

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

In the Matter of the Application of

CF 311694

**GREGORY NALBANDIAN for
JOHN LASH**

DPD Reference:
3012420

for approval of a rezone of property
located at 10001 Lake City Way NE

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CITY OF SEATTLE

Introduction

Gregory Nalbandian, on behalf of John Lash, applied for a contract rezone for property located at 10001 Lake City Way NE from Single-family 5000 to Commercial 1 zoning with a height limit of 40 feet, to allow construction of an 800 square foot structure accessory to an existing warehouse in an environmentally critical area.

The public hearing on the application was held on July 31, 2012, before the Hearing Examiner. The applicant was represented by Gregory Nalbandian, and the Director, Department of Planning and Development (Director), was represented by Molly Hurley, Senior Land Use Planner. The record remained open for the Hearing Examiner's site visit and closed on August 10, 2012.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence in the record and visited the site, the Hearing Examiner enters the following findings of fact, conclusions and recommendation on this application.

Findings of Fact

Site and Vicinity

1. The rezone site is a triangular parcel 5,581 square feet in area and located along Lake City Way NE between NE 100th Street and NE 102nd Street. It is not located within an urban center or urban village, but is located within the Northgate Overlay District.
2. The site and adjacent property are depicted on the plans, Exhibit 7, at 1. The shaded area on the map is zoned Commercial 1 with a 40 foot height limit (C1-40), and the crosshatched shaded area (the site) and the unshaded area are zoned Single-family 5000 (SF 5000). The proposed rezone would modify the existing boundary between the two zones by incorporating the site into the C1-40 zone.
3. The current boundary between the SF 5000 and C1-40 zones corresponds to the boundary of the Northgate Overlay District. As a result, the rezone site lies within the

Overlay District, but the C1-40-zoned property does not. The applicant does not seek a change in the Overlay District boundary.

4. As shown on the map, exhibit 7 at 1, the rezone site is located on a block bounded by NE 102nd Street on the north, NE 100th Street on the South, 23rd Avenue NE on the west, and Lake City Way NE on the east. The block consists of four tax parcels, three of which are also owned by the applicant. The one parcel under separate ownership is addressed as 10015 on the map and is developed with a commercial structure used for custom and craft work. *See also* Exhibit 1, the Director's Analysis and Recommendation, at 4 (map showing existing zoning boundary and addresses, and map showing existing development and parcel identification numbers).

5. The rezone site is part of tax parcel 51010405880, the remainder of which is zoned C1-40. This tax parcel includes the area addressed as 10001 Lake City Way NE on the map and is 61,420 square feet in size. Nearby parcels are approximately 11,000 square feet, 29,000 square feet and 21,000 square feet. Exhibit 7 at 2.

6. The tax parcel that includes the subject property is developed with commercial structures in warehouse and manufacturing use, with the existing warehouse structure encroaching slightly into the single-family zone in two places. These encroachments would be resolved by the proposed rezone. The rezone site is developed with a 15.5 foot by 51.67 foot storage shed, built without permits, that is the subject of an enforcement action. The shed is accessory to the commercial use on the adjacent commercially-zoned property. The rezone would allow the applicant to proceed with applications for the necessary permits for the shed.

7. The remainder of the block is zoned SF 5000 and is undeveloped. The SF 5000/C1-40 split zoning is a pattern repeated along Lake City Way NE for a few blocks north and south of the subject site. The depth of the C1-40 zone in this area is approximately 120 feet to over 300 feet deep before transitioning to the SF 5000 zoning to the west.

8. The single-family-zoned property to the north includes seven structures. Five are in single-family residential use; the others are in multifamily and commercial uses. There are no structures in single-family residential use to the south, where part of the property is undeveloped and part is in commercial use. To the west is undeveloped single-family zoned property owned by the applicant and then single-family residences. To the east is the applicant's warehouse on C1-40 zoned property. Further east, across Lake City Way NE, is commercial property that is presently vacant.

9. Lake City Way NE is a principal arterial and is identified as "Primary State Highway No 2". NE 100th Street, NE 102nd Street and 23rd Avenue NE are all non-arterials. NE 100th Street is open but unimproved, with no curbs or sidewalks; NE 102nd Street is partially improved to a width of approximately 12 feet; and 23rd Avenue NE is not open.

10. There are few sidewalks or crosswalks in the area, so pedestrian access is limited. Bus stops are located within 350 feet of the property along Lake City Way NE, but the site is not located within a frequent transit service area.

11. The tax parcel on which the rezone site is located slopes steeply from northwest to southeast. As a result, the SF 5000 portion of the parcel is 10 to 20 feet higher than the C1-40 portion.

12. The tax parcel that includes the rezone parcel also includes the following mapped environmentally critical areas: steep slope; and riparian corridor and wetlands within 100 feet. A small portion of the southern edge of the tax parcel falls within the mapped riparian corridor management area (the area within 100 feet of top of bank), but the actual riparian corridor is located off-site, over 230 feet away from the rezone site. The mapped wetlands correspond to the riparian corridor.

13. All of the rezone site, and much of the remainder of the block, is mapped as environmentally critical area due to steep slopes. A Non-Disturbance Covenant was recorded for the Steep Slope ECA as a condition of approval of a 2003 short subdivision. However, based on new geotechnical information, the Director has recently removed the covenant. Exhibit 6.

14. The site is not located within a shoreline environment.

Zoning History

15. The original zoning designation for the tax parcel at the time of annexation was single-family (R1- First Residence District) and Commercial (B- Business District), with the boundary line between two zones in the same location it is today. Maps in 1983 and 1993 both indicate that the zoning remained SF 5000 and C1-40 with the boundary line unchanged. The Northgate Overlay District was adopted in 1993 with a boundary line that coincides to the line between the two zones.

Neighborhood Plans

16. In evaluating a rezone proposal, consideration is to be given to those parts of a neighborhood plan that have been adopted by the City Council, with particular attention given to any adopted policies that guide future rezones. SMC 23.34.008.D.

17. The site is located within the planning areas of both the Northgate Neighborhood Plan and the North Neighborhoods (Lake City) Neighborhood Plan. The adopted portions of the Northgate Neighborhood Plan include two applicable policies that relate to rezones. NG-P7 calls for reducing conflicts between activities and promoting a compatible relationship between different scales of development by maintaining a transition between zones that allow significantly different intensities of development. NG-P8 stresses maintaining the character and integrity of existing single-family-zoned areas by maintaining that zoning on properties that meet the single-family locational

criteria. The adopted portions of the North Neighborhoods (Lake City) Neighborhood Plan include the Policy 39 to guide rezones in the area between 15th Avenue Northeast and Lake Washington, and between NE 95th Street and NE 145th Street:

- Rezones are not favored by this neighborhood plan if they would:
- increase the permitted density of residential or commercial use (except for rezones from C to NC zones);
 - increase the permitted bulk or height of structures;
 - change a neighborhood commercial (NC) to a commercial (C) zone; or
 - change a commercial to an industrial zone.

This policy shall not apply to rezones in close proximity to a high-capacity transit station outside of the urban village. Any rezone should be done in cooperation with the community.

Proposal

18. The applicant seeks a contract rezone for the subject property from SF 5000 to C1-40 to locate a storage shed, already constructed, accessory to the abutting warehouse. The applicant has proposed a Property Use and Development Agreement (PUDA) to mitigate any impact of the rezone. The PUDA would: 1) limit current and future development within the site to 15 percent or less of total area, or 837 square feet; 2) prohibit removal of any existing foliage for any future development within the site; and 3) prohibit development within 25 feet of the property lines inside the rezone area. Exhibit 4.

Public Comment

19. Following notice of the rezone, the Director received one comment via e-mail. The comment opposes the rezone but cites a section of the Neighborhood Plan that was not adopted by the Council. Exhibit 5.

Director's Review

20. The Director determined that SMC 25.09.200 exempted the site from ECA regulations for riparian corridors and wetlands due to the distance between the site and the riparian corridor and wetlands. The Director also reviewed the potential short- and long-term environmental impacts of the proposal pursuant to SEPA and issued a determination of non-significance without conditions. After reviewing the proposal, the Director recommended that a rezone to C1-30 be approved subject to the proposed PUDA, but that the PUDA be modified to limit future development within 25 feet "of the single family zone" rather than "of the property line". Exhibits 1 and 8. The applicant agreed to the modification.

Applicable Law

21. SMC 23.34.010.A states that except as provided in subsections B or C of this section, single-family zoned areas may be rezoned to more intense zones only if they do not meet the single-family designation criteria. Subsection B provides that single-family or RSL zoned areas that meet the single-family zoning criteria in SMC 23.34.011.B, and are located within an urban village, may be rezoned to a more intense zone than SF 5000 if a neighborhood plan has designated the area as appropriate for the zone, and the rezone is to certain identified zones within certain specified locations.
22. SMC 23.34.010.C provides an exception to the general "no rezone" rule for areas zoned single-family within the Northgate Overlay District "that consist of one or more lots and meet the criteria for single-family zoning contained in subsection B of Section 23.34.011" if the rezone "is limited to blocks (defined for the purpose of this subsection C as areas bounded by street lot lines) in which more than 80 percent of that block is already designated as a neighborhood commercial zone."
23. SMC 23.34.011.A states that the function of single-family zones is to provide "predominantly detached single-family structures on lot sizes compatible with the existing pattern of development and the character of single-family neighborhoods."
24. SMC 23.34.011.B lists the locational criteria for single-family zones, and states that a "single-family zone designation is most appropriate" in: "1. Areas that consist of blocks with at least seventy (70) percent of the existing structures in single-family residential use," or "3. Areas that consist of blocks with less than seventy (70) percent of the existing structures, not including detached accessory dwelling units, in single-family residential use but in which an increasing trend toward single-family residential use can be demonstrated". A "block" for purposes of this Code section is "two (2) facing block fronts bounded on two (2) sides by alleys or rear lot lines and on two (2) sides by the centerline of platted streets, with no other intersecting streets intervening." SMC 23.84A.004.
25. SMC 23.34.011.C requires that an "area that meets at least one (1) of the locational criteria in subsection B above should also satisfy the following size criteria in order to be designated as a single-family zone: 1. The area proposed for rezone should comprise fifteen (15) contiguous acres or more, or should abut an existing single-family zone. 2. If the area ... contains less than fifteen (15) contiguous acres, and does not abut an existing single-family zone, then it should demonstrate strong or stable single-family residential use trends or potentials".
26. SMC 23.34.072, concerning the designation of commercial zones, states that the "encroachment of commercial development into residential areas shall be discouraged," that "[c]ompact, concentrated commercial areas or nodes" are preferred to "diffuse, sprawling commercial areas," that the "preservation and improvement of existing commercial areas" is preferred to the creation of new business districts, and that the "[p]referred configuration of commercial zones shall not conflict with the preferred

configuration and edge protection of residential zones" established in SMC 23.34.010 and .011.

27. SMC 23.34.080 provides that the function of the C1 zone is to provide for "an auto-oriented, primarily retail/service commercial area that serves surrounding neighborhoods and the larger community, citywide, or regional clientele." The locational criteria indicate that a Commercial 1 zone designation is most appropriate in land that is "generally characterized" by the following conditions: 1) "Outside of urban centers and urban villages ... 2) Retail activity in existing commercial areas; 3) Readily accessible from a principal arterial; 4) Presence of edges that buffer residential or commercial areas of lesser intensity ... 5) Predominance of parcels 20,000 square feet or larger; and 6) Limited pedestrian and transit access."

28. The purpose of the Northgate Overlay District is to: "A. Create an environment in the Northgate Area that is more amenable to pedestrians and supportive of commercial development; and B. To protect the residential character of the residential neighborhood; and C. Support the use of Northgate as a regional high-capacity transportation center." SMC 23.71.002.

29. SMC 23.34.009 prescribes additional criteria when a rezone includes consideration of height limits in commercial zones. Height limits are to be "consistent with the type and scale of development intended for the zone," considering the "demand for permitted goods and services and the potential for displacement of preferred uses." They are also to "reinforce the natural topography of the area and its surroundings," considering the likelihood of view blockage. Height limits established by current zoning are to be considered, and permitted height limits are to 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." They are to be "compatible with actual and zoned heights in surrounding areas," and are to provide a "gradual transition in height and scale and level of activity between zones" unless major physical buffers are present. Particular attention is to be given to height recommendations in adopted neighborhood plans.

30. SMC 23.34.004 addresses contract rezones. Subsection A provides that the Council may approve a rezone subject to an agreement by the property owner "to self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts which could occur from unrestricted use and development permitted in the zone." A rezone is to be conditioned on compliance with the agreement.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.052.
2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC on rezones are to be weighed and balanced together to determine the most appropriate zone and height designation. In addition, the zone function statements are to be used "to assess

the likelihood that the area proposed to be rezoned would function as intended." SMC 23.34.007 A. "No single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a zone designation ... unless a provision indicates the intent to constitute a requirement" SMC 23.34.007 B. The general rezone criteria, including "zoning principles," are set forth in SMC 23.34.008.

3. The most appropriate zone designation is the one "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." SMC 23.34.008 B.

Single-family Zone

4. The site is not located within an urban village, and although it is within the Northgate Overlay District, a rezone to a neighborhood commercial zone is not requested. Further, the subject site does not meet all criteria for single-family designation. There are no structures in single-family use in the immediate vicinity of the site, and lot sizes exceed those generally found in single-family zones.

5. In calculating the percentage of structures in single-family use on surrounding blocks, even if the rezone site is characterized as having frontage on Lake City Way NE, NE 100th Street and NE 102nd Street (because it is part of a tax parcel with those frontages), and the commercial structure at 10015 is not considered (because it has frontage only on Lake City Way), just five of eight, or 62%, of structures on the corresponding block faces are in single-family residential use. There is also no evidence of a trend toward single-family development in the immediate area.

Commercial Zone

6. The proposed rezone is a minor expansion of a commercial zone and would allow for preservation and improvement of the established commercial/manufacturing use on the adjacent property. Although the area does not meet the locational criteria for a single-family designation, a significant block of single-family zoned property would remain to the west of the rezone site, along 23rd Avenue NE.

7. The subject property is located in an area that is auto-oriented and serves a citywide or regional clientele. It is outside of an urban center or village and abuts C1-zoned property along a state highway. The existing commercial zone is developed with commercial structures and uses, and the subject property would be readily accessible across the abutting property from Lake City Way NE, an arterial. Pedestrian access is limited by a lack of crosswalks and sidewalks, but there is basic transit service available. Predominant parcel sizes are 20,000 square feet or larger. The topography of the tax parcel would continue to provide some buffer between the SF 5000 and C1 zones, and the proposed restrictions on the rezone site would provide a better buffer for adjacent single-family property than currently exists along the SF 5000/C1-40 zone edge.

Height Limits

8. The Director's recommendation to limit heights on the rezone site to 30 feet, equivalent to the height limit in a single-family zone, would provide a better transition between the SF 5000 and C1-40 zones and meet the criteria of SMC 23.34.009.

Precedential Effect

9. There is no evidence in the record that the proposed rezone would have any precedential effect. Given the existing variation in the zoning boundary and the unique circumstances of this application, such an effect is unlikely.

Relationship to Neighborhood Plans

10. Northgate Plan Policy NG-P8 does not apply because the rezone site does not meet the locational criteria for single-family zones. The proposed rezone would be consistent with Policy NG-P7 and North Neighborhoods Policy NN-P39 because, with the proposed PUDA and the recommended height restriction, potential development on the site would be restricted to a bulk and scale less than that allowed under the existing SF 5000 zoning: 15% lot coverage versus 35% allowed in SF 5000; setbacks of 25 feet to property lines versus five foot side yard setbacks allowed in SF 5000; and a height limit of 30 feet, consistent with that allowed in SF 5000. As limited, the proposed rezone would provide a better transition between the SF 5000 and C1-40 zones than presently exists.

Zoning Principles

11. The proposed rezone would be consistent with the zoning principles, in that the SF 5000 zone would be separated from the C1-40 zone by the C1-30 zone and by a change in topography of 10 to 20 feet, and the proposed PUDA would restrict vegetation removal on the site, as well as restricting height, bulk and scale to provide a better transition along the zone boundary than currently exists.

Impact Evaluation

12. Given the size of the subject site, the proposed rezone would remove the potential for siting just one single-family residence on the property, a minimal impact on housing. The Director analyzed environmental factors under SEPA and found that the proposal would have no significant adverse impacts. The proposed PUDA would limit any future impacts to flora and fauna, and other environmental impacts would be mitigated by both the vegetation and the topographic changes on the property. Access to and from the site across the adjacent commercial zone would remain unchanged, as would impacts to service capacities.

Changed Circumstances

13. Changed circumstances are not required before a rezone may be approved and are not cited in support of the proposal.

Overlay District

14. As noted, the applicant has not requested a change in the Northgate Overlay District boundary. The proposed rezone is not located within the Northgate Urban Center or Northgate Core Subarea. It would not impact residential development in the vicinity, and nothing in the record indicates that it would be inconsistent with the purpose of the Overlay District.

Critical Areas

15. As noted above, the site includes mapped environmentally critical areas, and any development would be subject to the ECA regulations for landslide-prone sites. The rezone would therefore have no negative impacts on the ECA.

16. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone and height designation for the site is C1-30.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** a rezone of the site to C1-30 subject to the proposed PUDA, but that the third provision of the PUDA be modified as follows:

3. No development is permitted on the site within 25 feet of the single-family zone.

Entered this 13th day of August, 2012.


Sue A. Tanner
Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner's recommendation to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the recommendation in writing to the City

Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the recommendation of the Hearing Examiner, and be addressed to:

Seattle City Council
Planning, Land Use and Sustainability Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3 (physical address)
P.O. 94728 (mailing address)
Seattle, WA 98124-4728

The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought. Consult the City Council committee named above for further information on the Council review process.