



**TO:** T.C. Broadnax, City Manager  
**FROM:** Phyllis K. Macleod, Hearing Examiner *PKM*  
Charla Kinlow, Planner, Associate *CK*  
**COPY:** City Council and City Clerk  
**SUBJECT:** Communication Request No. 16-0724 - Rezone – August 23, 2016  
**DATE:** August 1, 2016

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**SUMMARY:**

The Hearing Examiner is recommending denial of the request from Cornered LLC to rezone a 6,000 square foot (0.14 acre) parcel at the corner of South Puget Sound Avenue and South 70<sup>th</sup> Street from R-4L Low-Density Multiple Family Dwelling District to C-2 General Community Commercial District to allow for continued presence of a garage and its use for commercial purposes. The remainder of the parcel is currently used for a community garden, which would be retained by agreement; however, the rezoning request would extend C-2 zoning to the entire parcel.

**COUNCIL SPONSORS:**

N/A

**STRATEGIC POLICY PRIORITY:**

If the rezone were allowed, it would be best aligned to the following strategic policy priority:

- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.

**BACKGROUND:**

Cornered LLC is owned by Heather and James Curry. The Currys also own several parcels adjacent to the rezone site to the west that front on South Tacoma Way. The parcels on South Tacoma Way are zoned C-2 and are being used for a vehicle sales business run by the Currys known as Motors Northwest. The Currys built a large garage on the west side of the rezone lot in 2014. The garage was allowed as an accessory structure to a residence planned on the site. Building permits were issued for the house and garage simultaneously, but the residence was never constructed. In 2015, the City of Tacoma began a Code enforcement action regarding use of the garage. The land use code does not allow detached accessory buildings to remain on a site when the main structure has not been built. Mr. Curry met with City personnel and explored various options for addressing the garage. In an effort to obtain approval to retain the garage, Mr. Curry agreed to apply for a rezone seeking commercial zoning on the property. He entered into a Plan of Action with the Code enforcement division in November 2015, outlining his plan to apply for a rezone. The Plan of Action contained provisions that would apply if the rezone was granted, as well as provisions that would apply if the rezone was denied.

Mr. Curry understood that new Comprehensive Plan provisions were anticipated by the end of 2015. He thought that filing the application for a rezone prior to the Comprehensive Plan Amendments' effective date would prevent application of the new concepts to his proposal. The Comprehensive Plan Amendments changed the intensity designation of the R4-L zoning on the property from medium intensity to a different category: Multi-family (Low Density). As part of the 2015 Comprehensive Plan Amendment, the prior intensity designations were replaced with more specific characterizations. As a result, R-4L and C-2 were no longer considered part of the same intensity category. Mr. Curry was notified in writing the same day as his October 2015 meeting with City staff that they had been informed vesting would not apply to Comprehensive Plan Amendments and his project might not be evaluated under the earlier Comprehensive Plan language. The rezone application was submitted on



December 31, 2015, the same day the new Comprehensive Plan became effective. Mr. Curry testified at the hearing that he had skimmed over that memorandum and fully expected that his application for a rezone would be recommended for approval.

The property in question was rezoned from R-2 Single-family residential to R4-L Multi Family Low Density in 2008 as part of a failed attempt by certain property owners to extend C-2 zoning to properties along the west side of South Puget Sound Avenue. Business owners with frontage on South Tacoma Way came together to seek a rezone extending C-2 zoning from the back of parcels along South Tacoma Way to the west side of South Puget Sound Avenue. The conflict between residential neighborhood uses and commercial uses was resolved by applying R4-L zoning as a transition between the commercial and residential uses. The Curry's proposed rezone from R4-L to C-2 would be inconsistent with the intentional effort to buffer residential uses from impacts generated by commercial uses in this area undertaken in 2008.

Testimony at the hearing and comment letters received included some support for the rezone and the increased investment opportunities it would create. However, the majority of the comments opposed the reclassification, citing problems with the existing commercial uses that extend to South Puget Sound Avenue such as noise, light, traffic congestion, and inadequate parking. Neighbors testified that the modification to allow commercial zoning would change the character of their residential neighborhood. The South Tacoma Neighborhood Council submitted a letter opposing the rezone from residential to commercial uses at this location.

The Currys have allowed the east side of the lot to be used for a community garden. Mr. Curry indicated he would be willing to enter into a restriction that the garden could continue on that portion of the property. He simply wants to be able to keep on using the garage structure. The community garden is an amenity to the neighborhood, but it is an allowed use under the existing R4-L zoning. The rezone proposed by the Currys is not necessary to retain the garden use and the proposed reclassification would extend the C-2 zoning over the entire parcel.

Mr. Curry raised two legal arguments at hearing that the Hearing Examiner does not have jurisdiction to decide: (1) He claimed that the Plan of Action was a contract that the City breached; and (2) He contended that the situation raised an issue of equitable estoppel which would preclude the City from applying the current Comprehensive Plan or denying the rezone. Those issues were not addressed by the Hearing Examiner on the merits. Mr. Curry also points to two properties in the general area that previously obtained rezones to allow commercial uses west of South Puget Sound Avenue. Those rezones were obtained under prior versions of the governing Code and regulations. No rezones have been approved in the area since the 2008 area-wide rezone to R4-L.

Applying the Tacoma Municipal Code provisions governing rezones to the application, the Hearing Examiner concluded that the proposal failed to meet several of the governing criteria. The evidence failed to show that the requested rezone would conform to the goals of the Comprehensive Plan for this area. The evidence also fell short of showing any substantial change in the area since the 2008 rezone to provide an R4-L buffer along the west side of South Puget Sound Avenue. The proposal also appears inconsistent with the portion of the District Establishment Statement for the C-2 zone indicating C-2 is inappropriate in low intensity areas. In addition, the change in zoning would not further the public welfare, health or safety. Under TMC 13.06.650.B, any one of these shortcomings requires denial of the rezone request.



**ISSUE:**

Whether the requested rezone from R4-L Low Density Multiple Family Dwelling District to C-2 General Community Commercial District should be approved.

**ALTERNATIVES:**

The Council could choose to approve the rezone to C-2 for this parcel. Allowing a rezone to a more intense commercial use for property adjacent to a residential neighborhood would constitute a move away from the vision established for this area in the Comprehensive Plan.

**RECOMMENDATION:**

The Hearing Examiner recommends that this rezone be denied.