



**Legislative Department
Seattle City Council
Memorandum**

Date: May 6, 2013

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

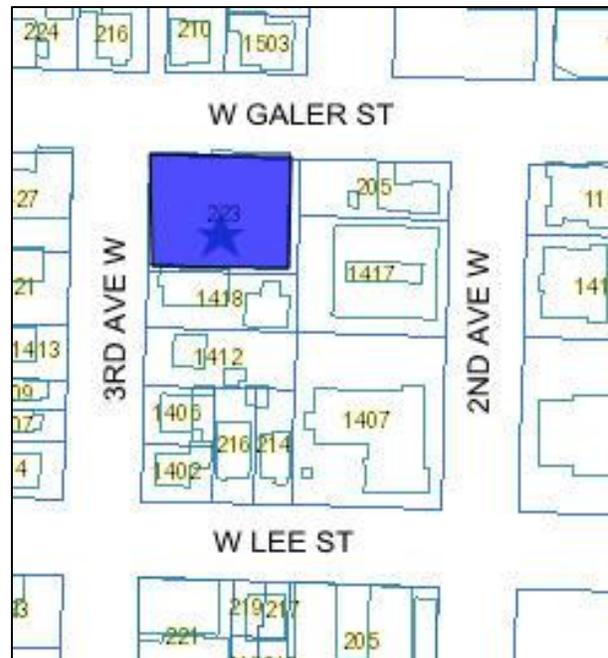
Subject: Application of R.C. Backer for a contract rezone of approximately 12,800 square feet of land at 225 West Galer Street from Neighborhood Commercial 2 with a 30 foot limit (NC3-30') to Neighborhood Commercial 2 with a 40 foot limit in height (NC2- 40'), to construct a 27,000 square foot, three-story 48 unit assisted living facility, to include 18 parking stalls in a 21,000 sq. ft. of below grade area. (Project No. 3012582, Type IV).

1. Overview

R.C. Backer, on behalf of Aegis Living (“Proponent”) proposes a contract rezone on a 12,800 square foot site at 225 West Galer Street in the Upper Queen Anne residential urban village. The site, reflected in the embedded map¹, is located at the southwest (S.W.) corner of 3rd Avenue West and West Galer Street.

The site is currently zoned Neighborhood Commercial 2 with a 30 foot height limit (NC2-30). If the request is approved, the site would be rezoned to NC2 with a 40 foot height limit (NC2-40). The rezone would allow the construction of a 4 story building that includes 57 assisted living residential units², a 507 square foot retail space and 21 below grade parking spaces.

The site, currently developed with a one-story warehouse structure, would be demolished.



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.

¹ The site is also known as 223 West Galer Street.

² A total of 60 beds could be accommodated

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 31375). 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 PLUS. 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 PLUS 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 Recommendation³ (Attachment B);
3. Relevant copies of project plans, renderings, and elevations⁴ (Attachment C);
4. November 26, 2012 Parking Analysis memorandum (Attachment D)⁵; and
5. Hearing Examiner's decision on the appeal of Richard Gordon, Hearing Examiner's decision MUP-13-001 (Attachment E).

³ Hearing Examiner's Exhibit 3

⁴ Excerpts from Hearing Examiner's Exhibits 11-16

⁵ Excerpts from Hearing Examiner's Exhibit 6

4. Summary of the record

The Hearing Examiner recommended that Council **APPROVE** the rezone request, following a similar recommendation by the Department of Planning and Development (DPD), subject to recommended conditions.

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

A. Zoning history

The site has been zoned NC2-30 since the adoption of the 1986 zoning code.

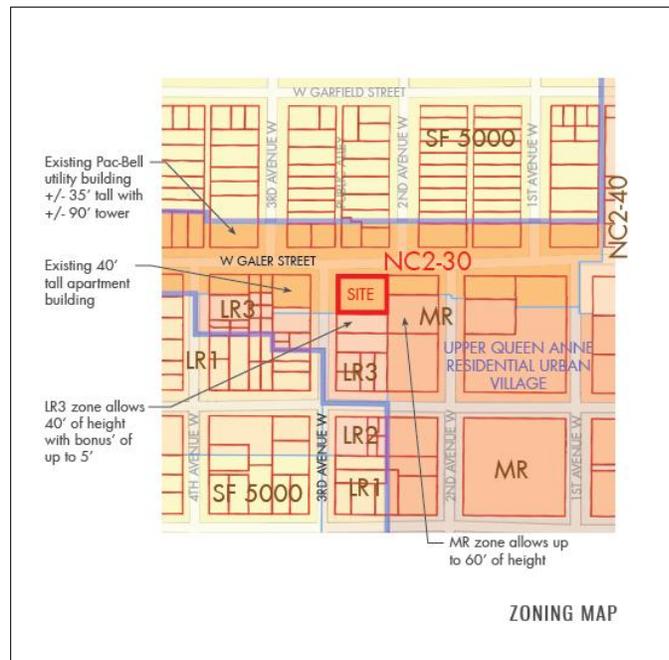
B. Surrounding area

As reflected in the embedded map, the site is located within the Upper Queen Anne Residential Urban Village, approximately 1/2 block from its southwest edge. The properties in this area that face West Galer Street are zoned NC2-30. Properties abutting the rezone site to the south are zoned Lowrise 3 (LR3), a residential zone that allows apartment buildings of up to 40 feet in height. The areas to the south and west are developed with low scale multi family structures of up to 39 feet in height.

The site also abuts a Midrise (MR) zone on its east property line. The MR zone permits residential buildings of up to 60 feet in height outright, and up to 75 feet if development complies with the City's Incentive Zoning ordinance. Uses in this area include a variety of 5 and 6 story multifamily structures and a few minor institutions, including St. Anne's Church and School. A NC2-40 zone is located approximately 500 feet to the east along Queen Anne Avenue North and West Galer Street.

Properties across the street from the site along the north side of West Galer Street are also zoned NC2-30 and include small scale residential and mixed use buildings. A grocery store (Trader Joes) is located 1/2 block from the rezone site. Immediately north of these NC2-30 zoned properties is a Single Family 5000 zone.

The geography of the site and the abutting properties is relatively flat. Away from the rezone site, West Galer Street rises to the east approximately 20 feet over a three block area.



C. Project information

Attachment C includes a variety of drawings, photos and renderings showing details of the proposed project, the neighborhood context, and various drawings illustrating the difference between what is permitted in the existing and proposed zones.

If the rezone is approved, it would authorize the construction of a 4 story structure that includes 57 assisted living units and 21 below grade parking spaces. At the ground level, a 507 square foot retail space is proposed for the 3rd Avenue West and West Galer Street corner. A common dining room and living room for building residents is located along West Galer Street, along with the building entrance. Along 3rd Avenue West, the facility's kitchen is located at ground level, along with a screened loading space for the building's passenger shuttle. The driveway to the garage is located at the southwest corner of the building. The driveway and a related planting area are located between the south property line and the structure; at ground level there is a 15 foot setback from the structure to the property line while the upper floors are setback approximately 7 feet.

In addition to the enclosed living and dining room, the project includes a roof top garden and a south facing 2nd floor deck. Ground level plantings will also be provided as well as a 12 foot screen wall along the south property line to hide the garage ramp from view of the neighbors. Right of way improvements are also proposed that includes retention of an existing stand of mature cypress trees along 3rd Avenue West, street tree plantings along West Galer Street, and restoration of sidewalks and curbs.

D. Public comment

DPD received a significant amount of public comment throughout their review of both the rezones request and the meetings before the City's design review board. The comments in regard to the rezone generally opposed the request. For example, DPD received 75 emails between September 17 and 18, 2012 using a template that reiterated three specific concerns:

- The site should not be rezoned and doesn't meet either rezone criteria or the City's Comprehensive Plan
- The loading dock for the facility should be located along West Galer Street and not 3rd Avenue West
- Adequate parking for visitors and staff should be provided

These three points were also sent in another template email from around 22 people on August 31 and September 1

Additional public comments focused on the perceived loss of property value from the proposal, the traffic and parking impacts that would result from the development, safety concerns related to monitoring by the facility of its residents,⁶ and other impacts of the use.

⁶ The facility is designed to serve individuals with Alzheimers and Dementia.

E. Summary of the Hearing Examiner's conclusions

1. Impact on zoned growth capacity:

General rezone criteria require an analysis of the effect of a rezone on zoned capacity. Zoned capacity is the amount of growth assigned to an urban center or village as part of the Comprehensive Plan. The Queen Anne Residential Urban Village has a growth target of 31 households per acre by 2024. The proposal would allow 57 assisted living residential units to be constructed on the site, serving up to 60 individuals. The Hearing Examiner found that these additional units support growth goals for the Upper Queen Anne Urban Village. While no information was provided as to how this development contributes towards this goal for this urban village, this .3 acre site will accommodate up to 60 individuals in the proposed development, thereby exceeding this goal for this site. Without the rezone, a development complying with the NC2-30 zone requirements could potentially accommodate approximately 43 individuals, still in excess of the stated growth target.

2. Relationship to neighborhood plans:

The Hearing Examiner noted that the adopted Queen Anne neighborhood plan does not include specific policies related to future rezones, nor does it identify specific sites or areas for rezones. The Hearing Examiner concluded that the proposed assisted living facility, which is a permitted use in an NC2 zone, broadens the range of housing choices (single family, multi-family, assisted living, etc) in this urban village. The Hearing Examiner noted several Queen Anne neighborhood plan goals and policies support the proposal, including

- Neighborhood Character (QA-G1, QA-P2)
- Human Service needs (QA-G4)
- Quality Design (QA-P3)
- Pedestrian oriented streetscapes (QA-P1)
- Urban-character enhancing improvements (QA-P40)
- Solutions to parking needs in business districts (QA-P44)

Neighbors opposing the project argued to the Hearing Examiner that the project is not consistent with the following Queen Anne neighborhood policies:

“Seek to alleviate parking problems in the Queen Anne Planning Area”(QA-P41)

“Seek to maintain and establish quality design in the Queen Anne neighborhood. Through neighborhood design guidelines and design review, consider unique or particular local design characteristics “ (QA-P3).

On the issue of parking problems at or near the site, the Hearing Examiner concluded that the City's land use code⁷ does not require parking for the facility, as the site is located within an urban village and is also located within ¼ mile of “frequent transit⁸”. Attachment D to this report is a copy of the traffic study for the facility, required to meet the facility's

⁷ Seattle Municipal Code Section 23.54

⁸ Frequent Transit is defined in Seattle Municipal Code Section 23.84A and generally means that the service has a minimum of 15 minute headways during the daytime

environmental review (SEPA) requirements. The traffic study concluded that 24 parking spaces would be needed to address parking demand for the facility's staff, residents and visitors. While the facility only provides 21 parking spaces, the Hearing Examiner concluded that the 3 space parking deficit is adequately mitigated by the availability of approximately 150 parking spaces⁹ during the day within 800 feet of the site, determined through a survey on surrounding streets.

On the issue of design quality the Hearing Examiner concluded that the project's design is consistent with the neighborhood plan. The project was subject to review by the City's Design Review Board to ensure compliance with the City's Design Review requirements and the neighborhood guidelines¹⁰. The Board concluded after 2 meetings that the project met the Citywide and neighborhood design guidelines and unanimously approved the design and its 7 related departures from development standards. This recommendation and DPD's approval was the subject of an appeal to the City's Hearing Examiner; the Hearing Examiner found that the project did comply with these guidelines (Attachment E).

3. Rezoning the property from NC2-30 to NC2-40 – height.

Because the rezone request is for a 10 foot increase in height, and no change in zone classification, the Hearing Examiner only considered the height increase and its impact nearby properties.

The proposal calls for increasing height on the site from 30 feet to 40 feet. The additional height would allow the construction of one additional floor containing 16 dwelling units. Height evaluation for rezones in SMC 23.34.009 requires an evaluation of 5 criteria. I have listed the criteria with a summary of the Hearing Examiner's conclusions:

A. Function of the Zone.

The Hearing Examiner concluded that the proposed 40 foot height limit was consistent with the scale of development anticipated for NC2 zones. The Hearing Examiner noted that the design of the project, its proximity to pedestrian oriented shopping areas along West Galer Street and Queen Anne Avenue North, and the use of the structure, were consistent with the height and scale of development anticipated for an NC 2 zone.

B. Topography of the Area and its Surroundings

The Hearing Examiner concluded that the site is located at the bottom of a series of grade changes to the east and west and is also located in a relatively flat area, with a slight grade change to the south. The Hearing Examiner concluded that these conditions, coupled with the proposed development, would not result in view blockages from the 10 feet in additional height.

⁹ Of the 150 spaces that are available in the day time, 63 of these spaces are unrestricted and the remaining are subject to 2 hour time limits.

¹⁰ Seattle Municipal Code Section 23.41

C. Height and Scale of the Area.

D. Compatibility with Surrounding Area.

The Hearing Examiner noted that the site abuts a LR3 zone to the south. The height limit for apartment buildings in LR zones is 40 feet, with additional height for rooftop equipment and building features. The Hearing Examiner noted that the site also abuts an MR zone, which allows for apartments up to 60 feet in height, also with allowances for rooftop equipment and features. The MR zone also allows for an additional 15 feet in height when buildings comply with the City's Incentive Zoning ordinance.¹¹ Finally, the Hearing Examiner noted that the facility is across the street from the Wimbledon Apartments, a 4 story apartment building built in the 1920's. The Hearing Examiner noted that the 3rd Avenue West façade facing the proposed development is approximately 39 feet in height.

The Hearing Examiner concluded that the proposed 40 foot height limit on this site would provide a gradual and appropriate transition to the NC2-30 zone across West Galer Street and to the adjacent LR and MR zones. The Hearing Examiner also noted that sites within the immediate area were likely to redevelop, given their current uses, the existing zoning designation, and their location in an urban village.

E. Neighborhood Plans.

The adopted Queen Anne neighborhood plan does not include recommendations for height in relation to rezones.

4. Impact evaluation

SMC 23.34.008.F.1 requires an analysis of impacts of the rezone. Extensive analysis was undertaken of the project's impacts. This included a determination that the project complies with the City's design review program and SEPA, including an analysis of the project's traffic and parking impacts. The community expressed significant concern about the traffic and parking impacts of the facility, in particular traffic impacts along 3rd Avenue West and impacts to the pedestrian network. The Hearing Examiner concluded that the project did adequately address traffic impacts along 3rd Avenue West, and for the project in general, noting that:

- When compared with the current development, PM peak trips would be *reduced* by approximately 11 trips;
- Trip volumes along 3rd Avenue West would generally be low (17 PM peak trips);
- Vehicle access would be located along 3rd Avenue West, which was also the Design Review board's preferred solution;
- Sidewalks along the project would be improved and widened
- Lighting and overhead weather projection would be provided along West Galer Street

¹¹ Seattle Municipal Code Section 23.58A

Most notably, there was concern about the proposed shuttle van movements entering and leaving the site from a loading zone; the loading zone also shares a curbcut with the entrance to the parking garage. While 3rd Avenue West is 66 feet wide, the roadway area is somewhat narrow and is constrained by existing on-street parking. Neighbors expressed concern that adequate turning area be provided to ensure safe movement to and from the loading zone. While the traffic study concluded that the project provided safe turning movements from the proposed on-site loading space and the garage, a condition was developed (and agreed to by the developer) that onsite personnel would be provided when the shuttle, or any truck, uses the onsite loading space. It should also be noted that the on-site loading space would be screened with a decorative fence.

As discussed in Attachment E, community members appealed DPD's SEPA determination and design review approval to the City's Hearing Examiner. The Hearing Examiner concluded that DPD adequately analyzed and, where needed, mitigated the impacts of the rezone and the proposed development. The Hearing Examiner noted that while the community was frustrated by the process and the community's ability to participate in the way they had hoped, DPD did not err in its decision to approve the project and that DPD did consider the neighbors concerns in their review and decision making.

5. Recommendation

I recommend that PLUS move to **APPROVE** the rezone request and adopt the Hearing Examiner's findings, conclusions and decision.

I also recommend that you vote to change the title of the Clerk's File to reflect the scope of the project, as follows:

Application of R.C. Backer and Aegis Living for a contract rezone of approximately 12,800 square feet of land at 225 West Galer Street from Neighborhood Commercial 2 with a 30 foot limit (NC3-30') to Neighborhood Commercial 2 with a 40 foot limit in height (NC2- 40'), to construct a ~~((27,000))~~ 48,000 square foot, ~~((three-story))~~ four-story ~~((48))~~ 57 unit assisted living facility, to include ~~((18))~~ 21 parking stalls in a ~~((21,000 sq. ft. of))~~ below grade ~~((area))~~ garage. (Project No. 3012582, Type IV).

6. Next Steps

If the Committee recommends approval of the rezone, I will draft Council Findings, Conclusion and Decision (FC and D) and a draft property use and development agreement (PUDA). I will also prepare for introduction and referral a separate Council Bill (CB). Once the CB is introduced the matter will come back to PLUS for a vote prior to full Council review and vote.