

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE CITY COUNCIL
FOR THE CITY OF SEATTLE

In the Matter of the Application of
HUGH BANGASSER, for MidTown Limited Partnership
for a rezone of property addressed
at 2301 E. Union Street

CF 312973
DPD Project No. 3005931
Applicant's Appeal of Hearing Examiner Recommendation

INTRODUCTION

The Bangasser family has owned the city block at 2301 East Union (the "Property") for more than 70 years and has asked the City to rezone it from NC2P-40¹ to NC2P-65 – an increase of two residential floors ("Rezone Request"). The purpose of the Rezone Request is to encourage mixed-use economic redevelopment, including the creation of new jobs and housing, at this key Central Area intersection, particularly in light of the recent and continuing loss of numerous key neighborhood businesses including the local post office and bank. DPD recommends approval of the Rezone Request.

As the undisputed expert testimony at the hearing showed, a rezone to NC2P-65 is critical to the ability to attract expertise, developers and capital to this key intersection. The two

¹ A small portion of the block is currently zoned NC2 without the pedestrian suffix. The Rezone Request will correct that anomaly by assuring the entire block includes the pedestrian suffix designation.

MCCULLOUGH HILL LEARY, P.S.

701 Fifth Avenue, Suite 6600
Seattle, WA 98104
206.812.3388
206.812.3389 fax

1 additional floors of housing that the 65' height limit allows provide the building efficiencies and
2 residential density that are necessary to justify the significant economic investment required to
3 redevelop the Property.

4 The undisputed testimony at the hearing also showed that approval of the rezone request
5 is urgent. This site was identified by unrebutted expert and neighborhood testimony as the
6 anchor for subsequent successful development around this crossroad. Doing nothing at this time
7 and delaying initiatives to attract needed development at this crossroad threatens to contribute to
8 the inertia of ever-increasing vacancies, job losses and the risk of community decay. Approving
9 the Rezone Request enhances the likelihood of timely and inclusive neighborhood
10 redevelopment, job creation, and community vitalization, and lays the foundation for future
11 urban development around this "gateway to the Central Area," as recommended by the City's
12 Comprehensive Plan.

13 Seattle's Department of Planning and Development ("DPD") reviewed and recommended
14 approval of the Rezone Request. As the Council knows, SMC 23.34 authorizes two types of
15 site-specific rezone requests: (1) a rezone request without an accompanying project; and (2) a
16 rezone request that includes a proposed accompanying project (the more common but not
17 exclusive approach). The Bangasser family has invested in this site and the welfare of the
18 Central Area over the course of 72 years. However, the family members are not professional
19 developers and therefore do not propose a specific project in their rezone request. Any future
20 specific project for the property will be considered through the City's Master Use Permit and
21 Design Review processes.

22 DPD reviewed and recommended approval of the Rezone Request under the City's
23 applicable rezone criteria, SMC 23.34.007, .008, .009, .072, and .086 and found that the
24

1 Bangasser Rezone Request is consistent with all of these criteria. DPD noted further that the
2 proposed rezone is also consistent with the most recent recommendations of DPD's Office of
3 Long Range Planning in its 23rd Ave Action Plan.

4 The Hearing Examiner agreed with DPD's analysis of the City's applicable rezone
5 criteria as to SMC 23.34.007, .008.A, .008.B, .008.C, .008.D, .008E.3 and 4, .008.F, .008.G,
6 .008.H, .008.I, .008.J, .009.A, .009.B, .009.E, .072, and .086. The Hearing Examiner found no
7 inconsistency of the Rezone Request with any of these rezone criteria.

8
9 Despite the Hearing Examiner's acknowledgment of the Rezone Request's compliance
10 with all of these rezone criteria, she nonetheless recommended denial. Her recommendation was
11 based on her stated concern that the ultimately developed property might not adequately provide
12 a transition to the less intensive zones to the east and south even though the property block has
13 been zoned NC2-40 for over two decades. Her recommendation relies on SMC 23.34.008.E and
14 SMC 23.34.009.C and D. In error, she appears to demand that there be a specific project
15 proposed before a rezone can be approved. With all due respect, she is wrong on both counts
16 and therefore her recommendation should not be followed. Her recommendation is contrary to
17 law. The City Council does not defer to the Hearing Examiner's legal conclusions, but must
18 independently determine whether they are consistent with applicable law. *See Council Rules for*
19 *Quasi-Judicial Proceedings, Section VI.C.5.*

20
21
22 This appeal, then, hinges on whether the City Council's recently adopted 2013 Design
23 Guidelines ("Design Guidelines") are sufficiently specific to assure that future development on
24 the property is "compatible with actual and zoned heights in surrounding areas," and that it will
25 provide for a "gradual transition in height and scale and level of activity between zones..." SMC
26 23.34.008.E, or whether, instead, this Code provision requires that a specific project must be
27

1 **Conclusion 9:** The Hearing Examiner properly concluded that “no project has been
2 proposed for this site,” and that therefore no transitional design had been identified to address a
3 transition to the SF 5000 properties across a southeast portion of 24th Avenue or the south side
4 across Spring Street. However, the Hearing Examiner improperly concludes from this statement
5 that “the proposed height change would not be consistent with the zoning principles addressing
6 impacts and buffer changes.” This is because the Hearing Examiner fails to acknowledge that
7 Seattle Design Guideline CS 2 (D), which specifically regulates zone transition issues, fully
8 addresses all of her zoning compatibility concerns.
9

10 **Conclusion 11:** The Hearing Examiner refers to “shadow studies” indicating increased
11 shadow impacts on properties to the south and east. There are no such “shadow studies” that
12 have been prepared or reviewed by either the Applicant or by DPD. There are two pages of
13 undocumented print-outs of unknown provenance that were attached to a comment letter that
14 appear to depict shadows. The purported “shadow studies” were not made available to or seen
15 by the Applicant or DPD until after the hearing. They do not constitute evidence. Conclusion 11
16 should be stricken.
17

18 **Conclusion 23:** The Hearing Examiner correctly concludes that “depending on what
19 kind of development occurs on this site, the [increased two floors in height] could be compatible
20 both with actual and zoned heights in the surrounding area.” The Hearing Examiner also
21 correctly concludes that “although no major physical buffers are present, the design of future
22 development at the site could provide gradual transition in height and scale and level of activity
23 between the commercial and residential zones.” As explained below, that is precisely what the
24 City’s Design Guidelines will guarantee. However, the Hearing Examiner is incorrect when she
25 concludes that based on the record before her, that transition criterion “cannot be assumed.” In
26
27
28

MCCULLOUGH HILL LEARY, P.S.
701 Fifth Avenue, Suite 6600
Seattle, WA 98104
206.812.3388
206.812.3389 fax

1 fact, it can be assumed. That is what the City Council guaranteed when it adopted the Seattle
2 Design Guidelines.

3 **Conclusion 24:** The Hearing Examiner correctly concluded that “the adopted goals and
4 plans tend to support a 65-foot height limit to encourage new mixed-use, pedestrian-friendly
5 development.” However, the Hearing Examiner is wrong when she speculates that “the extra
6 development capacity” created by the rezone would “frustrate” the “encouragement of business
7 at other nodes along 23rd Avenue.” There is no evidence in the record to support that
8 speculation. Indeed, the Rezone Request will result in no increased commercial capacity on the
9 site. The site is zoned NC2P now, and would continue to be zoned NC2P after the rezone.
10 Moreover, there is no basis for the Hearing Examiner to suggest that this crossroad should not
11 gain the business resources intended for this intersection, which is designated in all currently
12 adopted City plans as part of a Residential Urban Village, to be developed as a thriving
13 neighborhood commercial node with urban residential density capable of supporting local
14 neighborhood businesses.

15 **Conclusion 25:** This is the Hearing Examiner’s summary. She acknowledges that the
16 proposal is generally compatible with the adopted policies for the neighborhood. This, of course,
17 is customarily sufficient for a rezone to be approved. However, she recommends denial because
18 of the site’s “large size” and because the Bangasser family has not defined a specific
19 development which identifies “appropriate transition to those nearby zones.” This Conclusion is
20 unsound because the “large size” of the site is not relevant to any rezone criterion. In addition,
21 the Code does not require an applicant to propose a specific development as a condition for a
22 site-specific rezone. Finally, as described below, the Design Guidelines adopted by the City
23 Council fully address the Hearing Examiner’s transition concerns.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISCUSSION

As stated above, this appeal hinges on whether the City’s Design Guidelines are able to satisfactorily address the applicable Land Use Code zoning principle directing the City to address the possible impact of more intensive zones on less intensive zones, and to consider an appropriate complement or transition between zoning categories. As indicated, DPD in its recommendation found that the Design Guidelines are able to address this principle. At 8. The Hearing Examiner, in her recommendation, found that they are not. Conclusion 23.

A review of the City’s Design Guidelines clearly answers the question. They more than adequately address the “complement/transition” principle. The most pertinent guidelines are the “Height, Bulk and Scale” provisions. They are reproduced below:

D. HEIGHT, BULK, AND SCALE

1. Existing Development and Zoning: Review the height, bulk, and scale of neighboring buildings as well as the scale of development anticipated by zoning for the area to determine an appropriate complement and/or transition. Note that existing buildings may or may not reflect the density allowed by zoning or anticipated by applicable policies.

This guideline specifically requires any future development to address the very issue identified by the Examiner, and to address complement/transition in building design.

2. Existing Site Features: Use changes in topography, site shape, and vegetation or structures to help make a successful fit with adjacent properties; for example siting the greatest mass of the building on the lower part of the site or using an existing stand of trees to buffer building height from a smaller neighboring building.

As with Guideline D.1, this guideline directs any future development to “make a successful fit” with neighboring properties. This guideline recommends the use of site features to make this accommodation.

3. Zone Transitions: For projects located at the edge of different zones, provide an appropriate transition or complement to the adjacent zone(s).

MCCULLOUGH HILL LEARY, P.S.

701 Fifth Avenue, Suite 6600
Seattle, WA 98104
206.812.3388
206.812.3389 fax

1 *Projects should create a step in perceived height, bulk and scale between the*
2 *anticipated development potential of the adjacent zone and the proposed*
3 *development. Factors to consider:*

- 4 *a. Distance to the edge of a less (or more) intensive zone;*
5 *b. Differences in development standards between abutting zones;*
6 *c. The type of separation from adjacent properties (e.g. separation by*
7 *property line only, by an alley or street or open space, or by physical*
8 *features such as grade change);*
9 *d. Adjacencies to different neighborhoods or districts; adjacencies to*
10 *parks, open spaces, significant buildings or view corridors; and*
11 *e. Shading to or from neighboring properties.*

12 This guideline most specifically addresses the Hearing Examiner's stated interest. The
13 Hearing Examiner wanted to be assured that there would be consideration of features such as the
14 new upper level setbacks, modulation or other design components that might provide appropriate
15 transition. Conclusions 9 and 23. These considerations are addressed specifically in Guideline
16 D.3 which assesses possible provision of an "appropriate transition" to the adjacent zone;
17 creation of "a step in perceived height, bulk or scale" and consideration of distance between the
18 zones, types of separation, adjacencies and shading.

19 *4. Massing Choices: Strive for a successful transition between zones where a*
20 *project abuts a less intense zone. In some areas, the best approach may be to*
21 *lower the building height, break up the mass of the building, and/or match the*
22 *scale of adjacent properties in building detailing. It may be appropriate in*
23 *other areas to differ from the scale of adjacent buildings but preserve natural*
24 *systems or existing features, enable better solar exposure or site orientation,*
25 *and/or make for interesting urban form.*

26 This guideline elaborates on additional design factors to assure a "successful transition
27 between zones."

28 These guidelines together more than address all of the issues and concerns identified by
the Hearing Examiner.

Since any development of the property will be subject to these Design Guidelines, the
concerns expressed by the Hearing Examiner have no merit. The City Council should adopt the

MCCULLOUGH HILL LEARY, P.S.

701 Fifth Avenue, Suite 6600
Seattle, WA 98104
206.812.3388
206.812.3389 fax

1 recommendation of DPD, rather than the recommendation of the Examiner, and approve the
2 proposed Rezone so that the long delayed redevelopment of this anchor of the Union Street
3 crossroad with attendant jobs and housing can be expedited through attraction of development
4 expertise, investors, new residents and services, and retention of its neighborhood merchants.

5
6 **RELIEF REQUESTED**

7 The Applicant respectfully asks the City Council for leave to submit a memorandum to
8 set forth the key facts contained in the record and to present argument as to the key legal issues
9 pertaining to the appeal. The Applicant asks the Council to identify a date by which the
10 memorandum should be submitted.

11
12 As to the merits, the Applicant respectfully asks the City Council to approve the proposed
13 Rezone. The 2013 Seattle Design Guidelines will assure that all concerns about transition and
14 compatibility will be addressed in the design review process when a specific project is proposed
15 for approval.

16 If the Council is concerned that there may be projects proposed on the property that are
17 exempt from design review, the Applicant suggests that the Council condition its approval of the
18 rezone upon a condition that any project developed on the property will be subject to the City's
19 design review process.

20
21 Finally, if the Council determines that the City's existing design guidelines are
22 insufficient to address transition concerns, the Applicant respectfully requests that the Council
23 remand this matter to DPD to identify complement/transition-related considerations, for
24 recommendation to the Council.
25

26 ///

27 ///

28 MCCULLOUGH HILL LEARY, P.S.

701 Fifth Avenue, Suite 6600
Seattle, WA 98104
206.812.3388
206.812.3389 fax

1 Dated this 30th day of December, 2013.

2
3 Respectfully submitted,

4 McCULLOUGH HILL LEARY, P.S.

5
6 

7 _____
8 G. Richard Hill, WSBA 8806
9 Attorneys for Applicant