immediate area are improved with small apartment buildings or duplexes.

Staff further testified that the Future Land Use Classification of the parcel was changed from Commercial/Professional (CP) in 2003 to its current Classification, Mixed Use (MX).

Purpose of Request

Applicant's Letter of Intent stated that, with so many employers in the immediate area, the parcel would be "a great site for workforce housing."³

Further, he stated that the City Centrum Area, which he had been instrumental in proposing many years ago, has not been developed with non-residential uses, with the marketplace indicating over the years that uses appropriate to the Professional zoning category were not of interest in this area.

Finally, the Letter of Intent observed that much of the City Centrum Area has been rezoned back to Multi-family by the City Council.

IV. COMPREHENSIVE PLAN CONSISTENCY

Staff testified as follows regarding the proposed rezone's consistency with *Chapter 4, Future Land Use Element, Policy 1.15, Table 1 and subsection b. of the Comprehensive Plan*:

The proposed RML zoning district is consistent with the MX FLUC pursuant to Table 1. In addition, the RML zoning district has a maximum density of 16 dwelling units per acre, which is below the maximum of dwelling units allowed in the Multi-Family FLUC.

Policy 8.5

The City encourages the use of multi-family residential, compound buildings, professional offices, and parks as transitional uses between commercial development and low-density residential neighborhood.

Staff testified that the proposed rezone to the RML district is supported by this policy, as it allows uses considered "transitional" consistent with this Policy.

Staff testified as follows regarding the proposed rezone's consistency with the Housing Element of the Comprehensive Plan:

³ Re-zoning, if approved, cannot be conditioned on Applicant's agreeing to a specific use of the property; any uses allowed as of right could be developed on the property.

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 requested rezone to the RML District is supported by this goal.

Impact Analysis:

Police & Fire Impacts:

Fire: After consulting with Fire Department personnel on February 14, 2025, staff testified that the property is currently served by Fire Station #2 and was advised that the proposed rezone would be expected to generate less than 15 calls annually, resulting in minor impact to the Department. . Minor impact to the department is anticipated.

Police: After consulting with Police Department personnel on February 18, 2025, staff testified that the property is served by police patrol area Southeast District, Zone 4 and that negligible impacts are anticipated, i.e., less than a 1% increase in the zone and City-wide.

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

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

A. Review Criteria

1. The application **would be consistent** with the Comprehensive Plan, if the Future Land Use Classification is changed as set forth elsewhere herein. LDC § 3.4.6.B.1

See above recommended findings of fact.

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

The discussion under this Standard 2 incorporates by reference the discussion under Standard 3, below.

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*

As set forth elsewhere herein, areas to the east and west of the site are developed with office uses; property to the north is zoned Commercial (C) and is improved with government office uses; and properties to the south are zoned RML and are improved with duplexes or small apartment buildings. The larger surrounding area is mostly developed with offices and duplexes.

LDC, Section 4.1.2.A.2 states that the RML district is to "...accommodate multi-family housing to meet the needs of a diverse community, while ensuring that there is a transition to single-family neighborhoods which protects the integrity of those neighborhood..." and further that "The RML district acts as a transition zone from lower density residential to higher density residential or non-residential uses or zoning district."

The range of uses allowed within the RML zoning district are predominately residential uses including multi-family units, buildings, duplexes, and single-family homes. Other allowed uses include assisted living facilities and bed and breakfast uses by Special Exception.

LDC, Section 4.1.2.B.2 states that the P district is "designed to encourage the compatible development of major professional and related office complexes in areas which are suitable for such activities. The P District may serve as a transition between commercial corridors and nearby residential uses."

Vacant properties within 500 feet of the rezone area are zoned either RML or P and have a MX FLUC. These sites are small, typically encompassing two or three platted lots. Future development on these lots is likely to be small in scale consistent with the modest areas of these sites. Staff testified that, based on the prevalence of low-density residential development in the area of the proposed RML district, this rezoning would be compatible with the existing uses within the area.

Based on the foregoing testimony, the Hearing Examiner recommends a finding that the full range of uses **would be** compatible with both existing and proposed uses in the area.

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

Staff testified that, although the proposed rezoning could result in the development of workforce housing with a maximum of three duplexes or as a multi-family development with a maximum of 12 units, that term is not defined and is sometimes confused with affordable housing. Staff further points out that no guarantee exists that this property would be developed with this type of housing.

Staff further pointed out that the City has also identified a significant need for additional non-residential development to provide employment opportunities and increase the non-residential tax base, and that the existing P zoning would guarantee a degree of non-residential development on the property, since residential development is prohibited in this district.

However, the Applicant's Representative testified that, if developed with housing allowed under the RML zoning, such housing would be located very close to employers in the Mid-Cape Industrial Park, Cape Coral Hospital and the City of Cape Coral.

Further, and very importantly, the Applicant's Representative further testified that the property has been lying fallow for over twenty years, as no developer has expressed interest in developing it with any use allowed as of right under the P zoning. In addition, developing the parcel with uses compatible with the RML zoning designation would augment the tax rolls, which would further serve a community purpose.

While the Hearing Examiner agrees with staff in concept, she finds that as to this specific parcel, the testimony advanced by the Applicant's Representative is more compelling as to the non-development of the property over the past 20 years. In addition, the parcel is well located for development with uses compatible with the proposed RML zoning..

For all of these reasons, she does not find staff's presentation as factual as to this parcel and does find Applicant's presentation as factual.

Accordingly, the Hearing Examiner recommends a finding that the proposed rezoning **would comply** with this criterion.

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

Staff testified that the subject site exceeds the minimum lot area requirement of 10,000 SF for the RML District and that the total area of the site, along with the presence of centralized utilities, would render the property suitable for most uses in the RML District.

For the foregoing reasons, the Hearing Examiner recommends that Council find the characteristics of the proposed rezone area **would be suitable** for the uses permitted.

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

The Applicant's Letter of Intent stated that other zoning districts allowed within this FLUC would create additional impacts to the surrounding areas, in that they would create a larger impact to the adjoining infrastructure and not fit in as well to the many existing multifamily developments in the neighborhood.

Staff testified that the proposed RML district and the existing P district generally would allow less intrusive uses than most other nonresidential and mixed-use districts and that both zoning districts are considered appropriate transitional zoning districts. In addition, the subject property is not large enough to be zoned to the more intense RMM zoning district.

Accordingly, the Hearing Examiner recommends a finding that there would be **no other** zoning district creating fewer potential adverse impacts.

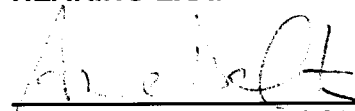
VI. RECOMMENDED FINDINGS AND CONCLUSIONS

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, 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 Low (RML) zoning district.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA



ANNE DALTON, ESQUIRE

March 4, 2025

ATTEST:

CITY CLERK