

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF RICHLAND**

Regarding the Application to *Rezone* a 2.07- )  
acre site from one Commercial land use )  
designation, the C-2 (Retail Business) )  
zoning district, to another Commercial )  
designation, the C-3 (General Business) )  
zoning district, which is fully consistent with )  
Comprehensive Plan’s Commercial land use )  
designation assigned to the area, submitted )  
by )  
)  
**CEDAR CREEK ARCHITECTURAL DESIGN,** )  
ON BEHALF THE PROPERTY OWNER, )  
CCWO13, LLC, )  
)  
Applicant )  
\_\_\_\_\_ )

**File No. Z2023-109**

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

**I. SUMMARY OF RECOMMENDATION.**

The above referenced applicant, on behalf the property owner, can meet its burden of proof to demonstrate that its requested rezone merits approval. The site is now designated as suitable for Commercial land uses under the City’s Comprehensive Plan, and it is currently zoned C-2 (Retail Business). The pending application would rezone the site to another Commercial zoning district, the C-3 (General Business) zoning district, which is fully consistent with the Comprehensive Plan’s Commercial land use designation assigned to the area.

This requested rezone does not approve any development activity on the site. As with all development proposals, City Development Regulations will apply to any specific projects that may eventually be proposed on the site.

**FINDINGS OF FACT, CONCLUSIONS AND  
RECOMMENDATION RE: APPLICATION TO  
REZONE PROPERTY AT 953 JERICHO COURT  
FROM THE C-2 TO C-3 ZONING DISTRICT –  
FILE NO. Z2023-109**

**GARY N. MCLEAN  
HEARING EXAMINER FOR THE CITY OF RICHLAND  
CITY HALL – 625 SWIFT BOULEVARD  
RICHLAND, WASHINGTON 99352**

1 **II. BACKGROUND and APPLICABLE LAW.**

2 In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing  
3 on the site-specific rezone application at issue and is directed to issue a written recommendation for  
4 consideration and final action by the Richland City Council. *See* Richland Municipal Code (RMC)  
5 19.20.010(D)(identifies “site-specific rezones” as Type IIIA permit applications); RMC  
6 23.70.210(A)(“The hearing examiner shall conduct an open record public hearing as required by RMC  
7 Title 19 for a Type IIIA permit application.”); and RMC 19.20.030(granting jurisdiction to Hearing  
8 Examiner to conduct public hearing and issue recommendation to City Council); RMC  
9 19.25.110(authority for Examiner actions, including conditions of approval on applications or  
10 appeals); and RCW 35A.63.170(state statute regarding hearing examiner system).

11 The applicant bears the burden of proof to show that its application conforms to the relevant  
12 elements of the city’s development regulations and comprehensive plan, and that any significant  
13 adverse environmental impacts have been adequately addressed. RMC 19.60.060.

14 Finally, Washington Courts apply three basic rules when reviewing appeals of rezone  
15 applications: (1) there is no presumption favoring the rezone request; (2) the proponent of a rezone  
16 must demonstrate that there has been a change of circumstances since the original zoning,  
17 PROVIDED if a proposed rezone implements the policies of a comprehensive plan, a showing of  
18 changed circumstances is usually not required<sup>1</sup>; and (3) the rezone must have a substantial relationship  
19 to the public health, safety, morals, or general welfare. *Woods v. Kittitas County*, 162 Wn.2d 597  
20 (2007), citing *Citizens for Mount Vernon*, 133 Wn.2d 861, at 875 (1997); *Parkridge v. City of Seattle*,  
21 89 Wn.2d 454, 462 (1978).

22 **III. QUESTIONS PRESENTED.**

23 For purposes of the pending rezone application, the central questions presented are:

24 A. Whether the requested rezone implements policies of the City’s Comprehensive Plan, and/or  
25 whether there has been a change of circumstances since the current C-2 zoning was adopted for the  
26 site?

*Short Answer:* Yes. The site is already designated for Commercial uses in the City’s  
Comprehensive Plan, and the rezone request would simply change the zoning designation  
from one Commercial zone to another, i.e. from the C-2 (Retail Business) zone to C-3  
(General Business). The property was first annexed into the City and zoned C-2 as city codes  
were written about 24 years ago, in 2000. The requested rezone would bring buildings placed  
on the site into compliance with current zoning codes and could facilitate the owner’s plans  
to develop portions of the site that are now covered with gravel and no vegetation and used

<sup>1</sup> *Save Our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 370-71 (1983); *Henderson v. Kittitas County*, 124 Wn. App.  
747, 754 (Div. III, 2004); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846 (Div. III, 1995).

1 for outdoor storage/parking of numerous boats, recreational vehicles and the like. Future  
2 development would have to comply with applicable City landscaping requirements.

3 B. Whether the rezone bears a substantial relationship to the public health, safety, morals, or  
4 general welfare?

5 *Short Answer:* Yes, because the rezone is fully consistent with the City's Comprehensive  
6 Plan, and any future, project-specific proposal will have to meet city development  
7 regulations, including SEPA, landscaping requirements, traffic impact reviews, public  
8 infrastructure concurrency reviews, and payment of any impact fees in effect at the time of  
9 an application. Vacant, under-developed Commercial property in an area already served with  
10 major transportation and utility facilities is not consistent with state and local policies that  
11 encourage such development in designated urban growth areas, like those in the Richland  
12 City limits. The proposed rezone appears to be an effort to expedite development potential  
13 for the site, presumably with buildings that will be more attractive than the current outdoor  
14 storage use of the site.

#### 15 IV. RECORD.

16 Exhibits entered into evidence as part of the record, and an audio recording of the two public  
17 hearings held for this matter are maintained by the City of Richland, and may be examined or  
18 reviewed by contacting the City Clerk's Office.

19 *Hearing Testimony:* Only City Planner, Kyle Hendricks, and the applicant's designated  
20 representative, Chuck Tookey, asked to present testimony under oath during the public hearing.  
21 During the hearing process, no one submitted written comments or personal testimony opposing or  
22 questioning the requested rezone.

23 *Exhibits:* The Development Services Division Staff Report for the requested Rezone,  
24 including a recommendation of approval, were provided to the Examiner in the week before each  
25 hearing. The Staff Report and the following Exhibits were all accepted into the Record in their  
26 entirety without modification:

1. Application materials
2. Vicinity Map
3. Public Notices and confirmation materials
4. Agency comments

27 During the public hearing, the Examiner requested Staff to verify the date on which the rezone  
28 property was first annexed into the City of Richland, and when the property was initially assigned  
29 its current C-2 zoning designation. After the hearing, Staff transmitted a copy of the following  
30 ordinance, which the Examiner has marked and included as part of the record for this matter:

5. Ordinance No. 16-00, passed by the Richland City Council on May 16, 2000, annexing

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1 property that is included in this pending rezone request; also zones the site C-2; effective date  
2 was date of recording with the Benton County Auditor, which occurred on June 8, 2000.  
3 Exhibit also includes true and correct copy of Ordinance as recorded with the Auditor, under  
4 Recording No. 2000-014221, on 06/08/2000.

5 The Examiner has visited the road network and vicinity of the proposed rezone on multiple  
6 occasions over the past few years in connection with other applications, and is fully advised on matters  
7 at issue herein, including without limitation adjacent developments and land uses, applicable law,  
8 application materials, and relevant comprehensive plan provisions.

## 9 **V. FINDINGS OF FACT.**

10 Based upon the record, the undersigned Examiner issues the following Findings of Fact.

### 11 ***Application, Site Location and Conditions.***

12 1. In early 2023, above-captioned property owner purchased property that is now the subject of  
13 this rezone. (*Testimony of Mr. Tookey*). During a pre-application conference with Staff after the  
14 purchase, the property owner realized they would need a rezone for the site in order to build multi-  
15 story ministorage buildings on portions of the site that are now just graveled and used for outdoor  
16 parking/storage for boats, RVs, and similar equipment. (*Testimony of Mr. Tookey; Staff Report, page*  
17 *3*).

18 2. Subsequently, the applicant's architectural design firm filed an application with the City,  
19 petitioning to rezone a site located at 953 Jericho Court from one Commercial zoning district to  
20 another, specifically from the Retail Business zone (C-2) to the General Business (C-3) zone. (*Staff*  
21 *Report, page 6; and Exhibit 1, Application materials*).

22 3. The rezone site is a single 2.07-acre square shaped parcel located at the western terminus of  
23 Columbia Park Trail, west of the roundabout with Queensgate Drive, abutting Jericho Road to the  
24 south, assigned Parcel No. 122982020003012. Currently, the property features two single-story  
25 storage structures on the north end of the parcel, with the remaining, undeveloped areas on the parcel  
26 used for outdoor storage of boats, RVs and the like. (*Staff Report, page 3; Site visits*).

1 The site is situated in an area of mixed uses, with most surrounding commercial properties in  
2 the area already zoned C-3. (*Staff Report, page 5, zoning map of immediate area shown in Figure 3,*  
3 *and Analysis on page 11; Site visits*). The large, 10+acre parcel immediately west of the rezone site  
4 is 504-feet wide, and zoned R-1-12, but now houses a church, so Staff is of the opinion that the  
5 existing church use provides a substantial buffer between Commercial zoned sites and residences  
6 located further west on Jason Loop. (*Staff Report, Analysis on page 11*). Based on site visits, and  
7 reviewing online maps of the immediate area, the Examiner concurs with Staff's opinion.

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1 5. There is no dispute that the property at issue is currently designated for Commercial uses in  
2 the City's Comprehensive Plan. So are most properties to the north, east, and south of the site,  
3 regardless of their present zoning designation. This application would simply change the specific  
4 zoning classification for the applicant's parcel from one Commercial zone to another.

5 6. The Staff Report confirms that public notices were posted, published, and mailed to property  
6 owners in the surrounding area, but no one submitted written comments opposing this requested  
7 rezone or offering any evidence that would serve as a basis to deny the applicant's request.

8 7. Changed circumstances also support the requested rezone from C-2 to the C-3 zone. Benton  
9 County Assessor records for the parcel indicate that two pre-engineered steel mini-warehouse  
10 structures were placed on the site in 1999 and 2003. (*Benton County Assessor, online Parcel Details  
11 for Applicant's property, "Improvement/Building" information*). The existing mini-warehouse  
12 buildings are not permitted uses on the parcel under current city codes addressing the C-2 zone, but  
13 they would be permitted uses under the requested C-3 zone. (*See list of permitted uses in Commercial  
14 zones, provided at RMC 23.22.030*). Again, annexation occurred in 2000. So, without an exhaustive  
15 search of City zoning codes as they have evolved over the last twenty years or more, it is possible that  
16 the 1999 building has always been nonconforming, or both buildings were conforming as permitted  
17 uses before city zoning codes changed the list of permitted uses on the property at some point after  
18 the second building was constructed in 2003. Under either circumstance, the requested rezone would  
19 bring the two existing mini-storage buildings into compliance with current city zoning codes.

20 8. Because staff deemed the application to be consistent with the City's Comprehensive Plan,  
21 which already designates the rezone site as suitable for Commercial land uses, and the City's plan  
22 was analyzed in an environmental impact statement at the time of its adoption, the pending application  
23 is categorically exempt from SEPA review as provided in WAC 197-11-800(6)(c). (*Staff Report,  
24 page 10; Official notice from record of previous rezone matters re: City SEPA process(es) undertaken  
25 when Comprehensive Plan was adopted and amended*).

26 9. The rezone is not likely to have any material impact on capacity for the existing local street  
system serving the property. Specific design and assessment of transportation related improvements,  
frontage improvements, access modifications, if any are required, will be determined when specific  
development plans are submitted to the City.

10 10. The Staff Report credibly explains that utilities and public infrastructure have capacity to  
11 serve the types of uses that could occur on the site under its requested C-3 zoning designation. (*Staff  
12 Report, pages 7-9*).

13 11. Only Staff and an applicant representative provided testimony during the public hearing. No  
14 members of the general public, including surrounding homeowners, appeared during the hearing, by  
15 phone, in-person in the council chambers, or computer.

16 12. The Staff Report's analysis of this application stands un rebutted. The requested rezone is  
17 fully consistent with land use policy goals in the City's Comprehensive Plan. (*Staff Report, pages 4-  
18 5*). No one testified or provided written comments to express concerns with or opposition to this

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rezone application.

***Consistency with City Codes and Comprehensive Plan.***

13. As explained elsewhere in this Recommendation, the rezone site is already designated as “Commercial” in the City’s Comprehensive Plan, and the request is to modify the classification from one Commercial zoning designation (C-2) to another (C-3).

14. Standing alone, the requested rezone conforms to the Comprehensive Plan, because the plan already identifies the property as suitable for Commercial uses. There is nothing in this record to justify holding the property as a C-2 zoned site, as might be the case where compatibility with neighboring properties is questionable. Such concerns are not included as part of this record, despite public notices and invitations for interested parties to submit comments or appear during the public hearing.

***General findings.***

15. The requested rezone bears a substantial relationship to the public health, safety, and general welfare. The requested rezone is appropriate in the context of adjacent properties.

16. The Development Services Division Staff Report, prepared by Mr. Hendricks, includes a number of specific findings and explanations that establish how the underlying application satisfies provisions of applicable law and is consistent with the city’s Comprehensive Plan and zoning regulations. Except as modified in this Recommendation, all Findings contained in the Staff Report are incorporated herein by reference as Findings of the undersigned-hearing examiner.

17. Any factual matters set forth in the foregoing or following sections of this Recommendation are hereby adopted by the Hearing Examiner as findings of fact and incorporated into this section as such.

**VI. CONCLUSIONS.**

Based upon the record, and the Findings set forth above, the Examiner issues the following Conclusions:

1. The applicant met its burden to demonstrate that the requested rezone conforms to, and in fact implements objectives of, the City’s Comprehensive Plan. *Findings; Staff Report.*
2. The applicant met its burden to demonstrate that the requested rezone bears a substantial relationship to the public health, safety, or welfare.
3. The Staff Report and testimony in the record demonstrate that the proposed rezone will not require new public facilities and that there is capacity within the transportation network, the utility system, and other public services, to accommodate all uses permitted in the C-3 zone requested herein.

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1 4. The rezoned site will not be materially detrimental to uses or property in the immediate vicinity  
2 of the subject property. In fact, the rezone may serve as a boost for more attractive development on  
the property, which could include landscaping to satisfy city standards.

3 5. While the pending rezone application is categorically exempt from formal SEPA review, the  
4 record demonstrates that the potential for adverse impacts is very unlikely. And, after public notices  
5 issued for the application, no one spoke or submitted any written comments opposing the pending  
rezone request.

6 6. As required by RMC 19.50.010(C), the transportation system is sufficient to accommodate  
7 the type of development envisioned with the proposed rezone. The surrounding road network is fully  
8 functional, and no transportation concurrency problems are likely to arise as a result of the rezone for  
the site. Development regulations, including without limitation those detailing frontage  
improvements, impact fees, setbacks, and the like, will apply to any future project built on the site.

9 7. Based on the record, the applicant demonstrated its rezone application merits approval,  
meeting its burden of proof imposed by RMC 19.60.060.

10 8. Approval of this rezone will not and does not constitute, nor does it imply any expectation of,  
11 approval of any permit or subsequent reviews that may be required for development or other regulated  
12 activities on the site of the subject rezone.

13 9. Any finding or other statement contained in this Recommendation that is deemed to be a  
14 Conclusion is hereby adopted as such and incorporated by reference.

15 **VII. RECOMMENDATION.**

16 Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that  
17 this Rezone application (File No. Z2023-109) to reclassify a 2.07-acre site located at 953 Jericho  
18 Court from its current C-2 (Retail Business) zone to another Commercial land use designation, the  
C-3 (General Business) zoning district, which is consistent with the Comprehensive Plan's  
Commercial land use designation assigned to the area, should be **APPROVED**.

19 ISSUED this 30<sup>th</sup> Day of January, 2024

20 

21 \_\_\_\_\_  
22 Gary N. McLean  
23 Hearing Examiner

24  
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