



City of Tacoma
Hearing Examiner

August 17, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

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Charla Kinlow Associate Engineer
City of Tacoma Planning & Development Services Dept.
747 Market Street, Room 345
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Re: HEX2015-020 (REZ2015-40000248261; SEP2015-40000248263)

**Applicant: Ben Tran of The Residential Group, LLC
on behalf of owners Trung Q. and Jessica L. Do**

Enclosed please find a copy of the Hearing Examiner's Report and Recommendation to the Tacoma City Council as a result of a public hearing held on August 6, 2015.

Sincerely,

LOUISA LEGG
Office Administrator

Enclosure (1) – Hearing Examiner's Report and Recommendation

cc: *See Attached Transmittal List*

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED August 17, 2015, at Tacoma, WA.

Louisa Legg

TRANSMITTAL LIST

FILE NO.: HEX2015-020 (REZ2015-40000248261; SEP2015-40000248263)

First Class Mail Delivery:

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Merita Pollard-Trohimovich, Principal Planner, City of Tacoma, Environmental Services,
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Trevor Perkins, Environmental Specialist, City of Tacoma, Environmental Services,
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Rick Coyne, City of Tacoma Public Works Department, Solid Waste Management

Sue Simpson, City of Tacoma, Public Works Department, Construction/LID

Lihuang Wung, City of Tacoma, Planning & Development Services Department

J. Martinson, Supervisor, Tacoma Power T&D New Services Engineering

Jesse Angel, Utility Services Specialist, Tacoma Water

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL ON REZONE

APPLICANT: Ben Tran of The Residential Group, LLC
on behalf of owners Trung Q. and Jessica L. Do
33505 13th Place South Suite D
Federal Way, WA 98003

HEARING EXAMINER FILE NO: HEX 2015-020 (REZ2015-40000248261; SEP2015-40000248263)

SUMMARY OF REQUEST:

A request to rezone the eastern 9,398 square feet (127 feet by 74 feet) of one parcel from an “R-4-L” Low-Density Multiple-Family Dwelling District to “C-2” General Community Commercial District.

LOCATION:

8639 Pacific Avenue, Parcel Number 0320332056.

RECOMMENDATION:

Approval, subject to conditions.

PUBLIC HEARING:

After reviewing the report of the City's Planning and Development Services Department and reviewing information on file, the Hearing Examiner conducted a public hearing on August 6, 2015. The Hearing Examiner also conducted a site visit on August 6, 2015, after the conclusion of the hearing.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION:

FINDINGS OF FACT:

1. The Applicant Ben Tran of The Residential Group, LLC, on behalf of the property owners Trung Q. and Jessica L. Do, submitted an application proposing a rezone of the easterly 9,398 square feet (127 feet by 74 feet) of one parcel located at 8639 Pacific Avenue from an “R-4-L” Low-Density Multiple-Family Dwelling District to “C-2” General Community Commercial District. The rezone would allow the undeveloped easterly area to be used for parking associated with an existing jewelry repair business located in a two-story structure on the west side of the parcel. The westerly portion of the parcel already has “C-2” General Community Commercial zoning (Ordinance #23339, 1985). *Exs. I; A-2; A-3.* The Applicant’s site plan indicates that the parking area will be able to accommodate approximately 24 additional parking spaces, resulting in a total of 32 parking spaces to serve the existing business. The parking area will be improved in a manner consistent with governing City standards for parking areas.¹ *Ex. I; Ex. A-1.*

2. The site at 8639 Pacific Avenue is currently developed with a two-story 6,400 square foot commercial building on the western portion that is used for jewelry repair. The parcel is rectangular in shape and fronts to the west on Pacific Avenue. The site now has parking to accommodate only eight cars. The Applicant indicates that the jewelry repair business employs over 60 employees. Additional parking is needed for the employees. *Ex. I; Ex. A-7.*

3. The undeveloped rear portion of the property proposed for the rezone has a gravel surface that was used for parking in the past without proper authority. This use resulted in Code Enforcement action (File Number 60000117556). A meeting was held on July 28, 2014, between the City and the property owner to address the Code Enforcement concerns. Subsequent to that meeting, the property owner entered into a lease agreement with the owners of a site located at 8802 Pacific Avenue (Tacoma Professional Plaza, LLC) for use of employee parking. Employees must cross Pacific Avenue to access the worksite from this leased parking area. The Applicant has submitted a copy of the lease agreement for parking, and an accident report which he indicates was a result of a hazard created by the temporary parking solution. *Exs. I; A-7; A-8.*

4. The site at 8639 Pacific Avenue was classified “R-2” Single-Family Dwelling District in 1953. A reclassification request was approved for the site on December 5, 1978 to change the zoning of the entire site from “R-2” Single-Family Dwelling District to “R-4-L-T” Residential Commercial Transitional District to allow a one-story, 3,120 square foot professional office building, which was never constructed. Another reclassification request was approved for the site on April 16, 1985, to change the zoning of the western 160 feet of the site from “R-4-L-T” Residential Commercial Transitional District to “C-2” General Community Commercial District to allow for development of a chainsaw, lawnmower, and saw and tool sharpening business at the site. When the rezone was being considered, eight parking spaces and one loading space were required to serve the anticipated needs of

¹ The current site plan is a conceptual drawing and does not fully incorporate all development requirements (e.g., landscaping and ADA accessibility), but does account for the 15-foot landscaping buffer that will be required adjacent to the residentially-zoned properties. A comprehensive review will be done at the time of development permitting to ensure that all applicable requirements are met. *Kinlow Testimony.*

the proposed use. The second story of the building was not included in the parking calculations because it was set aside for storage uses. Building permits were issued for construction of the two-story commercial building in 1998. Based on the lack of any identified plan involving the eastern 127 feet of the parcel, that area was not reclassified with the rest of the property in 1985. As of 2006, the “T” Residential-Commercial Transitional District designation was removed from the list of established zoning designations. The “R-4-L” zoning designation for the eastern 127 feet of the site remained and governs the property today.

Ex. 1.

5. The City’s Generalized Land Use Element (GLUE), as referenced within the City’s Comprehensive Plan, designates the subject site as “Medium Intensity.” The Comprehensive Plan further designates the site as a “Tier I Primary Growth Area.” The proposed “C-2” zoning for this site would be more consistent than the current “R-4-L” zoning with the “Medium Intensity” designation for the property contained in the Comprehensive Plan. *Ex. 1; Kinlow Testimony.*

6. The immediately surrounding area is zoned “C-2” General Community Commercial District to the north and west, “T” Transitional District to the south, and “R-2” Single-Family Dwelling District to the east, with a portion of “R-2” zoning abutting 30 feet of the site on the south.

The parcel to the south is owned by the Korean US Citizens Association and is developed with a 4,848 square foot office building. A reclassification request was approved for the abutting site to the south in 1963 to change the zoning of the western 257 feet from “R-2” Single-Family Dwelling District to “R-4-L-T” Residential Commercial Transitional District. An area-wide rezone in 1989 changed the zoning of the western 257 feet of the site to the south from “R-4-L-T” Residential Commercial Transitional District to “T” Transitional District.

The parcel to the north is owned by Safeland Storage² and is developed with a storage building. A reclassification request was approved for the abutting site to the north in 1979 to change the zoning of the western portion of the site to “R-3” Two-Family Dwelling District and “R-4-L-T” Residential Commercial Transitional District. A reclassification request was later approved for the site to the north in 2003 to change the zoning of the western portion of the site to “C-2” General Community Commercial District. The parcels behind the property to the east, and 30 feet of the parcel to the south, are zoned “R-2” Single-Family Dwelling District. The Applicant owns the two vacant residential properties immediately adjacent and to the east of the subject property. (Parcels 0320336044 and 0320336043). *Ex. 1.*

7. Almost every site along Pacific Avenue in the immediate vicinity of the subject property has been the subject of at least one rezone application in the past several years. The result of the multiple rezone requests and approvals is an eclectic mix of “C-1” General Neighborhood Commercial District, “C-2” General Community Commercial District, “T” Transitional District, and “R-4-L” Low-Density Multiple-Family District zoning along the Pacific Avenue corridor. Pacific Avenue is a major transportation corridor with two lanes in each direction and a center turn lane at this location. Changes in the zoning and accompanying commercial development have changed the nature of the neighborhood

² The staff report lists Safeway Storage, as the owner, which appears to be a typographic error. The owner of record is Safeland Storage.

fronting on Pacific Avenue. Residential uses have been transitioning to the largely commercial uses present today. A parking lot with required buffering from residential uses to the east would be consistent with the neighborhood pattern of commercial development fronting on Pacific Avenue.

8. The District Establishment Statement for the requested “C-2” zone provides:

This district is intended to allow a broad range of medium-to high-intensity uses of larger scale. Office, retail, and service uses that serve a large market area are appropriate. Residential uses are also appropriate. This classification is not appropriate inside Comprehensive Plan designated mixed-use centers or low-intensity areas.

The District use table allows repair services as a permitted use in the “C-2” zone. *TMC 13.06.200.C.4, District use table.*

9. As part of the project review process, Planning and Development Services has provided notification of this rezone request to various City, outside governmental, and non-governmental agencies. Departmental comments and requirements regarding this proposal are included as attachments to the City’s Staff Report and, where appropriate, incorporated as recommended conditions of approval. *Exs. 1; A-8; A-9.*

10. At the hearing, presentations were made by City Staff, by Ben Tran on behalf of the Applicants, and by property owner Trung Q. Do. The Applicant agreed to the conditions of approval recommended by reviewing agencies. No members of the public appeared to testify opposing the requested rezone.

11. In accordance with the requirements of Tacoma Municipal Code (TMC) 13.05.020 regarding notice of rezone applications, written notice of the application was mailed to all owners of property within 400 feet of the site, the appropriate neighborhood council, and qualified neighborhood groups on June 25, 2015. In addition, a public notice sign was posted on the property. To date, no public comments opposing the project have been received. *Ex. 1; Kinlow Testimony.*

12. On July 14, 2015, the City issued a Determination of Environmental Non-Significance for the proposed project under the State Environmental Policy Act (SEPA).³ The DNS was not appealed. *Ex. 1.*

13. No area-wide rezone action affecting this property has been taken by the City Council in the two years preceding the instant rezone application. *Ex. 1; Kinlow Testimony.*

³ It is noted that the site plan attached to the SEPA Determination varies slightly from the site plan attached to this rezone request because of a discrepancy between the dimensions of the parcel included in the legal description and the dimensions shown by the Applicant on the plan. This discrepancy is de minimis and does not affect the overall intent or conclusion of the SEPA Determination. *Ex.1; Kinlow Testimony.*

14. The Staff Report in this matter accurately describes the proposal, general and specific facts about the site, applicable sections of the GLUE, and applicable regulatory codes. The Report is marked as Exhibit 1, and by this reference, is incorporated herein as though fully set forth.

15. Any conclusion of law herein which may be deemed a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. The Examiner's role is to make a recommendation to the City Council. The final rezone decision is made by the City Council. *See TMC 1.23.050.A.1 and TMC 13.05.*

2. The requirements of SEPA have been met by the City's issuance of a Determination of Environmental Non-Significance, which was not appealed.

3. Under TMC 13.06.650.B, the Applicant for a rezone is required to demonstrate consistency with all of the following criteria:

1. That the change of zoning classification is generally consistent with the applicable land use intensity designation of the property, policies, and other pertinent provisions of the *Comprehensive Plan*.

2. That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is appropriate. If it is established that a rezone is required to directly implement an express provision or recommendation set forth in the *Comprehensive Plan*, it is unnecessary to demonstrate changed conditions supporting the requested rezone.

3. That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested, as set forth in this chapter.

4. That the change of the zoning classification will not result in a substantial change to an area-wide rezone action taken by the City Council in the two years preceding the filing of the rezone application. Any application for rezone that was pending, and for which the Hearing Examiner's hearing was held prior to the adoption date of an area-wide rezone, is vested as of the date the application was filed and is exempt from meeting this criteria.

5. That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.

TMC 13.06.650.B. The Applicant bears the burden of establishing by a preponderance of the evidence, that the requested rezone conforms to all of the foregoing criteria. *TMC 1.23.070.A.*

Consistency with the Comprehensive Plan

4. The proposed rezone will be consistent with the terms of the Tacoma Comprehensive Plan. The GLUE of the Comprehensive Plan identifies this location as a Tier 1 – Primary Growth Area. Tier I lands are areas already characterized by urban growth and with the key public facilities and services available. *Comprehensive Plan LU-9*. The subject property is fully serviced by utilities and streets adequate for the intended uses. In addition, the rezone from “R-4-L” to “C-2” will actually bring the subject parcel into greater consistency with the Medium Intensity designation given this area under the Comprehensive Plan. Commercial development in medium intensity areas is to be situated on either principal or minor arterial streets, as is this parcel. (*LU-CDMI-3*.) Moreover, the proposal is consistent with the South End Neighborhood and Larchmont subarea vision which indicates:

The vision of the residents of the South End, as represented by the “action strategy” is a low-density residential district with commercial development located along major arterial streets and limited multifamily development within established residential neighborhoods....

Changing the zoning on this parcel to “C-2” will be consistent with this vision by supporting commercial development along Pacific Avenue while moving away from residential uses contemplated by the “R-4-L” zone.

Changed Conditions

5. Case law and the TMC require that the Applicant for a rezone show that conditions have changed since the original zoning or latest zoning amendment and that the rezone bears a substantial relationship to the public health, safety, morals or general welfare. *See Bassani v. County Commissioners*, 70 Wn. App. 389, 853 P.2d 945 (1993) citing *Parkridge v. Seattle*, 89 Wn.2d 454, 573 P.2d 359 (1978); *Woodcrest Invs. Corp. v. Skagit Cy.*, 39 Wn. App. 622, 694 P.2d 705 (1985); *TMC 13.06.650.B.2*. No showing of compelling circumstances is required. Under Washington law, a “strong showing” of change is not required and the rule is intended to be flexible and allow consideration of each case on its own facts. *Bassani* at 394.

In this case, the area along Pacific Avenue has changed substantially since the multi-family residential zoning was placed on the property in 1953. A large number of rezones from multi-family residential to commercial zoning have been approved over the years along the Pacific Avenue corridor. The westerly portion of the subject site has been rezoned to commercial and the adjacent properties along Pacific Avenue have commercial or transitional zoning. The proposed rezone will support the existing commercial use by providing needed parking. The proposal is consistent with these changes in the neighborhood and will advance the general public welfare.

Consistency with District Establishment Statement

6. The proposal is consistent with the “C-2” District Establishment Statement which states:

This district is intended to allow a broad range of medium-to high-intensity uses of larger scale. Office, retail, and service uses that serve a large market area are appropriate. Residential uses are also appropriate. This classification is not appropriate inside Comprehensive Plan designated mixed-use centers or low-intensity areas.

The rezone will allow a commercial use of the undeveloped portion of the property that is consistent with the medium intensity service businesses contemplated under the “C-2” District Establishment Statement.

Recent Area-Wide Rezone

7. The proposed rezone will not modify an area-wide rezone action taken by the City Council in the past two years. The evidence indicated that the City has not undertaken an area-wide rezone action in this vicinity within the relevant time period.

Relationship to the Public Welfare

8. The rezone will facilitate the commercial enterprise located on the site which is providing employment to a substantial number of citizens. Utilizing the undeveloped portion of the site for parking will establish a useful purpose for the vacant property. This action will be accompanied by vegetative buffering and construction standards designed to protect residential uses to the east. Conditioning the change in zoning classification upon the policies and development requirements of the TMC further insures that the public health, safety, morals and general welfare will be preserved.

9. The findings substantiate a conclusion that the Applicant has met the burden of establishing by a preponderance of evidence that the requested rezone, if properly conditioned, will conform to the applicable approval criteria.

10. Any finding of fact herein which may be deemed properly considered a conclusion of law is hereby adopted as such.

11. In order to assure consistency with the City’s ordinances, goals, and policies, the following are recommended as conditions of approval for the rezone request:

RECOMMENDED CONDITIONS OF APPROVAL

A. SPECIAL CONDITIONS:

1. STORM AND SANITARY SEWERS

- a. The proposal shall comply with all applicable requirements contained in the *City of Tacoma Stormwater Management Manual*, *Side Sewer and Sanitary Sewer Availability Manual*, TMC 12.08, TMC 2.19, TMC 10.14, TMC 10.22 and the *Public Works Design Manual* in effect at time of vesting land use actions, building or construction permitting.

- b. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.

2. STREETS, DRIVEWAY AND SIDEWALKS

- a. Damaged, defective, or hazardous curb, gutter, and sidewalk abutting the site on Pacific Avenue shall be removed and replaced.
- b. The existing driveway approach shall be removed and replaced to meet current City of Tacoma standards.

3. BUILDINGS

Accessible parking spaces on closest accessible route to the existing building per IBC 1106 shall be provided. This shall be evaluated during the grading/paving permit phase.

4. PROTECTION OF ADJACENT PROPERTIES

With the development of the project, the proponent shall be responsible for adverse impacts to other property abutting the project. The project shall be designed to mitigate impacts including, but not limited to, discontinuities in grade, abrupt meet lines, access to driveways and garages, and drainage problems. Slopes shall be constructed with cuts no steeper than 1-1/2:1, and fills no steeper than 2:1, except where more restrictive criteria is stipulated by the soils engineer. When encroaching on private property, the project engineer shall be responsible to obtain a construction permit from the property owner. The design shall be such that adverse impacts are limited as much as possible. When they do occur, the project engineer shall address them.

5. MISCELLANEOUS

- a. The Applicant shall ensure that proposed project meets all required standards under *TMC* 13.06.502 – Landscaping and/or buffering standards, *TMC* 13.06.503 – Residential compatibility standards, *TMC* 13.06.510 – Off-street parking and storage areas, *TMC* 13.06.511 – Transit support facilities, and *TMC* 13.06.512 – Pedestrian and bicycle support standards.
- b. Prior to obtaining grading/paving permits, the proponent shall contact the appropriate City departments to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to, Tacoma Power (253-383-2471), Tacoma Water (253-383-2471), Site Development (253-591-5760) and Planning and Development Services (253-591-5030).

B. USUAL CONDITIONS:

- 1. THE RECOMMENDATION SET FORTH HEREIN IS BASED UPON REPRESENTATIONS MADE AND EXHIBITS, INCLUDING DEVELOPMENT PLANS AND PROPOSALS, SUBMITTED AT THE HEARING CONDUCTED BY THE HEARING EXAMINER. ANY

SUBSTANTIAL CHANGE(S) OR DEVIATION(S) IN SUCH DEVELOPMENT PLANS, PROPOSALS, OR CONDITIONS OF APPROVAL IMPOSED SHALL BE SUBJECT TO THE APPROVAL OF THE HEARING EXAMINER AND MAY REQUIRE FURTHER AND ADDITIONAL HEARINGS.

2. THE AUTHORIZATION GRANTED HEREIN IS SUBJECT TO ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, REGULATIONS, AND ORDINANCES. COMPLIANCE WITH SUCH LAWS, REGULATIONS, AND ORDINANCES ARE CONDITIONS PRECEDENT TO THE APPROVALS GRANTED AND ARE CONTINUING REQUIREMENTS OF SUCH APPROVALS. BY ACCEPTING THIS APPROVAL, THE APPLICANT REPRESENTS THAT THE DEVELOPMENT AND ACTIVITIES ALLOWED WILL COMPLY WITH SUCH LAWS, REGULATIONS, AND ORDINANCES. IF, DURING THE TERM OF THE APPROVAL GRANTED, THE DEVELOPMENT AND ACTIVITIES PERMITTED DO NOT COMPLY WITH SUCH LAWS, REGULATIONS, OR ORDINANCES, THE APPLICANT AGREES TO PROMPTLY BRING SUCH DEVELOPMENT OR ACTIVITIES INTO COMPLIANCE.

RECOMMENDATION:

The Hearing Examiner recommends that the rezone application be approved, subject to the conditions set forth above.

DATED this 17th day of August, 2015.



PHYLLIS K. MACLEOD, Hearing Examiner

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (TMC 1.23.140)

APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law shall have the right to appeal the recommendation of the Examiner by filing written notice of appeal with the City Clerk, stating the reasons the Examiner's recommendation was in error. **EACH APPEAL SHALL BE ACCOMPANIED BY A FEE AS SET FORTH IN TACOMA MUNICIPAL CODE (TMC) 2.09.170. THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD APPELLANT PREVAIL. APPEALS SHALL BE REVIEWED AND ACTED UPON BY THE CITY COUNCIL IN ACCORDANCE WITH TMC 1.70.**

GENERAL PROCEDURES FOR APPEAL: The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all of these procedures here, you should be aware of the following items which are essential to your appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code sections heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**