

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

RZN HEX Recommendation 8-2025  
Rendered June 6, 2025

DCD CASE # RZN24-000013

**APPLICATION FOR:** Rezoning of one (1) parcel, comprising approximately 0.34 acres, from the Professional (P) zoning district to the Residential Multi-Family Low (RML) zoning district.

**NAME OF OWNER/APPLICANT:** Ascot Realty Acquisitions USE LLC

**NAME OF APPLICANT'S REPRESENTATIVE:** Jonathan Levy

**PROPERTY LOCATION:** 1213 Academy Boulevard, Cape Coral, Florida  
STRAP # 24-44-23-C3-01039.0060  
Unit 24, Block 1039, Lots 6-8

**CURRENT ZONING DISTRICT:** Professional (P)

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

**FUTURE LAND USE CLASSIFICATION:** Mixed Use (MX)

**URBAN SERVICE AREA:** Transition

**CITY SEWER AND WATER:** Available

**HEARING DATE:** June 3, 2025

**SUMMARY OF REQUEST:** Applicant has requested a rezone from the Professional (P) zoning district to Residential Multifamily Low (RML) zoning district for a 0.34 acre undeveloped site

**PUBLIC CONCERNS:** No testimony, emails or telephone calls were received.

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

**NOTICE OF HEARING**

This matter was scheduled for Hearing on May 6, 2025. Upon the commencement of the Hearing, the Hearing Examiner found that, based upon the testimony of City Staff Mike Struve, proper notice of the Hearing had been 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").

Staff then requested a continuance of the matter to June 3, 2025, which was granted. The Hearing Examiner entered an Order of Continuance regarding same.

Accordingly, all the notice prerequisites for hearing this matter on June 3, 2025, were fulfilled.

### **PARTICIPANTS IN HEARING**

APPLICANT'S REPRESENTATIVE: Jonathan Levy

CITY STAFF: Wyatt Daltry, AICP, Planning Team Coordinator<sup>1</sup>

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

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<sup>1</sup> Mr. Daltry 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.

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 by reference into his presentation.

### **III. DISCUSSION**

#### Site Information/Surrounding Areas

The Applicant's Representative and staff testified that three-lot subject parcel, which is undeveloped, is located close to the intersection of Academy Boulevard and Nicholas Parkway.

The Applicant's Representative testified that Applicant owns the adjacent parcel to the south, located at 1219 Academy Boulevard.

Staff testified that the parcel has Mixed-Use (MX) Future Land Use Classification (FLUC) and Professional (P) Zoning which is consistent.

Staff further testified that Block 1039 has a mixture of future land uses and zonings, with properties to the north having a Commercial/Professional future land use. The subject property and other nearby properties have a Mixed-Use future land use. Properties south of the subject property have a Multi-Family (MF) future land use with Residential Multi-Family Low (RML) zoning.

It is important for this analysis to note that many surrounding properties are developed primarily with residences. Specifically, the Applicant's Representative and staff both testified that properties adjacent to the north and east are developed with multi-family residences; as aforesaid, property adjacent to the south is also owned by the Applicant and was recently rezoned to RML through Ordinance 59-22.

Staff testified that the subject property itself received a future land use map amendment from Commercial/Professional to Mixed-Use through City Ordinance 63-22.

Purpose of Request

Applicant's Representative testified that the purpose of this request was to enable him to construct multi-family residential housing on the subject property and on adjacent property also owned by Applicant.<sup>2</sup> Applicant's prior request for the same rezoning was denied in June, 2023.

IV. **COMPREHENSIVE PLAN CONSISTENCY**

Staff testified as follows regarding the proposed rezone's consistency with *Chapter 4, Future Land Use Element, Policy 8.5 of the Comprehensive Plan*:

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. Such development should include:*

- a. Design elements such as: height and scale compatible with the surrounding residential uses;*
- b. Site design that is compatible with surrounding residential neighborhoods with consideration given to extensive screening, architectural features, building and parking orientation, and preservation of natural features; and*
- c. Primary site access provided from arterials, collectors, or access streets in order to discourage traffic from directly entering residential areas.*

Staff testified that both the proposed rezone to the RML zoning district and the continuance of the existing P zoning district are supported by this policy, as it allows uses considered "transitional" consistent with this Policy.

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<sup>2</sup> The Hearing Examiner observes that rezoning cannot be conditioned upon development with a specific use. Rather, the rezoning, if approved by City Council, would enable the Applicant to develop the property with any use allowed as of right in that zoning district.

**Impact Analysis:**

*Police & Fire Impacts:*

**Fire:** Staff testified that the subject property is served by Fire Station 8 and the proposed rezoning would possibly generate 15 calls. Accordingly, minimal impact to the department would be anticipated.

**Police:** Staff testified that the property is served by police patrol area Central District, Zone 2 and, if the rezoning were approved, the property would be anticipated to generate less than a 1% increase in recorded calls for service 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. 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*

Staff testified that the existing uses in the surrounding areas consist of duplexes and single-family housing, with some professional office and ancillary retail uses. Accordingly, he testified that the full range of permitted uses in the proposed RML District would be compatible with parcels to the north and identical to existing uses in the parcels to east and south in the area. He further testified that the proposed RML Zoning would allow for similar or less intense uses than those currently existing in the immediate 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 City has identified an existing need for additional multi-family housing within its borders, which would be supportive of the proposed zoning.

Conversely, however, staff also testified that there is a need for additional non-residential uses such as would be allowed under the existing Professional zoning, due to the need to both expand the tax base and provide sufficient employment opportunities. Finally, staff testified that, where there is such a dichotomy of policy perspectives, the zoning should remain as Professional.

The Applicant's Representative testified that the parcel is well suited for the proposed rezone, as it is adjacent to another parcel with RML zoning and the change in zoning of one parcel from the existing zoning district would not significantly negatively impact the City's desire to retain the uses allowed in the Professional zoning district.

While the Hearing Examiner agrees with staff as a general planning principle, she finds that as to this specific parcel, the testimony advanced by the Applicant's Representative is more compelling, as the parcel is well located for development with uses compatible with the proposed RML zoning.

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 meets the minimum lot area requirement of 10,000 SF for the RML District and that the smaller 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 adverse impacts to existing uses in the surrounding area.  
LDC§ 3.4.6.B.5

Staff testified that the existing Professional (P) District, unlike the requested RML District, does not allow duplexes or multi-family uses, but permits the development of offices and low-intensity commercial uses. Staff further testified that the proposed RML district would create fewer potential adverse impacts than other multi-family residential uses in the surrounding area.

The Residential Multi-Family Medium (RMM) would not be eligible for consideration hereunder, as it is only permitted for sites of one acre or larger.

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**

  
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ANNE DALTON, ESQUIRE

June 6, 2025

ATTEST:

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CITY CLERK