

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

In the Matter of the Application of

**CRAIG BELCHER on behalf of
BROOKLYN 50, LLC**

for approval of a contract rezone for
property located at 5001 Brooklyn
Avenue NE

CF 314324

Department Reference:
3019997

Introduction

Craig Belcher, on behalf of Brooklyn 50 LLC, applied for a rezone of property located at 5001 Brooklyn Avenue NE from Lowrise 3 to Neighborhood Commercial 3-65. 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 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 18, 2016. The Applicant was represented by Jessica M. Clawson attorney-at-law, and the Director was represented by Michael Dorcy, Senior Land Use Planner. The Examiner reviewed the property on July 23, 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.

Site and Vicinity

1. The subject site consists of one lot, approximately 5,000 square feet in area, which is addressed as 5001 Brooklyn Avenue NE and located within the University District Northwest Urban Center Village Overlay. It is generally flat, with a slight slope west to east along NE 50th Street, and includes no environmentally critical areas. A 70-foot tall European Beech tree, designated as an exceptional tree, is located on the northeast portion of the property.

2. The site is zoned Residential Multifamily Lowrise 3 ("LR3") and developed with a two-story structure originally constructed as a single-family residence, but later divided into three separate living units. To the north is LR3 zoning developed with a duplex and mid-rise apartment buildings. To the west, across the alley, is LR3 zoning developed with a rooming house and four-story townhomes. To the east, across Brooklyn Avenue NE, is LR3 Residential Commercial zoning developed with the University Heights Community Center and parking lot. From the centerline of

NE 50th Street to the south, the zoning is Neighborhood Commercial 3 with a 65-foot height limit (“NC3-65”) developed with restaurants, a pharmacy and other commercial uses.

3. Brooklyn Avenue NE is a collector arterial that in appearance and use, functions more as a residential street. Northeast 50th Street is a principal arterial that is 60 feet wide and provides access to Interstate 5. There are numerous transit stops and frequent transit service in the area.

Zoning History and Potential Zoning Changes

4. From 1923 to 1947, the site was zoned Business/Commercial District. Since 1947, it has been zoned for multifamily residential use under several different captions. The Comprehensive Plan and Future Land Use Map have recently been amended in anticipation of a proposed legislative rezone of the University District that is expected to occur before the end of 2016. *See* Ordinance 124888. The rezoned site is shown on the Future Land Use Map as one of several “New Commercial Mixed Use Areas”. The proposed legislation includes numerous upzones within the University District. The proposed zoning for the subject site is NC3-75. Exhibit 1 at 36.

Neighborhood Plan

5. The site is located within the planning area of the adopted University Community Urban Center Neighborhood Plan. The current Neighborhood Plan was adopted in 1998. It does not include policies to guide future rezones, and the policies are generally consistent with the current zoning. However, UC-P12 calls for employing “a variety of strategies to effectively provide for identified housing needs, including preservation of some existing housing *while accommodating growth with a diversity of unit types, sizes and affordability.*” Emphasis added. Amendments to the Neighborhood Plan are proposed in conjunction with the proposed legislative rezone for the University District.

Proposal

6. The Applicant seeks a rezone of the property from LR3 to NC3-65 with a property use and development agreement (“PUDA”). The proposal is to construct a seven-story mixed-use structure with 60 small efficiency dwelling units, 1,500 square feet of ground floor retail space, and parking for 47 bicycles. No parking for motor vehicles is proposed. *See* Exhibit 1. The European Beech tree is to be retained, and the proposed structure was designed in an L-shape, with an outside stairway, to accommodate the tree. *See* Exhibits 1 and 2. Two-thirds of the proposed structure would be located next to the north property line, with a courtyard, which includes the European Beech tree, along the remaining one-third of the property line. The retail/commercial entry would be oriented to the corner of NE 50th Street and Brooklyn Avenue NE, with a commercial front on NE 50th Street. The residential entry would be located further north on Brooklyn Avenue NE.

7. As noted, the proposal went through the design review process. At its recommendation meeting, the Design Review Board (“Board”) agreed unanimously that the proposed design met the Design Review Guidelines identified by the Board, and recommended approval of the project and the development standard departures requested by the Applicant. Exhibit 16 at 24.

8. A transportation analysis and parking analysis was prepared for the proposal by TranspoGroup, showed that the proposal would result in a net increase of 182 vehicles trips, including 13 AM peak hour and 15 PM peak hour vehicle trips. All study area intersections are expected to operate at level of service C or better with the proposed project. Exhibit 11 at 8-9. Peak parking demand for the proposal was estimated at 11 vehicles, and the analysis determined that the vehicles could not be accommodated within the on-street parking supply based on existing demand and pipeline projects. The Applicant is proposing various transportation demand management strategies to reduce parking demand. Exhibit 11 at 7, 9.

9. A Water Availability Certificate has been approved for the proposal, and the evidence in the record shows that other public services, such as sewer and electrical service, are available. Exhibits 6, 7 and 8. The Applicant has signed an LID non-protest agreement for improvements to the alley adjacent to the site. Exhibit 12.

10. 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". The legislation would provide for "voluntary agreements" for affordable housing and 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 4 units, or 6 percent of the total units in the project, at "40% AMI". In addition, the Applicant would provide 8 units, or 14% of the total units, at "60 % AMI". Exhibit 3. *See* Exhibit 4.

11. The EIS prepared for the proposed University District rezone determined that the residential structure on the site did not have historic value, and the Department of Neighborhoods affirmed, in conjunction with the proposed project, that the structure has no architectural or historic value. Exhibit 5. The former University Heights School, now a community center, is located directly across Brooklyn Avenue NE and is a designated City landmark. There is no evidence in the record of adverse impacts to the landmark.

Public Comment

12. The Director received nine written public comments in addition to those received during the design review process. Nearly all the comments concerned the exceptional tree on the property and the neighbors' desire to have it removed. None of the comments addressed the proposed rezone. The Examiner received one written comment, from the Office of Planning and Development, which agreed with the Applicant's proposal for the inclusion of affordable housing in the project. Exhibit 4. No members of the public attended the rezone hearing.

Director's Review

13. The Director reviewed the Board's design review recommendations and accepted them, approving the proposed design and requested departures. Exhibit 16 at 24.

14. The Director's report analyzes the proposed contract rezone and recommends that it be approved subject to a PUDA. Exhibit 16 at 28.

15. The following Code sections address the function and locational criteria of zones to be considered in analyzing the proposed rezone. They are set forth in full in the Director's Analysis and Recommendation, and are attached to this recommendation:

SMC 23.34.020 - Lowrise 3 (LR3) zone, function and locational criteria
SMC 23.34.072 - Designation of commercial zones
SMC 23.34.078 - Neighborhood Commercial 3 (NC3) zones, function and locational criteria

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, Comprehensive Plan goals and policies are not separately reviewed.

Effect On Zoned Capacity

5. 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. It also requires that "the zoned capacity for the area within the urban village boundary and for hub urban villages and for residential urban villages taken as a whole, shall not be less than the densities established in the Urban Village Element of the Comprehensive Plan." The adopted growth target for the University District Northwest Urban Center Village is 2000 additional dwelling units between 2004 and 2024, and the target density is 25 dwelling units 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.

Neighborhood Plan/Precedential Effect

6. As noted above, policies in the existing adopted Neighborhood Plan primarily address development that is consistent with the area's current zoning and do not include policies to guide future rezones. The proposal would be consistent with UC-P12 in the adopted Neighborhood Plan, which calls for "accommodating growth with a diversity of unit types, sizes and affordability."

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.

8. The site is adjacent to LR3-zoned property on the north, and across the alley to the west. The alley would provide a small buffer to the west, and the courtyard would provide a buffer along one-third of the structure's width at the north property line. It could be argued that, along with NE 50th Street, the proposal would provide a transition in height between the higher allowed heights across NE 50th and the lower heights to the north. Brooklyn Avenue NE to the east would provide a buffer between the proposal and the LR3/RC-zoned property and community center across the street, and the proposal's residential entry on Brooklyn would reinforce the residential nature of that frontage.

9. The proposed legislative rezone for the University District would zone the site and the property to the north, the properties across the alley to the west, and the half-block across Brooklyn Avenue NE from the site to NC3-75, and would rezone the remainder of the block on which the site is located to Multiple Residential. Exhibit 1 at 4. Under that scenario, of course, there would be no issue of impacts on less intensive zones, as the proposed rezone of the subject site would be unnecessary.

10. With respect to zone boundaries, the proposed rezone would follow platted lot lines and street centerlines, and the proposed street-level retail use would face the commercial uses across NE 50th Street. The proposal is also consistent with the principle that height limits greater than 40 feet should generally be limited to urban villages.

Impact Evaluation

11. The proposed rezone would have a positive impact on the housing supply, as it would add 60 new residential units, including some affordable units, to a site that now supports just three residential units.

12. Although the proposal would increase the demand for public services, the evidence in the record shows that demand would not exceed service capacities. The Director has evaluated impacts on public services and service capacities, as well as transportation, parking and other environmental impacts, pursuant to SEPA and determined that, with the exception of the need for

a construction/noise management plan, the impacts are adequately addressed through existing regulations. As noted, architectural and historic assessments were also prepared. Height, bulk and scale impacts, including shadow impacts, were reviewed and addressed through the design review process.

13. The area is presently developed with sidewalks, street lights and crosswalks for pedestrian safety. The proposed retail facilities could provide additional employment opportunities in the area.

14. Manufacturing activity, shoreline views and access, shoreline navigation, overlay districts and critical areas are not factors in this rezone.

15. There are no incentive zoning provisions presently applicable in the University District. The proposed legislative rezone contemplates adoption of incentive zoning provisions for the area, but additional information about them is not readily available. As noted, the Applicant has agreed to provide four affordable housing units (40% AMI) as part of the project.

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 existing zoning for the subject site and neighboring property, the City has completed the University District Urban Design Framework planning process, amended the Future Land Use Map and Comprehensive Plan in anticipation of rezoning the University District for greater density and heights, and proposed an implementing legislative rezone. The Future Land Use Map designates the subject property as Commercial/Mixed Use, and the proposed zoning ordinance would rezone it to NC3-75.

Match Between Zone Criteria and Area Characteristics

17. The area functions adequately as an LR3 zone, and meets the LR3 locational criteria. The property is located within an urban center and an existing multifamily neighborhood characterized by a mix of lowrise to highrise residential development. This area of LR3 zoning is two and one-half blocks wide and stretches from NE 50th Street to NE 52nd Street. It provides a buffer and a transition in scale between the NC3-65 zoning to the south across NE 50th Street and the LR2 and single-family zones north of NE 52nd Street. It has direct access to NE 50th Street and NE 45th Street, which are major east-west arterials that connect to Interstate 5; to Roosevelt Way NE and 11th and 15th Avenues NE, which are major north-south arterials; and to Brooklyn Avenue NE and University Way NE, which are north-south collector arterials.

18. The area is well served by commercial businesses along NE 50th Street, Brooklyn Avenue and University Way. Public transit is located along both 50th Avenue NE and Brooklyn Avenue NE, and Sound Transit's University District Station, approximately one-quarter mile to the south, will provide light rail service north to Northgate and south to SeaTac Airport when operational in 2021. As noted, the University Heights community center is directly across Brooklyn Avenue NE, the University District Public Library branch is within a three-block walk, and there are numerous shopping opportunities nearby.

19. Although the property and its immediate surroundings, meets the function and locational criteria of the existing LR3 zone, development within LR3 parameters would be inconsistent with the recent amendments to the Comprehensive Plan and Future Land Use Map, which call for increased density and mixed-use development in the area.

20. In designating commercial zones, encroachment of commercial development into residential areas is discouraged, SMC 23.34.072.A. However, in this case, the requested NC3-65 rezone better reflects the recently amended Future Land Use Map, and the implementing commercial/mixed-use zoning proposed for the area, than does the existing LR 3 zone. Similarly, the other criteria for designating commercial zones have already been addressed for this area in the revisions to the Future Land Use Map and the proposed implementing zoning legislation.

21. The site is consistent with the function of NC3 zone. The area in which it is located is an extension of a pedestrian-oriented shopping district that serves both the surrounding neighborhood and, to an extent, a city-wide clientele. It includes a variety of small- to medium-sized businesses, including pharmacies, grocery stores, banks, bars, and other neighborhood businesses at street level, along with some residences. The area is home to the University District Farmer's Market, as well. Many businesses are built to the front lot line, but others are surrounded by surface parking lots. Customers can drive to the area, but it is also well-served by transit, which is heavily used. There is intense pedestrian activity, and those who arrive by car typically walk from business to business.

22. The site also meets the locational criteria for the NC3 zone. It is the principal business district for the center of the University District Urban Center and serves as a transition between the intense commercial district to the south and the residential areas to the north. As noted above, it is served by both NE 50th Street and NE 45th Street, as well as by several north-south arterials, and transit service is some of the best available within the city.

Height Limits

23. 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.

24. 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.

25. 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. As noted, the site is relatively flat, with the topography rising slightly to the north, and the zoning to the south is NC3-65. There are some views available toward the southeast. However, it is unlikely that the proposal

would affect views because properties to the east and south of the site are already zoned at, or proposed for zoning of 65 to 85 feet.

26. Height and scale of the area and compatibility with surrounding 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. Further, height limits are to be compatible with actual and zoned heights in surrounding areas, and a gradual transition in height and scale and level of activity between zones is to be provided unless major physical buffers are present.

27. The height limit of the site and properties to the north and west of it is 40 feet under current zoning. However most existing development is not built to the maximum height and is not a good measure of the area’s overall development potential. The proposed legislative rezone corroborates this conclusion. As noted above, a height limit of 65 feet for the site could provide a transition in height between the higher allowed heights across NE 50th and the lower heights to the north. More importantly, the proposed 65 foot height limit is consistent with the recently amended Future Land Use Map for the University District and the pending legislative rezone.

28. Neighborhood plans. “Particular attention” is to “be given to height recommendations in” adopted neighborhood plans. The 1998 Neighborhood Plan that covers the subject property includes no height recommendations.


29. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is N3-65 with a PUDA.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone subject to the following conditions:

1. A PUDA that incorporates the final approved Master Use Permit drawings for the proposal that was approved through the design review process;
2. The Applicant’s voluntary agreement to provide affordable housing as reflected in Exhibit 3; and
3. A SEPA condition which requires that a Construction/Noise Management Plan be submitted to and approved by SDOT prior to issuance of any demolition or construction permit.

Entered this 26th 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.

ATTACHMENT

23.34.020 - Lowrise 3 (LR3) zone, function and locational criteria

- A. Functions. The dual functions of the LR3 zone are to:
1. provide opportunities for a variety of multifamily housing types in existing multifamily neighborhoods, and along arterials that have a mix of small to moderate scale residential structures; and
 2. accommodate redevelopment in areas within urban centers, urban villages, and Station Area Overlay Districts in order to establish multifamily neighborhoods of moderate scale and density.
- B. Locational Criteria. The LR3 zone is most appropriate in areas generally characterized by the following conditions:
1. The area is either:
 - a. located in an urban center, urban village, or Station Area Overlay District where new development could help establish a multifamily neighborhood of moderate scale and density, except in the following urban villages: the Wallingford Residential Urban Village, the Eastlake Residential Urban Village, the Upper Queen Anne Residential Urban Village, the Morgan Junction Residential Urban Village, the Lake City Hub Urban Village, the Bitter Lake Village Hub Urban Village, and the Admiral Residential Urban Village; or
 - b. located in an existing multifamily neighborhood in or near an urban center, urban village, or Station Area Overlay District, or on an arterial street, and characterized by a mix of structures of low and moderate scale;
 2. The area is near neighborhood commercial zones with comparable height and scale;
 3. The area would provide a transition in scale between LR1 and/or LR2 zones and more intensive multifamily and/or commercial zones;
 4. The area has street widths that are sufficient for two-way traffic and parking along at least one curb;
 5. The area is well served by public transit;
 6. The area has direct access to arterial streets that can accommodate anticipated vehicular circulation, so that traffic is not required to use streets that pass through lower density residential zones;
 7. The area well supported by existing or projected facilities and services used by residents, including retail sales and services, parks, and community centers, and has good pedestrian access to these facilities.
- C. The LR3 zone is also appropriate in areas located in the Delridge High Point Neighborhood Revitalization Area, as shown in Map A for 23.34.020, provided that the LR3 zone designation would facilitate a mixed-income housing development initiated by the Seattle Housing

Authority or other public agency; a property use and development agreement is executed subject to the provisions of Chapter 23.76 as a condition to any rezone; and the development would serve a broad public purpose.

....

- D. Except as provided in this subsection 23.34.020.D, properties designated as environmentally critical may not be rezoned to an LR3 designation, and may remain LR3 only in areas predominantly developed to the intensity of the LR3 zone. The preceding sentence does not apply if the environmentally critical area either:
1. was created by human activity, or
 2. is a designated peat settlement, liquefaction, seismic or volcanic hazard area, or flood prone area, or abandoned landfill.

(Ord. 123495, § 10, 2011; Ord. 121700 § 5, 2004; Ord. 120694 § 1, 2001; Ord. 119714 § 4, 1999; Ord. 119691 § 1, 1999; Ord. 119637 § 1, 1999; Ord. 119635 § 1, 1999; Ord. 119521 § 1, 1999; Ord. 119403 § 5, 1999; Ord. 119322 § 5, 1998; Ord. 119217 § 6, 1998; Ord. 118794 § 10, 1997; Ord. 117430 § 11(part), 1994; Ord. 116795 § 3, 1993; Ord. 114886 § 2, 1989.)

23.34.072 - Designation of commercial zones.

- A. The encroachment of commercial development into residential areas shall be discouraged.
- B. Areas meeting the locational criteria for a single-family designation may be designated as certain neighborhood commercial zones as provided in Section 23.34.010.
- C. Preferred configuration of commercial zones shall not conflict with the preferred configuration and edge protection of residential zones as established in Sections 23.34.010 and 23.34.011 of the Seattle Municipal Code.
- D. Compact, concentrated commercial areas, or nodes, shall be preferred to diffuse, sprawling commercial areas.
- E. The preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts.

(Ord. 122575, § 2, 2007; Ord. 120691 § 6, 2001; Ord. 117430 § 13, 1994; Ord. 112777 § 2(part), 1986.)

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.

(Ord. 122311, § 11, 2006; Ord. 117430 § 18, 1994; Ord. 116795 § 4, 1993; Ord. 112777 § 2(part), 1986.)

**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 **Craig Belcher for Brooklyn 50 LLC**. Council File: **CF 314324** in the manner indicated.

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Dated: July 26, 2016

TK

Tiffany Ku
Legal Assistant