

**CITY OF GIG HARBOR
RESOLUTION NO. 423**

A RESOLUTION DENYING AN APPLICATION FOR A REZONE FROM R-1 TO RB-1 WITH AN RB-2 CONTRACT OVERLAY ZONE, REJECTING THE HEARING EXAMINER'S RECOMMENDATION OF JUNE 20, 1994.

Be it resolved by the City Council of the City of Gig Harbor to enter the following Findings of Fact relating to the application for rezone by Phillip K. Israelson (Providence Ministries), City File No. REZ 93-01, and the June 20, 1994 recommendation of the Hearing Examiner on this application.

FINDINGS OF FACT

Application and Background.

1. On April 29, 1994, Phillip K. Israelson ("applicant") filed an application on behalf of the property owner, Providence Ministries, for a rezone from R-1 to RB-1 with an RB-2 contract overlay zone for a parcel of property located at 9515 No. Harborview Drive. An application for a variance from Gig Harbor Municipal Code Section (GHMC) Section 17.100.020C was also submitted for a reduction in the minimum lot size of the rezone.
2. The subject property is 19,220 sq. ft. in size, and is zoned residential (R-1). The underlying comprehensive plan designation for the property is Low Urban Residential. It is surrounded on all sides by residential zoned property.
3. The subject property is currently developed with a commercial building which is fully wired for power. The interior of the building is in good to excellent shape and the outside is in reasonable shape. This building is not suitable for a residential dwelling because substantial changes to the interior would be required to accommodate this use. The exterior is also clearly not consistent with residential use.
4. In 1983, the property was zoned RB-1, and the existing structure was renovated to accommodate office use and light assembly. Professional office was a permitted use and development under this zoning classification. Although this use is not allowed under the subsequently adopted R-1 zoning, it was a legally nonconforming use during the period of time that the previous property owner maintained the commercial use.
5. The current owner purchased this property in June of 1990. Since that time, the owner has used the property for storage, which is a use not specifically addressed by the City's Zoning Code.

6. In 1990, the City initiated an area-wide rezone and the subject property was rezoned to R-1. All required notice of the area-wide rezone was provided by the City.
7. The structure was last occupied in 1991. Because the structure has been vacant for more than one year, the property's owner's right to continue the legal nonconforming use under the RB-1 zoning has expired.
8. In August 1993, the property owner requested a contract rezone from R-1 to RB-2, to allow limited light assembly. The Hearing Examiner reviewed the application under the criteria set forth in GHMC Section 17.100.040, which requires consideration of the change in conditions upon which the existing zoning classification is based, sufficient to demonstrate that the current classification does not meet the public interest. Additional information was requested by the Hearing Examiner from the City about the Planning Commission and City Council's intent to rezone this parcel as R-1 in 1990.
9. After researching the City's records relating to the 1990 rezone, the City staff were unable to find any record of any discussion by either the Planning Commission or City Council regarding the subject parcel. Thereafter, the Hearing Examiner determined that the City had unintentionally rezoned the property to R-1, and had erroneously designated this property R-1 on its Official Zoning Map. In his decision of March 2, 1994, the Hearing Examiner did not describe how the application met the rezone criteria set forth in GHMC Section 17.100.040, but recommended to the City Council that the property be rezoned on the basis that an error had occurred.
10. Upon the City Council's review of the rezone application, the City's legal counsel advised that chapter 17.100 GHMC did not provide a "map error correction" process contemplated by the Examiner's decision, and that the application must be processed according to the procedures set forth in chapter 17.100 GHMC for rezones. On March 14, 1994, the Council tabled the proposal indefinitely.
11. The present application for a rezone and variance was submitted to the Hearing Examiner, who held a public hearing on May 25, 1994 to consider the matter.
12. At the hearing, the City staff submitted its report of May 25, 1994, which recommended three actions: (1) approval of the variance; (2) denial of a rezone to RB-1; (3) conditional approval of a contract rezone to RB-2, and the addition of certain conditions in the contract relating to structural design, landscaping, signs and other land use features.
13. Pursuant to GHMC Section 17.10.100, the Examiner's decision on a variance is final. A decision on a rezone is a recommendation to the Council for final action.
14. In his decision of June 20, 1994, the Examiner approved the variance and recommended that the City Council conditionally approve the rezone of the property from R-1 to RB-1 with an RB-2 contract overlay zone. While the Examiner specified

that certain conditions be added to the contract submitted by the applicant, he did not recommend inclusion of all conditions recommended by staff in the May 25, 1994 report.

15. Under GHMC Section 17.100.050, the Council is required to consider the Hearing Examiner's recommendation at its next regular meeting after receipt of the recommendation. Although the matter was scheduled to be considered at the Council's next regular meeting, there was a power failure during the meeting, and no tape recording of the meeting could be made. Therefore, the Council scheduled a special meeting to be held on July 18, 1994, for its consideration of the Hearing Examiner's recommendation.

Council Consideration of Application.

16. At a special meeting held on July 18, 1994, the Council considered the report of City staff (for the Planning Director) dated July 11, 1994, the City staff report submitted to the Hearing Examiner dated May 25, 1994, the Hearing Examiner's recommendation of June 20, 1994, the Concomitant Zoning Agreement proposed by the applicant, information submitted in the Council packet on this application and all the oral presentations by Ray Gilmore, Planning Director. All required notices of the meeting were properly given.
17. As stated in GHMC Section 17.28.010, the intent of the RB-1 zone is to serve as a buffer between higher intense commercial uses and lower intense residential uses.
18. As required by GHMC 17.100.040(A), both the Examiner and staff evaluated the application in light of the City's comprehensive plan, and agreed that a contract rezone to RB-2 would further the goals, policies and objectives of the plan. (Staff Report, No. 11, p. 16, May 25, 1994; Examiner decision, p. 3 (adoption of No. 11 of Staff Report by reference in B.), June 20, 1994.)
19. As required by GHMC 17.100.040(B), the staff evaluated whether or not there has been a change in conditions upon which the existing zoning classification is based, sufficient to demonstrate that the current classification does not meet the public interest. (Staff Report, No. 12, p. 16-17, May 25, 1994.) Staff determined that the rezone request was not based upon a change in circumstances since the last rezone, but upon the fact that the previous rezone allowed construction of a commercial building, taken together with the building's current vacant condition. The Examiner determined only that a mapping error occurred, and did not fully discuss this criteria. Specifically, the Examiner did not find that current conditions were not anticipated or foreseen since the last area zoning. (Examiner decision, p. 2, No. I.(B)(1) and II.(A)(1).)
20. As required by GHMC 17.100.040(C), both the Examiner and staff evaluated the application to determine whether it would further the public health, safety and general welfare. The Examiner concluded that the requested RB-2 contract rezone

would, with appropriate conditions, accomplish this by allowing a viable use for an existing building which would otherwise remain vacant. (Examiner decision, p. 3, II.(A)(9).) The staff agreed with this conclusion, and also found that if the contract rezone with staff's recommended conditions was approved, it would allow a viable use for a building that would otherwise remain vacant, become a public nuisance, and contribute to a blighted condition in the area. (Staff Report, p. 17, No. 13.)

21. The Council must consider this application under GHMC Section 17.100.050, which requires the Council to review the report of the planning director and the hearing examiner. In order to approve the rezone request, the Council must find from the facts presented by the findings of these reports that the public health, safety and general welfare would be preserved, and that the rezone would be in keeping with the spirit and intent of the comprehensive plan.

CONCLUSIONS

22. After consideration of these reports and the information presented at the July 18, 1994 public meeting, the Council concludes that the current zoning designation of the subject property is R-1, as shown on the City's Official Zoning Map.
23. The Council concludes that the request for reclassification does not further the goals, policies and objectives of the comprehensive plan. The underlying comprehensive plan designation for this property is Low Urban Residential, and is meant, as a general rule, to provide a guideline for subsequent rezones. Therefore, a rezone of the property to allow commercial uses in an area designated for low intensity residential uses is inconsistent with the comprehensive plan.
24. The Council concludes that there have been no changes in conditions, upon which the existing zoning classification of R-1 is based, sufficient to demonstrate that the current classification does not meet the public's interest. In addition, the applicant has not shown that there has been a material change in circumstances which was not anticipated or foreseen since the adoption of the comprehensive plan or the last area zoning.

Because the property was once zoned for commercial uses, any commercial use of the property after the R-1 area-wide rezoning could have been maintained as a legal, non-conforming use. However, the property owner allowed its right to maintain the non-conforming use to lapse, and this is the only "changed circumstance" presented to the Council in support of the rezone.

25. The Council concludes that neither of the requested reclassifications, RB-1 or RB-2, meet the code criteria for rezone approval. If the property were to be rezoned to a commercial use in the midst of a residentially zoned area, there would be no buffer between these uses. As a result, the existing residential uses

would be negatively impacted by a commercial use, to the detriment of the public health, safety and welfare. Even with the conditions proposed by the Hearing Examiner and the City staff, these obvious public health, safety and welfare concerns would not be satisfied by the carving out of this subsized property for a rezone incompatible with the comprehensive plan designation.

DECISION

The City Council hereby denies the application request for an approval of a rezone from R-1 to RB-1 with a RB-2 contract overlay zone, No. 93-01, and rejects the Hearing Examiner recommendation of June 20, 1994 on this application.

PASSED by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the Council held on this 25th day of July, 1994.

Gretchen A. Wilbert, Mayor

ATTEST:

Mark E. Hoppen
City Administrator/Clerk

Filed with City Clerk: 7/21/94
Passed by City Council: 7/25/94