

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

In the Matter of the Application of)	ZMA 09-004
)	
Asian American Enterprises, Inc.)	Woodcreek Center ZMA
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Approval of a Zone Reclassification</u>)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the request for a zone reclassification from General Business to Central Business District for property located at 13110-13120 NE Little Bear Creek Parkway, in Woodinville, Washington, be **APPROVED**.

SUMMARY OF RECORD

Request:

Asian American Enterprises Inc., through Herbert Washburn, requests a zone reclassification from General Business to Central Business District for property located at 13110-13120 NE Little Bear Creek Parkway, in Woodinville, Washington.

Hearing Date:

The City of Woodinville Hearing Examiner held an open record hearing on the request on December 17, 2009. The hearing was continued to January 7, 2010 to correct the public hearing notice.

Testimony:

The following individuals presented testimony under oath:

Ray Sturtz, Planning Manager
Gil Cerise, AICP, for Applicant
Emma Dixon

Exhibits:

The following exhibits were admitted into the record:

1. City Staff Report, prepared for December 17, 2009 open record hearing
2. Zone Reclassification Application, received October 21, 2009
3. Environmental Checklist, received October 21, 2009
4. Applicant's Amendment Analysis and Response to WMC 21.44.070
5. Legal Description and Vicinity Map
6. SEPA Determination of Nonsignificance, issued November 24, 2009

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7. Notice of Application, dated November 9, 2009
8. Copy of published notice of hearing, published November 30, 2009
9. Woodcreek Center Critical Areas Setbacks/Buffers Map
10. Power Point Slides, dated December 17, 2009
11. Affidavit of Posting for December 17, 2009 hearing
12. Letter from Gil Cerise, Applicant Representative, dated December 18, 2009
13. Notice of January 7, 2010 Public Hearing, published in *The Woodinville Weekly* on December 21, 2009
14. Posted Notice of January 7, 2010 Public Hearing
15. Public Hearing Notice mailing list
16. Affidavit of posting of notice for January 7, 2010 Public Hearing

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

FINDINGS

1. Asian American Enterprises Inc., through Herbert Washburn, (Applicant) requests a zone reclassification from General Business (GB) to Central Business District (CBD) for property located at 14110 NE Little Bear Creek Parkway, in Woodinville, Washington.¹ *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 4.*
2. The City of Woodinville Planning Department (City) determined that the zone reclassification (rezone) application was complete on October 21, 2009. The City provided notice of the application on November 9, 2009. The City provided notice of the open record hearing associated with the application on November 30, 2009, by posting notice on-site and publishing notice in the *Woodinville Weekly*. The City mailed notice to interested parties, government agencies, and surrounding property owners, consistent with City ordinance. The December 17, 2009 open record hearing was continued to January 7, 2010 to correct an error in the initial public notice. On December 21, 2009, the City provided notice of the continued hearing by posting notice on-site and publishing notice in the *Woodinville Weekly*. The City mailed notice consistent with City ordinance. *Exhibit 1, Staff Report, page 5; Exhibit 7; Exhibit 8; Exhibit 11; Exhibit 13; Exhibit 14; Exhibit 15; Exhibit 16.*
3. The City acted as lead agency in analyzing the environmental impacts of the requested rezone, as required by the State Environmental Policy Act (SEPA). The City determined that granting the rezone would not result in a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance (DNS) on November 24,

¹ The property is identified by tax parcel number 72691-00020. *Exhibit 1, Staff Report, page 2; Exhibit 3, page 3; Exhibit 5.* A legal description of the property is provided in the Staff Report and in Exhibit 5. *Exhibit 1, Staff Report, page 2; Exhibit 3, page 3; Exhibit 5.*

2009. The City did not receive any comments or appeals of the DNS prior to the end of the appeal period on December 7, 2009. *Exhibit 1, Staff Report, page 5; Exhibit 6.*

4. The property is currently zoned GB. In 2009, the City Council amended the Comprehensive Plan designation for the subject property from Auto Service/General Commercial to Central Business District. Adjacent property to the west across 131st Avenue NE is designated and zoned CBD. Property to the east is zoned GB and designated Auto Service/General Commercial. The State Route 522 right-of-way lies to the north, and the Burlington Northern & Santa Fe Railway right-of-way lies to the south of the property. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 4; Exhibit 10.*
5. The purpose of the CBD zone is to provide for the broadest mix of comparison retail, higher density residential (R-12 through R-48), service and recreation/cultural uses with compatible storage and fabrication uses, serving regional market areas and offering significant employment and housing opportunities. *Woodinville Municipal Code (WMC) 21.04.110(1).* The purpose of the CBD zone are accomplished by (a) Encouraging compact development that is supportive of transit and pedestrian travel, through higher nonresidential building heights and floor area ratios than those found in other business areas; (b) Allowing for outdoor sales and storage, regional shopping areas and limited fabrication uses; and (c) Concentrating large scale commercial and office uses to facilitate the efficient provision of public facilities and services. *WMC 21.04.110(1).* Use of the CBD zone is appropriate in the urban center as designated by the Comprehensive Plan that is served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services. *WMC 21.04.110(2).* The CBD zone permits a wide range of uses, including higher density residential development, temporary lodging, parks, theaters, libraries and museums, auto services, health services, business services, retail and wholesale services. Manufacturing and resource land uses are generally not permitted within the CBD zone. *Chapter 21.08 WMC.*
6. The purpose of the zoning code includes the harmonious grouping of compatible and complementary land uses and the implementation of Comprehensive Plan goals and policies. *WMC 21.02.030.*² The Comprehensive Plan Land Use Element describes the CBD designation as intended to provide a broad mix of comparison retail, moderate to high density residential, professional services, and recreation/cultural uses that serve the regional market. Comprehensive Plan Land Use goals and policies encourage

² The general purposes of this title are: (1) To encourage land use decision making in accordance with the public interest and applicable laws of the State of Washington; (2) To protect the general public health, safety, and welfare; (3) To implement the City of Woodinville Comprehensive Plan's goals and policies through land use regulations; (4) To provide for the economic, social, and aesthetic advantages of orderly development through harmonious groupings of compatible and complementary land uses and the application of appropriate development standards; (5) To provide for adequate public facilities and services in conjunction with development; and (6) To promote general public safety by regulating development of lands containing physical hazards and to minimize the adverse environmental impacts of development. *WMC 21.02.030.*

development that reduces reliance on single-occupant vehicle transportation, with multi-story mixed uses in the downtown area and a variety of commercial services and employment opportunities. *City Comprehensive Plan Land Use Element, Chapter 3; Exhibit 1, Staff Report, pages 3 and 4.*

7. The property measures 1.1 acres and is developed with two 2-story commercial buildings. Ray Sturtz, Planning Manager, testified that the CBD zone allows for mixed-use retail and residential uses, in contrast to the current GB zone, which is primarily for heavy commercial use and does not allow residential uses. Mr. Sturtz testified that increased density is a key to the City's compliance with the Growth Management Act. He testified that the CBD zone would permit residential development in the downtown area where half of the growth would occur, and would ensure that new residential development would be near future light rail and other transportation. He further testified that the Downtown Little Bear Creek Corridor Master Plan encourages offices of up to five stories. Mr. Sturtz testified that the property was previously zoned CBD until 1997, and that the current designation does not permit all the uses that the buildings were originally designed for. Mr. Sturtz described the property as located at the gateway to the City center. *Exhibit 1, Staff Report, page 2; Exhibit 4; Testimony of Mr. Sturtz.*
8. 131st Avenue NE runs north/south along the western property boundary, and Little Bear Creek Parkway runs generally east/west along the southern property boundary. The Burlington Northern & Santa Fe Railroad runs east/west just south of the Little Bear Creek Parkway. The property is accessed from 131st Avenue NE, which the City staff report describes as a pedestrian-oriented street, and via Little Bear Creek Parkway. Both the Applicant and the City describe the property as oriented towards 131st Avenue NE rather Little Bear Creek Parkway. The property slopes downhill from the east to the west. The property adjacent to the east is developed with three warehouses and is accessed from Little Bear Creek Parkway. Woodinville Water District provides water and sewer service to the property. *Exhibit 1, Staff Report, pages 2, 4 – 6; Exhibit 4; Exhibit 5; Exhibit 10.*
9. Little Bear Creek flows along the northern property boundary. The creek is designated as a shoreline of statewide significance, and is protected by a 150-foot wide critical areas setback, which could be reduced to 100 feet wide with enhancement of the stream shoreline. One of the existing structures appears to lie entirely within the 150-foot wide setback. The City staff report states that the building is a legally established pre-existing non-conforming use, and can continue to be used for any permitted use. However, the staff report notes that if the building is removed or reconfigured, or if it is damaged beyond 50 percent of its value, the City would require that any redevelopment comply with the critical areas setback and shoreline regulations. *Exhibit 1, Staff Report, pages 2 – 4; Exhibit 3; Exhibit 4; Exhibit 9.*
10. Mr. Sturtz testified that the requested rezone would result in a greater connection to the current CBD zone to the west than to the GB zone to the west. He further testified that

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the property topography and Little Bear Creek critical areas create a natural break between the subject property and adjacent properties to the east, ensuring that the CBD zone would not “creep” farther east. *Exhibit 1, Staff Report, page 5; Exhibit 4; Testimony of Mr. Sturtz.*

11. Gil Cerise, AICP, testified for the Applicant that potential tenants have expressed interest to the Applicant for uses not permitted in the current GB zone, including medical offices, retail, and perhaps hotel uses. Mr. Cerise testified that the property is particularly attractive because of its location at the gateway to the city. He testified that the creek and associated critical areas could also be considered an amenity. Mr. Cerise testified that the Applicant would keep the existing buildings for now, but would include other uses not currently permitted. *Exhibit 4; Testimony of Mr. Cerise.*
12. Mr. Sturtz testified that the property might be too small for all of the uses permitted by the CBD zone, but that it would be appropriate for development with a hotel or high-rise office building, to replace existing warehouse-type buildings over time. Mr. Sturtz testified that the uses allowed by the requested zone would be compatible with the uses on surrounding properties. *Exhibit 1, Staff Report, pages 4 – 6; Testimony of Mr. Sturtz.*

CONCLUSIONS

Jurisdiction

The City of Woodinville Hearing Examiner is granted jurisdiction to hear zone reclassification requests and make a recommendation on the request to the City Council. *Woodinville Municipal Code (WMC) 2.27.030; WMC 17.07.030; WMC 21.020.090.*

Criteria for Review

City code requires that a zone reclassification shall be granted only if the Applicant demonstrates that the proposal is consistent with the Comprehensive Plan and applicable functional plans at the time the application for such zone reclassification is submitted, and complies with the following criteria:

- (1) There is a demonstrated need for additional zoning as the type proposed.
- (2) The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.
- (3) The property is practically and physically suited for the uses allowed in the proposed zone reclassification.

WMC 21.44.070.

In addition to the rezone criteria provided in the City code, Washington state courts apply the following general rules to rezone applications:

- (1) there is no presumption of validity favoring the action of rezoning;
- (2) the proponents of the rezone have the burden of proof in demonstrating that conditions have substantially changed since the original zoning; and

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- (3) the rezone must bear a substantial relationship to the public health, safety, morals or welfare.

Parkridge v. Seattle, 89 Wn.2d 454 (1978).

Proof of changed circumstances are not required for a rezone if the proposed rezone and associated development implement policies contained in the comprehensive plan. *Bjarnson v. Kitsap County*, 78 Wn. App. 840 (Div. I, 1995); *Henderson v. Kittitas County*, 124 Wn. App. 747 (Div. III, 2004). Only general conformance with a comprehensive plan is required. *Woods v. Kittitas County*, 130 Wn. App. 573 (Div. III, 2005).

Conclusions Based on Findings

- 1. There is a demonstrated need for additional zoning of the type proposed.** The City Council approved the Comprehensive Plan designation of the property as Central Business District in 2009. Approval of the zone reclassification would allow for the property to be developed with a greater range of uses than permitted in the current GB zone. The Applicant reported that potential tenants have inquired regarding using the property for medical, educational, retail, or residential uses that would be permitted in the CBD zone. City staff testified that there is a need for additional zoning that would allow increased dense residential development within and near the downtown area, which would be permitted in the CBD zone. *Findings 1, 4 – 7, 11, 12.*
- 2. The zone reclassification would be consistent and compatible with uses and zoning of the surrounding properties.** Properties adjacent to the west across 131st Avenue NE are currently zoned CBD. Property adjacent to the east is zoned GB. The subject property is oriented towards 131st Avenue NE and the CBD zoning districts, with a natural break between the subject property and the GB-zoned property to the east. The existing buildings were developed for uses not permitted under the current zoning. Approval of the requested rezone would allow the Applicant to develop the property consistent with its location at the city gateway, and to expand the on-site uses consistent with Comprehensive Plan goals and policies encouraging a wide variety of uses. *Findings 4 – 10.*
- 3. The property is practically and physically suited for the uses allowed in the proposed zone reclassification.** The CBD zone permits a wide range of uses, including higher density residential uses, cultural services, auto services, health services, business services, retail and wholesale services. Manufacturing and resource land uses are generally not permitted within the CBD zone. The property was previously zoned CBD until 1997, and was developed for uses not permitted under the current zone. The property is served by water and sewer systems. The City reviewed the requested rezone for environmental impacts and determined that it would not result in probable significant adverse environmental impacts. The City issued a Determination of Nonsignificance (DNS) on November 24, 2009. The City provided adequate notice of the zone

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reclassification application and associated open record hearing. No comments or appeals of the DNS were received. *Findings 1 – 8.*

4. **The proposed zone reclassification would comply with the general approval criteria prescribed by Washington State case law.** Proof of changed circumstances is not required for a rezone if the proposed rezone and associated development implement policies contained in the comprehensive plan. Here, the City Council has already approved designating the property as Central Business District. In designating the property as Central Business District, the City Council has already determined that to be an appropriate land use for the property. Approval of the zone reclassification request would amend the zone to be consistent with the current Comprehensive Plan.

The requested rezone bears a substantial relationship to the public health, safety, morals or welfare. In designating the property as Central Business District under the City Comprehensive Plan, the City Council has already analyzed potential impacts of the proposed rezone. In addition, the City analyzed the environmental impacts of the requested rezone and determined that granting the rezone would not have a probable significant adverse impact on the environment. The City issued a Determination of Nonsignificance on November 24, 2009. The proposal would allow a greater variety of commercial and residential uses, consistent with City code and the Comprehensive Plan. *Findings 1 –12.*

RECOMMENDATION

Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that a request for a zone reclassification from General Business to Central Business District for property located at 13110 - 13120 NE Little Bear Creek Parkway, in Woodinville, Washington, be **APPROVED**.

Decided this 15th day of January 2010.


THEODORE PAUL HUNTER
Hearing Examiner