

**FINDINGS AND RECOMMENDATION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of

**NEAL THOMPSON (for Ezra Teshome)**

for a contract rezone of property addressed as  
1222 East Pine Street

**CF 309451**

DPD Project No:  
3007044

**Introduction**

The applicant, on behalf of property owner Ezra Teshome, seeks a contract rezone from Neighborhood Commercial 3 Pedestrian with a 40-foot height limit (NC3P-40) to NC3P with a 65-foot height limit.

The public hearing on this application was held on February 8, 2010, before the undersigned Deputy Hearing Examiner. The Director's SEPA determination on the proposal was not appealed. Represented at the hearing were the Director, Department of Planning and Development (DPD), by Bradley Wilburn, Land Use Planner, and the applicant, Ezra Teshome, by Neal Thompson, architect. The Examiner viewed the site on February 8, 2010.

The record was reopened on February 18, 2010, to receive additional information from the parties. The parties responded by February 22, 2010, the information was added to the record, and the record was closed at that time.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code"), as amended, unless otherwise indicated. After due consideration of the evidence elicited during the hearing, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

**Findings of Fact**

**Site and Vicinity**

1. The subject site is addressed as 1222 East Pine Street, and is bounded by East Pine Street to the South, 13<sup>th</sup> Avenue East to the east, and by other properties to the west and north, in the Capitol Hill neighborhood. The site consists of two parcels which have a combined size of approximately 15,360 square feet.

2. The site is currently developed with a two-story building built in 1901. The building is owned by the applicant, Ezra Teshome, who also operates his insurance

business out of this building. The building has a footprint of 4,000 square feet and has three levels. A commercial parking lot is also located on the site, with space for 35 vehicles. There is no alley. The site is accessed by two curbcuts; one on East Pine Street, and one on 13<sup>th</sup> Avenue East.

3. At this location, 13<sup>th</sup> Avenue East has a 66-foot right-of-way. East Pine Street is a secondary arterial. East Pike and East Madison are nearby arterials providing direct access to major thoroughfares and downtown.

4. The site is served by Metro routes 8 and 43 along East Pine. Two blocks south of the site, on East Madison, Metro routes 11 and 12 serve routes to downtown. Four blocks west is the site of the Sound Transit Link Light Rail Capitol Hill Transit station, which is scheduled to open in 2016.

5. The property is zoned Neighborhood Commercial 3 Pedestrian with a 40-foot height limit (NC3P-40). The property is located within the Pike/Pine Urban Center Village, and is within the Pike/Pine Conservation Overlay District.

6. The Landmarks Preservation Board has reviewed information submitted by the applicant and has concluded that the building would not meet the standards for designation as a landmark.

7. The site is not within a shoreline area and is not mapped as an environmentally critical area. The lot slopes downward approximately 10 feet from its northeast corner to the southwest corner.

8. The abutting property to the west is zoned NC3P-65, as are properties across East Pine Street to the south, both of which are within a larger area of NC3P-65 zoning in the area. Immediately to the north of the site, the zoning is Multifamily Lowrise 3 (L-3). East across 13<sup>th</sup> Avenue East, there is a band of NC3P-40 zoning extending along East Pine Street for a block and half; this band of NC3P-40 zoning is surrounded by NC3P-65 and L3 zoning.

9. The development in the vicinity includes a City of Seattle Fire Department station directly across 13<sup>th</sup> Avenue East from the site, a two-story apartment structure to the north, and a two-story structure to the west. Other development in the vicinity includes commercial uses to the west and south, including restaurants, retail, and surface parking. Many of the existing buildings in the NC3 zone adjacent to the site are not developed to the Code-allowed height. Further to the west along East Pine Street are Cal Anderson Park and Seattle Central Community College. The future Capitol Hill Link Light Rail Station is located four blocks west of the site.

#### Zoning history

10. With the adoption of Ordinance 112777 in 1986, several changes were made to the zoning in this area. The site had been zoned Commercial General (CG) with a 60-

foot height limit until 1986. The 1986 ordinance changed the zoning to NC3-40. The western half of the same block, which had been CG with a 60-foot height limit, was rezoned to NC3-65. The Lowrise 3 zone in the remaining portion of the block (i.e., to the north of the site) was left unchanged.

11. At the same time, the CG zoning in the block between 13<sup>th</sup> and 14<sup>th</sup> on East Pine (east of the site) became NC3-40. The block between 14<sup>th</sup> and 15<sup>th</sup> Avenues on East Pine also was rezoned, with the CG zoning changed to NC3-40. The Business Commercial (BC) zone with a 60 foot height limit was changed to NC3-65. The legislative history does not identify a reason for the reduction in height that occurred with the passage of Ordinance 112777.

12. As noted above, the site is within the Pike/Pine Conservation Overlay District. During the pendency of this application, Ordinance 123020 was enacted (in 2009). The ordinance removed the site along with other properties from the Capitol Hill Station Area Overlay District. The ordinance also expanded the boundaries of the Pike/Pine Overlay District and renamed it the Pike/Pine Conservation Overlay District, and added a "P" (Pedestrian) suffix to the zoning designation.

13. The Comprehensive Plan sets a residential growth target for this Urban Center Village of 600 households by year 2024, a density increase to 26 households per acre over the baseline of 21 households per acre. The Director's report notes that, according to a 2003 report, this urban village has reached 63 percent of its targeted growth.

#### Neighborhood Plans

14. The project is located within the planning area of the Pike/Pine Urban Village Neighborhood Plan, which was adopted as part of the City's Comprehensive Plan through Ordinance 119413. The Pike/Pine Conservation Overlay District provides requirements which are codified in Chapter 23.73 SMC.

#### Proposal

15. The proposed contract rezone would change the height designation from NC3P-40 to NC3P-65. The applicant seeks the height change to allow redevelopment of the site with a six-story mixed-used building. The building would include five floors of 75 apartment units consisting of 50 studio units, 10 one-bedroom units, and 15 two-bedroom units. The applicant intends to market the residential units to students and staff of Seattle Central Community College and Seattle University.

16. The first floor will house commercial office or retail uses. The proposal also includes below-grade parking for 70 vehicles, to be accessed from 13<sup>th</sup> Avenue East near the northeast corner of the site. Street trees and other pedestrian amenities are proposed as described in the plans in the record.

17. With a 65-foot height limit, the applicant proposes 30 additional residential units than would be permitted under the current zoning height limit. Because of the sloping topography at the site and bonuses allowed by the Code, a 65-foot height limit would allow the project to achieve a planned height of approximately 70.41 feet to the rooftop from the lowest elevation grade along the East Pine Street frontage. A stair and elevator penthouse would extend an additional nine feet. Upper level setbacks and modulation are proposed (see design review discussion below, and Director's Report and Analysis, page 35). Above the building's 13-foot concrete base, 44 percent of the proposed structure would set back approximately 15 feet from the north property line which is shared with the L-3 zone; the remaining 56 percent of the structure would step back 24 feet from the north property line.

18. The applicant submitted traffic and parking impact analyses, which were reviewed by the Director. The project would generate 18 net new AM peak hour trips, and 23 net new PM peak hour trips. The project would not generate traffic that would significantly affect levels of service at surrounding roadway intersections. The applicant's parking analysis estimates that the project would generate a peak parking demand of 91 stalls. Of this total, the peak demand for 16 stalls for the office use would occur during workday hours, while the peak residential demand for residential for 75 stalls would occur between midnight and 5 a.m.

19. The Code does not require off-street parking for this project, although Seattle Department of Transportation (SDOT) has determined that on-street parking utilization in the vicinity of the site is at capacity. Also, the City's SEPA policies do not include authority to mitigate for residential parking impacts within the Pike/Pine Urban Center Village. In any event, given the lack of overlap between peak demand periods, and the availability of alternate transportation modes, the Director's SEPA analysis concluded that the proposed on-site parking is sufficient to meet the project's parking demand. The applicant has also proposed to provide free one-time, six-month transit passes to the first tenant in each unit, to encourage transit use by residents.

20. Seattle Public Utilities issued a certificate of water availability for the project on July 24, 2009.

#### Design review

21. The project was reviewed by the Capitol Hill/First Hill Design Review Board, which held an initial Early Design Guidance meeting in December 2004. The Board convened meetings during the next several years to review the applicant's proposal as it was revised in response to the Board's direction. Changes to the design included elimination of the existing curbcut on Pine Street, massing and modulation changes to lessen the impacts of bulk and scale on the adjacent residential zone, an increased depth in the commercial space along East Pine, a strong vertical presence at the corner of 13<sup>th</sup> and East Pine, and pedestrian-oriented features (such as a covered pedestrian entry and street trees). At its March 2009 meeting, the Board recommended approval of the design and three departures, as described in the Director's report at page 30.

22. The Director granted design review approval in accordance with the recommendations of the Board, concluding that the proposal was consistent with the Pike/Pine Urban Center Village Design Guidelines and the Design Review Guidelines for Multifamily and Commercial Buildings. The conditions of approval are set forth in the Director's Analysis at pages 38-39. The Director's design review decision was not appealed.
23. The Director also reviewed the proposal pursuant to SEPA, and issued a DNS on the proposal, with conditions. The Director's SEPA decision was not appealed.
24. The applicant submitted information (see February 4, 2010 letter from applicant to DPD) and updated drawings at hearing which reflect the conditions imposed by DPD in its MUP decision.
25. DPD has reviewed the proposed contract rezone and recommends that it be approved. The Director's Analysis and Recommendation recommends that the contract rezone be approved subject to a Property Use and Development Agreement (PUDA) that limits the structure to the approved design.

#### Public comments

26. DPD received five comment letters supporting the proposed rezone. The Hearing Examiner received a comment letter from the owner of the apartment building to the west of the site, stating his support for the rezone, and one person at hearing testified in support of the rezone (other people declined to testify but indicated that they were in support of the rezone). Public comments were also submitted to DPD and the Design Review Board during the review of the proposed project design, which are summarized in the Director's report and analysis.

#### Codes

27. SMC 23.34.004 addresses the use of contract rezones, and authorizes the Council to approve a map amendment *"subject to the execution, delivery and recording of an agreement executed by the legal or beneficial owner of the property to be rezoned to self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."*
28. SMC 23.34.007 provides that *"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."* The section also states that *"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."*

29. SMC 23.34.008 states the general rezone criteria. The criteria address the zoned capacity and density for urban villages; the match between the zone criteria and area characteristics; the zoning history and precedential effect of the rezone; neighborhood plans that apply; zoning principles that address relative intensities of zones, buffers, boundaries; impacts of the rezone, both positive and negative; any relevant changed circumstances; and the presence of overlay districts or critical areas.

30. SMC 23.34.009 provides that *"Where a decision to designate height limits in Neighborhood 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,"* additional criteria should be considered. The criteria address the zone function, the topography of the area, the height and scale of the area, the compatibility with the surrounding area, and height recommendations or requirements imposed by neighborhood plans.

### Conclusions

1. The Hearing Examiner has jurisdiction to make a recommendation on the proposed contract rezone to City Council, pursuant to SMC 23.76.052.

2. Several Code criteria apply to the proposed contract rezone, including the general rezone criteria, and change in height in a commercial zone; the proposal does not involve a designation of a new commercial zone subject to SMC 23.34.072. Under SMC 23.34.007, the rezone provisions are to be weighed and balanced to determine the appropriate zone designation, and none of the criteria are to be applied as absolute requirements.

3. The general rezone criteria are set forth in SMC 23.34.008, with the first criterion addressing zoned capacity within an urban village. The proposed rezone to a 65-foot height limit would allow the creation of 30 additional residential units at this site. The rezone would not reduce zoned capacity below 125 percent of the growth target for the Pike/Pine Urban Center Village. The zoned capacity on this individual site would exceed the target density (26 households per acre) for the urban village area as a whole, contributing to attainment of the target densities within the urban village.

4. Match between zone criteria and area characteristics. Under this criterion, the most appropriate zone designation is 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. In this case, the underlying zone, NC3P, remains unchanged and continues to match the area characteristics.

5. Zoning history and precedential effect. The site and much of the surrounding area were zoned Commercial General with a 60-foot height limit prior to 1986, when the site was zoned NC3-40 while other sites were designated with a 65-foot height limit. The zoning history in the record does not show why specific properties were included or excluded from the NC3-40 zone, although the location of the L3 zones suggests that the NC3-40 zones were located to buffer the L3 zones from the NC3-65 zones. The granting

of this rezone request may have a precedential effect, in that NC3P-40 properties to the east may seek similar height rezones to match the surrounding NC3P-65 zone. This site can be distinguished from those properties, however in that this site is physically separated from the rest of NC3P-40 zone, and adjoins other NC365 properties that front on East Pine Street.

6. Neighborhood plans. The site is within the area covered by the Pike/Pine Neighborhood Plan, adopted by the City Council. The Pike/Plan Neighborhood Plan does not identify this site as one required to be rezoned. The proposed rezone would be generally consistent with certain Plan policies, including P1 (encouraging new housing and a pedestrian-oriented environment) and P11 (promoting development of new housing units through development review). The rezone would increase the number of residential units that could be built on this site, while also encouraging development of commercial and retail uses along East Pine Street.

7. P37 calls for the reduction of car ownership of residents to minimize parking demand. The project would create new on-site underground parking stalls, a net increase of 35 spaces at the site (a total of 70 spaces for 75 units) although new residents at this project will be given transit passes to encourage ridership. The new housing would be within walking distance of the community college, the planned transit station, further lessening the project's impacts on on-street parking.

8. General zoning principles. The impact of more intensive zones on other zones must be considered, and a gradual transition between height limits is preferred. The western half of the block is already in NC3P-65 zoning, as are several blocks to the south and west. The increased height at this site would mean that both sides of East Pine Street would have a 65-foot height at this location. 13<sup>th</sup> Avenue East and its 66-foot right-of-way width would provide an adequate buffer for the NC3P-40 properties east across 13<sup>th</sup> Avenue East. The City Fire Department station directly across 13<sup>th</sup> from the site also provides transition to other properties further east. The L-3 zoned property to the north would likely be most affected by the height change, although these properties are already adjacent to NC3P-65 properties, a situation that is not uncommon in the area (see Exhibit 3). The design approved by the Director includes upper-level setbacks (above its 13-foot concrete base, the building would be stepped back between 15 to 24 feet from the north property line) and landscape treatments, which were specifically developed to address impacts on the L3 properties. Given the project's design, as well as the fact that other NC3P-65 properties are in close proximity already, adequate buffering and transition appear to be provided by the proposed rezone.

9. There are no physical boundaries of the kind listed in SMC 23.34.008.E.2. The boundaries of the rezone would follow platted lot lines. The boundaries between commercial and residential areas would not be affected by the rezone, and this site would still face other commercially-zoned properties across 13<sup>th</sup> Avenue East and East Pine Street. The site is located in the Pike/Pine Urban Village Center, so meets the criterion that height limits greater than 40 feet should be limited to urban villages.

10. Impact evaluation. The proposal is to replace a two-story commercial building with 75 market-rate residential units, and ground floor commercial uses; no low-income housing is proposed. The service capacity in the area is adequate to serve the new development. The Director's SEPA analysis considered environmental impacts associated with the proposal, concluded there were no significant adverse impacts, and imposed conditions to address other adverse impacts. The effects of shadows from the taller building, and its bulk and scale, were also considered as part of the design review process. The vehicle entrance was moved to 13<sup>th</sup> Avenue East near the north property line, away from the East Pine Street frontage, in order to address pedestrian safety. The proposal includes warning devices and textured sidewalk to alert pedestrians to the presence of the driveway. The character of the surrounding area was considered as part of the design review process, and modifications were made to the original proposal, including location of entrances, façade, landscaping, commercial spaces, to ensure a better fit within this area of the Pike/Pine neighborhood. The proposed rezone is not expected to have any impact on manufacturing or employment activity in the area, and the site is not located in or near a shoreline area so as to affect views or access.

11. Service Capacities. The 30 additional housing units associated with the rezone would not impair street access to the area or street capacity in the area. The site is served by several Metro routes, and transit service in the area would not be exceeded by this proposal, and the project includes improvements to an adjacent bus stop. The 2016 opening of the Link Light Rail Capitol Hill station four blocks will add more service capacity to the area. On-street parking capacity in the area is nearly completely utilized, but because the project provides 70 off-street parking spaces, it is not anticipated to affect the parking capacity in the neighborhood. Utility and sewer services are adequate to serve this project. Shoreline navigation will not be affected by this rezone, which is not located in or near a shoreline area.

12. Changed circumstances. Under SMC 23.34.008.G, changed circumstances are not a requirement for a rezone, but relevant changes in circumstance are to be considered. There are no changed circumstances here that necessitate the rezone, although the applicant has cited the proximity of the planned light rail station which would serve residents of the proposed project.

13. Overlay Districts. The site is within the Pike/Pine Conservation Overlay District. The stated intent of the District is to encourage and enhance the balance of residential and commercial uses, by encouraging residential development and discouraging large, single-purpose commercial development. The rezone would allow additional residential units to be constructed within a mixed-use building that has been designed to enhance pedestrian use of East Pine Street.

14. Critical areas. There are no critical areas on the site.

15. The designation of height limits in the NC3 zone is subject to the criteria in SMC 23.34.009, in addition to the general criteria of SMC 23.34.008. These criteria address the function of the zone, topography, height and scale of the area, compatibility with

surroundings, and neighborhood plans. The 65-foot height limit proposed here would be consistent with the type and scale of development for NC3. Development to the south and west has been developed to NC3P-65 standards. The project would not displace preferred uses and would provide new housing, including housing for students attending nearby institutions, and commercial services along this stretch of East Pine Street.

16. Topography. The site is located near the crown of Capitol Hill, with views west to downtown. Under the proposed 65-foot height limit, the site would have the same height limit as properties to the west and south; while development of this site would potentially affect views from properties located across 13<sup>th</sup> Avenue East, the potential for view blockage already exists on account of the existing NC3P-65 zoning. The views from the adjacent L3 zone, which has a 30-foot height limit, will not suffer increased view blockage as a result of a 65-foot limit instead of a 40-foot, height limit.

17. Height and scale of area. The existing height limits in the area include the 65-foot heights of the large NC3P-65 zone to the west and south, the 30-foot height limit of the L3 zone to the north, and the 40-foot height limit in the band of NC3P-40 zoning to the east across 13<sup>th</sup> Avenue East. The proposed height of the applicant's building would be comparable to and compatible with the height and scale of development in the NC3P-65 zone further west along East Pine. The design of the building has been adjusted to create compatibility with the existing L3 development to the north. To some extent, existing development in this area is not a reliable measure of the area's overall development potential. Much of the existing commercial and multifamily development in the area has not yet been built out to development standards, so the project would appear taller than other development in the area which is zoned with a 65-foot height limit.

18. Compatibility with surrounding area. The 65-foot height limit would be compatible with other zoned height limits in the area. There are large areas of NC3P-65 zoning adjacent to and surrounding this site, and in many cases the NC3P-65 zone is located directly adjacent to an L3 zone or an NC3P-40 zone. The height of existing development ranges from older structures with one to four stories, but newer structures have been developed to full height limits and the proposed project would be compatible with newer development, and future redevelopment that is expected once the Link Light Rail Station is completed.

19. A transition in height and scale and activity to the L3 property to the north has been provided through design, including upper level setbacks, modulation and landscaping, and 13<sup>th</sup> Avenue East provides separation between the site and remaining band of NC3P-40 zoning across the street. Given that the L3 zone on this block is already adjacent to the NC3P-65 zone, the design measures for the project would create adequate transition for the nearby zones.

20. Neighborhood plans. The Pike/Pine Neighborhood Plan does not recommend a specific height limit applicable to this site, and does not require a height limit different from that which would be established under SMC 23.34.008 or SMC 23.34.009. The

planning and legislative history found in this record do not identify any legislative intent or policy that would apply specifically to this contract rezone request.

21. There are factors that favor granting the requested height increase and some which weigh against it. The increased height will have some impacts to views in the area, including the L3 zone to the north, but it appears that no substantial view blockage will result. The impacts of height, bulk and scale appear to have been mitigated through the design review process and the Director's design review decision. Also, given the proximity of other NC3P-65-zoned properties which presumably will be built to the height limit in the future, it is difficult to conclude that this rezone would substantially impair future views in the area.

22. The rezone would result in an NC3-65 zone adjacent to the L-3 zone, which is generally not preferred by the Code. However, the existing zoning in the area, including on this block, already presents a pattern of L3 and NC3P-65 zones abutting each other. It is not clear what buffering or transition function would be accomplished by retaining the NC3P-40 zoning for this site, as the site is separated from the rest of the NC3P-40 zone by 13<sup>th</sup> Avenue East, and is directly adjacent to other NC3P-65 sites to the west which front on East Pine Street.

23. As noted by the Director, the proposed height increase would eliminate the split zoning along the East Pine Street block front, and would have a potentially positive effect of encouraging redevelopment along this street on both sides. This effect would be consistent with neighborhood plan policies encouraging new housing and pedestrian access to commercial services. Unifying the block in this way is an important factor in favor of the proposed height increase. The project itself would be more consistent with policies regarding housing and pedestrian emphasis, than are the current office structure and surface parking lot. Upon weighing and balancing the criteria which apply to this rezone request, the proposed NC3P-65 designation is the most appropriate designation for the site. The proposed contract rezone should be approved with the conditions recommended by the Director.

### Recommendation

The Hearing Examiner recommends **APPROVAL** of the contract rezone with a PUDA subject to all conditions recommended by the Director.

Entered this 23rd day of February, 2010.



Anne Watanabe  
Deputy Hearing Examiner

**CONCERNING FURTHER REVIEW**

NOTE: It is the responsibility of the person seeking further review to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by or interested in the Hearing Examiner's recommendation may submit in writing an appeal of the recommendation to City Council and, if desired, a request to supplement the record. No appeals of a DNS, or the determination that an EIS is adequate, will be accepted. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and the relief sought.

Appeals of the Hearing Examiner's recommendation shall be filed with the City Clerk by five (5:00) p.m. of the fourteenth (14th) calendar day following the date of issuance of the Hearing Examiner's recommendation. When the last day of the request period so computed is a Saturday, Sunday or federal or City holiday, the request period runs until five (5:00) p.m. on the next business day. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought.

