

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

In the Matter of the Application of

EAST UNION 22, LLC

for approval of a contract rezone for
property located at 2220 East Union Street

CF 314312

Department Reference:
3019001

Introduction

East Union 22, LLC applied for a contract rezone of property from Neighborhood Commercial 2P-40 to Neighborhood Commercial 2P-65 and Neighborhood Commercial 2-40 to Neighborhood Commercial 2-65. The Director of the Department of Construction and Inspections ("Director") submitted a report recommending that the rezone be approved subject to a property use and development agreement. The Director's report included a SEPA Determination of Non-significance and design review approval, neither of which was appealed.

A public hearing on the rezone application was held before the Hearing Examiner ("Examiner") on July 12, 2016. The Applicant was represented by Melody B. McCutcheon attorney-at-law, and the Director was represented by Michael Dorcy, Senior Land Use Planner. The Examiner reviewed the property on July 21, 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 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 addressed as 2220 E. Union Street, and is composed of three parcels of land that total approximately 29,044 square feet and are located at the northwest corner of 23rd Avenue E. and E. Union Street, in Seattle's Central District. The site fronts on both 22nd and 23rd Avenues E. and on E. Union Street and occupies the core of the northernmost node of the 23rd & Union-Jackson Residential Urban Village. It is relatively flat and contains no environmentally critical areas.
2. The site is zoned Neighborhood Commercial 2P-40 and Neighborhood Commercial 2-40. The largest parcel, at the corner of 23rd Avenue E. and E. Union Street, is currently developed with a gas station/convenience market. The parcel that fronts only on 22nd Avenue E. is developed with a one-story structure that housed Cappy's Boxing Gym and Seattle Kajunkenbo & Kung Fu Kids.

The parcel to the south, which fronts on both 22nd Avenue E. and E. Union Street has been used as a community garden and tool shed but is currently overgrown with weeds and grasses.

3. To the north of the site, the zoning is a mix of Single-Family 5000, developed with a two-story residence and garage, and Neighborhood Commercial 2P with a height limit of 40 feet (“NC2P-40”), developed with a two-story duplex. Zoning to the east, across 23rd Avenue E., is also NC2P-40, and development includes a one-story commercial structure and a two-story church and adjacent parking lot. To the west, across 22nd Avenue E., the zoning is NC2P with a height limit of 30 feet (“NC2P-30”), and development includes a one-story church and adjacent parking lot and a two-story duplex. To the south, across E. Union Street, the zoning is NC2P with a height limit of 65 feet (“NC2P-65”) developed with a six-story mixed-use structure. Zoning to the southeast is NC2P-40 developed with a one-story commercial structure. To the southwest is NC2P-30 zoning developed with a two-story mixed-use structure.

4. East Union Street is a two-lane, east-west, minor arterial with a 90-foot-wide right-of-way and a 52.5-foot-wide roadway. Twenty-third Avenue E. is a four-lane, north-south, principal arterial with a 70-foot-wide right-of-way and 25-foot-wide roadway. Twenty-second Avenue E. is a two-lane, north-south, local access street with a 70-foot-wide right-of-way and 25-foot-wide roadway, and is part of the Central Area Neighborhood Greenway. King County Metro Transit stops are located on E. Union Street and 23rd Avenue E, and bicycle lanes and sharrows are available on E. Union Street.

Zoning History and Potential Zoning Changes

5. The subject site was zoned Commercial Business in 1980 and rezoned to NC2-40 and NC2P-40 in 2006. In 2008, the property located directly across E. Union Street received approval for a contract rezone from NC2P-40 to NC2P-65, and the approved six-story apartment building with ground level commercial space was recently constructed.

6. The Director reports that potential zoning changes for the site have been under consideration since 2013. In June of 2015, the Director released information on proposed rezones and amendments to the Land Use Code to implement the Central Area Neighborhood Planning Element and the 23rd Avenue Action Plan and Urban Design Framework (“Action Plan”). The Director anticipates that the proposed legislation will be forwarded to the City Council in 2017.

Neighborhood Plan

7. Neighborhood policies for the Central Area were adopted as part of the 2005 Comprehensive Plan update and revised in 2014 and again in 2015. The Neighborhood Plan does not include policies to guide future rezones, but it includes several policies that are relevant to the proposed rezone. CA-P7 provides that a vibrant commercial district should be created, “encouraging dense urban development in the commercial areas and encouraging housing supportive of the community through land use tools, such as rezones, design guidelines and incentives.” CA-P28 calls for ameliorating “the potential impacts of gentrification and displacement of existing residents through a variety of affordable housing programs including ... producing new affordable housing.” (This policy is carried over into the Action Plan.) CA-P65 encourages “new pedestrian-friendly mixed-

use development at 23rd and Union that includes neighborhood serving shops and services, opportunities for startup businesses, affordable housing and live/work housing while respecting the small scale and historic character of this node.”

8. The Applicant and Director have pointed out that the draft Action Plan, although not yet implemented through legislation, includes specific guidance on rezones in the 23rd and Union area. Appendix B to the Action Plan addresses the “Union Core”. It notes that “[m]ixed-use development that could include live-work units,” “[a]ffordable housing,” and “[a] unified, inviting and pedestrian friendly streetscape along 23rd Ave and Union Street” are desired elements for the area, and that the proposed Action Plan “[r]ecommends a change of height limit from 40’ to 65’ around the intersection to create a unified identity at this important intersection,” “[c]reates a pedestrian friendly streetscape with more ‘eyes on the street,’” and “[i]ncreases activity on the street with more people living and using this business core.” Draft 23rd Avenue Action Plan (July 2015) at 37.

Proposal

9. The Applicant seeks a rezone of the property from NC2P-40 to NC 2P-65, and from NC 2-40 to NC 2-65, with a property use and development agreement (“PUDA”). The proposal is to construct a six story, 144 unit apartment building with 20,207 square feet of ground floor retail space along 23rd Avenue E. and E. Union Street and wrapping around to corner to 22nd Avenue E. The retail space would include a grocery store. There would be multiple access points along both streets, and ground related housing with landscaped areas would be constructed along 22nd Avenue E. The proposal includes 148 parking spaces below grade in two levels, for residential and commercial vehicles. The parking garage would be accessed from 22nd Avenue E. via a driveway at the northwest corner of the development. Access to the truck loading dock would also be from 22nd Avenue E. *See* Exhibit 9 at 1; Exhibit 1 at 3. Some existing curb cuts would be removed.

10. A nonconforming two-story residence is located within one foot of part of the site’s northwest property line. *See* Exhibit 9 at 1. As noted, the proposal went through the design review process, and the Design Review Board (“Board”) addressed the transitions along this north property line. *See, e.g.*, Exhibit 7 at 15, 20 and 24. The Applicant responded, in part, by providing a five-foot landscaped area with plantings to buffer the single-family residence, and setting the entire proposed structure, from the ground floor through the fifth floor, back 30 feet, 6 inches from the north property line along the westerly 38 feet of the building (a 55 percent increase over Code requirements). Additional transition features are as follows:

- For the westerly 38 feet of the building, the sixth floor is set back another four feet from the primary façade, for a total of 34 feet-6 inches from the north property line.
- To the east of the single family dwelling is a carport structure with a substantial setback from the property line. In this area (the easterly 41 feet of the building abutting the SF zone), the proposed building is built to the property line and is about 16 feet-8 inches in height. Above that height, the proposed building sets back 30 feet-6 inches.
- The building’s courtyard is oriented toward the north, which substantially reduces building bulk and massing to the north, as the building form is divided into two

wings separated by the courtyard. The courtyard is landscaped, and the western portion of the courtyard is densely landscaped for screening purposes.

- The northern building façade adjacent to the single-family zone includes exterior materials selected to soften the sense of massing.

Exhibit 1 at 8. *See* Exhibit 9 at 5 (Plan Detail and Section). At the Board's request, the Applicant also performed a study of window adjacencies on the north façade. *See* Exhibit 1 at 9.

11. At its recommendation meeting, the Board unanimously agreed that the proposed design met the priority and general Design Review Guidelines identified by the Board and recommended that it be approved, including five requested development standard departures. However, the Board also asked the Applicant to work with the owners of the nonconforming residence further to ensure acceptable mitigation for the proposal's impacts. The Applicant did so, and the owners submitted a letter to the Examiner stating that the Applicant has adequately addressed their concerns. Exhibit 11, Collins and Nelson letter.

12. A transportation impact analysis ("TIP") for the proposal, prepared by Transportation Engineering NorthWest, showed that the proposal would result in a net increase of 890 daily vehicle trips, including 45 AM peak hour trips and 98 PM peak hour trips. Exhibit 5 at 12. The TIP does not state the number of trips that could be generated by development of the site to current zoning limits. The signalized intersection of 23rd Avenue E. and E. Union Street is projected to operate at level of service ("LOS") C in 2017 both with, and without the project. At the stop controlled intersection of 22nd Avenue E. and E. Union Street, all movements are projected to operate at LOS C or above without the project, but one movement would be reduced to LOS E with the project. Exhibit 5 at 18. The Director evaluated transportation currency for the project under the guidelines in Director's Rule 2009-5 and determined that all screenlines would operate below the concurrency threshold with the project, so no concurrency mitigation was warranted. Exhibit 5 at 20. The TIP also included a parking demand analysis, which concludes that the parking provided would be adequate for both residential and commercial demand. Exhibit 5 at 20-21.

13. The Applicant has secured a Water Availability Certificate for the proposal from Seattle Public Utilities.

14. In November of 2015, the City Council adopted an ordinance codified as Chapter 23.58B SMC, which established what is commonly referred to as "Mandatory Housing Affordability for Commercial" development. This Code chapter provides for "voluntary agreements" for affordable housing and applies, in part, through the terms of a contract rezone. The Applicant has voluntarily agreed to comply with the requirements of Chapter 23.58B SMC for the proposed project's commercial floor area and has made a preliminary calculation of the required payment under the chapter's fee option of \$60,277. A final calculation will be determined by the Director prior to building permit issuance. Exhibit 10.

15. A Council Bill currently under consideration by the Council would create a new Chapter 23.58C SMC, which would establish "Mandatory Housing Affordability for Residential development". As with Chapter 23.58B, the requirements would apply, in part, through the terms

of a contract rezone. Although this legislation has not yet been adopted by the Council, the Applicant has voluntarily agreed as part of the contract rezone "to provide four units within the project at 60% of AMI for 50 years". Exhibit 10 at 2. The methodology used to calculate the number of units is explained in Exhibit 10. The Applicant has further agreed that if it elects to participate in the Multifamily Housing Property Tax Exemption Program ("MFTI") under Chapter 5.73 SMC, the MFTI units will be in addition to the four units of affordable housing provided under the proposed Chapter 23.58C SMC. Exhibit 10 at 2-3.

Public Comment

16. The Director received eight written comments on the proposal (in addition to those received during the design review process). Three comments simply expressed support for the rezone, one focused on design issues, one addressed the use of the property, one (from the owners of the adjacent single family residence) sought additional information, one expressed concerns relating to the greater planning and zoning process taking place in the area, and one expressed concern about there being too much development without required infrastructure. Exhibit 3.

17. The Examiner received three written public comments. The comment from the owners of the adjacent single-family residence, stating that their concerns have been addressed, is noted above. A comment letter from the Central Area Land Use Review Committee states that the Applicant met with the Committee repeatedly and that their concerns were also resolved. The third letter is from the City's Office of Planning and Community Development and strongly suggests that the Applicant include affordable housing in the proposal. Exhibit 11.

Director's Review

18. The Director reviewed the Board's recommendations and accepted them, approving the proposed design and departures with conditions. Exhibit 7 at 24.

19. The Director also analyzed the proposal's potential long-term and short-term environmental impacts and recommended a condition to mitigate construction-related impacts. Exhibit 7 at 30.

20. The Director's report analyzes the proposed contract rezone and recommends that it be approved subject to a PUDA. Exhibit 7 at 29.

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 general rezone criteria, including "zoning principles," are set forth in SMC 23.34.008. 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.

4. Compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones. SMC 23.34.007.C. Therefore, Plan goals and policies are not separately reviewed.

Effect On Zoned Capacity

5. SMC 23.34.008.A 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 adopted growth target for the 23rd Avenue @ South Jackson-Union Residential Urban Village is 650 additional dwelling units and a target density of nine households per acre by 2024. The proposed rezone would increase both zoned capacity and zoned density and thus meets the requirements of SMC 23.34.008.A.

Match Between Zone Criteria and Area Characteristics

6. In this case, the proposal does not seek a change in the existing NC2-zone designation or the pedestrian designation. The site continues to match the NC2 function and locational criteria, in that it is located within the primary business district of the Residential Urban Village on streets with good capacity and transit service, and would accommodate a pedestrian-oriented shopping area with a wide-range of commercial uses and housing. The proposal does seek a change in height, which is addressed below.

Neighborhood Plan/Precedential Effect

7. The proposal would implement policies CA-P7, CA-P28, and CA-P65 in the existing Neighborhood Plan, as it would develop a pedestrian-friendly, mixed-use development at 23rd and Union that includes both neighborhood commercial development and affordable housing, thereby contributing to the growth of a vibrant commercial district. It would also be consistent with the draft Action Plan, which calls for development similar to that addressed in CA-P7, CA-P28, and CA-P65, but also recommends an upzone from 40 feet to 65 feet around the intersection of 23rd Avenue E. and E. Union Street.

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 site borders NC2 zoning on all sides except for the western 79 feet of the north property line, which abuts SF 5000 zoning and the two-story single-family residence built to within one foot of the property line. Although this is a longstanding condition, the increase in height afforded by the proposed rezone has the potential to significantly impact the residential property. Code-compliant setbacks would not have mitigated the impact. However, as noted, the applicant has proposed a series of setbacks and other design features that exceed Code requirements and create a transition in zoning heights that responds generously to this unique zone edge condition.

Impact Evaluation

10. The proposed rezone would positively impact the housing supply. It would not displace existing housing and would add 144 new residential units, including some affordable units.

11. Although the proposal would increase the demand for public services, the record shows that public service capacity is available for the new units.

12. The two stories of additional height allowed by the rezone would cause some additional shading on properties to the north. This has been addressed in the design of the proposed structure.

13. The proposal should enhance pedestrian safety by reducing the number of curb cuts associated with existing development, much of which is auto-oriented. The proposed retail facilities may provide an increase in employment opportunities.

14. There are no designated landmark structures or Historic Districts in the immediate vicinity, and because the topography of the area is relatively flat, there are no shoreline views.

15. The Director has evaluated the Applicant's TIP and the proposal's transportation impacts pursuant to SEPA and determined that the proposal is not expected to create a significant adverse impact to the site or the adjacent street network. Thus, no traffic or parking mitigation was identified. As noted, height, bulk and scale impacts were reviewed and addressed through the design review process.

Changed Circumstances

16. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. Since adoption of the most recent zoning change in the neighborhood in 2006, the property directly across E. Union Street from the subject site has been rezoned to NC2P-65 and now contains a six-story, mixed-use structure. Further, the Action Plan has been developed, and implementing legislation pending before the Council would increase height limits within the area centered on 23rd Avenue E. and E. Union Street, including the subject site, which would be rezoned to a 65-foot height limit.

Overlay Districts and Critical Areas.

17. The proposed rezone is not located within any of the overlay districts included in the Land Use Code in Chapters 23.60 A through 23.74, nor is it located in or adjacent to a designated critical area.

Incentive Provisions

18. The subject site is not located within a zone that currently includes an incentive zoning suffix.

Height Limits

19. 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.

20. 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. NC2 zones are intended to “support or encourage a pedestrian-oriented shopping area that provides a full range of household and personal goods and services, including convenience and specialty goods, to the surrounding neighborhoods, and that accommodates other uses that are compatible with the retail character of the area, such as housing or offices” SMC 23.34.076.A. The proposed rezone to NC2P-65 would increase the capacity for multifamily residential uses and slightly increase the variety and scale of commercial uses allowed at this intersection. The proposal would not displace any preferred uses on the property.

21. 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. Because the topography of the site and surrounding area is relatively flat, topographic conditions would not affect the impacts of a height increase on the surrounding areas.

22. 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. As noted, the predominant height limit at the 23rd Avenue E. and E. Union intersection is presently 40 feet, with the exception of the site directly across the street from the subject site, which was rezoned to 65 feet eight years ago. Most existing development in the area is not built to the 40-foot or 30-foot height limits under current zoning. Although some of the older, lower structures add charm to the area, the 65-foot mixed-use structure across E. Union Street from the subject site is more representative of the area’s overall development potential.

23. 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 match the height of the new mixed-use structure across the street from the subject site and, as noted, would be consistent with the height recommended for the area in the Action Plan. It would not provide a gradual transition in height and scale, but it would be no more incompatible with the actual and zoned heights in the surrounding area than is the mixed use structure across E. Union Street.

24. Neighborhood plans. “Particular attention” is to “be given to height recommendations in” adopted neighborhood plans. The adopted Neighborhood Plan does not recommend specific height limits. As noted, it does include policies that call for a vibrant commercial district, with pedestrian-friendly mixed-use development, at 23rd Avenue E. and E. Union Street. And the proposed legislation for the area would rezone the property in this area, including the subject site, to encourage the type of development called for in the existing Neighborhood Plan.

25. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the entire subject site is NC2P-65 with a PUDA.

26. The Director has recommended that the following condition be imposed pursuant to SEPA:


Prior to Building Permit Issuance

Provide SDCI and SDOT with a Construction/Noise Management Plan (CMP) prepared by the contractor for review and approval. The CMP shall be submitted by the contractor before commencement of any project-related activities on site, and should detail mitigation for all construction-related impacts, including, but not limited to, traffic, parking, and noise. The CMP shall also identify the timing and methods of communication from the contractor to individuals within the community who might be affected by the anticipated construction.

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 that was approved through the design review process, the Applicant’s voluntary agreement to provide affordable housing as reflected in Exhibit 10, and the Director’s recommended SEPA condition.

Entered this 22nd day of July, 2016.


Sue A. Tanner
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 Zoning 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.

**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 **East Union 22 LLC**. Council File: **CF 314312** in the manner indicated.

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<u>Applicant</u> East Union 22 LLC c/o Melody McCutcheon HCMP Melody.McCutcheon@hcmp.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: July 22, 2016

TK

Tiffany Ku
Legal Assistant