

September 19, 2019

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Eric McConaghy, Analyst
Subject: Clerk File 314365: 5256 Rainier Avenue S Rezone

On September 24, 2019, the Planning, Land Use and Zoning (PLUZ) Committee will discuss an application to rezone the property addressed as 5256 Rainier Avenue S from Neighborhood Commercial 2 with a height limit of fifty-five feet and a (M) Mandatory Housing Affordability (MHA) suffix (NC2-55 (M)) to Neighborhood Commercial 2 with a height limit of sixty-five feet and a (M1) MHA suffix (NC2-65 (M1))(Project No. 3025493-LU, Type IV).

This memorandum:

- (1) provides an overview of the rezone application contained in [Clerk File \(CF 314365\)](#);
- (2) describes proposed Council findings, conclusions and decision regarding the application, which would grant the rezone application;
- (3) summarizes 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; and
- (4) describes the actions the PLUZ Committee may take to adopt the rezone.

Overview

Kathleen Justice (the Applicant), has applied for a contract rezone for approximately 18,423 square feet of land addressed as 5256 Rainier Avenue S (“rezone area”). The rezone area is proposed to be developed with six-story, 73-unit apartment building with 6,950 square feet of commercial space.

On June 20, 2019, 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 Determination of Non-significance with recommended conditions and a design review decision.

The Hearing Examiner held an open record hearing on the rezone recommendation on July 10, 2019. On August 8, 2019, the Seattle Hearing Examiner (HE) issued Findings and Recommendation that recommended approval of the rezone, subject to a Property Use and Development Agreement (PUDA), the provisions of Seattle Municipal Code (SMC) [23.58B](#) and/or [23.58C](#), and a requirement that development of the rezone area be consistent with the approved plans under [SDCI Project Number 3025193](#). The HE findings and recommendation are included with this memo as Attachment 1.

At the time of application, the rezone site was zoned Neighborhood Commercial 2 with a height limit of 40 feet (NC2-40). Since then, the City has rezoned the site from NC2-40 to NC2-55 (M), as part of the MHA citywide rezones ([Ordinance 125791](#)). SDCI and the HE recommended approval of the rezone.

The HE's recommendation included minor errors:

- The planner representing SDCI was Holly Godard, not Carly Guillory;
- The rezone site consists of four parcels, not one;
- Current zoning: effective April 2019, the site was rezoned to NC2-55 (M), not NC2-55; and
- The proposed rezone would allow an additional 10 feet, not 25 feet, in zoned height.

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 HE.

The HE establishes the record at an open-record hearing. The record contains the substance of the testimony provided at the HE's open record hearing and the exhibits entered into the record at that hearing. The entire record, including audio recordings of the HE's open record hearing are available for review in my office.

Clerk File 314365

Title

When [Clerk File 314359](#) was first created, it included some information that is no longer correct. The Committee should take the following action to correct the title:

Amend the title of Clerk File 314359 from:

Application of 5250 Rainier, LP to rezone an approximately 40,000 square foot site located at 5256 Rainier Avenue South from Neighborhood Commercial 2 with a 40-foot height limit (NC2 40) to neighborhood Commercial 2 with a 65 foot height limit (NC2 65) (Project No. 3025493, Type IV).

to:

Application of Kathleen Justice to rezone approximately 18,423 square feet of land addressed as 5256 Rainier Avenue S from Neighborhood Commercial 2 with a height limit of fifty-five feet and a (M) mandatory housing affordability suffix (NC2-55 (M)) to Neighborhood Commercial 2 with a height limit of sixty-five feet and a (M1) mandatory housing affordability suffix (NC2-65 (M1))(Project No. 3025493-LU, Type IV).

Committee Decision Documents

To approve a contract rezone the Committee must make recommendations to the Full Council on two pieces of legislation: (1) a Council Findings, Conclusions and Decision that is added to the Clerk File and grants the rezone application, and (2) a bill amending the zoning map and approving a PUDA.

Findings, Conclusions and Decision

Council Staff drafted a proposed Council Findings, Conclusions and Decision (Attachment 2), which:

- (1) Adopts the HE's findings and conclusions, with corrections to the errors discussed above;
- (2) Adopts the HE's conditions; and
- (3) Grants the rezone subject to the recording of a PUDA requiring the owner to comply with the Hearing Examiner Conditions.

If the Committee agrees with the Findings, Conclusions and Decision document as drafted, it should vote to adopt the Findings, Conclusions and Decision, and vote to recommend that the City Council grant the rezone as modified subject to conditions.

Next Steps

Council Bill

On or before October 7, 2019, the Council will introduce and refer a new Council Bill to the City Council to be considered alongside Clerk File 314365. This bill would amend the Official Land Use Map to rezone the rezone area from LR3 (M) to NC2-65 (M1) and accept a PUDA.

The PUDA would limit future development on the site to the development analyzed and approved by SDCI through the current Master Use Permit application and establish conditions to implement the Applicant's voluntary agreement to comply with the requirements of SMC 23.58B and 23.58C.

Final Action

If PLUZ recommends adoption of the Findings, Conclusions and Decision and granting of the rezone, the rezone application could be ready for a City Council vote as early as October 7, 2019

Attachments:

1. Findings and recommendations of the Hearing Examiner (CF 314365)
2. Findings, conclusions, and decision of the City Council of the City of Seattle

cc: Kirstan Arestad, Exec Director
Aly Pennucci, Supervising Analyst

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

In the Matter of the Application of

CF-314365

KATHLEEN JUSTICE, JOHNSTON ARCHITECTS

Department Reference:
3025493-LU

for a contract rezone for property located
at 5256 Rainier Ave S

Introduction

Kathy Justice, for Johnston Architects, applied for a rezone of property located at 5256 Rainier Ave S Street, from Neighborhood Commercial Two Pedestrian with a 40 foot height limit (“NC2-40”), to Neighborhood Commercial Two Pedestrian with a 65 foot height limit (“NC2-65”). The Director of the Department of Construction and Inspections (“SDCI” or “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 July 10, 2019. The Applicant was represented by Abigail DeWeese, attorney-at-law, and the Director was represented by Carly Guillory, Senior Land Use Planner. Following the Hearing Examiner’s site visit, and submission of additional comments by the Department, the record closed on July 23, 2019.

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 at 5256 Rainier Ave S. The site contains one 18,423 square foot parcel with existing structures, including: a one story retail structure with a daylight basement; a two story warehouse/office structure; and, a two story retail building. There is an unimproved alley right of way to the north and east of the site. Property to the south, is developed with a newer 4-story residential structure. Development to the north includes a multifamily structure and a 3 story, semi-circular apartment. Rainier Avenue South is located to the west of the project site. Commercial uses exist along both sides of Rainier Avenue South, and consist of 2-4 story structures of mixed styles and vintage. Across Rainier Avenue South, to the northwest, a project was recently permitted via a contract rezone. That proposal was approved for a three-story, four-unit townhouse structure and a six-story structure with 104 apartment units, three live-work units,

and 1,607-square feet of commercial space. *See* Exhibit 12. Three on-site trees appear to qualify as Exceptional Trees.

2. The subject site and properties to the north, south, east and west are zoned Neighborhood Commercial Two with a fifty five foot height limit (“NC2-55”). The area zoning pattern is commercial uses along Rainier Avenue South, and becomes progressively less dense farther from Rainier Ave. S. Zoning changes at the site and vicinity are approved, and in effect, as part of the City’s implementation of its MHA program. The City proposed a draft rezone map for the Columbia City Residential Urban Village in October 2016, which proposed to change the height limit on the site from 40 feet to 55 feet. The city-wide rezone became effective on April 19, 2019. This proposal is vested to the prior code, and is being reviewed under that version of the Code, which has a height limit of 40 feet.
3. The subject site slopes approximately 18 feet down toward the east from Rainier Avenue South to a somewhat flat center area in the middle of the site. The site can be characterized as a “half bowl,” due to the topography.
4. Immediately to the north of the site is an existing 19-foot wide alley. Immediately to the west of the site is Rainier Avenue South, a principal arterial with a right of way width of 80 feet. Rainier Avenue South provides a significant separation between the site and the existing NC2-55(M), and NC3-65(M1) zones to the west and northwest. To the south of the site is a 4-story apartment building, Rainier House, which contains affordable housing units and support services for formerly homeless individuals. A landscaped area separates the site by approximately 40 feet. The private open space and setbacks provide effective separation between the proposal and the existing building to the south. Immediately to the east of the site is the 16-foot wide alley.

Zoning History and Potential Zoning Changes

5. The site has been zoned for commercial use since the mid-1900s, and has had a 65-foot height for much of its zoned history. The height limit was lowered from 65 feet to 40 feet, in 1999, in response to the adoption of the Columbia City Neighborhood Plan (the “Neighborhood Plan”), which was adopted prior to the location of numerous transit routes nearby and the City’s continued emphasis on the Urban Village growth strategy to focus growth in such areas. In general, the historic zoning pattern in the vicinity of the site shows higher intensity commercial and manufacturing uses allowed along Rainier Avenue South, along with transitions to lower intensity residential use farther to the east of the site.
6. In November of 2015, the City Council passed Ordinance 124895, creating a new Land Use Code Chapter 23.58B, *Affordable Housing Impact Mitigation Program Development Program for Commercial Development* (MHA-C). The Council followed this, in August of 2016, with Ordinance 125108 creating a new Land Use Code Chapter 23.58C, *Mandatory Housing Affordability for Residential Development* (MHA-R).
7. Zoning changes for the site and vicinity are approved, and in effect, as part of the City’s implementation of its MHA program. As a result of the MHA rezone, the height limit on the site was changed from 40 feet to 55 feet.

8. The Applicant for this rezone also proposes increasing the height allowed on the property to the east of the site across the alley, from 40 feet to 55 feet. That height increase is consistent with the City's approved height increase to 55 feet to implement the MHA program. In addition, there is another, unrelated, contract rezone approval in the vicinity of the site at 5201 Rainier Ave. That rezone similarly involved a height increase from 40 to 65 feet, and included a change in the zoning designation of that site from Neighborhood Commercial 2 to Neighborhood Commercial 3.

Neighborhood Plan

9. The site is located within the Columbia City Residential Urban Village established in the Comprehensive Plan. The City's 2035 Comprehensive Plan states that housing in this Village is expected to grow 30% between 2015 and 2035. Thus, the Plan anticipates the creation of 800 additional housing units by 2035.
10. The goals and policies of the Columbia City Neighborhood Plan (the "Plan") were adopted by the City Council in 1999 as part of the City's Comprehensive Plan Neighborhood Planning Element and have not been amended since then.
11. The adopted portions of the Plan do not contain policies expressly for the purpose of guiding future rezones, other than Policy CC-P14 related to rezoning appropriate property with NC/R designations (a designation that was eliminated when the commercial zoning code was updated in 2006).
12. Other sections of the adopted Columbia City Neighborhood Plan Policies include policies for future development that are related to design and zoning regulations. CC-G2 encourages planning for "[a] community served by a light rail transit system that also is a catalyst for transit-oriented housing and commercial development within the station area." CC-P3 seeks to "[m]aximize community benefits through the management of parking around the light rail station." CC-G5 encourages "[a] community with retail and service businesses that serve community needs, particularly pedestrian-oriented commercial development." CC-G8 encourages "[a] community with a variety of available housing options for a mix of income levels and household sizes." CC-P21 seeks to "[s]upport incentives for new housing development near high-capacity transit facilities."

Proposal

13. The Applicant seeks to have the property rezoned from NC2-40 to NC2-65 with a property use and development agreement ("PUDA"). The terms of the PUDA are not disclosed in the record before the Hearing Examiner. The Applicant proposes to construct a six story, 73-unit apartment building with 6,950 sq. ft. of commercial use. Parking for 74 vehicles will be provided within the structure. Existing structures are to be demolished.

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 12.

14. The site has sloping topography, creating a bowl-like feature. This feature results in the allowed height of any structure dropping approximately 5 feet compared to other adjacent properties under existing NC2-55(M) zoning.
15. The proposal was reviewed by the Southeast 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.
16. A traffic and parking study for the proposal, prepared by Transportation Engineering Northwest, showed that the project is expected to generate a net total of 409 daily vehicle trips, and would generate a peak evening parking demand of 61 vehicles, and a peak daytime parking demand for 45 vehicles. Exhibit 16. The proposal includes off-street parking for a total of 74 spaces. Taking into consideration the parking provided by the proposal, the parking analysis estimated that the proposal would not generate any significant demand for on-street parking, except during peak weekday daytime periods when retail customers would generate shopping trips and typically park on-street. Exhibit 12 at 22.
17. The proposal will improve the alley to the north of the site. Although the alley is not a major traffic arterial, the width of the alley will provide some separation from the parcels to the north.
18. The proposal includes setbacks from the Rainier House to the south. In addition to a pre-existing landscaped area on the Rainier House property, the setbacks provide effective separation between the proposal and the existing building to the south.
19. A Steep Slope Environmentally Critical Area ("ECA") is located on and adjacent to the site. Based on a review of the information submitted by the Applicant and the City GIS system, SDCI concluded that the ECA Steep Slope Critical Areas on and adjacent to the project site were created by previous legal grading associated with development of surrounding properties and rights-of-way. Consequently, the project qualifies for Relief from Prohibition on Steep Slope Development, as described in SMC 25.09.180 B2b. An ECA Steep Slope Area Variance, or an Exception, is not required for this application. The site was granted relief on steep slope development by the SDCI Geotechnical Engineer on April 27, 2017.
20. The Applicant performed a study of the shadow impacts of the proposal. There will be some minor shading on the properties to the north and south, due to the height increase, but the shading is not anticipated to impact the buildings on those properties.

Public Comment

21. Public comments were received during the design review process for the proposal. They are summarized in the Director's Report, Exhibit 12, at 4-5.

22. The issues raised in early comments included, but were not limited to, the following: public access to the site; project material type; and, the nature of project facades and entrances, and were addressed by the Applicant during, and following, the design review process.
23. In addition to the comment(s) received through the design review process, other comments were received and considered by SDCI, to the extent that they raised issues within the scope of this review. These areas of public comment related to drainage north of the site and existing drainage pipes.

Director's Review

24. The Director reviewed the Southwest 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 with conditions. Exhibit 12 at 18.
25. The Director also analyzed the proposal's potential long-term and short-term environmental impacts, and recommended conditions to mitigate construction-related impacts.
26. The Director's report, Exhibit 12, analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

27. 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.
28. 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.
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 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 proposed rezone would slightly increase the zoned capacity of this Residential Urban Village, and this increase does not reduce capacity below 125% of the Comprehensive Plan growth target. The rezone allows approximately 24 additional housing units, and aids the City's ability to meet the population growth target and densities in the Plan, 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 NC2, and the rezone would retain that zoning designation. The site currently matches the NC2 zone function and locational criteria, found in SMC 23.34.076,¹ so the designation remains appropriate.

¹ 23.34.076 - Neighborhood Commercial 2 (NC2) zones, function and locational criteria.

A. Function. 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, where the following characteristics can be achieved:

1. A variety of small to medium-sized neighborhood-serving businesses;
2. Continuous storefronts built to the front lot line;
3. An atmosphere attractive to pedestrians;
4. Shoppers can drive to the area, but walk from store to store.

B. Locational Criteria. A Neighborhood Commercial 2 zone designation is most appropriate on land that is generally characterized by the following conditions:

1. Primary business districts in residential urban villages, secondary business districts in urban centers or hub urban villages, or business districts, outside of urban villages, that extend for more than approximately two blocks;
2. Located on streets with good capacity, such as principal and minor arterials, but generally not on major transportation corridors;
3. Lack of strong edges to buffer the residential areas;
4. A mix of small and medium sized parcels;
5. Limited or moderate transit service.

Neighborhood Plan/Precedential Effect

6. The development is consistent with the portions of the Columbia City Neighborhood Plan Policies listed in Finding 12 above. The proposal is consistent with CC-G2, because the project would provide 73 residential units and commercial space along Rainier Avenue South (a frequent transit corridor), on a site that is just outside the 10-minute walkshed from the Columbia City light rail station. The proposal is consistent with CC-P3, because it includes 74 parking spaces to serve its residents and commercial tenants, and ensures public street parking near the light rail station is not over-taxed. The proposal is also consistent with CC-G5, because the project's proposed commercial space is oriented to pedestrians along Rainier Avenue South. The proposal is consistent with CC-G8's call for a variety of housing options, because it proposes a variety of apartment-style housing options, and will contribute to the affordability of housing in the City through compliance with MHA requirements. Lastly, the proposal is consistent with CC-P21, because the proposal is served by frequent transit, and provides housing opportunities in the vicinity of light rail along a planned RapidRide bus route. In general, the goals and policies in the Plan support approval of the Project and the rezone application.
7. The proposal is unlikely to have a precedential effect. The proposal does not change the underlying neighborhood commercial designation, and only seeks a height increase of ten feet above the height set by the MHA upzone for the entire neighborhood.

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 neighborhood commercial zoning will continue to exist. The proposed rezone does propose a change from the original zoning height of 40 feet to 65 feet in height.
10. There is one development site that abuts the rezone site to the south at 5270 Rainier Avenue South, otherwise, the site is separated from other properties by intervening streets and alleys.
11. 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 NC2-55 zoning, but it does not appear to significantly affect sightlines from public rights-of-way along Rainier Avenue South.
12. The proposed rezone would maintain the existing pattern of commercially zoned properties facing Rainier Avenue South. It will not create a new boundary between commercial and residential areas.

Impact Evaluation

13. The proposed rezone would positively impact the housing supply, as it would add 73 new residential units.
14. 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.
15. 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.

Changed Circumstances

16. Changed circumstances are to be considered, but are not required to demonstrate the appropriateness of a proposed rezone. The City has continued to emphasize growth in urban centers and villages in its Comprehensive Plan as the areas that are most appropriate for accommodating higher density development. The rezone site is within the Columbia City Residential Urban Village. The City's latest Comprehensive Plan, adopted in 2016, emphasizes locating density in urban centers and villages. In addition, the MHA upzone is an additional changed circumstance in the area.

Overlay Districts

17. The proposed rezone site is located in the Southeast Seattle Reinvestment Area ("SSRA"), which suggests that the designation shall strengthen and reinforce commercial nodes, business development and business retention. See SMC 23.67.040. This rezone does not propose to change the SSRA designation.
18. The purpose of the SSRA is to "promote community revitalization and investment, and to encourage development which supports business activity and promotes employment opportunities and needed services to the residents of Southeast Seattle." The proposal assists with fulfillment of these objectives as it represents an investment in Southeast Seattle which will bring more residents and business activity.
19. The site is also located within the "Horizontal Surface" and "Turning Area" Airport Height Overlay, which indicates that planes fly at an elevation of between 1,464 and 1,946 feet above the site. The purpose of the Airport Height Overlay is to ensure safe, and unobstructed takeoff and landing approach paths to King County International Airport. The maximum height permitted for structures and trees in this area is not to exceed the height of the turning surface (i.e., 1,464-1,946).

SMC 23.64.006. As the height limit under the proposed rezone would only be 65 feet, and significantly less than the height of the turning surface, the purposes of this Overlay would not be undermined by the rezone.

Critical Areas

20. The steep slope areas on the site are considered by Geotech experts to be man-made, and therefore have received Relief from Prohibition on Steep Slope Development per SMC 25.09. *See* SMC 25.09.180.B.2.

Height Limits

21. 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.
22. 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 NC2-65 zone in urban centers, as discussed above. There will be no displacement of preferred uses.
23. 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 site’s internal slope means that the allowed height of the building is five feet lower than 65 feet on the Rainier Avenue South frontage under the City’s measurement requirements. Further, the applicant proposes a 1 foot to 6-foot setback on the 6th story along the Rainier Avenue frontage in order to allow the building to better blend into its surroundings. It is not anticipated that any significant view blockage will occur.
24. 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, particularly under the MHA upzone. The older one to two story development is not representative of the development potential for zoning in this area.

The height limit of this area of Rainier Avenue South was recently increased to 55 feet with the MHA upzone. The proposed height is 10 feet higher than the MHA height limit (and functionally only 5-feet when factoring in the site’s internal sloping topography), and the building will generally be compatible with existing development, up to that height limit, given the features integrated into its design to lessen the appearance of height, bulk, and scale.

25. 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 scale of newer development in the area.
26. The record contains some confusion concerning the proper MHA zoning suffix for the rezone. The Applicant and Department submitted post-hearing comments concerning the MHA suffix and applicable fee tier level. *See* Exhibits 1 and 2. Under the Code and Director's Rule 14-2016, the appropriate MHA suffix is "M1," and the proposal should be considered to be in a "low" fee tier.
27. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC2-65(M1) 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. The rezoned property shall be subject to a PUDA, the plan documents, and the provisions of SMC Chapters 23.58B and 23.58C.

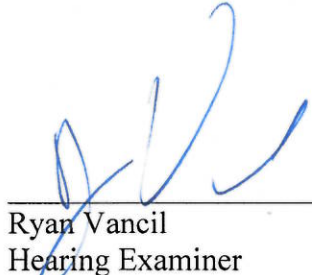
Prior to Issuance of Demolition, Excavation/Shoring, or Construction Permit

2. 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>.

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 (Holly.godard@seattle.gov).

Entered this 9th day of August, 2019.


 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 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.

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

In the matter of the Petition:)	Clerk File 314365
Application of Kathleen Justice to)	FINDINGS, CONCLUSIONS,
rezone approximately 18,423)	AND DECISION
square feet of land addressed as)	
5256 Rainier Avenue S from)	
Neighborhood Commercial 2 with a)	
height limit of fifty-five feet and a)	
(M) mandatory housing)	
affordability suffix (NC2-55 (M)))	
to Neighborhood Commercial 2)	
with a height limit of sixty-five feet)	
and a (M1) mandatory housing)	
affordability suffix (NC2-65)	
(M1))(Project No. 3025493-LU,)	
Type IV).)	

Introduction

This matter involves a petition by Kathleen Justice (the “Applicant”), to rezone approximately 18,423 square feet of land addressed as 5256 Rainier Avenue S from Neighborhood Commercial 2 with a height limit of fifty-five feet and a (M) mandatory housing affordability suffix (NC2-55 (M)) to Neighborhood Commercial 2 with a height limit of sixty-five feet and a (M1) mandatory housing affordability suffix (NC2-65 (M1)). Attachment A shows the area to be rezoned.

On June 20, 2019, 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) Determination of Non-significance with recommended conditions and a design review decision.

The Hearing Examiner held an open record hearing on the rezone recommendation on July 10, 2019. On August 8, 2019, the Hearing Examiner issued Findings and Recommendation that recommended approval of the rezone, subject to conditions. On September 24, 2019, the Planning, Land Use and Zoning Committee of the Council 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 corrects a clerical error in the Introduction of the Hearing Examiner's Findings and Recommendation dated August 8, 2019 and adopts the Hearing Examiner's Findings of Fact as stated in the same Findings and Recommendation, as amended below. The Introduction and Findings of Fact are amended as follows:

Introduction

* * *

A hearing on the rezone application was held before the Hearing Examiner on July 10, 2019. The applicant was represented by Abigail DeWeese, attorney-at-law, and the Director was represented by ~~Carly Guillory~~, Holly Godard, Senior Land Use Planner...

* * *

Findings of Fact

Site and Vicinity

1. The subject site is located at 5256 Rainier Ave S. The site contains four parcels constituting about 18,423 square feet ~~one 18,423 square foot parcel~~ with existing structures...

* * *

Conclusions

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated August 8, 2019, as amended below. The Council amends the conclusions as follows:

11. 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 NC2-55 (M) zoning.

* * *

21. The proposed rezone would allow an additional ~~25~~ 10 feet in zoned height...

* * *

Decision

The Council hereby **GRANTS** a rezone of the Property from NC2-55 (M) to NC2-65 (M1), 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 conditions found in the Hearing Examiner's recommendation which are adopted by the Council.

Dated this _____ day of _____, 2019.

City Council President

ATTACHMENT A

