



**Legislative Department
Seattle City Council
Memorandum**

Date: October 21, 2012

To: Richard Conlin, Chair
Tim Burgess, Vice Chair
Mike O'Brien, Member
Planning, Land Use and Sustainability (PLUS) Committee

From: Michael Jenkins, Council Central Staff

Subject: Clerk's File 311694, Application of Gregory N. Nalbandian on behalf of John W. Lash for approval of a contract rezone of land at 10001 Lake City Way NE from Single Family 5000 (SF 5000) to Commercial 1 (C1-40), for future construction of an 800 sq. ft. accessory structure to an existing warehouse in an environmentally critical area (Project No. 3012420, Type IV).

1. Overview

Gregory Nalbandian ("Proponent") proposes a contract rezone of a 5,581 square foot portion of a 61,420 square foot site located at 10001 Lake City Way N.E. The site is located along Lake City Way N.E. between N.E. 100th and N.E. 102nd Streets. The map shows the entire site colored in blue with the rezone area highlighted in a grid pattern



The lot is currently split-zoned Commercial 1 with a 40 foot height limit (C1-40) and Single Family 5000 (SF 5000). The rezone would change the SF 5000 portion to C1-40. The rezone would authorize the construction of an 800 square foot storage shed addition to an existing warehouse facility. Construction of the shed was started without a permit; this proposal would allow the shed to be completed, as warehouse facilities are not permitted in a SF zone.

Both the Department of Planning and Development (DPD) and the Hearing Examiner find the proposal to be consistent with the City's rezone criteria and recommend approval of the rezone with conditions.

2. Type of Action – Standard of Review - No Appeal or Request to Supplement the Record

This rezone is a Type IV quasi-judicial rezone under Seattle Municipal Code (SMC) 23.76.036. Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication and the Council's rules on quasi-judicial proceedings (Resolution 31001). The Hearing Examiner establishes the record for the decision at an open-record hearing. After the hearing, the record may be supplemented through a timely request to Council only. No appeal of the Hearing Examiner's recommendation was filed, and there was no timely request to supplement the record.

Because there was no appeal or timely request to supplement the record, the Council's quasi-judicial rules require that the decision be based upon the record as submitted by the Hearing Examiner, and that no oral argument be presented by the parties to the PLUS Committee. The Council's quasi-judicial rules provide that the action by Council must be supported by substantial evidence in the record.

The record contains the substance of the sworn testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing. Those exhibits include but are not limited to:

- The recommendation of the Director of DPD;
- The environmental (SEPA) checklist for the proposal;
- Development plans and photographs showing the rezone area;
- The rezone application, and other application materials; and
- An audio recording of the Hearing Examiner's open record hearing.

The entire Hearing Examiner's record is kept in my office and is available for your review.

3. Materials from the Record Reproduced in COBE Notebooks

I have provided copies of the following exhibits from the Hearing Examiner's record:

1. The Hearing Examiner's Recommendation (including the findings of fact and conclusions supporting the recommendation) (Attachment A);
2. DPD Director's Analysis and Recommendation¹ (Attachment B);
3. Plans showing the rezone area and proposed development (Attachment C)², including plans that document the grade changes on the site and surrounding area ; and
4. A draft Property Use and Development Agreement (PUDA) (Attachment D)³

4. Summary of the record

The Hearing Examiner recommended that Council **APPROVE** a rezone of the property to C1-30, not to the proposed C1-40, as the Hearing Examiner found that the C1-30 zone would

¹ Hearing Examiner's Exhibit 1

² Hearing Examiner's Exhibit 7

³ Hearing Examiner's Exhibit 4

better mitigate the impacts related to the rezone in relation to the adjacent SF 5000 zones. The Hearing Examiner also recommended that three conditions be imposed on the rezone.

The following is a brief summary of the zoning history, the proposed development and the Hearing Examiner's conclusions.

A. Zoning history

The site is currently split-zoned C1-40 and SF 5000. The site has been split-zoned since its 1953 annexation from King County; the existing zone boundary line was not changed at annexation. Since 1953, the zoning history has been similar, with the rezone area restricted to single family uses and the remaining portion of the site permitting general commercial uses.

The zone boundary line is also the boundary of the Northgate Overlay District overlay zone. The SF portion of the site is within this overlay zone.

B. Site and Surrounding area

This split-zoned site is located between the Northgate and Lake City neighborhoods. The site fronts along, and is accessed from, Lake City Way NE. There are significant grade changes in the area, with grades rising from at least 10 feet to over 60 feet from Lake City Way N.E. In the rezone portion of the site, the grade rises between 10 and 30 feet to the north and west. The areas to the north and west of the rezone site are predominately zoned SF 5000. The C1-40 zone continues along Lake City Way N.E. (Attachment C).

Two other rights of way— N.E. 100th and N.E. 102nd Street – lie to the south and north of the site. N.E. 100th Street connects to Lake City Way and provides secondary access to the site with a paved roadway not improved to city standards. N.E. 102nd Street is only partially improved with a paved roadway to the north and west of the site; it does not connect to the site or Lake City Way N.E due to a 30 to 60 foot change in elevation.

The proposed 800 square foot addition is located at the base of a hillside where the grade begins its rise to the north and west. In 2003 an Environmental Critical Areas covenant was applied over the entire steep slope area on this site that restricted development in this area. In 2011, this covenant was lifted based on an updated geotechnical report. The site is no longer subject to the City's steep slope standards in its Environmental Critical Areas (ECA) ordinance, SMC Section 25.09; its landslide prone standards still apply.

C. Project information

If approved, the rezone would authorize an 800 square foot addition in the rezone area of the site. The addition would attach to the existing warehouse structure located on the C1-40 portion of the site. The owner began building the addition without a permit, and DPD has stayed a code enforcement action pending the outcome of the rezone.

In addition, the existing warehouse encroaches 2 ½ feet into the existing SF 5000 zone; this rezone would make those encroachments comply with zoning requirements.

D. Public comment

One email in opposition to the request was submitted to DPD prior to the Hearing Examiner's hearing. The email opposed the rezone, citing a rezone policy developed during the Lake City neighborhood planning process. The policy prohibits rezones outside an urban village unless the site is "adjacent to a new monorail or high capacity transit station". This policy was not adopted with the other policies affecting the North Neighborhood portion of the City's Comprehensive Plan.

E. Summary of the Hearing Examiner's conclusions

The following is a summary of the Hearing Examiner's findings and conclusions related to the proposed rezone and why the Hearing Examiner recommended that the property be rezoned from SF 5000 to C1-30.

1. SF zone location criteria

SF rezone policies in SMC Sections 23.34.010 and 23.34.011 generally discourage rezoning SF zoned land, unless the SF zoned land does not meet SF zone designation criteria. Rezone criteria states that property is generally appropriate for SF designation when 1) the site or area is located on blocks with at least 70% of the existing structures in single family residential use or 2) the site or area has less than 70% of existing structures in residential use, but it can be demonstrated that there is an increase in new single family uses in the area.

The Hearing Examiner determined that only 62% of the structures on the two blocks adjacent to the rezone site – N.E. 100th and N.E. 102nd Streets – are SF zoned property in SF use. No evidence was presented that SF uses are increasing on these blocks. The Hearing Examiner's record shows that the adjacent SF zones to the west and north are separated from the rezone area by 30 to 60 foot grade changes. These changes provide significant separation between the rezone area and adjacent SF residences, thereby isolating it from nearby SF uses. There are two SF residences to the southwest of the rezone area across N.E. 100th street, further separated from the rezone area by a C1-40 zoned lot developed with a commercial structure.

2. Commercial designation and zone criteria

SMC Sections 23.34.072 and 23.34.080 provide policies and criteria for the designation of commercial zones. Generally, these criteria discourage the encroachment of commercial development into residential areas, with a stated preference for 1) compact commercial development and 2) the preservation of existing commercial areas. These codes sections provide specific direction when designating C1 zones, favoring land that is characterized by:

- its location outside an urban center or village
- retail activity in existing commercial areas
- ready access from a principal arterial
- the presence of edges that buffer residential or commercial areas of lesser intensity
- parcels at least 20,000 square feet in size and
- limited pedestrian and transit access.

Once a site is determined to be appropriate for commercial zoning, SMC Section 23.34.009 provides criteria to determine the appropriate height. The criteria for designating height limits favor setting of a height limit that is consistent with the type and scale of development intended for the zone. In addition to considering the existing heights in surrounding areas, the criteria require consideration of the loss of potential views and the extent to which the proposed zone is compatible with surrounding zoning. The height criteria favor gradual transitions in height and scale between zones, unless major physical buffers are present

The Hearing Examiner found that the site and the rezone area is part of an auto-oriented commercial area that services a regional clientele and abuts other similar C1-zoned property along Lake City Way N.E. (a state highway). While transit serves the area, there are few sidewalks, crosswalks, or other pedestrian features that promote non-motorized transportation. The site exceeds 20,000 square feet in size, as do other parcels located along Lake City Way N.E. The Hearing Examiner also noted that while SF zoned property surround the site, the grade changes provide a buffer from the adjacent zone.

DPD recommended, and the Hearing Examiner supported, a condition limiting height in the rezone area to 30 feet, and not the proposed 40 feet in the applicant's initial request. DPD determined that a C1-30 foot zone is equivalent to the height allowed in the current SF 5000 zone and provides an appropriate transition between the existing C1-40 zone and the adjacent SF zones. The proposed height limit, as well as other restrictions on bulk and scale, would be implemented through a Property Use and Development Agreement – a draft that was prepared for the Hearing Examiner's review is included as Attachment D.

3. Neighborhood Plans

Rezone criteria require an evaluation of neighborhood plan policies and the extent to which they include rezone policies. The site is located within two planning areas that have adopted neighborhood plans – the Northgate Neighborhood Plan and the North Neighborhoods Plan; both plans have rezone policies.

Policy NG-P7 from the Northgate Plan calls for zone transitions between zones that allow significantly different intensities of development. Policy NG-P8 stresses maintaining SF-zoned character by retaining SF zoning on properties that meet SF zone locational criteria.

Policy NN-39 of the North Neighborhood Plan states that rezones are not favored when the rezone would:

- Increase permitted density of a residential or commercial use (except for rezones from C to Neighborhood Commercial (NC) zones);
- Increases in structure bulk or height;
- Change an NC zoned property to a C zone, or
- Change a C zone to an Industrial zone.

These conditions do not exist with this rezone.

The Hearing Examiner found that the proposed rezone is consistent with both neighborhood plan rezone policies due to the restrictions on potential development implemented through a PUDA. The proposed PUDA limits height to 30 feet, provides a maximum development area of 15% (837 square feet) of the rezone area and establishes a 25 foot setback property line setback.

4. Impact evaluation

The rezone was subject to both review under the City's environmental regulations (SEPA) as well as rezone criteria in SMC 23.34.008F. As conditioned, the Hearing Examiner found that there will be minimal if any impacts resulting from the rezone and allowed development. The Hearing Examiner determined that only one SF residence could be sited in the rezone area.

In addition to the building size limits and setbacks described above, the PUDA includes a condition to prohibit removal of foliage to allow future development in the rezone area.

5. Recommendation

I recommend that PLUS move to **APPROVE** the rezone request and adopt the Hearing Examiner's findings, conclusions and decision, including the recommendation that the site be rezoned to C1-30.

I recommend that PLUS adopt the following recommended conditions developed by DPD as modified by the Hearing Examiner:

1. Future development coverage in the rezone area is limited to 15% of the rezone area, or 837 square feet.
2. No development is permitted on the site within 25 feet of the adjacent single family zone.

Finally, I recommend that PLUS **not** accept the following condition recommended by the Hearing Examiner:

2. No trees or shrubbery may be removed in the rezone area if the removal is intended to accommodate future development.

I am recommending that the committee not adopt this condition because the City's existing codes governing tree or vegetation removal in an environmentally critical area are sufficient to protect the site. In their recommendation, DPD indicated that the applicant proposes that all vegetation on the site be retained; DPD did not recommend the condition suggested by the Hearing Examiner. With the lifting of the ECA covenant, the City's steep slope regulations no longer apply to the site. However, the record shows that the site is also in a landslide prone area. Landslide prone areas *are* subject to tree and vegetation requirements in the City's ECA ordinance, which prohibit removal or clearing of trees and vegetation but allow selective pruning and normal maintenance of trees and shrubbery. The recommended condition may be in conflict with these standards and requirements; the record does not indicate whether the condition is consistent with or exceeds these requirements.

October 21, 2012

PLUS

Re: C.F. 311694

6. Next Steps

If the Committee recommends approval of the rezone as described above, and my recommendation on adoption of conditions, I will draft the Council's Findings, Conclusion and Decision (FC and D) and revise the draft PUDA to meet the City's drafting standards for these documents. I will also prepare for introduction and referral a separate Council Bill (CB). Once the CB is introduced, there are two options:

1. Both the FC and D can be considered by the committee before a vote; or
2. The matter can be taken up directly by full Council. If this is your preference, I can work directly with the Chair on both documents.