

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

RZN HEX Recommendation 4-2025
Rendered March 7, 2025

DCD CASE # RZN24-000005

APPLICATION FOR: Rezoning of two (2) parcels (0.92 acres) from the Professional (P) to the Residential Multi-Family Low (RML) zoning district.

NAME OF OWNER: Blue Water Trust LLC

NAME OF APPLICANT: Andrew George, Managing Member

NAME OF APPLICANT'S REPRESENTATIVE: Les Spade

PROPERTY LOCATION: 1224 Country Club Blvd. and 1306 Country Club Blvd
Unit 22 Blk 809 PB 14 PG 5 Lots 60-62
Unit 22 Blk 809 PB14 PG 5 Lots 63-67

CURRENT ZONING DISTRICT: Professional Office (P)

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

FUTURE LAND USE CLASSIFICATION: Mixed Use (MX)

STREET ACCESS: The subject property has frontage on Country Club Boulevard

HEARING DATE: March 4, 2025

SUMMARY OF REQUEST: Applicant has requested a rezone from the Professional (P) zoning district to Residential Multifamily Low (RML) for two (2) parcels totaling 41,000.02 square feet.

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 Justin Heller 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: Les Spade

CITY STAFF: Justin Heller

CITY CLERK'S OFFICE: Sheri Rhine, Recording Secretary

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.

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 into his presentation by reference.

III. **DISCUSSION**

Site Information/Surrounding Areas/Entitlements

Staff testified that the parcel is in the middle of Block 809, with frontage on Country Club Boulevard, with the 0.92-acre site being comprised of two parcels. The subject property is undeveloped. The parcel has a Mixed Use (MX) Future Land Use Classification (FLUC) and Professional Office (P) Zoning, with all of Block 809 also having a Mixed Use FLUC.

Per the testimony by Applicant's Representative, the property is surrounded on three sides (to the east, south and west) with properties which are zoned RML. The only P zoning is to the north of this property.

Staff Recommendation

Staff's recommendation to the Hearing Examiner (and ultimately for decision by the City Council) was that four of the five standards (criteria 1,2,3 and 5) for the proposed rezoning are met by this application, and that only criterion # 4 is not met.

The Hearing Examiner disagrees with the staff recommendation regarding criterion #4, for the reasons set forth below. As set forth below, she recommends that City Council find that all five criteria have been met, resulting in her recommendation that the Applicant's request for rezoning be approved.

Purpose of Request

Applicant's Letter of Intent, dated June 24, 2024, stated that Mr. George had purchased the property approximately 22 years ago for the purpose of combining the two lots and developing four buildable duplexes for his family, as his own retirement vehicle.¹

It further stated that:

this aspiration [by Mr. George] was consistent with the Comprehensive Plan and all adjacent homes in the area of this corridor at the time of purchase (emphasis omitted). Since then, unbeknownst to Mr. George this property was rezoned to (P), but all of the other properties in this area remained (RML).

IV. COMPREHENSIVE PLAN CONSISTENCY

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

Future Land Use Element

Policy 1:15: Staff testified that the proposed Multi-Family Residential (RML) district is consistent with the existing MX Future Land Use Classification.

Policy 1.15.e: Properties less than one (1) acre: Where assemblage is difficult due to existing development, a property with a Mixed Use future land use classification may be developed with one use, which is also consistent with its underlying zoning district.

Staff recommended a finding that the proposed rezoning is consistent with the foregoing Policy. The Hearing Examiner agrees.

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,** requirements of the applicable provisions of the Comprehensive Plan.

¹ Rezoning cannot be conditioned upon the property being developed with a specific use within that zoning designation.

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

A. Review Criteria

1. *The proposed rezoning **would be consistent** with the Comprehensive Plan.*

See above recommended findings of fact regarding consistency with the Comprehensive Plan.

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 permitted uses in RML Zoning are identical to those uses allowed on parcels to the immediate south, east, and west, in that the existing uses currently surrounding the site on all sides are duplexes and multi-family housing, with a senior living facility located toward the southern end of the block.

Accordingly, staff testified that the full range of permitted uses in the proposed RML District would be compatible with the existing uses in 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 the site has sat vacant for 18 years since it was rezoned by the City to Professional Office in 2007. The rezone to RML would allow these properties to be developed faster, putting those homes on the tax roll much sooner.

However, in supporting their recommendation of a finding that this criterion is not met (and therefore the rezoning should not be approved), staff also testified its location is suitable for uses allowed

by right in this zoning category; the City still has a documented deficiency in commercial property; and that were four duplexes to be developed on the property, multiple driveway cuts would be possible along Country Club Boulevard.

The Applicant's Representative testified that:

According to the city's Commercial Centers by Corridors Chart [emphasis omitted], the area surrounding this property ranks as second to last in projected demand for professional space. This indicates that the city's desire for more commercial or office space in this location is not in line with the actual demand.... Rezoning to RML would allow the property to be developed in a way that aligns with both the current needs of the community and the owner's original intentions.

The Applicant's Representative further testified that:

The area is located near an industrial park and a bus line, making it an ideal location for affordable housing for the local workforce. Rezoning to RML would help meet the increasing demand for multi-family housing in the region while reducing traffic impacts and offering easy access to public transportation... the rezoning would support housing for local workers and help address the need for residential space in a location that is already well-connected to employment opportunities. RML zoning would also allow for small businesses, contributing to the area's economic vibrancy. ... [This would] offer a balanced solution that benefits both the property owner and the community at large.

The Applicant's Representative testified at the Hearing that she herself had bicycled as a test from the subject property to nearby businesses, to illustrate her point that if the rezoning were granted, the residents of the property could easily access employment opportunities within bicycling distance.

In addition, the Applicant's Representative testified that the building referenced elsewhere herein as having been constructed under the current P zoning, has remained empty for a substantial period of time and continues not to be occupied by any business. Indeed, she testified that it appears that the only use being made by anyone of that property is by nearby workman (unrelated to the building's use) sitting on its steps, eating their lunches.

The Hearing Examiner finds that the factual allegations and argument presented by the Applicant's Representative outweigh in

materiality those of staff, especially in view of staff's testimony that the property has remained vacant for 18 years since the zoning was changed to P.

Accordingly, the Hearing Examiner declines to agree with staff's recommendation that the proposed rezone is not in compliance with this criterion.

Rather, 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 40,000 square foot site meets the minimum lot area requirement of 10,000 square feet for the RML District. The area of the site is 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 impacts to existing uses in the surrounding area. LDC§ 3.4.6.B.5*

P zoning district: Staff testified that uses allowed on the subject property would likely be less intense than the potential uses allowed on P-zoned parcels to the north. The northern end of the block is currently developed with commercial office buildings.

R1 zoning district: The Single Family Residential (R1) District, unlike the requested RML Zoning District, does not allow duplexes or multi-family uses. This district would be considered to create fewer potential adverse impacts to existing uses in the surrounding area. However, a rezone to R1 would not be supported by staff as such a request would introduce a new zoning district in the block on a small site.

RML zoning district: The proposed rezone to the RML district would confer zoning on the site that is identical to properties to the immediate east, south, and west. Over 50% of the land area in the subject block already has RML zoning. As a result, staff does not envision any adverse impacts or compatibility-related concerns with this request.

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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.

This Recommendation takes effect on the date specified below.

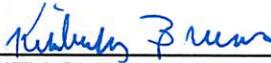
HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA



ANNE DALTON, ESQUIRE

March 7, 2025

ATTEST:



CITY CLERK