

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

In the Matter of the Application of)	No. PLA 19-0168
)	
Robert Moore)	Moore Rezone
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Site-Specific Rezone</u>)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the request to rezone a 0.88-acre parcel at 11246 8th Avenue South from the “Single-Family Residential” (RS-7,200) zoning district to the “Multi-Family Residential” zoning district (RM-12) be approved.

SUMMARY OF RECORD

Hearing:

The Hearing Examiner held an open record hearing on the request on June 26, 2019. At the open record hearing, the Hearing Examiner ruled that the record would be held open until close of business on June 28, 2019, to allow for the submission of additional documents.

Testimony:

The following individuals testified under oath at the open record hearing:

Thara Johnson, Senior Planner
Robert Moore, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, with the following attachments:
 1. Vicinity Map, undated
 2. Rezone/Zoning Map Amendment Request, received January 24, 2019; Application to Amend Zoning Map, dated January 17, 2019; City Ordinance No. 701, adopted December 17, 2018
 3. City Ordinance No. 701, adopted December 17, 2018
 4. Comprehensive Plan Map Amendment for Robert G. Moore, PLA 18-0433, with attachments
 5. SEPA Determination of Nonsignificance (DNS) and Adoption of Existing Environmental Documents, dated June 12, 2019
 6. Determination of Complete Application, dated March 5, 2019

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7. Notice of Application with confirmation of posting, mailing, and publication in *The Seattle Times*
8. Notice of Public Hearing with confirmation of posting, mailing, and publication in *The Seattle Times*
9. Environmental Checklist, dated March 5, 2019

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Robert Moore (Applicant) requests a zoning map amendment to rezone a 0.88-acre parcel from the Single-Family Residential (RS-7,200) zoning district to the Multi-Family Residential (RM-12) zoning district. The property is located at 11246 8th Avenue South.¹ *Exhibit 1, Staff Report, page 1; Exhibit 1.2.*
2. The City of Burien (City) determined the application was complete on February 21, 2019. On March 5, 2019, the City mailed notice of the application to property owners within 500 feet of the property, posted notice on-site, and published notice in *The Seattle Times*. On June 12, 2019, the City mailed notice of the application to property owners within 500 feet of the property, posted notice on the site, and published notice in *The Seattle Times*. The City received no comments in response to its notice material. *Exhibit 1, Staff Report, pages 3 and 4; Exhibits 1.2; 1.6, 1.7, and 1.8.*

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the proposed rezone, as required by the State Environmental Protection Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed the existing environmental documents that served as the basis for changing the Comprehensive Plan designation of the parcel on December 17, 2018, including an addendum to a Final Environmental Impact Statement (FEIS), dated November 30, 2018. The City used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355, and provided notice of the SEPA review process along with the notice of application. Following its review, the City determined that the proposal would not have a probable significant adverse impact on the environment and issued a DNS on June 12, 2019. The DNS was not appealed. *Exhibit 1, Staff Report, pages 3 and 4; Exhibits 1.5 and 1.7.*

¹ The property is identified by Tax Assessor Parcel No. 336140-0020. *Exhibit 1, Staff Report, page 1; Exhibit 1.2.*

Site-Specific Rezone

4. The property is designated “Low Density Multifamily Neighborhood” under the Comprehensive Plan, which allows multiple-family residential uses with a density range of 18 to 24 units per net acre. The Low Density Multifamily Neighborhood designation is implemented by the “Multi-Family Residential” (RM-12) zoning category. *Comprehensive Plan, Policy RE 1.8.* The property is currently zoned “Residential Single-Family (RS 7,200),” and the Applicant is requesting that the parcel be rezoned to “Multi-Family Residential” (RM-12). The property has very little elevation change, with a gentle slope to the east from the 8th Avenue South. A single-family residence with a detached garage is located on the western portion of the site adjacent to 8th Avenue South. The property is bordered by 8th Avenue South on the west side. An undeveloped property is located to the north and is designated and zoned “Neighborhood Center.” Some properties to the west are designated “Low Density Residential Neighborhood” and are zoned RS-7,200. Others are designated and zoned Neighborhood Center and include a small-scale retail building and a single-family residence. Single-family residences located to the east and south and are designated Low Density Residential Neighborhood and are zoned RS-7,200. City Senior Planner Thara Johnson testified that adequate public facilities and services are available for the property. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 1.1; Testimony of Ms. Johnson.*

5. The Growth Management Act (GMA), Chapter 36.70A RCW, requires cities and counties to engage in a planning process. *RCW 36.70A.040.* Thirteen exclusive goals guide that process; the goals concern urban growth, sprawl reduction, transportation, housing, economic development, property rights, permitting, natural resource industries, open space and recreation, the environment, citizen participation and coordination, public facilities and services, and historic preservation. *RCW 36.70A.020.* Any jurisdiction subject to the GMA’s planning requirement must balance these sometimes competing goals (*see Feil v. E. Wash. Growth Mgmt. Hrgs. Bd.*, 172 Wn.2d 367, 259 P.3d 227 (2011)) and produce a comprehensive plan that guides future growth and development. *RCW 36.70A.040 through .120.* The jurisdiction must then enact development regulations implementing the comprehensive plan and otherwise act in conformity with the comprehensive plan. *RCW 36.70A.120.*

6. In 2010, the City annexed this parcel and the surrounding neighborhood from King County. Interim zoning and Comprehensive Plan designations were assigned to the whole area during this process. In 2011, the City initiated a community-based process to analyze existing land use designations and proposed Comprehensive Plan and zoning designations for the recently annexed area. On December 17, 2018, the City adopted a Comprehensive Plan map change for the parcel from Single-Family Residential to Low Density Multifamily Neighborhood through Ordinance No. 701. *Exhibit 1 Staff Report, pages 2 and 3; Exhibit 1.1; Exhibit 1.3.*

7. The Applicant submitted a project narrative with its application materials. The project narrative argues that the site-specific rezone should be approved because:
- The Burien Comprehensive Plan has been amended. Rezoning the property would appropriately coordinate the City's zoning map and Comprehensive Plan map.
 - The proposed zoning change would allow redevelopment with up to 10 apartment or townhouse units and would help the City fill the need for new housing units.
 - Redevelopment would eliminate an on-site septic tank and contribute to street frontage improvements.
 - The property is in an aquifer recharge area, but no other critical areas are located on the site. Redevelopment would include connection to the public sewer main and installation of a surface water management system.
 - The proposed rezone would have no significant adverse impact on adjacent properties.
 - The rezone is necessary to achieve consistency with the Burien Comprehensive Plan.

Exhibit 1.2.

Testimony

8. City Senior Planner Thara Johnson testified generally about the application and how it would meet the site-specific rezone requirements of Burien Municipal Code (BMC) 19.65.090.3.C. She noted that environmental impacts of changing the land use designation for the property were already analyzed during the Comprehensive Plan amendment process and that any future development would be subject to further environmental review. Ms. Johnson stated that conditions within the city have changed since the parcel was first designated as single-family residential and that rezoning this property would contribute toward achieving that goal. *Testimony of Ms. Johnson.*
9. Applicant Robert Moore testified that the Applicant concurs with the City's analysis and recommendation for the proposal. *Testimony of Mr. Moore.*

Staff Recommendation

10. The City staff recommends the Hearing Examiner forward a recommendation of approval to the City Council. *Exhibit 1, Staff Report, page 1.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to receive and examine information on a rezone; conduct a public hearing on the application; prepare a record of the hearing; enter findings of fact; and, based upon those facts, make a recommendation to the City Council. *RCW 35A.63.170.*

The recommendation may be to grant the application, grant the application with conditions, or deny the application. *BMC 2.15.070(4); BMC 2.15.080.* A recommendation to the City Council

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is a Type 3 review process. *BMC 19.65.075*. A site-specific rezone application is processed as a Type 3 quasi-judicial decision. *BMC 19.65.090.3.A*.

Criteria for Review

The Hearing Examiner may recommend approval of a site-specific rezone request if the following criteria are satisfied:

- i. The rezone is consistent with the Comprehensive Plan; and
- ii. The rezone will advance the public health, safety, or welfare; and
- iii. The rezone will not have significant adverse environmental impacts that are materially detrimental to adjacent properties or other affected areas; and
- iv. The rezone is necessary because at least one of the following is met:
 - a. Conditions in the immediate vicinity or neighborhood have changed so that it is in the public interest to approve the rezone, or
 - b. The rezone will correct a zone classification or zone boundary that was inappropriate when established, or
 - c. The rezone is necessary to achieve consistency with the Comprehensive Plan land use map.

BMC 19.65.090.3.C.

The criteria for review adopted by the Burien City Council implements the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed developments to ensure consistency with City development regulations; considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

The proposed rezone satisfies the criteria for approval found in BMC 19.65.090.3.C and should be approved. The proposed rezone would not require amendment of the City Comprehensive Plan and would be consistent with the 2018 Comprehensive Plan's Multi-Family Residential designation of the property: Multi-Family Residential (RM-12) zoning is allowed in property designated Low Density Multi-Family Residential under the Comprehensive Plan. Conditions placed on any future land development permits would ensure that the proposal would comply with the development regulations required by the Growth Management Act and Title 19 of the Burien Municipal Code. The proposed rezone would advance the public health, safety, and welfare by allowing for a broader range of development options providing needed housing opportunities. Development of the property would allow for removal of an on-site septic system.

Changed circumstances, specifically the City's recent Comprehensive Plan amendment, warrant the rezone. The property is suitable for Multi-Family Residential development that complies with the standards of the RM-12 zone. The City analyzed the environmental impacts of the proposal, as required by SEPA, and determined that the rezone would not have a probable significant adverse impact on the environment. The City's DNS was not appealed. In addition,

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specific development impacts would be reviewed at the time of building permit application. Adequate public facilities and services are available to the property. Reasonable notice of the application and associated open record hearing was provided in a manner that was “reasonably calculated” to inform interested parties of the proposal “and of the opportunity to object.” *State v. Dolson*, 138 Wn.2d 773, 777 (1999). *Findings 1 – 10.*

RECOMMENDATION

Based on the preceding findings and conclusions, the Hearing Examiner recommends that the City Council **APPROVE** the request to rezone a 0.88-acre parcel at 11246 8th Avenue South from the Single-Family Residential (RS-7,200) zoning district to the Multi-Family Residential (RM-12) zoning district.

RECOMMENDED this 15th day of July 2019.



LEE RAAEN
Hearing Examiner
Sound Law Center