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

In the Matter of the Application of

AEGIS LIVING

for a contract rezone of property addressed as 223 and 225 West Galer

CF 311813

DPD Project: 3012582

Introduction

The applicant, Aegis Living, seeks a contract rezone of 12,800 square feet of land from Neighborhood Commercial 2 with a 30-foot height limit, to Neighborhood Commercial 2 with a 40-foot height limit. The proposal is for a rezone to allow a four-story structure with 60 assisted living units (57 units are actually proposed with bed space for up to 60 people) located above 509 square feet of street level retail, with parking for 21 vehicles.

The public hearing on this application, and the hearing on an appeal of the Master Use Permit decision (MUP) for the project, were held on February 19 and 22, 2013, before the undersigned Deputy Hearing Examiner. A separate decision on the MUP appeal has been issued this day. Represented at the rezone hearing were the Director, Department of Planning and Development (DPD), by Colin Vasquez, Senior Land Use Planner; and the applicant, by Jessica Clawson, attorney at law. The record on the contract rezone application was held open after the hearing for purpose of the Examiner's site visit, which occurred on March 1, 2013.

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 site is a 12,800-square-foot lot which is addressed in the file as 223 and 225 West Galer Street. The site is located southeast of the intersection of West Galer and 3rd Avenue West, in the Queen Anne neighborhood.

2. The site is currently developed with a one-story structure that was most recently utilized as a commercial warehouse with offices (the building was apparently vacated some time prior to hearing). A row of tall mature cypress trees borders the west side of the site, adjacent to 3rd Avenue West.

3. Directly east of the site is a service garage with a surface parking lot. To the west, across 3rd Avenue West, is the Wimbledon Co-op, a multifamily structure with four levels (three stories over a basement level) at a height of approximately 39 feet. To the south are multifamily structures and single family structures, including a five-story SHA structure on the same block within the MR zone. Along West Galer near this location are several commercial or retail uses, including restaurants and a Trader Joe's store. A 90-foot communications monopole is located to the west and north.

4. The site is zoned Neighborhood Commercial 2 with a 30-foot height limit (NC2-30) and is within the Upper Queen Anne Residential Urban Village. The site is located in a corridor of NC2-30 zoning that lies along either side of West Galer. To the east and south of southeast of the site, the zoning is Midrise (MR), which allows a maximum height of 75 feet. The zoning southwest of the site is Lowrise 3 (LR3), which allows up to 40-foot height for multifamily (except for cottage housing, rowhouses or townhouses, and portions of lots within 50 feet of a single family zone in which case a 30-foot height limit applies) an additional five feet in height is allowed for a pitched roof. The zoning further south and west is LR1, Single Family 5000 (SF 5000) and LR2; the zoning to the north of West Galer is SF 5000.

5. The site is relatively level. The topography in this area slopes slightly downward from Queen Anne Avenue to the site, than rises again west to 6th Avenue.

Proposal

6. The proposal is to change the zoning at this property from NC2-30 to NC2-40. The applicant, Aegis Living, proposes to develop the site with a four-story structure containing up to 60 units of assisted living above 509 square feet of street level retail, with parking for 21 vehicles. (The applicant has actually proposed 57 units, but up to 60 persons may reside in the facility.) The proposed 10-foot height increase results in the project being able to have 16 units above what would be permitted under the NC2-30 designation. Community meeting space would be available as part of the street level use. The existing curbcuts on West Galer would be removed. Access to a loading/service area and underground parking would be taken from a 25-foot driveway on 3rd Avenue West. An existing loading zone on West Galer would be maintained. Three of the four tall cypress trees located along the west side of the site would be preserved.

7. Aegis Living operates several other assisted living facilities in the Puget Sound area. The average age of residents at entry to an Aegis assisted living facility is 82 years old and 80 percent of the population is female. The second floor of the Galer facility would be dedicated to "Memory Care" for residents suffering from cognitive disease. Aegis's experience at its other facilities is that its residents typically do not drive.

8. Service vehicles are expected to access the site as follows, based on Aegis's experience at its other facilities:

Facility passenger van (for transporting residents, or moving assistance): once a day
Food delivery: three times a week
Office supply delivery: once a week
Garbage/recycle trucks: once a week
Resident moving: two or fewer move-ins/move-outs per month

Design Review

9. The Queen Anne/Magnolia Design Review Board held an Early Design Guidance (EDG) meeting on the project proposal on October 10, 2011. The DPD notice for the meeting was published on September 8, 2011, and the Notice described the project as "a 3-story structure with 48 units of assisted living. Parking for 18 vehicles proposed below grade."

10. At the meeting, the applicant presented three options for the project, shown at Applicant's Ex. 15. All options were based on a rezone to NC2-40. Options 1 and 2 included approximately 64 units and 17 parking stalls. Option 3 included approximately 66 units and 18 parking stalls. One option included taking access for parking from West Galer, for which a departure would be required, since the Code requires access in this case to be taken from 3rd Avenue West.

11. The Board identified the Citywide Design Guidelines and the neighborhood-specific guidelines (Upper Queen Anne Neighborhood Design Guidelines) of highest priority for the project. The identified guidelines are set out at pages 22-28 of the Director's Report, DPD Ex. 3, along with a summary of the Board's early design guidance to the applicant. Among other directives, the Board recommended that vehicle access not be taken from West Galer and that it be taken from 3rd Avenue West.

12. The Board held its Recommendation meeting on the project a little over a year later, on October 24, 2012. At this meeting, all three of the Board members present recommended approval of the proposed design and seven departures. One of the applicant's departure requests was a response to the Board's direction that vehicle access be restricted to 3rd Avenue West. The applicant therefore requested a 25-foot wide, rather than a 20-foot wide, curb cut along 3rd Avenue West to allow for a consolidated loading and parking access on that street which would allow adequate room for maneuvering clearance.

13. The applicant's response to the Board's October 10 direction is shown in the MUP drawings in the file and Applicant's Ex. 11 and 16. The access to the loading dock and to the below-grade parking was moved to 3rd Avenue West, consistent with the Code and the Board's direction. On West Galer, an existing loading area is maintained, two new on-street parking spaces are added (because of the removal of a curb cut on this side) and a passenger load/unload area located near the building entrance. The project would have 21 off-street parking stalls.

14. The building was set back from the property line by two feet along West Galer, allowing for a wider sidewalk and planting area. Along the 3rd Avenue West, the building was set back 3-10 feet, and no activity areas were located on this side, to lessen privacy impacts on the Wimbledon building across 3rd Avenue W; the retained cypress trees are also expected to provide screening of the building from that side.

15. The façade concept, materials and colors are shown in Applicant's Ex. 16. The landcape plan as noted above retains three of the four mature cypress trees on the 3rd Avenue West, and includes new street trees on West Galer, as well as a rooftop garden; Applicant's Ex. 9 and 16.

DPD Review

16. DPD reviewed the proposal pursuant to SEPA, and issued a Determination of Nonsignificance (DNS). DPD also conditionally approved the design of the project.

Impacts

17. The applicant's transportation engineering consultant, Transpo Group, prepared two Transportation Analysis Memoranda for this proposal. PD Ex. 6. After reviewing the first memorandum, dated May 17, 2012, DPD transportation planner John Shaw issued a correction notice noting that the traffic data count appeared to be based on observations at the intersection of Galer and 3rd Avenue North, rather than West Galer Street and 3rd Avenue West, closest to the site. The notice asked for confirmation that the latter intersection had actually been studied, or new data collected at that intersection. Transpo submitted a second Transportation Analysis Memorandum on November 26, 2012, which addressed traffic impacts and parking demand.

18. Based on the standard trip generation formula in the ITE Manual, with no reductions for transit use, the proposed assisted living facility is expected to generate 17 new weekday daily PM peak hour trips. The study also noted that the former use of the site as a warehouse and office would generate 28 weekday daily PM peak hour trips, so that a net reduction of 11 weekday daily PM peak hour trips would occur with the assisted facility use.

19. The transportation and analysis prepared by Transpo shows that the impact of traffic on the nearby street system is expected to be minor, because of the low volume of trips generated by the use, which are fewer trips than were generated by the previous occupant's uses at the site. The garage access at 3rd Avenue West and West Galer is expected to operate at Level of Service A, with less than 10 seconds of delay for outbound traffic and little or no delays for inbound traffic.

20. The parking demand for the proposed assisted living facility, based on the ITE Parking Generation Manual, is predicted to be 24 vehicles at peak hour (which for

parking is around 11 a.m., when vehicles associated with the use are likely to be generating demand for parking). As with the trip generation calculations, no reduction for transit was calculated. The estimated peak parking demand is 24 vehicles. The former warehouse use and office space on the site would have generated a peak parking demand of 48 vehicles, so that a net decrease in parking demand is expected to occur.

21. The project will include 21 off-street parking spaces for an estimated demand of 24 spaces, so an overflow of three spaces may be created. An on-street parking supply within 800-feet walking distance of the site was conducted. The study references the methodology use in CAM 117. CAM 117 refers to conducting a parking waiver study for accessory dwelling units. DPD has no CAM for conducting parking surveys for other purposes, but considers the CAM 117 methodology to be a reasonable as starting point. CAM 117 refers to a 400-foot study radius, but for other uses, DPD generally recommends that surveys use an 800-foot walking distance radius. Although only one day's worth of data, instead of two, was provided, DPD in this case concluded that, given that at most 3 spillover spaces were expected, the survey was adequate.

22. Transpo's survey found a total public parking supply of 525 spaces, 375 of which were occupied, leaving 150 spaces available within the study area, 81 of which were designated as Residential Parking Zone (RPZ) spaces and 69 which were unrestricted. At the public hearing, public comments pointed out restrictions on some of the on-street parking areas included in the survey. The applicant's transportation expert, Mr. Gahnberg, noted that Transpo revisited the area and revised its figures slightly. The overall number of parking spaces was actually a little higher than what had previously been identified in the November 2012 memo; however, the number of restricted spaces was actually higher as well, so that 63 spaces were unrestricted. Mr. Gahnberg noted that this was still well above the three spaces of off-street parking demand that might be generated by the project.

23. SMC 23.54.015 addresses required minimum parking. Table B line C provides that an assisted living facility use should have 1 space for each 4 units, plus 1 space for each 2 staff members on-site at peak staffing time, and 1 barrier-free passenger load/unload space. Line M states that no minimum parking is required for all residential uses in commercial and multifamily zones within urban villages not within an urban center or Station Area Overlay District, if the residential use is located *"within 1,320 feet of a street with frequent transit service, measured as the walking distance from the nearest transit top to the lot line of the lot containing the residential use."*

24. SMC 23.84.038 defines *"Transit service, frequent"* as *"transit service headways in at least one direction of 15 minutes or less for at least 12 hours per day, 6 days per week, and transit service headways of 30 minutes or less for at least 18 hours every day."*

25. The applicant prepared a study to compare the shadow impacts of the project built to a 30-foot height limit and a 40-foot height limit. The study is shown at Applicant's Ex. 16.

Public comments

26. Many public comments and petitions were submitted to DPD and the Hearing Examiner on the proposed contract rezone, and are found in the record on this matter. The proposal is opposed by many residents who cite impacts such as the rezone's consistency with the neighborhood plan; impacts on-street parking supply; the project's traffic impacts; safety along 3rd Avenue West; the proposed use as an assisted living facility; the need for this facility; and other issues. As noted above, the MUP decision for the project was appealed, and a separate decision has been issued on that appeal this day.

27. The Land Use Review Committee (LURC) of the Queen Anne Community Council (QACC) reviewed the project proposal and held several public meetings as the project was going through the design review process. Among other issues, the LURC and QACC provided input on building height, parking and traffic, and vehicular access from 3rd Avenue West. The QACC voted to support the proposed rezone at its March 7, 2012 meeting. The QACC submitted a letter to the Hearing Examiner on February 19, 2013 stating its support for the proposal on February 19, 2013.

Neighborhood Plan

28. Portions of the Queen Anne Neighborhood Plan was adopted in 1999 as an amendment to the City's Comprehensive Plan.

29. The Queen Anne Residential Urban Village has a growth target of 31 households per acre by 2024.

Codes

30. 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.*

31. SMC 23.34.008 states the general rezone criteria. These 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; the presence of overlay districts or critical areas, and whether the area is within an area with an incentive zoning suffix.

Conclusions

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

2. Under SMC 23.34.007, the rezone provisions are to be weighed and balanced to determine the appropriate zone designation. No single criterion or group of criteria are to be applied as an absolute requirement or test of appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations unless specified by the Code. The proposed rezone is located within the Queen Anne Residential Urban Village, so the proposed rezone is subject to the sections of Chapter 23.34 which apply to urban villages.

General rezone criteria

3. Effect on zoned capacity. SMC 23.34.008.A requires that, within the urban center or urban village, the zoned capacity taken as a whole shall be no less than 125 percent of the applicable adopted growth target, and not less than the density established in the Comprehensive Plan. The proposed contract rezone would allow 17 additional residential units to be built on the site, and would not therefore reduce the zoned capacity of the Queen Anne Residential Urban Village, or cause this urban village to fall below the zoned capacity and density identified in the Comprehensive Plan.

4. Match between zone criteria and area characteristics. 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 designation. In this case, the site is already zoned NC2 and the proposal would not change the NC2 designation. The site currently matches the NC2 function and locational criteria, and NC2 continues to be the appropriate designation for this site. The proposal would change the height limit, which is considered under SMC 23.34.009 discussed below.

5. Zoning history and precedential effect. The property has been zoned NC2-30 since enactment of the City's Zoning Ordinance in 1986. It is difficult to predict precedential effects of a contract rezone. However, the rezone of this site to a 40-foot height limit would add to the existing factors (i.e., proximity of zones whose height limit is greater than 30 feet, and existing development that exceeds 30 feet in height) that tend to encourage a greater height limit than 30 feet.

6. Neighborhood plan. SMC 23.34.008.D provides that the Council-adopted portions of the Queen Anne Neighborhood Plan should be considered. The adopted portions of the Plan include goals and policies related to the Queen Anne environment and community. The adopted Plan does not include express policies to guide future rezones, and does not identify specific sites or areas for rezones. The proposed use, which is permitted in the NC2 zone, would contribute to the range of housing types in the area by providing assisted living units. The project design is consistent with the Queen Anne Neighborhood Plan goals and policies, e.g., concerning 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) and finding solutions to parking needs in the business districts (QA-P44). The proposed rezone to allow a 10-foot height increase is consistent with the adopted neighborhood plan.

7. Some public comments argued that the proposed rezone is not consistent with the Neighborhood Plan policies, e.g., QA-P41, "Seek to alleviate parking problems in the Queen Anne planning area," arguing that the project's impacts on parking violate this policy. But the applicant is providing more off-street parking spaces than are required to meet the demand predicted for the facility. Similarly, some public comments strongly disagreed with the proposal's consistency with policies related to design and transition, or those related to preservation of the neighborhood. But the project's design is consistent with the plain language of the neighborhood plan. Certainly, policy and design guidelines do not set numerical standards, and can mean different things to different people. But on the basis of this record, the proposal appears to be consistent with the adopted neighborhood plan.

8. Zoning principles. Zoning principles are to be considered under SMC 23.34.008.E., including impacts, physical buffers, location of zone boundaries along platted lot lines or include physical buffers, and the boundaries between commercial and residential areas.

9. The impact of "more intensive zones on less intensive zones" is to be considered. In this case, the underlying zoning controlling the types of use at this site will remain NC2. However, the proposed new height limit should be examined relative to other zoned heights, as a gradual transition between height limits is preferred. The proposed change to NC2-40 would match the height limits of the property to the south zoned LR 3 (40-45 feet) and would be less than the 60-75-foot height limit in the MR zone to the east and southeast. The massing studies in Applicant's Ex. 16 show projected heights of future construction after sites are redeveloped to the existing zoning heights. The existing development includes the Wimbledon building directly west of the site, at approximately 40 feet in height, and a five-story building to the southeast in the MR zone. The proposed 40-foot height limit would provide a transition between the existing zone heights near the property. There are no physical buffers such as natural features or freeways, etc., present to separate the site from the other uses or developments nearby. The proposed zone boundaries would follow platted lot lines, and boundaries between commercial and residential areas would not be changed by this action. The proposal is consistent with zoning principles identified in SMC 23.34.008.E.

10. SMC 23.34.008.F.1 requires evaluation of "possible negative and positive impacts" of the rezone. Factors to be examined include but are not limited to, housing, public services, environmental factors, pedestrian safety, manufacturing activity, employment activities, historic or architectural value, and shoreline values.

11. Housing would be provided as part of the proposal, with 16 additional units of assisted living associated with the requested height increase. Public services, including police and fire, are available to serve the site.

12. The record shows no significant environmental factors associated with the proposed rezone. The impacts of increased shadows from the extra story are shown in the Applicant's shadow studies in Applicant's Ex. 16 and appear to be minimal. Some public comments objected to noise at street level, but the small amount of ground-floor space and the use proposed at street level were not shown to be particularly noisy, particularly when compared with other NC2 uses (e.g., restaurants) that are allowed in the zone. No significant views were shown to be affected.

13. Pedestrian safety is to be considered. The proposal includes moving the vehicle access to the site away from West Galer, and includes widening the sidewalk and providing lighting and overhead weather protection along Galer to improve pedestrian comfort and safety. Vehicle access will instead be limited to 3rd Avenue West, which was recommended by the Design Review Board and is consistent with the Code.

14. Many neighbors urged that access be taken from West Galer, because of pedestrian safety concerns as well as general concerns regarding congestion on 3rd Avenue West. This is understandable, since 3rd Avenue West is narrow and only allows for one lane of travel when vehicles are parked on the street. But the evidence does not show that pedestrian safety would be harmed by this proposed rezone. The trip volumes would be low, 17 PM peak hour trips per day, and the traffic study and expert testimony at hearing established that the proposed vehicle access is not unusual or inherently hazardous to traffic or pedestrians.

15. The Transpo study did include a recommendation that, to minimize any potential for vehicle or pedestrian conflicts associated with the operation of the service dock on 3rd Avenue West, the applicant provide on-site personnel to oversee backing maneuvers and control adjacent traffic and pedestrian movements during these movements. Given the narrowness of 3rd Avenue West and the fact that the access point is new at this area, the Examiner agrees that the applicant should be required to provide on-site personnel to supervise backing maneuvers to avoid any conflicts.

16. Manufacturing activity does not occur at this site and is not proposed. Employment activity does not appear to be a significant factor in the proposed rezone; the applicant estimates perhaps 1-2 additional employees will be retained on account of the additional 16 units associated with the rezone. There are no landmarks or other designated historic structures on or near the site. The character of the area, Upper Queen Anne, as reflected in the neighborhood design guidelines, was considered during the design review process. The site is not within the shoreline area.

17. SMC 23.34.008.F.2 addresses service capacities, including street access, street capacity, transit service, parking capacity, utility and sewer capacity, and shoreline navigation.

18. The site is served by METRO transit; currently routes 2, 13 and 29. Street access and capacity would not be significantly affected by the proposed rezone. The entire project, when compared with the previous use at this site, will result in 11 fewer PM peak hour trips, and levels of service would not be noticeably reduced at nearby intersections or at the driveway location. The turning radii required for vehicles accessing or leaving the site was shown to be adequate. As noted above, many public comments objected to the access on 3rd Avenue West, but this access was disfavored by the Design Review Board as impairing the pedestrian environment on West Galer, and is not consistent with the Code. Many neighbors believe that the access will create substantial congestion on 3rd Avenue West, but the transportation analysis and the testimony of traffic experts at hearing show that street access and capacity are adequate.

19. Parking capacity is to be considered. The project would generate a peak parking demand of 24 vehicles and will provide 21 parking stalls, for a possible overflow of three spaces. The Transpo parking utilization study shows that there are over 154 on-street parking spaces on the street, with approximately 63 spaces that are unrestricted, and 91 spaces with 2-hour limits (RPZ or other limits). The supply of off-street parking is of concern to neighbors who utilize on-street parking; e,g., the Wimbledon building across the street does not have off-street parking, and the Queen Anne Christian Church a block away engages in income-generating activities during the week which generate a demand for on-street parking. The church is very concerned that its income will be impaired because of a lack of on-street parking. But the parking studies and expert testimony show that the proposed rezone will not impair parking capacity in the area, and that demand will be reduced from the demand previously generated by the prior uses at the site.

20. Public comments have objected to Aegis's statements that there is no Code-required parking for this project under SMC 23.54.015, because of the site's location in a residential urban village with "frequent transit." Some comments have included references to bus schedules showing more than a 15-minute gap in scheduled bus service.[1] But the rezone criteria address the proposal's impact on parking capacity, not the Code requirements, which regardless of the rezone decision, apply to the project. In this case, the project includes 21 off-street parking spaces, and the evidence in the record shows that parking capacity may at most be reduced by 3 spaces. There is adequate capacity to serve the proposal.

21. Utility and sewer capacity are sufficient to serve the proposed rezone, and shoreline navigation is not a factor in this rezone.

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[1] No formal Director's interpretation was requested on this question; the Director's application of this standard, if a Type I decision, would be final under SMC 23.76.004 absent issuance of an appealable DPD interpretation.

22. Changed circumstances. Under SMC 23.34.008.G, changed circumstances are to be taken into account, but are not required to demonstrate whether a proposed rezone is appropriate. The zoning code was recently amended to allow development in LR and MR zones, to achieve heights up to 45 feet and 75 feet, respectively, under certain circumstances. Otherwise, there appear to be no changed circumstances related to the criteria for the zone.

23. The criteria of SMC 23.34.008.H, I and J do not apply, as the site is not within a critical area, overlay district (except possibly the Airport Height Overlay district, which would not be relevant to the proposed height rezone in this case), a zone with an incentive zoning suffix, or in or adjacent to a environmentally critical area.

24. The proposed rezone, from NC2-30 to NC2-40, is consistent with the general rezone criteria of SMC 23.34.008.

Height Limits

25. Under SMC 23.34.009, additional criteria apply to this proposal, because it would change the height limit. The first criterion considers whether the height limit is consistent with the type and scale of development intended for the zone classification. The demand for permitted goods and services, and the potential for displacement of preferred uses shall be considered.

26. The proposed change to a 40-foot height limit is consistent with the type and scale of development intended for the NC2 classification. Under SMC 23.34.076, the NC2 zone is intended to support or encourage a pedestrian-oriented shopping area providing a full range of household and personal goods. The proposed assisted facility use is permitted in the NC2 zone, and the Design Review Board and DPD have required that the development encourage pedestrian use of West Galer and that landscaping, façade treatment and other design components be utilized to make the building appropriate at this location. The rezone for additional height does not appear to have any impact on the demand for permitted goods and services or on the potential for displacement of preferred uses. The height rezone would appear consistent with the height and scale of development in the NC2 zone.

27. Under SMC 23.34.009.B, the topography of the area and its surroundings are to be considered, and height limits are to reinforce the natural topography of the area and surroundings; view blockage is to be considered. The local topography slopes downward from 1st Avenue West west to the site, and rises again further west of the site to 6th Avenue West. The site sits slightly lower than areas to the north and south, and view blockage appears unlikely to result from the 10-foot height increase.

28. SMC 23.34.009.C considers the height and scale of the area, including the zoned height limits, and the height and scale of existing development, where that development is a good measure of the area's overall development potential. SMC 23.34.009.D

addresses the compatibility of the proposed height with the actual and zoned heights in surrounding buildings. The height limits in the immediate area include a 30-foot height limit in the NC2-30 area north of the site which runs along West Galer; the 40-foot height limit for the LR3 zone which lies adjacent to the property on the south; and the 60-75-foot height limit allowed in the MR zone which lies adjacent to the property on the south and southeast. The existing development in the area includes buildings of comparable height and scale, e.g., the Wimbledon and SHA buildings, as well as townhouses and developments in the nearby MR zone that are of comparable height and scale. Given that the surrounding area is a designated Residential Urban Village, and that sites nearby have recently been rezoned to the height limits allowed in MR and LR3, it seems likely that future redevelopment of nearby sites to allowable height limits will occur. The proposed height limit appears to be compatible with the actual and zoned height limits in the surrounding areas. The proposed 40-foot height will provide a gradual transition between the NC2-30 zoning to the north, the LR3 (40-foot height limit) zoning to the west and south, and the MR zoning (60-75 foot height limit) to the east and south.

29. SMC 23.34.009E provides that particular attention is to be given the height recommendations in adopted neighborhood plans. The adopted provisions of the Queen Anne Neighborhood Plan do not include recommendations or requirements for height limits.

30. The proposed height increase from NC2-30 to NC2-40 would be consistent with the criteria of SMC 23.34.009.

31. Neighbors have commented in opposition to the structure at this location, and have expressed deep concerns about traffic, parking, the proposed height of the building, or other issues related to Aegis's proposal and DPD's review. But the record does not show that the proposal's actual impacts would be substantial, or that any aspects of the proposal are inconsistent with the general rezone criteria of the Code. The proposed rezone on balance meets the rezone criteria, and therefore, the Examiner recommends approval of the proposed rezone with the condition set forth below.

Recommendation

The Hearing Examiner recommends **APPROVAL** of the rezone from NC2-30 to NC2-40 with the following conditions:

1. Approval is subject to a Property Use and Development Agreement (PUDA) that limits the development to the design as approved by DPD in its January 7, 2013 decision.
2. The applicant shall provide on-site personnel to oversee backing maneuvers associated with the operation of the service dock, and to control adjacent traffic and pedestrians during such movements.

The following conditions have been imposed on this project by DPD pursuant to its SEPA and Design Review decisions:

SEPA

1. During demolition, excavation, and construction. For the duration of the removal of the existing building, excavation of materials, and delivery of construction materials; the owner(s) and/or responsible party(ies) shall cause truck trips to and from the project site to cease during the hours between 4 PM and 6 PM on weekdays.

Design review

2. Prior to issuance of building permit. Any proposed changes to the exterior of the building or site must be submitted to DPD for review and approval by the Land Use Planner assigned to the project.

3. Compliance with all images and text on the MUP drawings, as modified by this decision and approved by the Land Use Planner, shall be verified by the Land Use Planner assigned to this project. An appointment with the assigned Land Use Planner must be made at least three working days in advance of field inspection. The Land Use Planner will determine whether submission of revised plans I required to ensure that substantial compliance has been achieved.

4. Prior to issuance of a Permanent Certificate of Occupancy. The applicant shall arrange for an inspection with the Land Use Planner to verify that the construction of the buildings width, siting, materials, and architectural details is substantially the same as those documented in the approved/issued plans.

Entered this 13th day of March, 2013.

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 a recommendation of the Hearing Examiner may submit an appeal of the Hearing Examiner's recommendation to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the Hearing Examiner's recommendation, and be addressed to: Seattle City Council Planning, Land Use and Sustainability Committee, c/o Seattle City Clerk, 600 Fourth Avenue Floor 3, P.O. Box 94728. Seattle, WA 98124-4728. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought.