

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

In the Matter of the Application of

CF 314356

DAVID FUCHS

Department Reference:
3023260

for approval of a rezone of property
located at 7009 Greenwood Avenue North

Introduction

David Fuchs applied for a contract rezone of property located at 7009 Greenwood Avenue North from Neighborhood Commercial 2 with a 40-foot height limit (“NC2-40”) to Neighborhood Commercial 2 with a 55-foot height limit and a mandatory housing affordability suffix of “M” (“NC2-55(M)”). The Director of the Department of Construction and Inspections (“Director”) issued a report recommending approval of the rezone. The Director’s report included a State Environmental Policy Act (“SEPA”) Determination of Non-Significance with recommended conditions and design review approval, which were not appealed.

The public hearing on the rezone application was held on April 30, 2018 before the Hearing Examiner (“Examiner”). The Applicant was represented by Jessica Clawson, attorney-at-law, and the Director was represented by Lindsay King, Senior Land Use Planner at the Department of Construction and Inspections (“Department”). The Examiner visited the site on May 17, 2018.

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 file and visited the site, the 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 20,799 square feet, addressed as 7009 Greenwood North, and consists of four tax parcels. The site fronts Greenwood Avenue North to the east, and is bound by North 70th Street to the south, Palatine Avenue North is to the west.
2. The property is L-shaped and is presently zoned NC2-40 and Single Family 5000 (“SF 5000”). The eastern half of the development site (the portion proposed for a rezone) is located within the Greenwood/Phinney Ridge Residential Urban Village. The site itself is generally flat with no critical areas and sits at the top of Phinney Ridge.

3. The development site is presently developed with a single-family residence, detached accessory garage and a paved vacant area. The surrounding existing development abutting the subject property's boundary lines are single family residences to the north and east. An existing religious institution is located across North 70th Street to the south of the subject property. The immediate surrounding area to the north, south, east and west of the subject site are relatively flat.
4. Greenwood Avenue North is a minor arterial and the primary commercial corridor running south/north, with commercial uses generally limited to neighborhood-related or eating establishments. The commercial uses on Greenwood Avenue North are primarily zoned NC2-40 and contains a mixture of older one and two-story commercial uses and newer four-story mixed-use buildings. Phinney Avenue North to the south has a more residential feel and has Lowrise-Residential Commercial ("LR3 RC") zoning.
5. Properties to the immediate north and south of the proposal along Greenwood Avenue North are zoned NC2-40. Properties east and west of the Greenwood corridor are existing single-family residences within single-family residential neighborhoods. Property to the west of the proposal is zoned SF 5000. Property to the east across Greenwood Avenue North is zoned NC2-40.
6. Greenwood Avenue North is a Metro bus corridor providing service to and from downtown Seattle, with express bus options at peak hour. The subject property is within a frequent transit service area.

Zoning History and Potential Zoning Changes

7. The zoning history for the portion of property subject to the rezone application is as follows:
 - a. 1947- Business District Area C with height limit of 65 feet
 - b. 1950- General Commercial Zone with height limit of 60 feet
 - c. 1988- Neighborhood Commercial 2 with height limit of 40 feet
 - d. 1994- Urban Village and Neighborhood Plan introduced
8. The Greenwood-Phinney Ridge Urban Village was established in 1994 and was zoned to its current zoning (NC2-40) in 1988.
9. The Housing Affordability and Livability Agenda ("HALA") Advisory Committee delivered a set of recommendations to the Mayor and City Council in 2015 that included mandatory housing affordability for residential ("MHA-R") and commercial ("MHA-C") development. MHA would require that commercial and multi-family residential developments either include affordable housing units in the building or pay into a fund to provide housing affordable to low-income households, in exchange for increases in development capacity.

10. The 2035 Seattle Comprehensive Plan, which became effective on November 16, 2016, did not change the underlying Comprehensive Plan designation of the project site. Policy LU G1 states:

Achieve a development pattern consistent with the urban village strategy, concentrating most new housing in urban centers and villages, while also allowing some infill development compatible with the established context in areas outside centers and villages.¹

As stated above, the proposal is located within the Greenwood/Phinney Residential Urban Village. LU 1.3 provides that a “low to moderate density and scale of development” is appropriate within a residential urban village.²

11. The City is currently considering area-wide zoning map changes, expansions of some urban village boundaries, modifications to development standards and other actions to implement Mandatory Housing Affordability (“MHA”) requirements for multi-family and commercial development in certain areas. The proposal includes a change to the zoning of the commercially zoned portion of the development site to NC2-55(M).

Neighborhood Plan

12. The portion of the development site proposed to be rezoned (the eastern half measured at 12,185 sq. ft. in area), is located within the Greenwood/Phinney Ridge Residential Urban Village with boundaries as established in the Comprehensive Plan. The remaining portion of the subject site (western half) is outside of the boundary for this urban village. The Council-adopted portions of the Greenwood/Phinney Ridge Neighborhood Plan do not identify any specific areas for rezone.
13. The estimated housing unit growth target for this Residential Urban Village in the Growth Strategy Appendix of the 2035 Comprehensive Plan is a density of 500 housing units at a growth rate of 30% between the years of 2015 to 2035. The established growth accommodation for residential urban villages in the 2035 Comprehensive Plan is zoning that permits at least 12 dwelling units per gross acre.

Proposal

14. The applicant seeks a rezone from NC2-40 to NC2-55(M), with a property use and development agreement (“PUDA”). The terms of the PUDA are not disclosed in the record before the Examiner. The applicant plans to construct a five-story multi-family building of 35 units, with approximately 6,000 square feet of above-ground retail, including 2-3 suites of micro-retail for small businesses. There will also be 26 below-ground parking spaces (a parking ratio of .74). Also planned is 2,100 square feet of publicly accessible open courtyard space with partial overhead weather

¹ Seattle Comprehensive Plan, November 2016, at 42.

² *Id.*

protection. The project will create a mix of housing units from studios to four-bedroom units, with 60% of the units being two bedrooms or larger.

15. Twenty percent of the units will be reserved as affordable using both the Multi-Family Tax Exemption and the MHA-R requirement. Those units will be priced at 60-80% of average mean income.
16. The proposal targets LEED Platinum certification, and the structure is intended to have a projected life span of 100 years.
17. The proposed rezone would allow for a single story of additional height and will increase the unit yield by 6 units.
18. The proposed site of the multi-family building is presently vacant; there are no structures to remove from the property. In the west portion of the site there are two concrete pads which are remnants from a historic environmental clean-up completed on the site.³ In the northwest corner of the site is an existing family home. That home will remain without any changes.
19. Existing vehicular access to the development property is via curb cuts along Greenwood Avenue North, North 70th Street and Palatine Avenue North. Greenwood Avenue North is an arterial street and a primary commercial corridor running north/south.
20. The design review packet submitted May 1, 2017 for the proposal was reviewed by the Northwest Design Review Board (“DRB”). The DRB considered shadow impacts from the proposal and examined massing options to minimize shadow impacts. In response, the applicant removed the sixth floor of the structure and made massing changes to provide an appropriate response to the zone transitions to the north, south, east, and west. The DRB supported the four-story brick base, strategic use of setbacks, and architectural detailing to visually distinguish the fifth floor from the lower four floors.⁴ It recommended approval of the subject design and departures subject to conditions.
21. A parking study was completed for the proposal.⁵ The proposal is projected to demand 1.07 vehicles per unit, or 37 vehicles for 35 apartments. Development and occupancy of the planned-mixed use project will create spillover parking demand ranging from 11 vehicles overnight to 29 vehicles in the early evening, and 15 vehicles during mid-day. The proposal provides 26 underground parking spaces, although it is not required to do so since it is in a designated frequent transit service area.

³ Ex. 39 (Washington State Department of Ecology issued a letter stating no further remedial action is required).

⁴ Ex. 30 & Ex. 1 at 9.

⁵ Exs. 28, 41.

22. A traffic study completed for the project by the Tilghman Group⁶ showed that the proposal would result in a net increase of 340 daily vehicle trips, including 28 PM peak hour trips. Truck trips would total approximately 20 per day, including 10 deliveries.
23. One tree on the site qualifies as exceptional. It is a multi-stem plum tree with three live stems growing from the base. Tree Solutions, Inc., arborists, opined that the tree is in declining health due to internal decay at the base.⁷ Presently, the tree is leaning on an existing fence, which will be removed as part of construction. Given removal of the fence, the arborist opines that the ongoing prognosis for tree to remain upright is poor. The opinion of the arborist is that the new buildings should not be modified to accommodate this tree.

Public Comment

24. Comments were received during the design review process for the proposal. They are summarized in the Director's Report, Exhibit 1, at 4-6, and 8-9. Comments received were in support of the project, and/or raised concerns related to height and bulk of the proposal, shadow impacts, potential new precedent for height in neighborhood, and compatibility with the neighborhood character and zoning.
25. Comments received by the Hearing Examiner both supported and opposed the proposed rezone. *See e.g.* Exhibit 48-49, 51, and 53-55. Supporters view the proposal as an asset to the community and developing in accordance with current zoning and development patterns. Opponents view the proposal as not conforming to existing zoning patterns, creating a precedent for greater heights and density, and lack of compatibility with the neighborhood character.

Director's Review

26. The Director's report, Exhibit 1, analyzes the proposed contract rezone and recommends that it be approved with conditions.
27. The Director also analyzed the proposal's potential long-term and short-term environmental impacts.

Applicable Law

28. 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

⁶ Exs. 17, 18, & 19.

⁷ Ex. 20.

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

29. 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 to make a recommendation to the City Council on the proposed contract rezone pursuant to SMC 23.76.052.
2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC are to be weighed and balanced together to determine the most appropriate zone and height designation. “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 23.34.007B. The general rezone criteria, including “zoning principles,” are set forth in SMC 23.34.008.

Effect on Zoned Capacity

3. SMC 23.34.008 requires that, within an urban center or urban village, the zoned capacity, taken as a 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 growth strategy density target for the Greenwood/Phinney Ridge Residential Urban Village is 12 dwelling units per gross acre. Existing zoning would allow for four floors of residential units, approximately 29 similarly sized apartment units.⁸ The proposal, with five floors of residential units, will provide for 35 apartments, an increase capacity over existing zoning by six additional units. Therefore, the proposed rezone will increase zoned capacity and zoned density by allowing for additional building height and residential units. The proposed rezone is consistent with SMC 23.34.008.A.1 because the increase in zoned capacity does not reduce capacity below 125% of the 2035 Comprehensive Plan growth target. This rezone is also consistent with SMC 23.34.008.A.2 because the proposed change would not result in less density for this zone than the density established in the Urban Village Element (Growth Strategy) of the Comprehensive Plan.

Match Between Zone Criteria and Area Characteristics

4. In this case, the proposal does not seek a change in the existing NC2-zone designation. The NC2 zone criteria in SMC 23.34.076 continue to match the characteristics of the area better than any other zone designation. This site is within the primary business district of the Residential Urban Village on streets with good

⁸ Ex. 1 at 27.

capacity and transit service.⁹ The proposal does seek a change in height, which is addressed below.

Neighborhood Plan/Precedential Effect

5. The Council-adopted portions of the Greenwood/Phinney Ridge Neighborhood Plan do not identify any specific areas for rezone.
6. The current zoning allows for a maximum height of 40-feet with a floor area ratio of 3.25. The MHA recommended NC2-55(M) zone would allow a maximum height of 55-feet with a floor area ratio of 3.75. The proposal would match development expectations for the area when compared with the City's area wide up-zone proposal. To the degree that the proposal, if approved, might influence Council's consideration of the area wide up-zone, e.g. as an example of a property with a height approval above the existing 40-foot height limit, then the proposal could have a precedential effect of increasing zoned heights.

Zoning Principles

7. 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.

The predominant zoning pattern in this neighborhood is a commercial zone with a 40-foot height limit in the urban village overlay located adjacent to a single-family zone. There are some examples of a 40-foot height zone located adjacent to a 65-foot height zone and 40-foot and 65-foot height zones adjacent to the LR3 RC and single-family zones. In some instances, the transition includes buffers, such as a right-of-way street/alley, but in other instances the transition occurs along a shared property line.

The entire development site abuts three streets: Palatine Avenue North, North 70th Street and Greenwood Avenue North. The rezone portion of the development site is located at the intersection of North 70th Street and Greenwood Avenue North. The overall development pattern illustrates mainly a 40' height commercial zoning north and south along Greenwood Avenue North and a decrease in zoning intensity and height as properties continue east and west along North 70th Street.

The general development pattern along the east and west sides of Greenwood Avenue North shows similar zoning intensity and height to the north and south. Conversely, the development pattern along the north and south sides of North 70th Street decreases in zoning intensity and height as the properties continue east and west of the corner properties at Greenwood Avenue North. The proposed rezone of a portion of the

⁹ Ex. 1 at 27.

development site to NC2-55(M) would allow for a gradual transition between those properties zoned NC2-40 to the north, south, and east. A proposed full height modulation on the sides of the building along Greenwood Avenue North and North 70th Street will help to break down the mass of the buildings. A gradual transition between zoning categories would occur between the mid-portion of the project site and the SF 5000 zoned properties to the west, as a private open space area will be landscaped to provide some separation between the five-story building and the single-family zone.¹⁰ In addition, there will be a minimum four-foot setback on the upper floor on the west side to allow for a visual transition.¹¹

Impact Evaluation

8. The proposed rezone would positively impact the housing supply, as it would add 35 new residential units. The proposed rezone will add housing capacity to the neighborhood and locate additional housing in the Urban Village.
9. The proposal would create a minimal increase in the demand for public services. There is no evidence in the record that the demand would exceed service capacities. In particular, street access, transit service, and parking, 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 parking, height, bulk and scale, transportation and other environmental impacts, pursuant to SEPA, and has identified conditions to mitigate impacts that are not otherwise adequately addressed through existing regulations.
10. The approved design includes design strategies to minimize the appearance of height, bulk, and scale impacts.
11. The site does not lie within a shoreline district, no public access is being impacted or removed with this proposal and no existing recreational areas are being impacted or removed.

Changed Circumstances

12. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. There are no changed circumstances to be considered in reviewing the proposal. The rezone does not propose to change the property from the existing NC2 classification, but will allow a height increase and addition of an M suffix which are addressed under the review of other criteria.

Overlay Districts/ Critical Areas

¹⁰ Ex. 50 at 37.

¹¹ *Id.* at 25.

13. The subject property is not within an overlay district or critical area; therefore, these criteria do not apply.

Height Limits

14. 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 public and private view blockage; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.
15. Function of the zone. Height limits are to be consistent with the type and scale of development intended for the zone classification. In addition, the demand for permitted goods and services and potential for displacement of preferred uses are to be considered. The proposed rezone lies within the boundaries of the Greenwood/Phinney Ridge Residential Urban Village and would allow increased density in this urban village. The proposal's multi-family residential uses with commercial elements would be consistent with the type and scale of development in the vicinity and the proposed NC2-55 zoning, and would not change the variety and size of commercial uses that are presently allowed. There will be no displacement of preferred uses. There is nothing in the adopted neighborhood plan policies that address heights.
16. 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. There is no likelihood of view blockage of protected public views, because there are no public views in the vicinity of the proposal. The proposed structure may impact territorial views from adjacent properties.
17. 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. Older one and two-story development in the area is not representative of the development potential for zoning in this area.

18. 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 55 feet, would be compatible with

most of the actual and potential zoned heights in the surrounding area, and would be consistent with the transition of zoned heights and scale of development in the area.

19. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC2-55(M) 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 with the following conditions:

Prior to Issuance of a Master Use Permit

1. The provisions of SMC 23.58B and/or 23.58C shall apply to the rezoned property.

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 3023260.

The Director has recommended the following SEPA conditions:

Prior to Issuance of 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>.

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

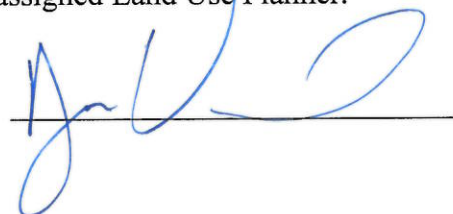
Prior to Certificate of Occupancy

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 (Tami Garrett, tami.garrett@seattle.gov) or a Seattle DCI assigned Land Use Planner.

For the Life of the Project

2. 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 (Tami Garrett, tami.garrett@seattle.gov) or a Seattle DCI assigned Land Use Planner.

Entered this 5th day of June, 2018.



Ryan Vancil
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 Neighborhoods Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3
P.O. 94728
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.

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Recommendation** to each person listed below, or on the attached mailing list, in the matter of **David Fuchs Rezone Application**. Council File: **CF 314356** in the manner indicated.

Party	Method of Service
Applicant Legal Counsel Jessica Clawson Jessie@mhseattle.com David Fuchs dfuchs@johnstonarchitects.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: June 5, 2018



Alayna Johnson
Legal Assistant