

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

In the Matter of the Application of

CF 312670

TOMAS STEIDL

for a contract rezone of property addressed
1321 N. 45th Street

DPD Project No.:
3014098

Introduction

The applicant seeks a contract rezone for 17,290 square feet of land from Lowrise 3 Residential Commercial (LR3 RC) to Neighborhood Commercial 2 Pedestrian with a 40-foot height limit. The associated project proposal includes a four-to-five-story structure with approximately 158 residential units and 6,110 square feet of retail at grade and parking for approximately 154 vehicles in a below-grade garage.

The public hearing on the rezone application was held on January 17, 2014, before the undersigned Deputy Hearing Examiner. The Director's design review and SEPA decisions for the project proposal were appealed. One SEPA appeal was withdrawn and dismissed. A decision on the remaining appeal is being issued separately this day. Represented at the rezone hearing were the Director, Department of Planning and Development (DPD), by Bruce Rips, Senior Land Use Planner; and the applicant, by Jessica Clawson, attorney at law. The record for the rezone was held open after the hearing for the Examiner's inspection of the site on January 30 and the receipt of closing statements on January 24, 2014, in the associated appeal.

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 addressed as 1321 N. 45th Street, and is located in the Wallingford neighborhood. The rezone site consists of four tax parcels which are part of a larger, nine-parcel site that is bounded by N. 45th Street to the north, N. Allen Place to the south, Interlake Avenue N. to the east and another property to the west.

2. The rezone site comprises approximately 17,290 square feet of a larger 34,790-square foot site. The rezone application involves the four tax parcels which front onto N. 45th Street and are zoned Lowrise 3 Residential Commercial (LR3 RC). The other five

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parcels on the larger development site are zoned Neighborhood Commercial 2 with a 40-foot height limit (NC2-40). The entire site is located within the Wallingford Residential Urban Village.

3. The zoning is NC2P-40 along much of the N. 45th Street corridor in Wallingford from I-5 to Midvale Avenue N. The surrounding zoning is shown at Ex. 2, page 11.

4. Existing development on the larger site includes eight single family homes and a two-story brick mixed-use building that houses apartments and offices. Surrounding uses and development include the University House retirement housing to the south across N. Allen Place, the Lincoln High School site to the southeast, and a three-story building (Walgreens) and surface parking lot immediately to the west. To the east across Interlake Avenue N. and along N. 45th are Smash Wine Bar, Tilth restaurant, a beauty salon, and other small retail and commercial uses. North across N. 45th Street is Archie McPhee, the Boys and Girls Club, Dandelion Salon, Nails and Wax, and Olympia Pizza. Ex. 2, at pages 3 and 12, describes in greater detail the adjacent and nearby properties.

5. Lincoln High School is currently used by the Lowell Elementary APP program. The school site is zoned LR2 and does not comply with the current zoning envelope restrictions, varying in height from 35 feet to 66 feet above the grade of Interlake Avenue North.

Proposal

6. The proposal is for a contract rezone of the four tax parcels fronting N. 45th Street, from LR3 RC to NC2P-40. The applicant has proposed redevelopment of the larger site with a four- or five-story mixed use structure containing 158 residential units, parking for approximately 154 vehicles below grade, and 6,110 square feet of retail use at grade. Three existing curb cuts on the site would be consolidated, and below-grade garage would take access from N. Allen Place. The residential entry would be from Interlake Avenue North. Retail entries would face N. 45th Street. Proposed streetscape improvements include lighting, landscaping, public art, a free library, bicycle racks and benches.

Zoning history

7. The four parcels which make up the rezone site has not been the subject of any recent rezones.

Neighborhood plans

8. The City Council adopted portions of the Wallingford Neighborhood Plan as part of the City's Comprehensive Plan in 1998. The adopted goals and policies include those identified at pages 25-26 of the Director's Report.

9. Seattle City Light and Seattle Public Utilities have indicated that sewer, stormwater, and electrical capacities are sufficient to serve the project. A storm sewer extension will be provided on N. Allen Place to connect the main storm drain in Stone Way.

10. A traffic impact analysis for the associated development project was prepared by the applicant's transportation engineering firm; Ex.29. Additional traffic and parking information was submitted to DPD in response to a correction notice and in response to a public comment.

11. Shadow studies for the project are shown at page 30 of Ex. 2.

DPD Review

12. DPD reviewed the proposed contract rezone and the associated project proposal. DPD issued design review approval for the project, and also issued a Determination of Nonsignificance (DNS) pursuant to SEPA, on December 5, 2013.

Public comment

13. Public comments were submitted to DPD and the Hearing Examiner on the proposed rezone. Many of the comments expressed concerns regarding the associated development project at the site. Residents of University House, which is located directly across N. Allen Place from the southern portion of the development site (which is not sought to be rezoned) have submitted comments expressing concerns with the project's height, bulk and scale, traffic, setbacks, landscaping, and the location of the garage access on N. Allen Place. Residents of University House have appealed the SEPA decision and design review approval for the project at this site, and a decision on the appeal is being issued separately this day.

Codes

14. 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."*

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

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circumstances; the presence of overlay districts or critical areas, and whether the area is within an incentive zoning suffix.

16. SMC 23.34.009 addresses the designation of height limits in a commercial or industrial zone. Under this section, the factors to be considered are the function of the zone; the topography of the area and its surroundings; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.

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.

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 subject site is within the Wallingford Residential Urban Village. The adopted growth targets in the Wallingford RUV are for an additional 400 households and a density of 12 households per acre. The rezone would increase the zoned capacity of the RUV. It would not reduce the zoned capacity to less than 125 percent of the growth targets.

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. The Director's analysis, at pages 31 to 43, compares criteria for several zones with the area's characteristics, and is hereby incorporated by reference.

5. The rezone site is currently zoned LR3 RC. A portion of the larger site is zoned NC2-40, and most of the properties along the commercial corridor of N. 45th Street are zoned NC2P-40. The four parcels which are currently zoned LR3 RC are located in the middle of the commercial corridor along N.45th Street. The parcels do not meet the functional and locational criteria for LR3 RC, and designation to commercial would be consistent with the criteria for designation of commercial zones. However, the NC1 zoning designation, which is for areas of lower density on the periphery of an urban village, would not be consistent with the site's characteristics, as it is within the Wallingford Residential Urban Village, faces onto a minor arterial, and is in an area that

is predominantly zoned NC2 or NC2P. The site best matches the criteria for NC2, and would meet the criteria for a P designation.

6. Under SMC 23.34.009, the height limit of the proposed rezone is to be considered. The site is within the Wallingford Residential Urban Village, so it is currently zoned with a 40-foot height limit, the existing height limit for the LR3 zone. The proposed 40-foot height limit would therefore match the existing height limit and the zoned height limit of adjacent properties. The function of the type and scale of development in the proposed NC2 zone is consistent with a 40-foot height limit. The 40-foot height limit would not result in view blockage, and natural topography is not a factor in this case. The height limit in the area is generally 40 feet, and the existing permitted height limits are compatible with the height and scale of existing development, since much of the existing development, including the Walgreens building, University House and Lincoln High School have been developed to the height limit or even beyond the 40-foot height limit. Gradual transition of the height on the four-parcel site would serve no purpose, as the rezoned property would match the height limit of surrounding areas.

7. Zoning history and precedential effect. The four subject parcels have been zoned LR3 RC for some time. Most of the N. 45th street corridor in the immediate vicinity is already zoned NC2 (see Ex. 2, page 11). There is some property across N. 45th Street from the site which is still zoned LR3 RC, and LR2 zoning to the east across Interlake Avenue, so it is possible that this rezone could encourage rezoning of that property.

8. Neighborhood Plans. The proposed rezone to NC2P-40 is consistent with several goals and policies in the adopted Wallingford Neighborhood Plan. For example, the proposal will be consistent with: W-G1 and W-G4 regarding the vitality of the commercial district; W-G3, W-P19 and W-P21 regarding streets and sidewalks that are exciting and provide pleasant public spaces. The adopted Plan does not include policies expressly adopted to guide future rezones and does not address this site.

9. Zoning principles. Zoning principles are to be considered, including impacts on less intensive zones and transitions, physical buffers, zone boundaries and height limits. The impact of the proposed NC2P-40 zone on less intensive zones is not a factor in this rezone. Most of the properties adjacent to or near the rezone site are zoned NC2P-40 or are developed with commercial uses. A rezone of the four parcels would leave a 25-foot wide gap along N. 45th Street to the west that would remain LR3 RC (this site is occupied by the Walgreens building and its surface parking lot). The rezone site is separated by the adjacent streets from other properties and uses, and the streets would provide adequate transition between uses and intensities of development. The zone boundaries would follow existing platted lot lines, and the current boundaries between commercial and residential areas remain unchanged on account of this rezone (the portions of the site which are already zoned NC2P-40, would retain residential uses on the portions of the site facing south towards the University House property (which is zoned NC2P-40, but which is developed with residential uses). The site is within an urban village where

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heights greater than 40 feet may be appropriate, but the proposed height limit would be 40 feet, consistent with the height limits found along the N.45th Street corridor.

10. Impact evaluation. The impacts of a rezone are to be considered. Impacts on housing are to be considered. The proposed rezone, under the development proposal, would replace eight single family residences with approximately 158 units of market-rate apartments. The applicant intends to utilize the City's Multifamily Tax Exemption (MFTE), so units will be subject to affordability requirements of the MFTE. Impacts on public services are not a factor, as the area is within an urbanized area with adequate services.

11. As for environmental factors, the Director's SEPA analysis and decision have determined that no probable significant environmental impacts would be caused by the project associated with the entire site, including the area to be rezoned. No exceptional trees are located on the site. Noise, air and water quality, glare, odors, shadow or energy conservation are not factors in this rezone. The project would reduce the existing number of curb cuts on the site, and add street improvements that would be positive factors for pedestrian safety.

12. The project entails addition of a garage access on N. Allen Place, and this has been the subject of attention, particularly for residents of University House directly across N. Allen Place. Their comments have urged that the garage access be placed on Interlake Avenue North, but the traffic analyses indicate that placing the access at this location will pose fewer conflicts with other traffic and with pedestrians than would an access point on Interlake. Manufacturing activity is not a factor in this rezone. Employment activity could be affected, as the rezone to NC2P-40 allows for larger commercial spaces than does the LR RC zone. There are no designated historic/landmark sites or buildings nearby, and the site is not within a shoreline district.

13. Service capacities. Development associated with this proposed rezone would not exceed the service capacities for the area. The levels of service at nearby intersections would not be degraded by the proposal. The residential parking demand generated by the project would be met by the quantity of off-street parking provided. Commercial parking demand can be met by available on-street parking capacity, and the area is within a frequent transit corridor. The utility and sewer capacities are adequate to serve the project, and the site is not within a shoreline area.

14. Changed circumstances. Changed circumstances are to be taken into account, but are not required to demonstrate whether a proposed rezone is appropriate. There are no specific changed circumstances in this case, although the Director has noted that several newer mixed use projects have been developed in the immediate neighborhood; Ex. 11, page 29.

15. Overlay districts. The site is not within an overlay district.

16. Critical areas. There are no environmental critical areas on or adjacent to the site, so this criterion does not apply.
17. Incentive provisions. The site is not located within a zone with an incentive zoning suffix, so this criterion does not apply.
18. On balance, the proposed rezone meets the provisions of Chapter 23.34. Therefore, the Examiner recommends approval of the proposed rezone with the condition set forth below.

Recommendation

The Hearing Examiner recommends APPROVAL of the rezone with a PUDA requiring substantial conformance with the approved plans for master use permit 3014098.

Entered this 10th day of February, 2014.



Anne Watanabe
Deputy Hearing Examiner

The following conditions are included in the Director's MUP decision dated December 5, 2013:

Design Review

Prior to MUP issuance

Revise plan sets to show

1. Eliminate the proposed curb bulb on N. Allen that extends, at mid-block, into the street.
2. Add the following elements to foster community interaction and anchor the northeast corner: break the stem wall to provide permeability and add benches to the same wall; place a tree near the corner; vary the paving materials and the plant selection; set back the storefront windows by eight inches from the masonry; and ensure a well-designed kiosk.
3. Vary the type of metal fencing along N. Allen Place and Interlake Avenue North.

Prior to Building Application:

4. Include the departure matrix in the zoning summary section on all subsequent building permit plans. Add call-out notes on appropriate plan and elevation drawings in the updated MUP plans and on all subsequent building permit plans.

Prior to Commencement of Construction:

5. Arrange a pre-construction meeting with the building contractor, building inspector, and land use planner to discuss expectations and details of the Design Review component of the project.
6. Approval of the mural or art on the west elevation requires that the owner/developer include the Wallingford community in the selection of or decision-making for the art.

Prior to issuance of all construction permits:

7. Embed the MUP conditions in the cover sheet for all subsequent permits including updated building permit drawings.

Prior to issuance of a certificate of occupancy:

8. Compliance with all images and text on the MUP drawings, design review meeting guidelines and approved design features and elements (including exterior materials, landscaping and ROW improvements) shall be verified by the DPD planner assigned to this project (Bruce P. Rips, 206.615-1392). An appointment with the assigned land use planner must be made at least five (5) working days in advance of field inspection. The land use planner will determine whether submission of revised plans is required to ensure that compliance has been achieved.

SEPA conditions:

Prior to issuance of building permit:

9. A transportation route plan shall be provided to DPD and SDT; this plan shall document proposed truck access to and from the site, and shall indicate how pedestrian connections around the site will be maintained during the construction period.
10. Provide a construction worker parking plan with the intent to reduce on-street parking. Construction workers may park on-site once the garage is completed.

The applicant shall submit a construction noise mitigation plan, construction worker parking plan, construction traffic management plan (as described on pages 45-47 of the DPD MUP decision dated December 5, 2013).

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.

