

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

APPLICANT: Avamere Bel Air Properties, LLC
25117 SW Parkway Ave., Suite B
Wilsonville, OR 97070

FILE NO: HEX 2014-017 (REZ2014-40000223364 & SEP2014-40000223363)

SUMMARY OF REQUEST:

A request to rezone two parcels totaling about 2.23 acres from an "R-2" Single-Family Dwelling District to an "R-4L" Low Density Multiple-Family Dwelling District to allow for the construction of a 60-bed extended care facility.

LOCATION:

620 and 630 South Pearl Street (Parcel Nos.: 0220022123, 0220022057).

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 July 24, 2014.

FINDINGS, CONCLUSIONS AND RECOMMENDATION:

FINDINGS:

1. CB Two Architects submitted an application on behalf of Avamere Bel Air Properties, LLC to rezone approximately 97,139 square feet from "R-2" Single-Family Dwelling District to "R-4L" Low Density Multiple Family Dwelling District.
2. The rezone would allow the construction of a 60-bed extended care facility. The structure would replace a non-conforming 120-bed extended care facility that is in the process of being demolished. The different number of beds reflects a change from shared two-bed rooms, to one-person rooms with private baths.
3. The site comprises two tax parcels: 0220022123 and 0220022057, covering approximately 2.23 acres at 620 and 630 South Pearl Street. With the 60-bed facility the property would have a density of approximately 27 residents per acre.
4. The initial plans called for a 34,000 square foot structure. A modified floor plan has added 6,000 more square feet. The site contains 50 parking stalls.
5. The site is generally rectangular. Abutting the site are South Pearl Street to the east, commercial development to the north, low-density multi-family development to the west, and the Tacoma YMCA to the south. The SR-16 eastbound on and off ramps both connected directly to South Pearl Street, are located directly east of the site.
6. The site's street frontage extends about 405 feet along South Pearl Street, which is a state highway (State Route 163). The street is paved to a width of 78 feet with curb, gutter and sidewalk abutting the subject site.
7. A public-right-of-way that functions as a private driveway runs along the 250 foot southerly portion of the site and serves as the primary access to the site and the apartment complex directly to the west. The right-of-way is paved to a width of 24 feet.
8. The site is within an urbanized setting with surrounding zones and uses being: north --"C-2", retail/shopping center; east -- "R-2" & "C-1", highway on/off ramps; south -- "R-2", YMCA; west -- "R-4L", low density apartments.
9. The site for which the rezone is sought and much of the property to the south and east were classified as "R-2" One-Family Dwelling District in 1953 when the City zoning code was enacted. Over the years a number of special use permits have been issued for use of the property as a nursing home.
10. On May 15, 2014, written notice as required by *Tacoma Municipal Code (TMC)* 13.05.020 was mailed to owners of property within 400 feet of the site, the appropriate

neighborhood council and qualified neighborhood groups. A public notice sign was also posted on the property. To date there have been no public comments.

11. On July 1, 2014, the City issued a Determination of Non-Significance (DNS) for the proposed project under the State Environmental Policy Act (SEPA). The DNS was not appealed. A related environmental determination was issued on July 18, 2014, to allow demolition of the existing extended care facility.

12. Presently the City's *Generalized Land Use Element* within the City's *Comprehensive Plan* designates the site as a "Medium Intensity Area". It is further designated as a "Tier 1 Primary Growth Area."

13. Medium Intensity areas are intended to be developed at densities ranging from 15 to 45 units per acre in areas served by arterial streets. Tier 1 areas are characterized by urban growth where key public facilities (such as developed roads, public water, power, sewer and stormwater facilities) are available.

14. The proposal and its location are consistent with the land use intensity designation of the property and within an area which is clearly Tier 1. Conditions have been attached, as recommended by various City departments, to insure that key facilities are provided.

15. The area involved has changed substantially since the original zoning of the site in 1953. SR-16 has been built to the north and east. Tacoma Community College to the south has undergone major expansion. Multiple apartment complexes have been built to the west and multiple shopping centers have been developed along 6th Avenue to the north.

16. The proposed rezone is also consistent with the district establishment statement for the zoning classification being requested. The "R-4L" designation is, among other things, intended for group living facilities that will result in minimal impacts on adjoining land. Further, these areas are to be located along major transportation corridors. The proposal is for just the sort of facility contemplated and is situated on an arterial street.

17. No area-wide rezone action affecting this property has been taken by the City Council in the two years preceding the instant rezone application.

18. If the rezone is approved, the proposed 60-unit extended care facility will be a permitted use. The project is intended to meet or exceed all of the development standards applicable in an "R-4L" district. Because these standards are an expression of measures for the public health, safety, morals and general welfare, it follows that meeting them will be consistent with those values. Conditions to reinforce these considerations have been added.

19. The Staff Report in this matter accurately describes the proposal, general and specific facts about the site, applicable sections of the *Generalized Land Use Element* and applicable regulatory codes. The Report is by this reference incorporated herein as though fully set forth.

20. At the hearing, presentations were made by Staff and by the Applicant. There was no public testimony.

21. Four exhibits were admitted, including the Staff Report, which was the principal source for the findings made.

22. Also admitted was a Revised Site Plan which, as noted, modifies the floor plan by adding about 6,000 square feet. However, the number of beds remains the same so no increase in intensity was proposed. This change does not bear on the appropriateness of the proposed zoning. It may, however, present development standard questions which should be addressed at the building permit level.

23. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. The Examiner's role is to make a recommendation. The final rezone decision is for the City Council.

2. The requirements of SEPA have been met.

3. Under *TMC 13.06.650.B*, approval of a rezone requires 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. . . .

3. That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested

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. . . .

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. The findings support a conclusion that the applicant has met its burden of establishing by a preponderance of evidence that the requested rezone, as conditioned, will conform to the applicable approval criteria.

5. Any finding herein which may be deemed a conclusion is hereby adopted as such

A. SPECIAL CONDITIONS:

1. STORM AND SANITARY SEWERS

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

2. STREETS, DRIVEWAY AND SIDEWALKS

- a. Five-foot wide sidewalk with minimum two-foot planter strip shall be constructed along the entire length of the southern property line 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. Driveway approaches shall be constructed in accordance with current City of Tacoma standards. The type, width, and location of all driveway approaches serving the site(s) shall be approved by the City Engineer.
- d. Per the Right-of-Way Restoration Policy, all utility cuts shall be consolidated which shall require full street two-inch grind and overlay fronting the property.
- e. 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.

3. BUILDINGS

- a. 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.
- b. Property lines shall not pass through buildings and shall be removed.

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. TACOMA WATER

- a. City ordinance 12.10.045 requires a separate water service and meter for each parcel.
- b. If fire sprinklering, the Tacoma Water Permit Counter at (253) 502-8247 shall be contacted for policies related to combination fire/domestic water service connections.
- c. 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.
- d. If a new fire hydrant is required at a location with an existing water main, the hydrant will be installed by Tacoma Water after payment of an installation charge.
- e. 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.
- f. Sanitary sewer mains and side-sewers 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".

6. PIERCE TRANSIT

- a. Pierce Transit requires the developer to install one 5' x 10' x 8" thick concrete foundation, immediately behind the sidewalk. The concrete foundation shall be located generally 175 to the south of the northeast corner of the project site, along the west side of South Pearl Street.

- b. The developer shall be responsible for all costs associated with the bus stop improvements, including construction, permits and inspections.

7. MISCELLANEOUS:

- a. 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 (253-383-2471), Tacoma Water (253-383-2471), and Public Works (253-591-5525).
- c. 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 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 *Pro Tempore* recommends that the application be approved, subject to the conditions set forth above.

DATED this 11th day of August, 2014.



Wick Dufford, Hearing Examiner *Pro Tempore*

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. (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) 2.09.170. 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**