

MEMORANDUM

To: Councilmember Rob Johnson, Chair
Councilmembers Mike O'Brien and Lisa Herbold, Members
Planning, Land Use and Zoning Committee

From: Lish Whitson, Legislative Analyst

Date: February 21, 2017

Subject: Clerk File 314115, Rezone of 743 N 35th Street

This memorandum (1) provides an overview of the application to rezone 743 N 35th Street in the Fremont Neighborhood; (2) describes the contents of a proposed Council decision document to be added to Clerk File 314115, which would grant the rezone application; and (3) describes the contents of a bill, which would amend the Official Land Use Map, also known as the zoning map, to effectuate the rezone, and accept a Property Use and Development Agreement (PUDA) limiting future development.

Overview

In 2014, Robert Hardy applied for a contract rezone of an approximately 9,314 square foot site located on the south side of N 35th Street between Fremont Avenue N and Troll Ave N. The rezone area is adjacent to the east from the Fremont branch of the Seattle Public Library. The Applicant requested a rezone of the site from Neighborhood Commercial 3 with a 40-foot height limit (NC3-40) to Neighborhood Commercial 3 with a 65-foot height limit (NC3 65). In 2015, a Pedestrian designation was added to the site, and the current zoning is NC3P-40. The proposed zoning is now NC3P-65. Also, following the initial application, the applicant of record has changed and is now listed as Bradley Khouri, B9 Architects.

The rezone would facilitate the development of a four-story structure that includes 54 residential units, 1,915 square feet of retail space at ground level, below-grade parking for 10 vehicles and 54 covered and secured bicycle stalls in the parking garage. The project will create a mix of housing units by providing five 2-bedroom units and 49 1-bedroom units. Mandatory Housing Affordability requirements are proposed at a rate of 6 percent of total units or \$13.25 a square foot. This reflects the standard requirement for projects in medium-cost areas.

The rezone would allow a building up to 65 feet. The proposed design and conditions to be placed on the project would limit the height increase to eight feet taller than allowed by current zoning along the north property line. The additional floors resulting from the rezone would facilitate the development of 14 of the residential units.

The Applicant filed a rezone petition on September 15, 2014. On September 19, 2016, the Seattle Department of Construction and Inspections (SDCI) issued an affirmative rezone recommendation, State Environmental Policy Act decision, and design review decision. The Hearing Examiner held an open record hearing on the rezone recommendation on

November 21, 2016. On December 16, 2016, the Hearing Examiner issued her recommendation to Council to approve the rezone subject to a PUDA. No appeal of the Hearing Examiner's decision was filed with the City Clerk.

Type of Action and Materials

This rezone petition is a quasi-judicial action. Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication. Council decisions must be made on the record established by the Hearing Examiner.¹

The Hearing Examiner establishes the record at an open-record hearing. The record contains the substance of the testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing. Key images from these exhibits were provided at for the February 7 PLUZ Committee meeting, and can be seen [here](#). The entire record, including audio recordings of the Hearing Examiner's open record hearing, are available for review in my office.

Following the February 7 PLUZ Committee meeting, I sent out a notice of ex parte communication to the parties of record. If they wish to rebut the ex parte communication, they have until the morning of the 24th to provide written letters of comment. I will share any such letters with the Committee members when and if I receive them.

Committee Decision Documents

To approve a contract rezone the Council must make recommendations to the Full Council on two pieces of legislation: (1) a Council Findings, Conclusions and Decision for Clerk File 314115 that would grant the rezone application and other changes to the Clerk File and (2) a bill amending the zoning map and accepting a PUDA.

1. Clerk File 314115

The Clerk File for this rezone contains the Hearing Examiner's record for the proposal.

Based on changes to the proposal since the Clerk File was originally introduced, the Committee should amend the title of Clerk File 314115 to reflect the project as currently configured, as follows (shown with new language underlined and language to be removed ~~struck out~~):

Application of ~~Robert Hardy~~ Bradley Khouri, B9 Architects, for a contract rezone at 743 N. 35th Street from Neighborhood Commercial 3 Pedestrian-40 (NC3P-40) to Neighborhood Commercial 3 Pedestrian-65 (NC3P-65) to allow a five-story structure containing ~~5654~~ residential units above ground-floor retail space in an environmentally critical area (Project No. 3016369, Type IV).

¹ Seattle Municipal Code (S.M.C.) § 23.76.054.E.

Council staff has drafted proposed Council Findings, Conclusions and Decision, which:

1. Would adopt the Hearing Examiner's findings and recommendation to adopt the rezone with conditions,
2. Recognize voluntary commitments the applicant has made to provide art on the side of the building and make improvements to the landscaped area between the proposed new building and the Fremont Branch of the Seattle Public Library on the Library's property, and
3. Establish two of the conditions laid out in the Hearing Examiner's recommendation, regarding affordable housing and consistency with the approved plans. Conditions related to the commitments listed under 2, above, are not directly related to the impacts of the rezone and cannot legally be required the Council.

The Committee may recommend adoption of the Findings, Conclusion and Decision as drafted; recommend against the rezone; or amend the Findings, Conclusion and Decision document.

2. Council Bill and Property Use and Development Agreement (PUDA)

If the Committee is supportive of the proposed rezone with the conditions laid out in the draft Findings, Conclusions and Decision, I will work to introduce and refer a Council Bill to amend the zoning map and approve a PUDA. That bill will be referred directly to Full Council. I will also work with the applicant to record the final PUDA reflecting the Committee's direction. The PUDA would incorporate the following conditions recommended by the Hearing Examiner:

- Development of the site would be subject to requirements of SMC Chapters 23.58B and 23.58C. including a payment of \$13.25 for affordable housing or inclusion of 6% affordable units;
- Development of the property in substantial conformance with the approved plans.

If the final, recorded PUDA is not be available at the time of introduction, and will need to be substituted when the Committee votes at Full Council.

Next Steps

If PLUZ recommends approval of the proposed Findings, Conclusions and Decision, the bill to finalize the rezone should be ready for a Full Council vote on March 13, 2017.

Attachments:

1. The Hearing Examiner's recommendation to approve the rezone with conditions;
2. Proposed Council Findings, Conclusions and Decision; and
3. A draft Council Bill to adopt the rezone and accept a Property Use and Development Agreement.

cc: Kirstan Arestad, Central Staff Director
Ketil Freeman, Supervising Analyst

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

In the Matter of the Application of

CF 314115

BRADLEY KHOURI, B9 ARCHITECTS

Department Reference:
3016369

for a contract rezone for property located
at 743 N 35th Street

Introduction

Bradley Khouri, B9 Architects applied for a rezone of property located at 743 N 35th Street from Neighborhood Commercial Three Pedestrian-40 to Neighborhood Commercial Three Pedestrian-65. The Director of the Department of Construction and Inspections ("Director") submitted a report recommending that the rezone be approved. The Director's report included a SEPA Determination of Non-significance with recommended conditions and design review approval, which were not appealed.

A hearing on the rezone application was held before the Hearing Examiner on November 21, 2016. The Applicant was represented by Joshua Brower attorney-at-law, and the Director was represented by Lindsay King, Land Use Planner. Following the Hearing Examiner's site visit, and submission of additional comments by the Department, the record closed on November 30, 2016.

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 reviewed the site, the Hearing Examiner enters the following findings of fact, conclusions, and recommendation on the rezone application.

Findings of Fact

Site and Vicinity

1. The subject site is located midblock on the south side of N 35th Street between Troll Avenue and Fremont Ave N. The site contains one parcel with an existing one story office building. To the west is the Fremont Public Library, a City of Seattle landmark structure. The library parcel also contains an existing Exceptional Tree located along the shared property line. To the north are existing single family and multifamily structures. To the east is an existing two story commercial structure. To the south across the alley a new structure is currently being built approximately to the full sixty-five-foot height of that NC3P-65 zoned property. *See Exhibit 5.*
2. The proposal's neighborhood, located within the Fremont Hub Urban Village, includes multifamily housing, community services, restaurants, and shopping. One block to the west is Fremont Avenue N which is a major vehicular, transit and pedestrian hub. Development along

Fremont Avenue N consists of several multi-story multifamily mixed use structures and one story commercial structures. To the east is the Aurora Bridge, a landmark structure, which includes the Fremont Troll. Uses along N 35th Street are varied and include single family homes, multifamily apartment buildings, multi-story mixed used buildings and commercial structures with generous street setbacks containing mature vegetation. The majority of buildings along N 35th Street are between one and two stories with a few three and four story structures. Within walking distance from the site, services include restaurants, grocery stores, shopping, library and parks. Natural amenities in the area include Lake Union.

3. The subject site and properties to the east and west are zoned Neighborhood Commercial Three with a forty-foot height limit (“NC3-40”). Lots to the south are zoned Neighborhood Commercial Three with a sixty-five-foot height limit (“NC3-65”). Lots to the north are zoned Lowrise Two (“LR2”) multifamily. Zoning along N 35th Street is primarily NC3-40.
4. Generally, the Fremont neighborhood slopes from north down to the south, towards Lake Union. The subject property includes an approximately 27-foot grade change from the north property line down to the south property line. Exhibit 11. The existing zoning transition pattern in this area does not necessarily reinforce the natural topography of the area. Zoning to allow taller buildings is typically closer to Lake Union, with lower height zoning applied as properties gain in elevation. Due to existing development and vegetation, there are no views of Lake Union available to pedestrians standing across the site from N 35th Street. There are no nearby public parks with views to Lake Union across the subject property.
5. Fremont Avenue N is a major Metro bus corridor providing service from Downtown Seattle to many districts north of Lake Union. The Burke Gilman Trail is located one block to the south, providing pedestrian and bicycle access to the University of Washington and Ballard with connections to multiple locations. N 35th Street is designated as collector arterial street.

Zoning History and Potential Zoning Changes

6. The project site became a part of the City of Seattle with the annexation of 1891 which included the neighborhoods of Fremont, Green Lake, Eastlake, and North Queen Anne among others. In 1923, the City of Seattle adopted Ordinance 45382 which established regulations on the height and size of buildings. The project site was designated a Second Residence District, and the subject parcel had a height limit of 65 feet. Under the provisions of Ordinance 86300, which governed issues of land-use after it passed in 1957, a General Commercial designation limited the height of construction to 60 feet. Ordinance 88466, passed in 1959, established the subject parcel as well as several adjacent parcels (including the Fremont Public Library) as “General Commercial.”
7. With the passage of Ordinance 110381, the City of Seattle established Title 23 in the Seattle Municipal Code. Starting with Residential Zones, the City began to adopt in phases a new Land Use Code. The zoning designation of the project parcel, initially “Mixed Use Area” in 1981, was developed as a part of the business and commercial zone phase of the policy development. By the time the 1988 zoning map was published, the project had been designated as NC3-40, the current zoning designation.

8. In 2015, the commercial zones across the City were updated through ordinance 124770, which added a Pedestrian designation to N 35th Street.
9. The Director reports that there are no City initiated zoning changes proposed for the Fremont neighborhood or sites surrounding the subject property.

Neighborhood Plan

10. The proposed rezone property is located within the Fremont Hub Urban Village Overlay, and is covered by the adopted portions of the Fremont Neighborhood Plan. The growth target listed for this Hub Urban Village in the Urban Village Appendix A of the Comprehensive Plan is 500 additional dwelling units between 2004 and 2024.
11. The adopted portions of the Fremont Neighborhood Plan do not include any policies related to future proposed rezones. However, other sections of the adopted Fremont Neighborhood Plan include policies for future development that are related to design and zoning regulations. F-P3 encourages “the development of public art, cultural amenities, and unique design treatments consistent with Fremont’s character for the enjoyment and enrichment of users.” F-P4 seeks to “provide street amenities that will create an attractive urban environment and that recognize the importance of both vehicular and pedestrian uses.” Both F-G4 and F-P10 call for consideration of view protection, calling for “[a] neighborhood that encourages the retention of important scenic view opportunities throughout the neighborhood,” and “to protect public view corridors and scenic opportunities throughout Fremont” respectively. Several of the Housing Goals and Policies are relevant to the proposal including F-G6 which calls for “a mix of housing affordability and types,” F-P16 which encourages “the development of housing in commercial areas,” and F-P24 which encourages “high density housing to locate in mixed-use areas” close to transit corridors. F-P21 encourages “neighborhood design quality, creativity, and character consistent with Fremont neighborhood design guidelines.” For transportation, F-P32 calls for development to “establish safe and convenient pedestrian circulation to, from, and within the downtown Fremont commercial area.” The Fremont Art Goals and Policies, also inform zoning and development. *See e.g.* F-G20, F-G21, F-G22 and F-P42.

Proposal

12. The Applicant seeks to have the property rezoned from NC3P-40 to NC3P-65 with a property use and development agreement ("PUDA"). The terms of the PUDA are not disclosed in the record before the Examiner. The Applicant proposes to construct a four-story structure that includes 54 residential units, 1,915 square feet of retail space at ground level, below-grade parking for 10 vehicles, and covered and secured bicycle stalls in the parking garage. The additional floors resulting from the proposed rezone would allow for 14 of the residential units. *See Exhibits 16 and R26.* The existing structure would be demolished. The project will create a mix of housing units by providing five 2-bedroom units in addition to the 1-bedroom units comprising the remainder of the proposal. The PUDA will ensure that the provisions of Chapters 23.58B SMC and 23.58C SMC will apply to the project proposal. Participation by the Applicant in the program under Chapter 23.58C SMC will yield affordable housing within the project or an equivalent in lieu payment. *See Exhibit 26.*

13. The proposed rezone would result in a building eight feet taller than allowed by current zoning along the higher north property line. The majority of the structure will be located adjacent to the south property line, the low point of the site located adjacent to the same zoning height requested - 65 feet. The proposed rezone would result in a north to south zoning transition that reflects similar transitions within the immediate area.
14. The proposal was reviewed by the Northwest Design Review Board ("DRB"). The DRB recommended a design with specific strategies to reduce the impacts of additional height, bulk, and scale to the adjacent sites. The DRB unanimously recommended approval of the proposal, including requested development standard departures, with the condition: "Work with SDOT to include visitor bike parking within the right-of-way." In response to this condition, the Applicant updated its plans to reflect a proposed bike rack in the right-of-way, and has applied to SDOT for this proposed use.
15. The Applicant met multiple times with the Seattle Public Library to discuss and plan project conditions related to the Fremont Branch Library which is located to the west of the proposal. The focus of these discussions has been to enhance the setback space between the proposal and the Library site on the Library property to provide a visual connection between the two buildings. Exhibit 8 at Exhibit A.
16. The Landmarks Preservation Board ("Board") reviewed the proposal in the context of the Fremont Library and the George Washington Memorial/Aurora Bridge. The Board (1) found the proposal "would not appear to significantly affect sightlines from public rights-of-way along North 35th Street either to, or from both landmarks," (2) determined that "the increased sun and shadow effect of the proposed building on the Fremont Library appears to be relatively small," and (3) encouraged "careful attention to the detailing of the shared plaza space" between the proposal and the Library. The Board required no additional mitigation. Exhibit 8 at Exhibit B.
17. The Applicant had several meetings with the Fremont Neighborhood Council. Based on these meetings the Applicant agreed to (1) add additional art to the proposed structure on the west side of the building, with a proposed budget for both installations of \$75,000, (2) reduce the overall unit count from 56 to 54 and increase the number of two-bedroom units from one to five, (3) increase the amount of bike parking in the garage to provide one secure bike parking stall per unit, for a total of 54 secure spaces, and (4) revise the project design to include a vestibule interior to the structure's lobby that visually connects the two retail spaces at the street level, and provides physical access between the lobby and the two commercial spaces.
18. A traffic and parking study for the proposal, prepared by William Popp Associates, showed that the proposal would result in a net increase of 226 daily vehicle trips, including 7 additional AM peak hour trips and 14 additional PM peak hour vehicle trips. Exhibit 22.
19. A parking utilization study was also completed for the proposal. The parking analysis estimated that the site could generate a peak evening parking demand of 30 vehicles, and a peak daytime parking demand for 21 vehicles. Exhibit 23. The proposal includes underground parking for a total of ten spaces. Taking into consideration the parking provided by the proposal, the parking

analysis estimated that the proposal would add up to 20 vehicles to on-street parking during the evening, and 11 vehicles to on-street parking during mid-day. Exhibit 22 at 10.

20. A Steep Slope Environmentally Critical Area (“ECA”) is located on the south portion of the site. PanGeo Incorporated performed a geological engineering study of the site, and issued a report for the proposal. Exhibit 19. The Director determined from the report that the proposal qualified for a limited exemption for this ECA, and that the City’s existing Grading and Stormwater Codes will sufficiently mitigate adverse impacts to the ECA. Exhibit 26.
21. The Applicant performed a study of the shadow impacts of potential build-out under the existing NC3P-40 zoning, and considered three different designs under NC3P-65 zoning. Exhibit 3. The study shows that shadow impacts are nearly the same between build-out under existing zoning, and for the proposal under NC3P-65 zoning.
22. One Exceptional Tree - a 44-inch big leaf maple - is located on the adjacent Fremont Public Library site. The proposal includes retention of the Exceptional Tree. The Applicant’s arborist report concluded that the proposed building and the Exceptional Tree can coexist, because the tree’s primary root zone is not located within the proposed building footprint.
23. The Applicant provided a view impact analysis showing the proposed development in relation to designated public views. Exhibit 3. The analysis concluded that the proposed development will not block any existing public views of Lake Union along the George Washington Memorial/Aurora Bridge, and does not block views of any nearby historic landmarks beyond what would occur under existing zoning. Some obscured views of Lake Union and the George Washington/Aurora Bridge are visible from private properties uphill to the north. However, the majority of the private property views would be blocked by development built to the current maximum zoning at the site.

Public Comment

24. A number of public comments were received during the design review process for the proposal. They are summarized in the Director's Report, Exhibit 26, at 4-5. The Director received several additional public comments on the proposed rezone. Exhibit 1. The Hearing Examiner received one public comment letter. Exhibit 1.
25. Many of the issues raised in early comments were addressed by the Applicant during, and following the design review process.
26. The issues raised in comments received following the design review process were concerns that the proposed project fails to fit in with the existing neighborhood character and a desire to maintain that character, concerns with private and public view blockage, concerns with the bulk of the proposed project relative to existing buildings, and concerns with insufficient on-street parking in the area and the limited number of parking stalls proposed for the project.

Director's Review

27. The Director reviewed the Northwest Design Review Board's recommendations and agreed that "the proposed project and conditions imposed result in a design that best meets the intent of the Design Review Guidelines" and accepted the recommendations noted by the Board. The Director approved the design subject to three design review conditions. Exhibit 26 at 11-12, and 37.
28. The Director also analyzed the proposal's potential long-term and short-term environmental impacts, and recommended conditions to mitigate construction-related impacts.
29. The Director's report, Exhibit 26, analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

30. SMC 23.34.008 provides 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 and 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 incentive zoning suffix.
31. When, as in this case, a rezone includes consideration of height limits in commercial or industrial zones, SMC 23.34.009 prescribes additional criteria to be considered, including the function of the zone, topography of the area and surroundings, height and scale of the area, compatibility with the surrounding area, and neighborhood plans.
32. SMC 23.34.007.C provides that compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones, but the Comprehensive Plan may be considered where appropriate.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.052, and makes a recommendation on the proposed rezone to the City Council.
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.
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.

Effect On Zoned Capacity

4. SMC 23.34.008 requires that, within an urban center or urban village, the zoned capacity, taken as whole, is to be no less than 125 percent of the applicable adopted growth target, and not less than the density established in the Comprehensive Plan. The established density target for the Fremont Hub Urban Village in the Urban Village Appendix A of the Comprehensive Plan is 12 dwelling units per acre by the year 2024. In 2004, the density in this Urban Village was listed at 10 dwelling units per acre. The proposed rezone would increase both zoned capacity and zoned density and thus, meets the requirements of SMC 23.34.008.

Match Between Zone Criteria and Area Characteristics

5. 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. In this case, the site is already zoned NC3, and the rezone would retain that zoning designation. The site currently matches the NC3 zone function and locational criteria, found in SMC 23.34.078,¹ so the designation remains appropriate.

Neighborhood Plan/Precedential Effect

6. The development is consistent with the portions of the Fremont Neighborhood Plan listed in Finding 11 above. The proposal is consistent with those Neighborhood Plan goals concerning retention of important public scenic views, development of art and cultural amenities, provision of residential housing in mixed-use areas, and providing amenities and establishing safe and convenient circulation for pedestrians.
7. It is not clear that the proposal would have a precedential effect. Instead, the proposal is part of an ongoing pattern of diverse development heights and uses in the Fremont neighborhood.

¹ 23.34.078 - Neighborhood Commercial 3 (NC3) zones, function, and locational criteria.

A. Function. To support or encourage a pedestrian-oriented shopping district that serves the surrounding neighborhood and a larger community, citywide, or regional clientele; that provides comparison shopping for a wide range of retail goods and services; that incorporates offices, business support services, and residences that are compatible with the retail character of the area; and where the following characteristics can be achieved:

1. A variety of sizes and types of retail and other commercial businesses at street level;
2. Continuous storefronts or residences built to the front lot line;
3. Intense pedestrian activity;
4. Shoppers can drive to the area, but walk around from store to store;
5. Transit is an important means of access.

B. Locational Criteria. A Neighborhood Commercial 3 zone designation is most appropriate on land that is generally characterized by the following conditions:

1. The primary business district in an urban center or hub urban village;
2. Served by principal arterial;
3. Separated from low-density residential areas by physical edges, less-intense commercial areas or more-intense residential areas;
4. Excellent transit service.

Zoning Principles

8. The zoning principles listed in SMC 23.34.008.E are generally aimed at minimizing the impact of more intensive zones on less intensive zones, if possible. They express a preference for a gradual transition between zoning designations, including height limits, if possible, and potential physical buffers to provide an effective separation between different uses and intensities of development.
9. The rezone proposal does not include any changes to the existing zoning designation. The existing pattern of lowrise zoning, commercial and industrial zoning will continue to exist. The proposed rezone does propose a change from the existing 40-foot height limit to 65 feet in height.
10. The Fremont neighborhood includes many zoning designations including multifamily, commercial, and industrial zones of varying intensity and heights, and many transitions in zoning intensity and height. In immediate proximity to the subject property, industrial zones are located adjacent to commercial zones, and commercial zones are located adjacent to residential zones. There are multiple examples of a 40-foot height zone located adjacent to a 65-foot height zone. In some instances, the transition does include buffers, such as a right-of-way street or alley, but in many instances the transition occurs along a shared property line.
11. There is some effective separation between the proposal and adjacent and nearby properties provided by topographic changes, existing mature vegetation, and adjacent streets/alley to the north and south. No physical buffer is present at the east edge.
12. The rezone has been reviewed by the Director who concluded the proposed building would cause some additional height to be visible above that of what is currently allowed by the NC3-40 zoning, but it does not appear to significantly affect sightlines from public rights-of-way along North 35th Street.
13. The proposed rezone would maintain the existing pattern of commercially zoned properties facing multifamily properties across the street on N 35th Street. It will not create a new boundary between commercial and residential areas.

Impact Evaluation

14. The proposed rezone would positively impact the housing supply, as it would add 54 new residential units, including several family sized units added to the proposal as a result of discussions with the Fremont Neighborhood Council.
15. Although the proposal would increase the demand for public services, the increase would be minimal. There is no evidence in the record that the demand would exceed service capacities. In particular, street access, street capacity, transit service and parking capacity were shown to be sufficient to serve the additional units that would be allowed by the rezone. The Director has evaluated impacts on public services and service capacities, as well as noise, historic preservation, transportation, and other environmental impacts, pursuant to SEPA, and has identified conditions to mitigate impacts that are not otherwise adequately addressed through existing regulations. As

noted, height, bulk and scale impacts, including shadow impacts, were reviewed and addressed through the design review process.

16. The proposal is located just over two blocks from the shoreline of Lake Union and will have no impact on public access to the shoreline or recreation. Some private views of the lake would be blocked by the proposal, but the view blockage would not exceed that caused by development under existing zoning.

Changed Circumstances

17. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. The adoption of the 1994 Comprehensive Plan and subsequent updates, the designation of the Fremont Hub Urban Village, and the adoption of the 2024 growth target for Fremont Hub Urban Village (2004) are all circumstances that have changed since the most recent zoning change for this area in 1988.

Overlay Districts

18. The proposed rezone is not located within any of the overlay districts included in Chapters 23.60 A through 23.74 SMC.

Critical Areas

19. As noted above, a geological engineering study of the site was performed, and the Director determined that the proposal qualified for a limited exemption for this ECA, and that the City's existing Grading and Stormwater Codes will sufficiently mitigate adverse impacts to the ECA. Exhibit 26.

Height Limits

20. The proposed rezone would allow an additional 25 feet in zoned height. SMC 23.34.009 addresses the designation of height limits for proposed rezones. The issues to be considered include the function of the zone; the topography of the area and its surroundings, including view blockage; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.
21. Function of the zone. Height limits are to be consistent with the type and scale of development intended for the zone classification, and the demand for permitted goods and services and potential for displacement of preferred uses are to be considered. The proposed mixed-use project is consistent with the type and scale of development intended for the NC3-65 zone in urban centers, as discussed above. There will be no displacement of preferred uses.
22. Topography of the area. Heights are to "reinforce the natural topography of the area and its surroundings, and the likelihood of view blockage" is to be considered. The existing zoning transition pattern in this area does not necessarily reinforce the natural topography of the area. Zoning to allow taller buildings is typically closer to Lake Union, with lower height zoning applied as properties gain in elevation. The proposed rezone is not consistent with this pattern.

As discussed above, the Applicant's analysis concluded that the proposed development will not block any existing public views of Lake Union along the George Washington Memorial/Aurora Bridge, and that the proposed development does not block public views of any nearby historic landmarks beyond what would occur with the existing zoning designation. The majority of the private property views that would be blocked by the proposal would also be blocked by any development built to the current maximum zoning of the site.

23. Height and scale of the area. The height limits established by current zoning in the area are to be considered. In general, 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." SMC 23.34.009.C.

The proposed development would be consistent with the predominant height and scale of nearby newer development, which is representative of the area's overall development potential. Early to mid-20th century development in the area tends to be two to four stories tall (with an estimated 20-45-foot range). Later 20th century and recent development tends to be four to six stories tall (with an estimated 40-65 foot range). The older one to two story development is not representative of the development potential for zoning in this area. The four to six story multi-family residential buildings are closer in height to the area's overall development potential. There are several examples of both types of development in the block's immediate vicinity.

24. Compatibility with surrounding area. Height limits are to be compatible with actual and zoned heights in surrounding areas. In addition, a gradual transition in height and scale and level of activity between zones is to be provided unless major physical buffers are present. The requested height limit of 65 feet would be compatible with the actual and zoned heights in the surrounding area, and consistent with the transition of zoned heights and scale of development in the area. As discussed above, zoning patterns in the neighborhood do not follow a gradual transition in height and scale.
25. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC3P-65 with a PUDA.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone subject to a PUDA that incorporates the final approved Master Use Permit drawings for the proposal and the following conditions:

Prior to Issuance of a Master Use Permit

1. Development of the rezoned property shall be subject to the requirements of SMC Chapters 23.58B and 23.58C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying Chapter 23.58C. For purposes of applying SMC 23.58C.040.A, the payment amount per square foot shall be \$13.25, and for purposes of applying SMC 23.58C.050.A, the percentage set aside shall be 6 percent.

Prior to Issuance of a Building Permit

2. Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3016369.
3. Prior to the building permit issuance for the Fremont Public Library site improvements, the applicant shall obtain approval from the Landmarks Preservation Board and the property owner. The proposed site improvements include modification to the parking area, book drop, trash and recycling area, exterior stairway, and landscaping.
4. Prior to the building permit issuance for the art installation along the east property line, the applicant shall obtain approval from the Department of Neighborhoods.

Prior to Certificate of Occupancy

5. Prior to the Certificate of Occupancy for the development addressed at 743 N 35th Street, the Fremont Public Library site improvements shall be installed per the approved building permit plans.
6. Prior to the Certificate of Occupancy for the development addressed at 743 N 35th Street, the \$75,000 art installation along the west and east property line facades shall be installed per plans.

The Director has recommended the following SEPA conditions:

Prior to Issuance of Demolition, Excavation/Shoring, or Construction Permit

1. Provide a Construction Management Plan that has been approved by SDOT. The submittal information and review process for Construction Management Plans are described on the SDOT website at: <http://www.seattle.gov/transportation/cmp.htm>.
2. The owner and/or responsible parties shall provide SDCI with a statement that the contract documents for their general, excavation, and other subcontractors will include reference to regulations regarding archaeological resources (Chapters 27.34, 27.53, 27.44, 79.01, and 79.90 RCW, and Chapter 25.48 WAC as applicable), and that construction crews will be required to comply with those regulations.
3. The plans shall show the tree preservation plan, consistent with the Greener TreeWorks LLC dated April 17, 2014 report on file with SDCI.

During Construction

If resources of potential archaeological significance are encountered during construction or excavation, the owner and/or responsible parties shall:

4. Stop work immediately and notify SDCI (Lindsay King (206) 684-9218 lindsay.king@seattle.gov) and the Washington State Archaeologist at the State Office of Archaeology and Historic

Preservation (OAHP). The procedures outlined in Appendix A of Director's Rule 2-98 for assessment and/or protection of potentially significant archeological resources shall be followed.

5. Abide by all regulations pertaining to discovery and excavation of archaeological resources, including but not limited to Chapters 27.34, 27.53, 27.44, 79.01 and 79.90 RCW and Chapter 25.48 WAC, as applicable, or their successors.

The Director has imposed the following design review conditions on the proposal:

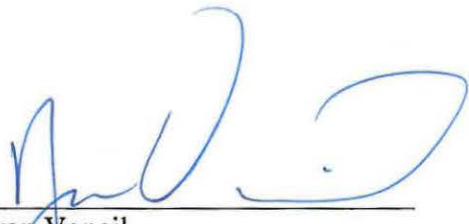
Prior to Certificate of Occupancy

1. The Land Use Planner shall inspect materials, colors, and design of the constructed project. All items shall be constructed and finished as shown at the design recommendation meeting and the subsequently updated Master Use Plan set. Any change to the proposed design, materials, or colors shall require prior approval by the Land Use Planner (Lindsay King (206) 684-9218 lindsay.king@seattle.gov).
2. The applicant shall provide a landscape certificate from Director's Rule 30-2015, indicating that all vegetation has been installed per approved landscape plans. Any change to the landscape plans approved with this Master Use Permit shall be approved by the Land Use Planner (Lindsay King (206) 684-9218 lindsay.king@seattle.gov).

For the Life of the Project

3. The building and landscape design shall be substantially consistent with the materials represented at the Recommendation meeting and in the materials submitted after the Recommendation meeting, before the MUP issuance. Any change to the proposed design, including materials or colors, shall require prior approval by the Land Use Planner (Lindsay King (206) 684-9218 lindsay.king@seattle.gov).

Entered this 16th day of December, 2016.



Ryan Vancil
Deputy 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.

ATTACHMENT 2 – PROPOSED COUNCIL FINDINGS, CONCLUSIONS AND DECISION

**FINDINGS, CONCLUSIONS, AND DECISION
OF THE CITY COUNCIL OF THE CITY OF SEATTLE**

In the matter of the Petition:)	Clerk File 314115
Application of Bradley Khouri, B9 Architects)	FINDINGS, CONCLUSIONS, AND DECISION
)	
For approval of a rezone of property located at 743 N 35 th Street)	
)	
)	

Introduction

This matter involves a petition by Bradley Khouri, B9 Architects (the applicant), to rezone approximately 9,314 square feet of land located at 743 N 35th Street (the “Property”) from Neighborhood Commercial 3 Pedestrian with a 40 foot height limit (NC3P-40) to Neighborhood Commercial 3 Pedestrian with a 65 foot height limit (NC3P 65). Attachment A shows the area to be rezoned.

On September 19, 2016, the Director of the Seattle Department of Construction and Inspections (SDCI) recommended approval of the proposed rezone, with conditions. SDCI also issued a State Environmental Policy Act (SEPA) decision and design review decision.

The Hearing Examiner held an open record hearing on the rezone recommendation on November 21, 2016. On December 16, 2016, after holding the open-record hearing, the Hearing Examiner issued Findings and Recommendation that recommended approval of the rezone, subject to conditions. On February 7, 2017, the Planning, Land Use and Zoning Committee reviewed the record and the recommendations by SDCI and the Hearing Examiner and recommended approval of the contract rezone to the Full Council.

Findings of Fact

The Council hereby adopts the Hearing Examiner's Findings of Fact as stated in the Findings and Recommendation of the Hearing Examiner dated December 16, 2016.

The Council recognizes commitments from the Applicant to install art on the side of the building and to enhance the setback space between the proposal and the Library site on the Library property as described in the Hearing Examiner's Findings of Fact.

Conclusions

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated December 16, 2016.

Decision

The Council hereby **GRANTS** a rezone of the Property from NC3P-40 to NC3P-65, as shown in Exhibit A. The rezone is subject to the execution of a Property Use and Development Agreement requiring the owner to comply with the following conditions, consisting of the following conditions found in the Hearing Examiner's recommendation:

Prior to Issuance of a Master Use Permit

Development of the rezoned property shall be subject to the requirements of SMC Chapters 23.58B and 23.58C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying Chapter 23.58C. For purposes of applying SMC 23.58C.040.A, the payment amount per square foot shall be \$13.25, and for purposes of applying SMC 23.58C.050.A, the percentage set aside shall be 6 percent.

Prior to Issuance of a Building Permit

1. Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3016369.

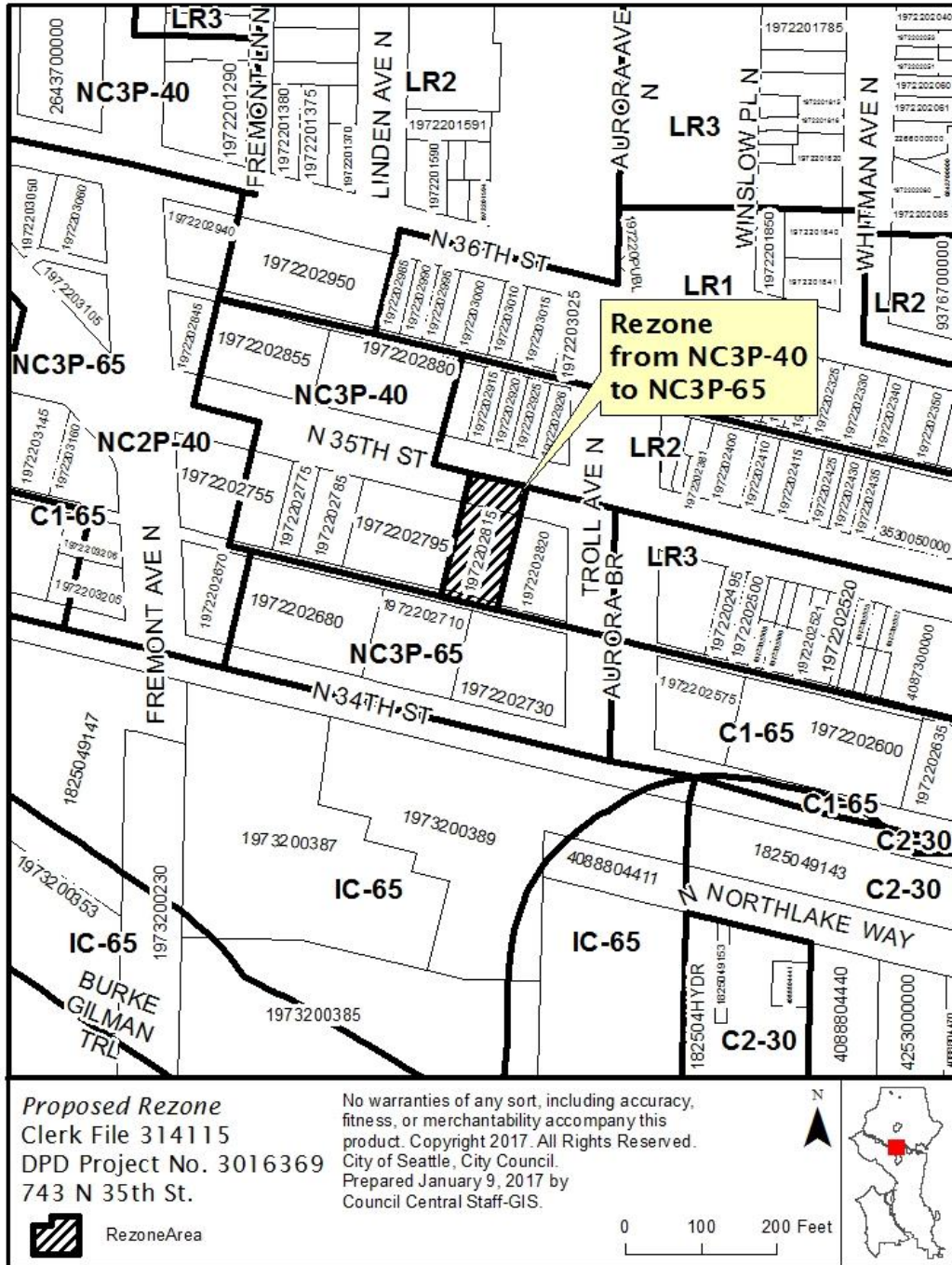
The agreement shall be recorded on the title of the Property. The agreement shall be enforceable by the City in Superior Court.

Dated this _____ day of _____, 2017.

City Council President

PROPOSED

ATTACHMENT A



Lish Whitson
LEG 743 N 35th St Ord
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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 75 of the Official Land Use Map to rezone property located at 743 N 35th Street from Neighborhood Commercial 3 Pedstrian-40 (NC3P-40) to Neighborhood Commercial 3 Pedestrian-65 (NC3P-65), and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by Bradley Khouri, B9 Architects, C.F. 314115, SDCI Project 3016369)

..body

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This ordinance rezones the following legally described property (“the Property”) commonly known as 743 N 35th Street:

PARCEL B, CITY OF SEATTLE SHORT PLAT NUMBER 80-119, RECORDED UNDER RECORDING NUMBER 8010300856 AND REVISED UNDER RECORDING NUMBER 8112280216, IN KING COUNTY, WASHINGTON.

Section 2. Page 75 of the Official Land Use Map, Seattle Municipal Code Section 23.32.016 is amended to rezone the Property described in Section 1 of this ordinance, and shown in Exhibit A to this ordinance, from Neighborhood Commercial 3 Pedestrian with a 40 foot height limit (NC3P-40) to Neighborhood Commercial 3 Pedestrian with a 65 foot height limit (NC3P-65). Approval of this rezone is conditioned upon complying with the Property Use and Development Agreement (PUDA) approved in Section 4 of this ordinance.

Section 3. The zoning designation established by Section 2 of this ordinance shall remain in effect until the Property is rezoned by subsequent Council action.

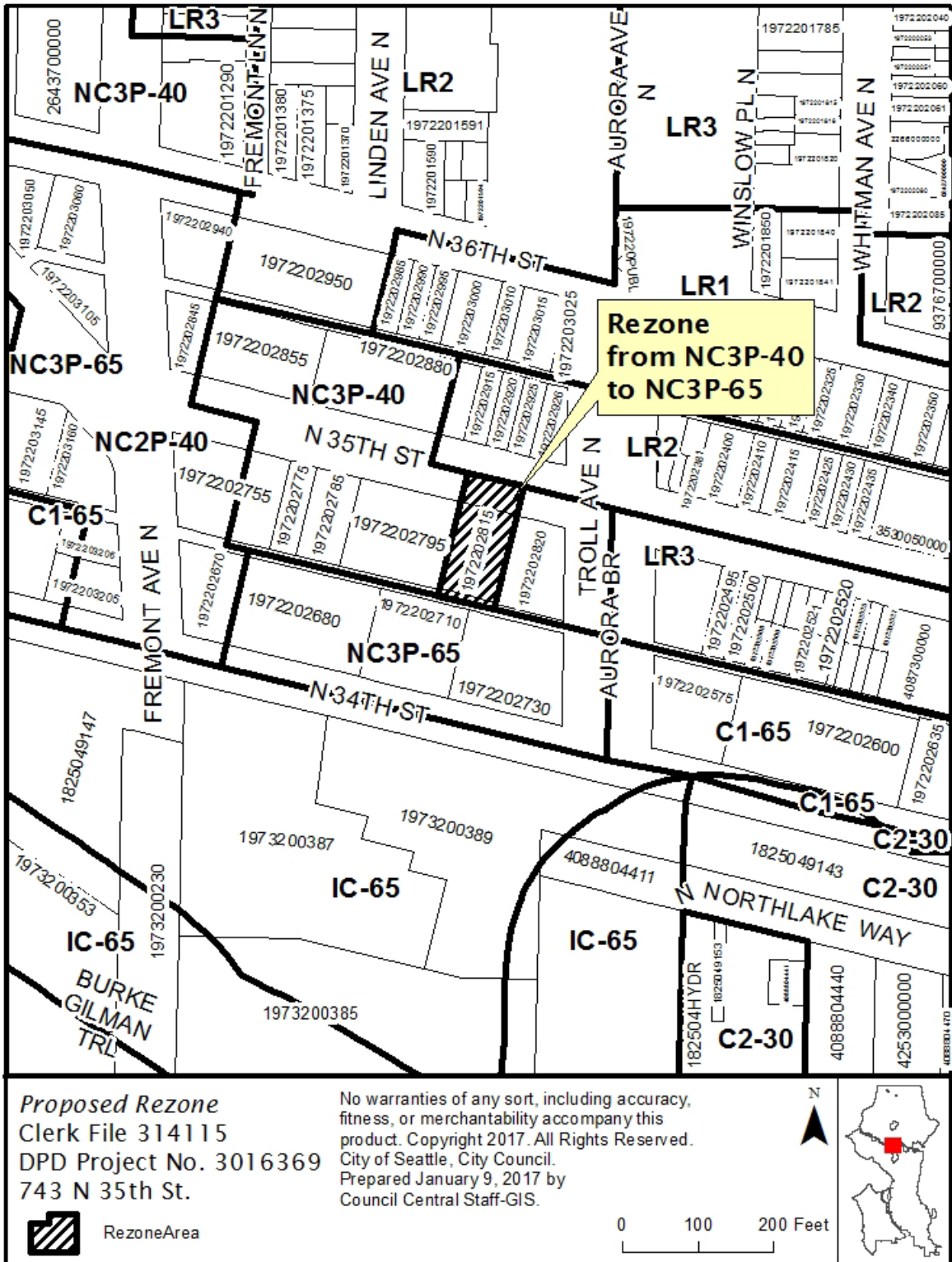
Section 4. The PUDA attached to this ordinance as Exhibit B is approved and accepted.

Section 5. The City Clerk is authorized and directed to file the PUDA approved in Section 4 with the King County Records and Elections Division; to file, upon return of the

1 recorded PUDA from the King County Records and Elections Division, the original PUDA along
2 with this ordinance at the City Clerk's Office; and to deliver copies of the PUDA and this
3 ordinance to the Director of the Seattle Department of Construction and Inspections and to the
4 King County Assessor's Office.

EXHIBIT A

Rezone Map



Property Use and Development Agreement

<i>When Recorded, Return to:</i>	
THE CITY CLERK 600 Fourth Avenue, Floor 3 PO Box 94728 Seattle, Washington 98124-4728	

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s):	(1)	Fremont Apartments LLC	(2)	
<input type="checkbox"/> Additional grantors on page _____				
Grantee:	(1)	The City of Seattle		
<input type="checkbox"/> Additional on page _____				
Legal Description <i>(abbreviated if necessary):</i>	PARCEL B, CITY OF SEATTLE SHORT PLAT NUMBER 80-119, RECORDED UNDER RECORDING NUMBER 8010300856 AND REVISED UNDER RECORDING NUMBER 8112280216, IN KING COUNTY, WASHINGTON.			
<input type="checkbox"/> Additional legal description on page _____ :				
Assessor's Tax Parcel ID #:	1972202815			
Reference Nos. of Documents Released or Assigned:				

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this ____ day of ____, 2017, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by Fremont Apartments LLC, a Washington limited liability company (the "Owners").

RECITALS

A. Fremont Apartments LLC is the owner of that certain real property (the "Rezone Site") in the City of Seattle zoned Neighborhood Commercial 3 Pedestrian-40 (NC3P-40) shown in Attachment A and described as:

PARCEL B, CITY OF SEATTLE SHORT PLAT NUMBER 80-119, RECORDED UNDER RECORDING NUMBER 8010300856 AND REVISED UNDER RECORDING NUMBER 8112280216, IN KING COUNTY, WASHINGTON.

B. On September 25, 2014, the Owner(s) submitted to the City of Seattle an application under Project No. 3016369 for a rezone of the Rezone Site from Neighborhood Commercial 3 Pedestrian-40 (NC3P-40) to Neighborhood Commercial 3 Pedestrian-65 (NC3P-65). The purpose of the application is to allow the Rezone Site to accommodate a five-story structure containing 54 residential units and commercial space at ground level.

C. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to Seattle Municipal Code Section ("SMC") 23.34.004, the Owner(s) hereby covenant, bargain and agree, on behalf of themselves and their successors and assigns, that they will comply with the following conditions in consideration of the rezone of the Rezone Site from NC3P-40 to NC3P-65:

Prior to Issuance of a Master Use Permit

Development of the rezoned property shall be subject to the requirements of SMC Chapters 23.58B and 23.58C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying Chapter 23.58C. For purposes of applying SMC 23.58C.040.A, the payment amount per square foot shall be \$13.25, and for purposes of applying SMC 23.58C.050.A, the percentage set aside shall be 6 percent; and

Prior to Issuance of a Building Permit

Future development of the Rezone Site is restricted to a project that complies with Master Use Permit #3016369, once that Master Use Permit is issued by the Seattle Department of Construction and Inspections (SDCI), after SDCI confirms that the drawings substantially comply with the conditions established during the design review process and through review pursuant to the State Environmental Policy Act, including the structure design, structure height, setbacks, building materials and colors, landscaping, street improvements, parking garage design and layout, bicycle parking, signage, and site lighting.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Property.

Section 3. Termination of Zoning Designation.

The new zoning designation shall expire according to SMC 23.76.060.C, or if the rezone is revoked pursuant to SMC 23.34.004.

Section 4. Termination of Conditions.

The conditions listed in Section 1 of this agreement shall expire at such time as the Rezone expires or is revoked pursuant to SMC 23.34.004. If the rezone does not expire, these conditions shall remain in effect until amended or repealed.

Section 5. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, if such amendments are approved by the City Council by ordinance.

Section 6. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 7. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 8. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

- a. revoke the rezone by ordinance and require the use of the Rezone Site to conform to the requirements of the previous NC3P-40 zoning designation or some other zoning designation imposed by the City Council; and/or
- b. pursue specific performance of this Agreement.

SIGNED this ____ day of ____, 2017.

a Washington limited liability company

By: _____

Its: Managing Member

On this day personally appeared before me _____, to me known to be the Managing Member, of _____, a Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ____ day of ____, 2017.

		Printed Name _____
		NOTARY PUBLIC in and for the State of Washington, residing at _____
		My Commission Expires _____
STATE OF WASHINGTON COUNTY OF KING	}	ss.

ATTACHMENT A

