

FILED
CITY OF SEATTLE
2014 FEB 10 AM 11:55
CITY CLERK

**CITY OF SEATTLE
RESPONSE OF DIRECTOR
TO APPEAL OF HEARING EXAMINER RECOMMENDATION
CLERK FILE 312973: APPLICATION OF MIDTOWN LIMITED PARTNERSHIP**

The Director of the Department of Planning and Development recommends approval of the proposed rezone of land located at 2301 East Union Street from NC2P-40 to NC2P-65. The NC2P zoning classification itself would not be changed. The only change would be in the height limit, from 40' to 65'. The Department conducted a thorough review of the application under SMC 23.34, as set forth in the Director's recommendation to the Hearing Examiner. The application meets all the rezone criteria set forth in the Land Use Code (a copy of pertinent portions of SMC 23.34 and the Director's analysis of each is attached to this response).

The Hearing Examiner acknowledged that it is consistent with virtually all of the City's rezone criteria as set forth in SMC 23.34. In addition, the new Design Guidelines adopted by the City Council in December 2013 will be applied to any construction on this site and those Design Guidelines and the review to be conducted by the Design Review Board are fully adequate to ensure an appropriate transition.

The Rezone Proposal and the Land Use Code Criteria.

The applicant has applied for a contract rezone to change the current zoning of the property from NC2P 40 mixed use zoning to NC2P 65 mixed use zoning. The only change being requested is to permit two possible additional floors of residential units.

As explained in the Director's recommendation, the applicant for this rezone proposal is a family partnership that has owned the property for over 70 years. The applicant has informed the Department that the family partnership members are not developers, and for that reason, they have not put forth a specific development proposal with a request for approval of a master use permit. Under SMC 23.34, applicants are allowed to submit a site-specific rezone application in this manner, i.e., without a specific project proposal.

Reviewing the rezone proposal, the Department determined that the application meets all the rezone criteria set forth in the Land Use Code for a rezone of the property to NC2P 65. Accordingly, the Department supported approval of the rezone application. Indeed, in the Hearing Examiner recommendation, the Hearing Examiner acknowledges that the rezone proposal meets the following applicable criteria:

- The proposed rezone meets the "effect on zoned capacity" criterion. Conclusion 4.
- NC2 is the most appropriate zone designation for the property. Conclusion 5.

- Both previous and potential zoning changes are generally consistent with a 65-foot height limit. Conclusion 6.
- The rezone proposal for a 65-foot height limit from the current 40-foot height limit is generally consistent with adopted Neighborhood Plans. Conclusion 7.
- The proposed rezone is within an urban village, so the proposed 65-foot height limit is consistent with applicable zoning principles. Conclusion 10.
- As to environmental factors, the Department issued a DNS on the rezone proposal, which is final. Conclusion 11.
- Employment activity will be positively affected as the site is developed. The Hearing Examiner acknowledged that several public comments expressed support for the rezone proposal as a way to address the area's need for economic development and revitalization. Conclusion 14.
- The rezone proposal does not conflict with the changed circumstances criterion. Conclusion 16.
- A 65-foot height limit would be consistent with the type and scale of development intended for the NC2 zone classification. Conclusion 19.
- There appear to be no major topographic conditions that would lessen or increase the impacts of a height increase on the surrounding areas. Conclusion 20.
- The goals and policies of the Neighborhood Plans tend to support a 65-foot height limit to encourage new mixed-use, pedestrian-friendly development. Conclusion 24.

The Hearing Examiner also acknowledges that “depending on what development occurs on this site, the [65-foot] height limit could be compatible both with actual and zoned heights in the surrounding area,” and that “the design of future development at the site could provide gradual transition in height and scale and level of activity between the commercial and residential zones.” Conclusion 23. The Department agrees with all of these conclusions of the Hearing Examiner.

The Hearing Examiner's Basis for Recommending Denial of the Rezone Proposal.

Despite acknowledging that the rezone proposal satisfies the rezone criteria set forth above, the Hearing Examiner nonetheless recommended the rezone be denied. Her reasoning for the recommendation of a denial of the rezone request was that “[e]ven if it is presumed that design review will apply to future development of the site, it is not known what the outcome of that process would be in terms of project design or conditions.” Conclusion 23. The Hearing Examiner was skeptical of design review to address project design or to condition future development on the property to address zone compatibility transition issues.

DPD Review of Transition Considerations in Rezone Applications.

DPD, as much as the Hearing Examiner, is concerned to assure that future development on the property addresses transitions involving residential zones to the east and south of the property. In its recommendation on this proposal, the Department indicated that the zone transition issues raised by this proposal will be conditioned during the City's design review process:

Seattle's design review process, which is designed to address, among other issues, appropriate transitions with development on neighboring properties, will review and condition future project-specific development proposals on the property.

Director Recommendation at 8. In its recommendation, the Department did not go into detail as to how Seattle's design review process will address "appropriate transitions with development on neighboring properties" because DPD and design review will address that issue when a developer files a MUP application for development of the property. The City Council may find it helpful for the Department to provide some additional detail on assessment of transitions in the Design Guideline Process before DPD recommends approval of a MUP.

Transition issues are customarily considered as part of the design review process and the new 2013 Design Guidelines include further detail as to the consideration of transition issues.

It is DPD's current and longstanding policy to consider closely transition issues for projects that abut different zoning categories and to address zone transition issues to consider the design features of a new project for its compatibility with its neighbors. The 1998 Design Review Guidelines addressed transition issues, but while they had many strengths, they lacked specificity as to how to address zone transition issues:

Height, Bulk and Scale Compatibility

Projects should be compatible with the scale of development anticipated by the applicable Land Use Policies for the surrounding area and should be sited and designed to provide a sensitive transition to near-by, less-intensive zones. Projects on zone edges should be developed in a manner that creates a step in perceived height, bulk and scale between the anticipated development potential of the adjacent zones.

1998 Design Guidelines at 22. Despite that lack of specificity, the 1998 Design Guidelines have been applied by many Design Review Boards to successfully address transitions between zones.

Nonetheless, it became apparent over the years that greater specificity would be beneficial with respect to this and other Guidelines. Accordingly, over a period of several years, DPD reached out to stakeholders to solicit input on how to improve the Guidelines. This ultimately resulted in the 2013 Guidelines, which were adopted by Ordinance in December 2013 after having first been reviewed, approved, and recommended by this Committee.

A review of the 2013 Guidelines indicates that the issue of zone transitions is very specifically addressed, along with mechanisms that will result in successful transitions. In addition to repeating the guidance in the 1998 Guidelines to provide an appropriate transition or complement to the neighboring zone, the new Guidelines provide additional specific direction:

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

2013 Design Guidelines CS2.D.3. See also Guidelines CS2.C.3 (Full block sites); CS2.D.1 (Existing development and zoning); and CS2.D.4 (Massing choices).

In this light, the Department considered that it would be ineffective from a development conditioning perspective to recommend particular zone transition conditioning at this time. Rather, the Department has recommended that the rezone proposal be approved, subject to assurance that all development on the site will be subject to the Council's 2013 Design Guidelines Ordinance.

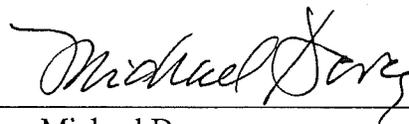
The Department suggests that it is through the design review process and the involvement and consideration of the Design Review Board that development on the property will be sited in a manner to effectively address the transition provisions of the 2013 Guidelines.

In this way, the Hearing Examiner's interest in assuring appropriate transition between zones can be fulfilled.

Conclusion.

The Department respectfully recommends to the Council that the rezone proposal be approved.

Dated this 10th day of February, 2014.



Michael Dorcy
Senior Land Use Planner,
for the Director

ATTACHMENT

Response of Director, Department of Planning and Development

To Appeal of Hearing Examiner Recommendation

Clerk File 312973: Application of Midtown Limited Partnership

current tenants, especially those businesses owned by persons of color. Some of the commenters also advocated for affordable housing and free parking on site.

ANALYSIS - REZONE

The applicable requirements for this rezone proposal are stated at SMC Sections 23.34.007 (rezone evaluation), 23.34.008 (general rezone criteria), 23.34.009 (height limits), 23.34.072 (designation of commercial zones), and 23.34.086 (Pedestrian designation, Suffix P, function & locational criteria). The zone function statements are to be used to assess the likelihood that the area proposed to be rezoned would function as intended.

The most reasonable order for analysis does not follow the section numbering. In the following analysis, SMC Section 23.34.008 (General rezone criteria) will be considered first. Then follows 23.34.009, which considers the compatibility of height considerations), 23.34.072 general commercial considerations, 23.34.086 (which considers the Pedestrian designation), and finally 23.34.007, which requires synthesis of all the foregoing analyses. The pattern below is to quote applicable portions of the rezone criteria in italics, which is then followed by analyses in regular typeface.

SMC 23.34.008 General rezone criteria.

A. To be approved a rezone shall meet the following standards:

- 1. In urban centers and urban villages the zoned capacity for the center or village taken as a whole shall be no less than one hundred twenty-five percent (125%) of the growth targets adopted in the Comprehensive Plan for that center or village.*
- 2. For the area within the urban village boundary of hub urban villages and for residential urban villages taken as a whole the zoned capacity shall be within the density ranges established in Section A1 of the Land Use Element of the Comprehensive Plan.*

The subject site and surrounding neighborhood are within the 23rd and Union-Jackson Residential Urban Village (23rd RUV). The Urban Village Appendix to the Seattle Comprehensive Plan set a 650 household increase as the growth target for this Residential Urban Village. This target requires a density increase to nine households per acre (or 4,840 sq. ft. per household) from the existing seven households per acre (or 6,233 Sq. ft. per household). The subject site, as earlier noted is 106,189 sq. ft. in size. Development of additional residential units on this site would contribute to the desired residential density of the Residential Urban Village.

According to the latest available progress report on growth, under Seattle's comprehensive plan the residential urban village has achieved 60% of the targeted growth (*Monitoring Our Progress: Seattle's Comprehensive Plan, 2003*). The proposed rezone will increase zoned capacity by allowing additional building height and the resultant gross square footage (FAR) on the same area of land. The proposed rezone is consistent with SNC 23.34.008.A.1 because the increased in zoned capacity does not reduce capacity below 125% of the Comprehensive Plan growth target. The rezone is also consistent with SMC 23.34.008.A.2 because the increased density contributes to the attainment of densities established in the Comprehensive Plan.

B. Match Between Zone Criteria and Area Characteristics. The most appropriate zone designation shall be that for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation.

The proposal is to increase the height limit of a property currently designated Neighborhood Commercial 2-40 (NC2-40) to Neighborhood Commercial 2-65 (NC2-65). SMC 23.34.076 provides the Neighborhood Commercial 2 zone, function and locational criteria. The property at a minimum meets the SMC 23.34.076 zone criteria for the Neighborhood Commercial 2 zone (its current designation). It can accommodate a pedestrian-oriented shopping area that provides a full range of household and personal goods, including convenience and specialty goods, to the surrounding neighborhoods, and can include other uses that are compatible with the retail character of the area such as housing or offices. It is located in a primary business district in a residential urban village, on streets with good capacity and excellent transit service. Because of its size, its location and its traditional function as the community commercial hub, it can achieve the following characteristics: a variety of sizes and types of retail and other commercial businesses at street level; continuous store fronts to the front lot line; substantial pedestrian activity; shoppers can drive to the area, but walk around from store to store; and the excellent transit provides for important means of access and egress for residents and the shoppers using the retail stores within it. The locational criteria for NC2, are consistent with the property because it is the primary business district for the 23rd RUV, is served by two arterials (Union and 23rd), can be buffered from less intense residential areas, is served by excellent transit service and is, as described below, sited at a designated business node of the applicable Urban Village where mixed use buildings of greater than 40' in height are encouraged.

C. Zoning History and Precedential Effect. Previous and potential zoning changes both in and around the area proposed for rezone shall be examined.

The subject property was zoned Community Business (BC) in 1980 and was re-zoned to NC2-40 under the City's prior commercial zoning code (Chapter 23.47) and remained NC2-40 under the most recent commercial zoning code (Chapter 23.47A), enacted in 2006. The zoning history of the surrounding area that includes NC, single-family and low-rise multifamily zones has remained relatively consistent. The property immediately to the west across 23rd Avenue (2203 East Union Street) was re-designated to NC2-65 pursuant to a contract rezone in 2008 (CF 308565).

D. Neighborhood Plans.

- 1. For the purposes of this title, the effect of a neighborhood plan, adopted or amended by the City Council after January 1, 1995, shall be as expressly established by the City Council for each such neighborhood plan.*
- 2. Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.*
- 3. Where a neighborhood plan adopted or amended by the City Council after January 1, 1995 establishes policies expressly adopted for the purpose of guiding future rezones, but does not provide for rezones of particular sites or areas, rezones shall be in conformance with the rezone policies of such neighborhood plan.*

The Central Area Action Plan II (“CAAP II”) is a community-based document, adopted in 1998 as the Central Area’s Neighborhood Plan and it encompasses the 23rd RUV. Updated neighborhood policies for the Central Area were also adopted as part of Seattle’s Comprehensive Plan update in January 2005. Both CAAP II and the Comprehensive Plan support the rezone proposal. The Comprehensive Plan, as described below, specifically recommends heights greater than 40 feet in Urban Village business nodes such as the subject property. CAAP II contains the following goals, policies, and action plan components that are germane to consideration of the proposed rezone at this location:

- The 23rd and Union neighborhood is “defined as the crossroads of the Central Area, with more activity and better district layout that makes use of the width and potential of East Union. [Development should] rearrange parking on the street and off to make better use of it, and emphasize the district as a convenience shopping area for local residents and workers.” (page 4)
- “23rd and Union has long been considered the hub of the Central Area. Its smaller scale lends itself to less residential and commercial density. The vision for the neighborhood focuses on maintaining the cultural and ethnic diversity of the community. In the future, changes will be made thoughtfully, with respect for the past, pride in the present and careful regard for sustainable development in the future. East Union Street will be the focus, both in terms of transportations systems and in becoming the gathering place for the community. To support this vision, an integration of streetscape, street improvement, land use and zoning changes and open space elements will need to come together.” (page 9-10)
- “Establish a Pedestrian 2 Overlay at the business core of 23rd and Union.” (pages 23 and 28)
- “Create a sense of entry for the Central Area and individual neighborhoods by developing “community gateways” that go beyond placing a sign on a utility pole. Develop landscaped areas, public art pieces, banners, and/or signage at locations that include but may not be limited to... 23rd & Union (page 44)
- “23rd and Union Node – The Community’s Business Center. Continue adding commercial office space and professional services. Encourage housing density in and around the commercial area...” (page 50)

“Moderate Income Housing. Encourage development of market-rate housing affordable to families of modest or moderate incomes. (80% - 120% of median).” (page 66)

- “Through implementation of the comprehensive plan and/or neighborhood planning, designate Key Pedestrian Streets within the highest-density portions of urban villages and along logical connections between villages. Design and operate these streets to be safe and attractive for pedestrians, improve access to transit, encourage street-level activity, and facilitate social interaction. Integrate pedestrian facilities into street improvements on these streets.

Consider strategies such as curb bulbs, mid-block crosswalks, benches, street trees, wider sidewalks, lighting, special paving, overhead weather protection, and grade-separated pedestrian walkways over or under major obstacles to pedestrian movement.” (page 72)

- “Union Street Improvements. Improve street landscaping and street furniture and provide lane modification on Union at 23rd Avenue to reduce pedestrian accidents, improve parking, improve safety for bicycles and enhance the business node.” (page 82)
- “Union Streetscape and Urban Design. Promote a pedestrian environment along Union between 19th and Martin Luther King Jr. Way. Request Seattle Transportation, the Department of Neighborhoods, and Seattle City Light to work with neighborhood associations to establish streetscape features such as decorative street lighting, seating areas, intersection paving patterns, and community identity markers.” (page 84)

The following 2005 Comprehensive Plan goals and policies are also relevant to analysis of this rezone application:

- Policy CA-P1: Enhance the sense of community and increase the feeling of pride among Central Area residents, business owners, employees, and visitors through excellent physical and social environments on main thoroughfares.
- Goal CA-G2: A community where residents, workers, students and visitors alike can choose from a variety of comfortable and competitively convenient modes of transportation including walking, bicycling, and transit and where our reliance on cars for basic transportation needs is minimized or eliminated.
- Goal CA-G3: A community that is served by a well-maintained infrastructure...
- Goal CA-G4: A stable community with a mix of housing types meeting the needs of a wide variety of households, where home ownership is an affordable option for many households.
- Policy CA-P7: Encourage use of travel modes such as transit, bicycles, walking and shared vehicles... and discourage commuting by single occupant vehicle...
- Policy CA-P24: Create a viable business base that will attract investment, focusing on neighborhood retail, professional and personal services, restaurants, and entertainment. Support the urban design element of the Central Area Neighborhood Plan that strengthens development and enhances the pedestrian nature of each area.
- Goal CA-G6: [Develop] distinct but mutually supportive primary business districts along the 23rd Avenue Corridor... 23rd and Union Node --

Business/Restaurant Center: A small scale commercial hub serving the neighborhood, providing a range of residential housing types.

This rezone proposal is consistent with these goals and policies. The neighborhood plan (CAAP II) specifically labels the 23rd and Union intersection as the “23rd and Union Node” and expressly encourages shopping, commercial and residential development with density at the core of that node.

E. Zoning Principles. The following zoning principles shall be considered:

- 1. The impact of more intensive zones on less intensive zones or industrial and commercial zones shall be minimized by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.*

The updated rezone proposal is solely for an increased height allowance from 40 to 65 feet (the next tallest level designated in the land use code). The existing “P-suffix” parcels along Union and 23rd will remain. Those that do not currently have a “P-suffix” overlay will be rezoned with the “P-suffix”. The increased height allowance will result in more viable commercial and residential development on the property, consistent with the recommendation of the Comprehensive Plan and the DPD recommended “23rd Ave Union-Cherry-Jackson Action Plan”.

The property to the west has an NC2-65 designation, with an approved master use permit which allows development as a ground-floor retail and 96-unit residential project. The properties to the northwest, north and northeast are currently designated NC2-40. (The DPD recommended “23rd Ave Union-Cherry-Jackson Action Plan indicates that these properties also are suitable for NC2-65 zoning designations.)

All properties on the subject block are currently zoned NC2-40. Properties to the east, across 24th, are zoned NC2-40 and SF 5000. Properties to the south, across Spring Street, are zoned SF 5000. The SF 5000 zoned properties are separated from the proposed rezone property by city streets, and have been adjacent to commercially zoned property for decades. In this light, a change from NC2-40 to NC3-65 will not significantly affect these SF 5000 zoned properties. In addition, Seattle’s design review process, which is designed to address, among other issues, appropriate transitions with development on neighboring properties, will review and condition future project-specific development proposals on the property.

- 2. Physical buffers may provide an effective separation between different uses and intensities of development. The following elements may be considered as buffers:*
 - a. Natural features such as topographic breaks, lakes, rivers, streams, ravines and shorelines;*
 - b. Freeways, expressways, other major traffic arterials, and railroad tracks;*
 - c. Distinct change in street layout and block orientation;*
 - d. Open space and green spaces.*

The subject property is bordered on all four sides by public rights of way. No other physical buffers exist between the proposed height increase and the existing, surrounding zones.

3. *Zone Boundaries.*

a. *In establishing boundaries the following elements shall be considered:*

- (1) *Physical buffers as described in subsection E2 above;*
- (2) *Platted lot lines.*

b. *Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas. An exception may be made when physical buffers can provide a more effective separation between uses.*

The proposed rezone will not change the currently existing boundaries between the commercially and residentially zoned areas.

4. *In general, height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty feet (40) may be considered outside of urban villages where higher height limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or where the designation would be consistent with the existing built character of the area.*

The site is located within an urban village where heights greater than 40 feet are contemplated. The proposed rezone will increase the height limit from 40 to 65 feet.

F. Impact Evaluation. The evaluation of a proposed rezone shall consider the possible negative and positive impacts on the area proposed for rezone and its surroundings.

1. *Factors to be examined include, but are not limited to, the following:*

a. *Housing, particularly low-income housing;*

The proposed rezone will afford the property with the opportunity to be developed with housing at an increased density due to the 65 foot height limit.

b. *Public services;*

The proposed rezone will not of itself require public services, but subsequent development will.

c. *Environmental factors such as noise, air and water quality, terrestrial and aquatic flora and fauna, glare, odor, shadows, and energy conservation;*

The proposed rezone will allow two stories of additional height without changing the type of uses allowed on the subject property, which is currently developed as a retail commercial center. There will likely be no appreciable negative environmental impacts associated with allowing the proposed denser urban infill development compared to existing zoning.

d. Pedestrian safety;

The area currently has sidewalks, street lights and crosswalks; therefore the proposed rezone will not adversely impact pedestrian safety. New commercial and residential development on the site would increase “eyes on the street,” which is assumed to enhance overall safety in the neighborhood. The property has, and will retain, the “pedestrian” designation, on all lots facing Union and 23rd, requiring a number of pedestrian-friendly design elements as part of any site development.

e. Manufacturing activity;

There is no manufacturing activity on the property or in the property’s vicinity.

f. Employment activity;

The proposed rezone will result in the opportunity for substantial commercial development, which will provide additional employment opportunities in new retail facilities as well as in constructing and maintaining the commercial and residential development on the subject property.

g. Character of areas recognized for architectural or historic value;

The existing development on the subject property is not considered to have architectural or historic value. No adjacent properties have been identified as having historic value.

h. Shoreline view, public access and recreation.

The proposed rezone will not impact shoreline, public access or recreation uses.

2. Service Capacities. Development which can reasonably be anticipated based on the proposed development potential shall not exceed the service capacities which can reasonably be anticipated in the area, including:

a. Street access to the area;

The additional development potential provided by the rezone is minimal in terms relative to street access in the project vicinity.

b. Street capacity in the area;

The additional development potential provided by the rezone will generate traffic which will use street capacity in the area. The street capacity of the area, however, can reasonably accommodate the traffic associated with that additional development potential.

c. Transit service;

The additional development potential provided by the rezone is negligible in terms relative to transit ridership for the project vicinity.

d. Parking capacity;

The area is in a pedestrian zone, with easy transit access both to downtown and to the University of Washington. New development will accommodate any City-required parking on site.

e. Utility and sewer capacity;

The proposed rezone is in an area that has experienced low water pressure, low sewer capacity and flooding issues. Seattle's Comprehensive Plan identifies how the City is addressing these issues: "The capacity of the wastewater system is limited in confined areas of the city, where there have been historic hydraulic and system backup problems. These problems are being addressed through developer-funded facility upgrades and by Seattle Public Utilities CIP." Additional residential density is of concern for existing sewer capacity, but the proposed height increase is not directly related to an increase in residential units on site and the limited local infrastructure is not directly burdened by the proposed rezone for additional height. The current proposal is for a rezone of the site only, Subsequent proposals for actual development on site may have to deal with issues of inadequate capacities and all future development on site will have to meet standards of approval set by Seattle Public Utilities.

f. Shoreline navigation.

The proposed rezone will not impact shoreline navigation.

- A. Changed Circumstances. Evidence of changed circumstances shall be taken into consideration in reviewing proposed rezones, but is not required to demonstrate the appropriateness of a proposed rezone. Consideration of changed circumstances shall be limited to elements or conditions included in the criteria for the relevant zone and/or overlay designations in this chapter.*

The most significant changed circumstance is that the United States Postal Service has significantly downsized its presence in the existing MidTown Center on the property. Other adverse changes include the shuttering of a local branch of a bank, and the closure of some long-term business establishments. These changes, taken together, could lead to additional vacant storefronts and neighborhood decay. According to the applicant, the rezone is important as a catalyst to encourage redevelopment of the property for residential and commercial purposes as envisioned in the City's Comprehensive Plan, the existing neighborhood plan, and current neighborhood planning which envision this locale as a site that will serve as a neighborhood hub and gathering place and serve as a demonstration of the community's resilience.

- B. Overlay Districts. If the area is located in an overlay district, the purpose and boundaries of the overlay district shall be considered.*

The proposed rezone is not located in an Overlay district; thus this criterion does not apply.

- C. Critical Areas. If the area is located in or adjacent to a critical area (SMC Chapter 25.09), the effect of the rezone on the critical area shall be considered.*

The subject site does not contain any environmentally critical areas.

SMC 23.34.009 - Height limits of the proposed rezone.

Where a decision to designate height limits in commercial or industrial zones is independent of the designation of a specific zone, in addition to the general rezone criteria of Section 23.34.008, the following shall apply:

- A. Function of the zone. Height limits shall be consistent with the type and scale of development intended for each zone classification. The demand for permitted goods and services and the potential for displacement of preferred uses shall be considered.*

This rezone seeks only to increase the proposed height limit of parcels zoned NC2 from 40 to 65 feet to accommodate increased housing density and, in order to allow more viable retail development. These two changes are consistent with the type and scale of development intended for the NC2 zones in a residential urban village, as discussed above with regard to the comprehensive and neighborhood plans. In particular, the creation of new commercial development and residential apartments will add density and vitality to the desired pedestrian character of the residential urban village.

The proposed rezone's location at the 23rd and Union intersection, long recognized as a central community hub for the neighborhood, will provide density at the center of the urban village and is expected to encourage redevelopment, particularly with the current use of the MidTown Center property confronted with the loss of the USPS facility and the threat of empty storefronts. The applicant believes that redevelopment authorized by the proposed rezone will bring a substantial number of new residents to the neighborhood, plus the jobs provided by the commercial development on site. As intended with urban villages, this will draw more pedestrian traffic from the surrounding residential neighborhoods to the urban village node, increasing use of local merchants while reducing dependence on automobiles. The rezone is likely to meet demands for permitted goods and services by providing housing and commercial opportunities on the current MidTown Center site.

- B. Topography of the Area and its Surroundings. Height limits shall reinforce the natural topography of the area and its surroundings, and the likelihood of view blockage shall be considered.*

The immediate vicinity of the proposal site is relatively flat. The site sits halfway on the western slope of a valley that begins on 18th Avenue and slopes downward to Martin Luther King Jr. Way. It then rises from that point to the Madrona neighborhood. The proposal site enjoys easterly views. Because surrounding properties to the site are currently zoned for higher, the same, or lower heights (65 feet, 40 feet, 30 feet, or single family), surrounding properties would generally not be subject to worse view blockage from the proposed 65-foot limit than would currently exist.

- C. Height and Scale of the Area.*

- 1. The height limits established by current zoning in the area shall be given consideration.*

2. *In general, permitted height limits shall be compatible with the predominant height and scale of existing development, particularly where existing development is a good measure of the area's overall development potential.*

D. Compatibility with Surrounding Area.

1. *Height limits for an area shall be compatible with actual and zoned heights in surrounding areas excluding buildings developed under Major Institution height limits; height limits permitted by the underlying zone, rather than heights permitted by the Major Institution designation, shall be used for the rezone analysis.*
2. *A gradual transition in height and scale and level of activity between zones shall be provided unless major physical buffers, as described in Subsection 23.34.008 D2, are present.*

The subject site and lots along 23rd Avenue, under the current zoning, have a maximum height limit of 40 feet, with the exception of the site immediately to the west, which has a maximum height limit of 65 feet. The existing buildings within this zone, however, generally do not extend to this maximum height.

Existing development in the area is not a good general measure of the area's overall development potential as there remains sufficient additional capacity for more retail and residential development. The goals and policies that apply to the 23rd RUV would be met by the redevelopment of MidTown into a mixed-use, pedestrian friendly element of the village. Changing the height designation from 40-feet to 65-feet creates a continuous central focal point (combined with the approved project directly to the west across 23rd Avenue) for the 23rd and Union Node, one that intended as an anchor to redevelopment of the area.

E. Neighborhood Plans.

1. *Particular attention shall be given to height recommendations in business district plans or neighborhood plans adopted by the City Council subsequent to the adoption of the 1985 Land Use Map.*
2. *Neighborhood plans adopted or amended by the City Council after January 1, 1995 may require height limits different than those that would otherwise be established pursuant to the provisions of this section and Section 23.34.008.*

There are no specific discussions of applicable height limits in CAAP II or the Central Area policies in the Seattle Comprehensive Plan, although they do speak to the importance of establishing commercial and residential density in this key community node. The Land Use Element of the Comprehensive Plan contemplates that heights greater than 40 feet may be needed in urban villages. LU120 states: "*Assign heights to commercial areas independently of the commercial zone designations. Allow different areas within a zone to be assigned different height limits based on the appropriate height to: further the urban village strategy's goals of focusing growth in urban villages; accommodate the desired functions and intensity of development....*" See also CAAP II, p. 50

SMC 23.34.072 - Designation of commercial zones.

This proposal does not seek to change the commercial zoning of the property and assumes the functional and locational validity of the current Neighborhood Commercial 2 zoning (SMC 23.34.076). The property will continue to meet the designation of the commercial zones criteria that emphasize edge transitions and concentrated commercial uses. The proposed rezone takes cognizance of the criterion that states that “the preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts” (SMC 23.34.072. E.).

SMC 23.34.076 Neighborhood Commercial 2 (NC2) zones, function and locational criteria.

The proposal does not seek to change the NC2 zoning designation of the property. The property continues to meet the locational criteria of the NC2 zone as the primary business district in the 23rd Residential Urban Village. The site is located on a principal arterial (23rd Avenue) and a minor arterial (Union Street), which have good capacity but are not major transportation corridors. The rezone site and its adjacent NC2 parcels are small to medium in size, with the rezone site as one of the larger properties in the area at 106,189 square feet.

The functional criteria of the NC2 zone can be more adequately achieved with future redevelopment of the site.

SMC 23.34.086 - Pedestrian designation (suffix P), function and locational criteria.

The subject property currently has the Pedestrian (“P”) designation as a substantial part of its zoning on site, and the proposed rezone does not seek to remove that designation. Appealing to the principle that zoning histories that have resulted in a kind of gerrymandered zoning map are less than desirable from the standpoint of applying and administering uniform development standards to development sites, and therefore do not serve the public interests well, the Director recommends that the two non-contiguous areas within the block that are currently zoned NC2-40 (and not NC2P-40) be zoned NC2P-65 as well. The NC2-40 applies to properties that comprise only 17.3% of the total site. The entire property site continues to meet the locational criteria of the Pedestrian designation as a commercial node in an urban village, zoned NC on both sides of the arterials with excellent pedestrian, bike, and transit access. The proposed additional height will not detract from the pedestrian character of the site and, by providing additional density, it is very likely to promote additional pedestrian and bicycle activity plus transit frequency and accessibility.

SMC 23.34.007 Rezone evaluation.

- A. *The provisions of this chapter shall apply to all rezones except correction of mapping errors. In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets those provisions. In addition, the zone function statements, which describe the intended function of each zone designation, shall be used to assess the likelihood that the area proposed to be rezoned would function as intended.*
- B. *No single criterion or group of criteria shall be applied as an absolute requirement or test of the appropriateness of a zone designation, nor is there a hierarchy or priority of rezone*

- considerations, unless a provision indicates the intent to constitute a requirement or sole criterion.*
- C. Overlay districts established pursuant to neighborhood plans adopted by the City Council may be modified only pursuant to amendments to neighborhood plans adopted or amended by the City Council after January 1, 1995.*
 - D. Compliance with the provisions of this chapter shall constitute consistency with the Comprehensive Plan for the Purpose of reviewing proposed rezones, except that Comprehensive Plan Shoreline Area Objectives shall be used in shoreline environment re-designations as provided in SMC Subsection 23.60.060 B3.*
 - E. Provisions of this chapter that pertain to areas inside of urban centers or villages shall be effective only when a boundary for the subject center or village has been established in the Comprehensive Plan. Provisions of this chapter that pertain to areas outside of urban villages or outside of urban centers shall apply to all areas that are not within an adopted urban village or urban center boundary. This subsection does not apply to the provisions of other chapters including, but not limited to, those which establish regulations, policies, or other requirements for commercial/mixed use areas inside or outside of urban centers/villages as shown on the Future Land Use Map.*
 - F. The procedures and locational criteria for shoreline environment re-designations are located in Sections 23.60.060 and 23.60.220 respectively.*
 - G. Mapping errors due to cartographic or clerical mistakes may be corrected through process required for Type V Council land use decisions in SMC Chapter 23.76 and do not require the evaluation contemplated by the provisions of this chapter.*

The above analysis has considered the foregoing criteria and complies with the individual valuations where applicable.

Lacking any development proposals accompanying the rezone application, actual development on the existing parcels could follow a variety of scenarios. There could be no immediate major changes in the current commercial structures on site. The current zoning would allow changes of use on the existing parcels and within the existing commercial structures where some or all of the commercial space would be converted to new commercial uses. New development of single-purpose commercial structures might also take place on individual lots or on lots combined for development. The subject sites are not located in any mapped Environmentally Critical Area (ECA) where restrictions might curtail the full build-out of the sites. The residential portion of a mixed-use structure, however, allowable under a NC2P-65 zoning designation, should exceed the density of structures which might be built under the current NC2P-40 zoning, especially if some of the individual subject sites were to be combined for development purposes.

Given the circumstances of the subject properties, the history of zoning, and the goals of neighborhood planning, as well as the applicable locational and functional criteria in Chapter 23.34 of the Land Use Code, the Neighborhood Commercial 2P zone, with an allowable 65-foot height limit, would appear to be as suitable a zoning designation for the property as is the existing NC2P-40 zone and one that provides more potential for desired residential density. Although there is unused development potential within existing NC2P-40 zoned property in the 23rd Avenue and E, Union Business District, recent interest in neighborhood development in the area and a longer term perspective would indicate that the an additional 106,189 sq. ft. of Neighborhood 2 -zoned property with a 65 foot height limit would not constitute a surfeit of property so zoned.

RECOMMENDATION - REZONE

This site and surrounding neighborhood are within the adopted boundaries of the 23rd and Union-Jackson Residential Urban Village. The proposed rezone also meets the general rezone criteria, where applicable. Regarding the neighborhood plan criteria of 23.34.008.D, the adopted neighborhood plan unfortunately gives little specific direction on this rezone question.

The contract rezone proposal will create the opportunity for a development containing a mix of commercial and residential uses that will be compatible with the existing neighborhood context, and preferable to other approvable configurations under the current zoning. The Director recommends **APPROVAL** of this rezone request. The Director also recommends for consideration the following: Should a broader, area-wide rezone of the 23rd Avenue and E. Union Street intersection be contemplated by City Council in the near future, and should that broader rezone be made subject to an "incentive zoning suffix" complying with subchapter 23.58A of the Land Use Code, at such a time the subject site should be made subject to the same suffix.

ANALYSIS – SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated March 27, 2013 and annotated by the Department. The information in the checklist, supplemental information provided by the applicant, (soils report), project plans, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

Short-term Impacts

As a non-project action, the proposed amendments will not have any short-term impacts on the environment. Future development affected by this legislation and subject to SEPA will be required to address short-term and long-term impacts on the environment.

Long-term Impacts

The proposal to rezone the subject parcels from NC2-40 and NC2P-40 to NC2P-65 is expected to generate various impacts, but while these impacts may be adverse, they are not expected to be significant. As an incentive for development the rezone could foreseeably add to traffic congestion and provide for other impacts. It is expected that these impacts would be well within the range of impacts expected for this kind of urban development; while significant, such impacts would not be expected to be adverse and generally they would be addressed by existing Land Use and Construction Codes.

The added height allowance should act as an incentive for mixed-use development and an increase in the development of residential units in the area. Residential development, however, would not be required of the site and actual development proposals could diminish the potential for realizing the general residential goals set forth in the Seattle Comprehensive Plan.

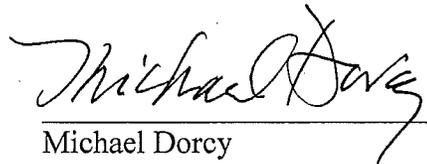
BEFORE THE SEATTLE CITY COUNCIL
APPEAL OF MIDTOWN LIMITED PARTNERSHIP
CLERK FILE 312973

FILED
CITY OF SEATTLE
2014 FEB 10 AM 11:55
CITY CLERK

I, Michael Dorcy, under penalty of perjury under the laws of the State of Washington,
declare as follows:

I am a Senior Land Use Planner with the City of Seattle Department of Planning and Development. On the date indicated below, I caused a copy of the Department's Response to Appeal and this Certificate of Service to be served via email transmission on Rich Hill, legal counsel for Hugh Bangasser, Applicant.

Dated this 10th day of February, 2014, at Seattle, Washington.


Michael Dorcy