



City of Tacoma
Hearing Examiner

July 23, 2014

Wesco Management LLC
ATTN: Rick Haux
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San Diego, CA 92126

Dustin Lawrence, Senior Planner
City of Tacoma, Planning & Development Svcs. Dept.
747 Market Street Room 345
Tacoma, WA 98402-3767 (Inter-office Mail Delivery)

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City of Tacoma, Real Property Services
747 Market Street, Room 737
Tacoma, WA 98402

Re: HEX 2014-011 (REZ2014-40000221995; MLU2014-40000221957;
MLU2014-40000221958); HEX 2014-012 (Street Vacation Petition No. 124.1341)

To the Parties,

Enclosed please find a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council on Street Vacation; Recommendation on Rezone and Decisions on Variances as the result of a hearing held on July 10, 2014.

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 July 23, 2014, at Tacoma, WA.

Sincerely,

LOUISA LEGG

Legal Assistant

Enclosure (1)

Cc: Charles Jackson, Architect, Jackson/Cole Assoc., 1560 Via Del Corvo, San Marcos, CA 92078

City Clerk, City of Tacoma

Legal Department, Civil Division, City of Tacoma

Stephen Murakami, Director, Tacoma Public Schools, 3223 South Union Avenue, Tacoma, WA 98409

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Rick Coyne, City of Tacoma Public Works Department, Solid Waste Management

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OFFICE OF THE HEARING EXAMINER
CITY OF TACOMA
REPORT AND RECOMMENDATION TO THE CITY COUNCIL ON REZONE
AND
DECISION ON VARIANCES

APPLICANT: Wesco Management, LLC

FILE NO: HEX 2014-011 (REZ2014-40000221955, MLU2014-40000221957, MLU2014-40000221958)

SUMMARY OF REQUEST:

The Planning and Development Services Department received an application from Wesco Management, LLC seeking to rezone a portion of the property located at 4810 South Wilkeson Street from the existing “R-2” Single-Family Dwelling District designation to “C-2” General Community Commercial District. The rezone would also allow a major modification of a portion of the site previously rezoned to a “C-2” General Community Commercial District. The rezoning would accommodate future construction of a 44,500 square foot retail building and associated parking. In addition to the rezone request, the Applicant is seeking a sign variance to allow a 25 percent increase in sign area and a parking stall quantity variance to reduce the required parking from 173 stalls to 116 stalls. In a related matter, the Applicant has petitioned to vacate the portion of South 49th Street abutting the site directly to the south. The street vacation request is addressed in a separate recommendation to the City Council.

LOCATION:

The site address is 4810 South Wilkeson Street (Parcel Numbers 2110000271, 2110000310, 2110000285, 2110000293), along with the portion of the South 49th Street right-of-way abutting the site to the south as described in the associated street vacation request.

RECOMMENDATION OF THE HEARING EXAMINER:

The proposed rezone and major modification request is hereby recommended for approval, subject to conditions.

DECISIONS OF THE HEARING EXAMINER:

The sign variance request to allow a 25 percent increase in the applicable sign area is hereby granted, subject to conditions. The parking stall quantity reduction variance request is hereby granted, subject to conditions.

ORIGINAL

PUBLIC HEARING:

After reviewing the report of the City of Tacoma’s Planning and Development Services Department (PDS) and examining available information on file with the applications, the Hearing Examiner conducted a public hearing on the matter on July 10, 2014. The Hearing Examiner conducted a visit to the site and the immediately surrounding area on July 16, 2014.

FINDINGS, CONCLUSIONS AND RECOMMENDATION:

FINDINGS:

1. Wesco Management, LLC (Wesco) submitted an application to rezone a portion of the property located at 4810 South Wilkeson Street from the existing “R-2” Single-Family Dwelling District designation to “C-2” General Community Commercial District. The rezone would also approve a major modification of a portion of the site previously rezoned to a “C-2” General Community Commercial District. The rezone would allow the future construction of a 44,500 square foot retail building and associated parking for a proposed “Mor Furniture for Less” store. Wesco has also requested variances to allow a 25 percent increase in sign area and a required parking stall quantity reduction from 173 stalls to 116 stalls. *Ex. 1; Lawrence Testimony.*

2. The proposed project site is currently zoned “R-2” on the westerly portion of the lot. The easterly portion of the site was rezoned from “R-2” to “C-2” a number of years ago to accommodate commercial use of the property. A number of businesses have occupied the structure that was built on the easterly portion of the site after the rezone, including a prior nursing home and a child care center that is currently utilizing the building. A planned office building on the westerly portion of the site was never completed. *Ex. 1; Lawrence Testimony.*

3. The project site is approximately 2.23 acres in size and the parcel fronts on South 48th Street to the north and South Wilkeson Street to the east. The property slopes from South Wilkeson Street westerly toward the adjacent Interstate 5 freeway. To the south, the parcel is bounded by South 49th Street, which is not developed as a roadway. Across the South 49th Street right-of-way, the Tacoma School District owns property developed with the Angelo Giaudrone Middle School. *Ex. 2.* The upper (easterly) part of the site contains a 20,000 square foot building that would be removed as part of the project. The westerly portion of the site is undeveloped and contains moderate vegetation. *Ex. 1; Lawrence Testimony.*

4. The surrounding area is a mix of residential and more intense uses. The area east of the site, across South Wilkeson Street, is zoned “R-2” Low Intensity Single-Family Detached Housing Area and is developed with established residential uses. To the north of the site, across South 48th Street, the property is zoned “C-2” and contains a large retail furniture store. The Interstate 5 freeway is located downhill and west of the site and the area across the freeway from the site is developed with retail and commercial uses surrounding the Tacoma Mall. The area to the south of the site is zoned “R-2” but is developed with a middle school, rather than single-family residences. *Ex. 1; Lawrence Testimony.*

5. The Generalized Land Use Element (GLUE) of the Comprehensive Plan identifies the subject site as within a Tier 1 – Primary Growth Area. Lands within this designation are already characterized by urban growth and key public facilities and services are available. The subject site is also located in a Medium Intensity area under the Comprehensive Plan.¹ Medium Intensity commercial developments require access to higher volume arterial streets and should be located within easy access to communities that they serve. *Ex. 1.*

6. The site plan for the project places the proposed furniture store building on the easterly portion of the site with parking extending down the slope toward the Interstate 5 freeway. This configuration is similar to the furniture store located across South 48th Street to the north. The project would have freeway frontage, but the substantial setback of the structure reduces visibility for passing motorists. As a result, the Applicant is seeking a sign variance to allow total signage area 25 percent greater than would otherwise be available (from 305 square feet to 381 square feet). *Ex. 1; Lawrence Testimony.* The signs would be consistent with the minimum size for visibility from the freeway under standards developed by the United States Sign Council. *Jackson Testimony.* The signs would be mounted on the building, rather than being placed on tall freestanding structures. The signs would be located on the building façades facing north, south and west, thereby avoiding any signage on the portion of the structure facing the residential development on South Wilkeson Street. *Ex. 1 at A-12; Lawrence Testimony; Jackson Testimony.*

7. Access to the store would be exclusively off of South 48th Street on the northerly boundary of the site and no traffic from the site would be directed onto the adjacent residential street. The access driveway would be aligned with the access to the furniture store directly across South 48th Street from the site. *Jackson Testimony; Ex. 4.* South 48th Street is a four and five lane Minor Arterial in this area. *Ex. 4, p.3.* A traffic study for the project was prepared by Jake Traffic Engineering, Inc. The traffic study evaluated the impacts on nearby roads and intersections that could be expected from development of the project. The traffic study concluded that all intersections impacted by the project would continue to operate with a level of service (LOS) of C or better with or without the project. *Ex. 4, p.8.* The traffic study recommended enhanced channelization on South 48th Street and maintenance of a minimum 10-foot clear zone for driver sight lines at the site driveway. Conditions incorporating these recommendations are included in the City’s recommended conditions for approval. *Ex. 1.*

8. Required parking is typically based on the type of use being undertaken at a site. A retail store, of the size involved in this case, would normally need to provide 173 parking spaces. *Lawrence Testimony.* The Applicant provided data from the Institute of Traffic Engineers indicating that much less parking is needed for a furniture store. The peak demanded calculation for a store the size of the proposed structure yields a need for of 66 parking spaces. *Ex. 4, p. 11; Jackson Testimony.* Wesco is seeking a parking variance to reduce the required parking spaces from 173 stalls to 116 stalls. This reduced level of parking will exceed the anticipated peak demand for the type of use involved and will avoid any parking overflow into the surrounding residential area. The parking provided under the proposed variance will be sufficient to accommodate both customers and employees. *Jackson Testimony.*

¹ The south 30 feet of the proposed street vacation on South 49th Street falls outside the medium-intensity area. *Ex. 1.*

9. Wesco's rezone request and variance requests have been reviewed by a number of governmental agencies and utility providers. The consulted agencies have suggested a number of conditions for the rezone relating to streets, driveways and sidewalks, utilities, fire protection, traffic, public transit, and project design. *Ex 1, Attachments A-1 through A-10; Lawrence Testimony.*

10. No area-wide zoning involving or affecting the rezone site has been taken by the Tacoma City Council, acting in its legislative capacity, in the past two years preceding the filing of Wesco's rezone application. *Ex.1; Lawrence Testimony.*

11. No citizens appeared at the hearing expressing opposition to the rezone or variance requests. A representative of the Tacoma Public School District (School District) appeared and testified in support of the requested actions. The School District owns the adjacent property to the south of the project site, which houses the Angelo Giaudrone Middle School. *Murakami Testimony.*

12. Pursuant to the State's State Environmental Policy Act (SEPA) Rules (WAC 197-11) and the City of Tacoma's Environmental Code (*Tacoma Municipal Code 13.12*), the Director of the Planning and Development Services Department issued a Determination of Nonsignificance (DNS) on May 21, 2014. The determination was based upon a review of the Applicant's Environmental Checklist and other supporting information on file with PDSD. The SEPA appeal period ended on June 4, 2014, and no appeal of the environmental determination was filed with PDSD. *Ex. 3; Lawrence Testimony.*

13. The site was posted on April 22, 2014, with the pending action and proper written notice of the public hearing was mailed to all owners of property within 400 feet of the site, the neighborhood council, and qualified neighborhood groups. Notice was also published in the Tacoma Daily Index. *Ex. 1; Lawrence Testimony.*

14. The PDSD's Preliminary Report, as entered into this record as Ex. 1, accurately describes the proposal, general and specific facts about the site, applicable sections of the *Generalized Land Use Element (GLUE)*, and applicable regulatory codes. The report is incorporated herein by reference as though fully set forth.

15. Any conclusion hereinafter stated which may be deemed to be a finding herein is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *See Tacoma Municipal Code (TMC) 1.23.050; 1.23.120; and TMC 13.05.*

2. The applicant bears the burden of establishing, by a preponderance of the evidence, that the requested rezone, major modification, and variances conform to all of the applicable criteria. *TMC 1.23.070.A.*

REZONE/MAJOR MODIFICATION

3. Applications for rezones² are reviewed for consistency with all of the following criteria:

Criteria for rezone of property. An applicant seeking a change in zoning classification must 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.

4. In this case, the proposed change of zoning classification is generally consistent with the Medium Intensity designation for the property in the Comprehensive Plan. As set forth in the Staff Report, the Medium Intensity classification is intended to provide for commercial developments offering everyday goods and services for several surrounding neighborhoods. The proposed furniture store located on a higher volume arterial, with adequate surface parking to accommodate customers and employees, directed to a broad customer base, is consistent with the Medium Intensity designation. The site is also served by adequate

² The application constitutes a major modification to prior zoning actions on a portion of the property. The major modification is processed in the same manner and is subject to the same decision criteria that are currently required for the type of permit being modified. *See TMC 13.05.080.C.1.* The permit in question pertains to the zoning of the property and will be evaluated under the same criteria as the rezone request. Accordingly, the matters will not be differentiated for purposes of analysis within this recommendation.

public facilities, including roads and utilities that will require only minor upgrades or extensions to existing systems. As such, the proposal is consistent with the Tier 1 – Primary Growth Area designation in the Comprehensive Plan’s GLUE.

5. Case law and the TMC require that the applicant for a rezone show that conditions have changed since the original zoning or latest 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, 394, 853 P.2d 945 (1993) citing *Parkridge v. Seattle*, 89 Wn.2d 454, 153, 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. *See Bassani* at 394

6. The evidence demonstrated that substantial changes have occurred affecting the use and development of property in the project area in the years since the original “R-2” zoning was assigned to the property in 1953. The development of the Tacoma Mall and surrounding commercial and retail installations has turned the area just over the freeway to the west of the site into a commercial center of regional significance. The property directly across South 48th Street from the site has been developed with a retail furniture store similar to the project Wesco is proposing. The area directly to the south of the site is developed with a middle school. Changes to the types of uses in the immediate area support the requested rezone.

7. The proposed project is consistent with the district establishment statement for the zoning classification being requested. The “C-2” district establishment statement specifically indicates that the “C-2” zone is appropriate for a broad range of medium-intensity uses including retail uses that serve a large market area. The 44,500 square foot furniture store is designed to attract customers from a large market area. The project is also consistent with the similar development directly across South 48th Street to the north.

8. The subject site has not been involved in any area-wide rezone actions by the City Council in the past two years. Therefore, the terms of TMC 13.06.650.B.4 do not present an obstacle to approval of the rezone.

9. The evidence demonstrates that the rezone will be consistent with the public health, safety, morals and general welfare if the conditions set forth below are included. The project will serve the needs of the larger community as contemplated by the “C-2” zoning district. The design of the site will orient major activity and impacts northerly toward South 48th Street and westerly toward the freeway and away from the residential area on South Wilkeson Street. The project will include suitable utilities and other necessary infrastructure on site and on the nearby roadway to assure public health, safety and welfare. Neighbors have not opposed the project and the neighboring school district supports the proposal.

10. The rezone and major modification proposed by Wesco meets the governing criteria for approval in TMC 13.06.650.B.

SIGN VARIANCE

11. The requirements for obtaining a sign variance are set forth in TMC 13.06.645.B.5:

5. Variance to sign regulations.

a. Applicability. Variances to sign regulations found in Section 13.06.520, 13.06.521, and 13.06.522 shall be categorized as one of the following:

(1) Level 1 Sign Variances: Any sign variance request for up to a 25 percent increase in the permitted sign area or height or to allow an increase in the permitted number of signs. Such variance requests shall be reviewed against the criteria outlined in Section 13.06.645.B.5.b. In no instance, shall a Level 1 Sign Variance allow the height of a sign to exceed 35 feet or exceed the height of the building it identifies, whichever is lower, if located on a site with freeway frontage.

(2) Level 2 Sign Variances: Any sign variance request beyond 25 percent of the permitted sign size or height and any request for relief from sign setback, separation, location, or other sign standard not identified above. Such requests shall be reviewed against the criteria outlined in Sections 13.06.645.B.1.b and 13.06.645.B.5.b.

b. Criteria. The Director may approve a sign variance for one or more of the following reasons:

(1) The proposed signage indicates an exceptional effort to create visual harmony between the signs, structures, and other features of the property through the use of a consistent design theme, including, but not limited to, size, materials, color, lettering, and location.

(2) The proposed signage will preserve a desirable existing design or siting pattern for signs in an area, including, but not limited to, size, materials, color, lettering, and location.

(3) The proposed signage will minimize view obstruction or preserve views of historically or architecturally significant structures.

(4) In a shopping center or mixed-use center, the proposed sign plan provides an integrated sign program consistent with the overall plan for the center.

(5) In a shopping center or mixed-use center, the variance is warranted because of the physical characteristics of the center, such as size, shape, or

topography, or because of the location of signs in existence on the date of passage of this section.

TMC 13.06.645.B.5.

12. The evidence shows that the proposed 25 percent increase in sign area variance supports the Applicant's plan to utilize a consistent design theme visible from the adjacent freeway. At the same time, the sign plan would minimize impacts on the neighboring area by attaching the signs directly to the portions of the building fascia facing away from the nearby residences. Overall the proposal meets the requirement to demonstrate an exceptional effort to create visual harmony through a consistent design theme.

13. The proposed sign plan is similar to the signage used by the furniture store directly across South 48th Street from the property. Both sites use wall mounted signage on façades that front on South 48th Street and Interstate 5. The Wesco project will preserve the existing benefits of the siting pattern for signs in the area.

14. The proposed signage will minimize view obstruction by mounting the signs on the building façade. The signs will be designed in compliance with recommendations established by the United States Sign Council for the minimum size necessary to be legible from Interstate 5. There is no evidence that any historic or architecturally significant structures would be impacted by the project or the associated signage.

15. The approval criteria for signs within a shopping center or mixed-use center do not apply to this project.

16. Wesco's sign plan meets the required criteria for approval of a sign variance contained in TMC 13.06.645.B.5.b.

PARKING QUANTITY VARIANCE

17. The standards for obtaining a variance to off-street parking requirements are contained in TMC 13.06.645.B.7.

7. Variance to off-street parking quantity standards.
 - a. Applicability. These shall include variances to the required off-street parking quantity standards contained in Section 13.06.510.A.1
 - b. Criteria. The Director may, in specific cases, authorize a variance to the off-street parking quantity standards. Except under extraordinary circumstances, the standard shall not be reduced by more than 50 percent. The Director or Hearing Examiner may issue such conditions as necessary to maximize possible compliance with the intent of the regulations. The applicant carries the burden of proof to demonstrate applicability of the appropriate criteria. The Director may authorize a variance upon finding that the application is consistent with each of criteria 1 through 3 and at least one of criteria 4 through 7.

- (1) The grant of the variance would allow a reasonable use of the property;
- (2) The grant of the variance will not be materially detrimental or contrary to the Comprehensive Plan and will not adversely affect the character of the neighborhood and the rights of neighboring property owners; and
- (3) The grant of the variance will not cause a substantial detrimental effect to the public interest.
- (4) Approval of the variance would not constitute a grant of special privilege not enjoyed by other properties in the vicinity and/or would allow for a more environmentally sensitive site and structure design to be achieved than would otherwise be permitted by strict application of the standard; or
- (5) The restrictive effect of the specific zoning regulation as it applies to the specific property is unreasonable due to unique conditions relating to the specific property, such as: parcel size; parcel shape; topography; location; proximity to a critical area; location of an easement; or character of surrounding uses; or
- (6) Reasonable alternatives are to be provided to said standards which are in the spirit and intent of this chapter; or
- (7) The likelihood of a decreased need for off-street parking for the use at that location due to site-specific circumstances, such as:
 - (a) A parking study demonstrating that the individual characteristics of the use at that location require less parking than is generally required for a use of this type and intensity;
 - (b) An approved carpooling/vanpooling or commute trip reduction program consistent with TMC Chapter 13.15;
 - (c) Availability of private, convenient transportation services to meet the needs of the use;
 - (d) Accessibility to and frequency of public transportation; or
 - (e) For residential uses, availability of pedestrian access due to proximity to health and medical facilities, shopping facilities and other services providing for everyday needs and amenities.

TMC 13.06.645.B.7.

18. The facts in this case support a conclusion that the proposed parking quantity variance would allow a reasonable use of the property. The planned furniture store with associated parking is a reasonable use of this sloped parcel located adjacent to the Interstate 5 freeway. The size of the proposal and the minimal impacts that would occur if the parking variance is granted are reasonable and consistent with the standards of the "C-2" General Community Commercial District zone.

19. The proposed parking variance will not be detrimental to the intent of the Comprehensive Plan and will not adversely affect the character of the neighborhood or the rights of neighboring property owners. The parking variance will reduce the required parking stalls from 173 to 116. The evidence shows that the peak demand for parking would be 66 stalls. The proposed parking, if the variance is granted, will be more than sufficient to avoid spill-over impacts on the neighborhood.

20. Likewise, the proposed parking variance will not cause a substantial detrimental effect to the public interest. The public interest will be served by the creation of a new retail furniture outlet. At the same time, the proposal has been designed to absorb all anticipated customer and employee parking needs without impact to the surrounding members of the public or persons using nearby streets.

21. Approval of the proposed parking variance would not constitute a grant of special privilege and would allow for a more environmentally sensitive site and structure design. The variance proposed would eliminate unneeded parking stalls, thereby allowing for a more efficient layout for the project site. The variance request is based on data regarding parking needs for the particular type of use being proposed for the property and allows for a design that effectively utilizes the unique features of this steeply sloping site near the freeway.

22. The parking stall quantity normally applicable to a retail operation on this site would be unreasonable for this proposal because it fails to acknowledge the actual needs for parking experienced by this type of retail entity. Data has been presented demonstrating that 173 stalls would vastly exceed even the peak demand for parking at the furniture store. The steep site in question, located adjacent to the Interstate 5 freeway, presents substantial challenges to feasible development without a variance reducing the required, but unnecessary, parking stalls. City staff analysis did not extend to reasonable alternatives and site-specific studies because the otherwise applicable variance criteria were considered met. Under the circumstances of this case, and the specific details of this project, the Applicant has shown compliance with the criteria for approval of the requested parking quantity variance under TMC 13.06.645.B.7.

SUMMARY

23. Findings entered herein, based on substantial and unrebutted evidence in the hearing record, support a conclusion that the proposed rezone and major modification are consistent with applicable criteria and standards for rezones, provided the conditions set forth herein are imposed and complied with by Wesco. The Findings entered herein also support a conclusion that the variance requests relating to sign area and required parking stalls are consistent with the applicable criteria and standards for approval.

24. Accordingly, the proposed rezone and variances requested should be approved subject to the following conditions:

A. RECOMMENDED CONDITIONS OF APPROVAL

1. ENVIRONMENTAL SERVICES (STREETS, DRIVEWAYS AND SIDEWALK):
 - a. Full intersection curb ramp build out shall be constructed at the intersection of South Wilkeson St and S 49th St meeting Public Right Of Way Accessible Guide-lines (PROWAG) and Americans with Disabilities Act (ADA) requirements.
 - b. Any damaged/defective sidewalk, curb and gutter abutting the site shall be removed and replaced.
 - c. A turnaround in the 49th Street right-of-way, meeting the Tacoma Fire Department and City of Tacoma requirements, shall be provided.
 - d. The type, width, and location of all driveway approaches serving the site(s) shall be approved by the City Engineer.
 - e. Per the Right-of-Way Restoration Policy, all utility cuts must be consolidated which will require full street two-inch grind and overlay fronting the property.
 - f. A Work Order is required. A licensed professional civil engineer shall submit the street plans for review and approval following the City's work order process. A performance bond is required for all work orders per TMC 10.22.070.F.

2. ENVIRONMENTAL SERVICE (STORM AND SANITARY SEWERS)
 - a. Full review of storm and sewer design shall be completed under the construction permits, additional mitigation may be required. This development's stormwater design shall be in compliance with the 2012 City of Tacoma Stormwater Management Manual, and all applicable Tacoma Municipal Codes. This development's sanitary sewer design shall meet the City of Tacoma Side Sewer and Sanitary Sewer availability manual, the Department of Ecology Sewage Works Design Criteria, and all applicable Tacoma Municipal Codes.
 - b. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.
 - c. Each lot shall be independently connected to the City sanitary sewer.
 - d. A Covenant and Easement Agreement shall be required for all projects with private storm drainage system.

3. TACOMA POWER

- a. Developer/owner contractors shall exceed all clearance requirements for all aerial conductors under NESC, WAC/RCW, NEC, WAC 296-155 “working near energized lines”.
- b. The developer/owner shall be responsible for all trenching, backfilling, excavation and restoration on- and off-site.
- c. All costs associated with the project shall be the customer’s responsibility, which include but are not limited to easement acquisitions, granting easements, and re-alignment/relocation of any of Tacoma Power’s infrastructure.

4. TACOMA WATER

- a. City ordinance 12.10.045 requires a separate water service and meter for each parcel.
- b. An existing water main crosses this property through an existing water main easement. This easement must remain and all conditions of the easement shall be met. Any adjustments to Tacoma Water facilities shall be paid for by the developer.
- c. If fire sprinklering, the Tacoma Water Permit Counter shall be contacted for policies related to combination fire/domestic water service connections.
- d. Existing water meters to subject parcels may be utilized by the owner provided size requirements for intended use are adequate, as approved by Tacoma Water. Tacoma Water shall review proposed plans prior to final approval.
- e. If new water services are required, they shall be sized and installed by Tacoma Water after payment of the Service Construction Charge and the Water Main Charge. New meters shall be installed by Tacoma Water after payment of the System Development Charge.
- f. If a new fire hydrant is required at a location with an existing water main, the hydrant shall be installed by Tacoma Water after payment of an installation charge.
- g. If existing water facilities need to be relocated or adjusted due to street improvements for this proposal they shall be relocated by Tacoma Water at the owners’ expense.
- h. Sanitary sewer mains and sidesewers shall maintain a minimum horizontal separation of ten feet from all water mains and water services. When extraordinary circumstances dictate the minimum horizontal separation is not achievable, the methods of protecting water facilities shall be in accordance with the most current State of Washington, Department of Ecology “Criteria For Sewage Works Design.”

5. TACOMA FIRE

- a. Records show an existing public hydrant at the west end of South 49th Street. Removal, relocation, and/or modification of this existing hydrant shall be coordinated with Tacoma Water. Approval shall be granted by both Tacoma Water and Tacoma Fire.
- b. A new public fire hydrant shall be required at the new termination of South 49th Street. The installation of this hydrant shall be coordinated with Tacoma Water. Final placement shall be approved by Tacoma Fire.

6. TRAFFIC ENGINEERING

- a. As proposed by the Applicant and based on the presented safety and operational analysis within the traffic impact analysis, access to/from the site on South 48th Street shall be permitted with no movement restrictions so long as it meets the following conditions: The proposed driveway shall be positioned across from the existing driveway on the north side of South 48th Street; the driveway construction shall include a required complementary re-channelization/re-striping of the center turn lane/painted median on South 48th Street as discussed within the study. The details of the applied design are to be coordinated with City staff at the time of construction and; adequate sight visibility triangles and relatively unobstructed views must be present at newly constructed the driveway per the City of Tacoma's Design Manual (Section 4.030.B), which cites the driveway leg of the visibility triangle being a preferred distance of 15 feet (or 10-foot minimum mentioned in the traffic impact analysis based on this situation, if shown to be necessary) from the intersecting roadway.
- b. Statements within the traffic impact analysis indicated that public and/or truck traffic would not utilize the proposed Fire Access Gate that is to be aligned with South 49th Street. Therefore, the Fire Access Gate shall only be used for emergency access with proper mechanism (e.g., Knox Box) installed to ensure its use only in this manner.

7. PIERCE TRANSIT

- a. Table 13.06.511.D.1 of the Tacoma Municipal Code states that for any retail development over 10,000 square feet, the developer is required to provide two foundation pads and shelters at transit stops within 500 feet of the project site. There are two bus stops within 500 feet that meet these criteria.
- b. The developer shall provide a 5' x 10' x 8" thick concrete foundation, at each bus stop immediately behind the sidewalk.
- c. The developer shall be responsible for all costs associated with bus stop improvements, including construction, permits and inspections.

- d. Once the foundations are complete and funds have been received, Pierce Transit shall install the benches and shelters, as well as relocate the bus stop poles. The shelters shall be cleaned and maintained by Pierce Transit.
8. PLANNING & DEVELOPMENT SERVICES
- a. With the exception to the standards in which the Applicant requested variances to, the Applicant shall ensure that proposed project meets all required standards under *TMC* 13.06.501 – Building design standards, *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, *TMC* 13.06.512 – Pedestrian and bicycle support standards, and *TMC* 13.06.520 – Signs.
 - b. Prior to obtaining building or grading 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, Tacoma Water, and Public Works.
 - c. All new construction shall conform to the current adopted edition of the International Building Code, other applicable codes, state amendments, and City of Tacoma ordinances.
 - d. The architect must be licensed in the State of Washington per RCW 18.08 and 308-1.
 - e. If the interior property line is not removed, the building shall be designed in relation to the property line for allowable area per IBC Chapter 5 based on occupancy groups and type of construction, fire-resistive walls, openings, and projections pursuant to IBC Table 602 and Section 705, and exiting pursuant to IBC Chapter 102 WAC.
 - f. Lots are mapped on GIS as “Slope (Steep) 25-40%” and “> 40%”. A geotechnical investigation and report that addresses site issues and provides recommendations for foundations and retaining structures is required prior to issuance of building permits.
 - g. The site shall be developed in a manner substantially consistent with the elevation and site plan drawings attached to the staff report.
 - h. In the event the site changes uses from the currently proposed furniture retail store to a use requiring an increase in parking, such change of use shall be reviewed by PDS and Traffic Engineering and a determination shall be made confirming that adequate parking is available. In the event the change of use requires more parking and it is determined that adequate parking is not available, a separate variance to parking stall quantity standards shall be sought to allow the change of use.

- i. A Concomitant Zoning Agreement (CZA) incorporating the conditions of approval imposed shall be executed and recorded with the Pierce County Auditor prior to final approval of the reclassification by the City.

B. USUAL CONDITIONS:

1. The recommendation set forth herein is based upon representation made and exhibits, including development plans and proposals, submitted at the hearing conducted by the Hearing Examiner. Any substantial change(s) or deviations(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 law, regulations, and ordinances are conditions precedent to the approval granted and are continuing requirement of such approvals. By accepting this approval, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinance. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, and ordinances, the applicant agrees to promptly bring such development or activities into compliance.

25. Any finding hereinbefore stated which may be deemed to be a conclusion herein is hereby adopted as such.

RECOMMENDATION OF THE HEARING EXAMINER:

The proposed rezone and major modification request is hereby recommended for approval, subject to the conditions outlined herein.

DECISIONS OF THE HEARING EXAMINER:

The sign variance request to allow a 25 percent increase in the applicable sign area is hereby granted, subject to the conditions contained herein. The parking stall reduction quantity variance request is hereby granted, subject to the conditions contained herein.

DATED this 23rd day of July, 2014.


PHYLLIS K. MACLEOD, Hearing Examiner

NOTICE

Pursuant to RCW 36.70B.130, you are hereby notified that affected property owner(s) receiving this notice of decision may request a change in valuation for property tax purposes consistent with Pierce County's procedure for administrative appeal. To request a change in value for property tax purposes you must file with the Pierce County Board of Equalization on or before July 1st of the assessment year or within 30 days of the date of notice of value from the Assessor-Treasurer's Office. To contact the board call 253-798-7415 or <www.co.pierce.wa.us/boe>.

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S DECISION ON VARIANCES

RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:

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. (*Tacoma Municipal Code* 1.23.140)

NOTICE

APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision is appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be commenced within 21 days of the entering of the decision by the Examiner, unless otherwise provided by statute.

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION ON REZONE

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. (*Tacoma Municipal Code* 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) 2.09.500. 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.