

August 29, 2019

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Lish Whitson, Analyst
Subject: Clerk File 314359: Application of Matt Driscoll to rezone an approximately 4,320 square foot site located at 4726 15th Avenue Northeast from Lowrise 3 (M) (LR3 (M)) multifamily residential to Neighborhood Commercial 2 with a 65-foot height limit (M1) (NC2-65 (M1)) (Project Number 3025193; Type IV).

On September 4, 2019, the Planning, Land Use and Zoning Committee will discuss an application to rezone the property located at 4726 15th Avenue Northeast from Lowrise 3 (M) (LR3 (M)) multifamily residential to Neighborhood Commercial 2 with a 65-foot height limit (M1) (NC2-65 (M1)) (Project Number 3025193; Type IV). This memorandum:

- (1) provides an overview of the rezone application contained in Clerk File (CF 314359);
- (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

Matt Driscoll (the Applicant), has applied for a contract rezone for an approximately 4,320 square foot site located at 4730 15th Avenue Northeast ("rezone area"). The rezone area, along with two parcels located to the south – 4722 and 4726 15th Avenue NE – would be developed with a 127-unit residential building above ground-floor retail space and underground parking. The proposed structure would be approximately 65 feet.

The Applicant filed a rezone petition in March 2017. On June 10, 2019, the Director of the Seattle Department of Construction and Inspections (SDCI) issued a recommendation to approve the rezone with conditions and a design review decision.¹ The Seattle Hearing Examiner (SHE) held an open record public hearing on July 10, 2019, and issued a recommendation to approve the rezone subject to a Property Use and Development Agreement (PUDA) and the provisions of SMC 23.58B and/or 23.58C,² and a requirement that development of the rezone area be consistent with the approved plans under SDCI [Project](#)

¹ Due to the proposed project's size and location, the proposed rezone is exempt from environmental review under the State Environmental Policy Act.

² SMC 23.58B and 23.58C are the chapters of the Land Use Code that contain the requirements for the Mandatory Housing Affordability program.

[Number 3025193](#). The SHE findings and recommendation are included with this memo as Attachment 1.

At the time of application, the site was zoned Lowrise 3 (LR3), and the abutting properties to the north and south, including the other two parcels to be developed, were zoned Neighborhood Commercial 2-65 (NC2-65). The Applicant applied for a rezone to NC2-65. In April, the Mandatory Housing Affordability (MHA) rezones went into effect and changed the rezone area to LR3 (M). The abutting parcels to the north and south were rezoned to NC2-75 (M). SDCI and the SHE analyzed a rezone from LR3 (M) to NC2-65 (M) and recommended approval of the rezone.

However, the Department's analysis did not consider [SMC 23.34.006](#), which was added to the Land Use Code in April 2019 as part of the Council's adoption of the MHA program. Section B of SMC 23.34.006 states:

- B. When the Council approves a Type IV amendment to the Official Land Use Map in an area to which Chapters [23.58B](#) and [23.58C](#) have previously been applied through the use of a mandatory housing affordability suffix, the suffix for the new zone shall be determined as follows:
1. If the rezone would not increase development capacity or is to another zone in the same MHA zone category according to Table A for [23.34.006](#), the MHA suffix should not change.
 2. If the rezone is to another zone that is one category higher than the existing zone according to Table A for [23.34.006](#), the new zone should:
 - a. Have a (M1) suffix if it currently has an (M) suffix; or
 - b. Have a (M2) suffix if it currently has an (M1) or (M2) suffix.
 3. If the rezone is to another zone that is two or more categories higher than the existing zone according to Table A for [23.34.006](#), the new zone should have a (M2) suffix.

An MHA suffix has been applied to the rezone area. According to Table A for 23.34.006 LR3 zones are in MHA Zone Category 3 and zones with 65-foot height limits are in MHA Zone Category 4. Consequently, the appropriate MHA zone suffix is M1.

Other minor errors in the SHE's recommendation include:

- Address: the rezone area is the parcel at 4730 15th Avenue NE not 4726 15th Avenue NE;
- Lot size: according to the plans for the project (SHE Exhibit 6), the lot is 4,320 square feet;
- Current zoning: the rezone area was rezoned to LR3 (M) in April, which allows a maximum height of 50 feet with a floor area ratio of 2.3.
- Proposed zoning development standards: in the proposed zoning, a 10-foot setback is required between 13 and 65 feet, not a 15-foot setback between 13 and 40 feet

Type of Action and Materials

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

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

Committee Decision Documents

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

Clerk File 314359

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 Yuan's H&H Property, LLC to rezone an approximately 4,320 square foot site located at 4726 15th Avenue Northeast from Lowrise 3 (LR3) multifamily residential to Neighborhood Commercial 2 with a 65-foot height limit (NC2 65) (Project Number 3025193; Type IV).

to:

Application of Matt Driscoll to rezone an approximately 4,320 square foot site located at 4730 15th Avenue Northeast from Lowrise 3 (M) (LR3 (M)) multifamily residential to Neighborhood Commercial 2 with a 65-foot height limit (M1) (NC2-65 (M1)) (Project Number 3025193; Type IV).

Findings, Conclusions and Decision

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

1. Adopts the Hearing Examiner's findings and conclusions, with corrections to the errors discussed above;
2. Adopts the Hearing Examiner's conditions;

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 September 16, 2019, the Council will introduce and refer a new Council Bill to the City Council to be considered alongside Clerk File 314359. 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 September 23, 2019.

Attachments:

1. The Hearing Examiner's recommendation to approve the rezone; and
2. Proposed Council Findings, Conclusions and Decision.

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 314359

MATT DRISCOLL

Department Reference:
3025193-LU

for approval of a rezone of property
located at 4726 15th Avenue NE

Introduction

Matt Driscoll applied for a contract rezone of property located at 4726 15th Avenue NE from Lowrise 3 (“LR3”) to Neighborhood Commercial 2-65 (M) (“NC2-65 (M)”). The project required design review with Departures. The Director of the Department of Construction and Inspections (“Director”) issued a report recommending approval of the rezone and design review and Departures with conditions. The Director’s report included a design review approval, which was not appealed. The proposal is exempt from the State Environmental Policy Act.

The public hearing on the rezone application was held on July 10, 2019 before the Deputy Hearing Examiner (“Examiner”). The Applicant was represented by Matt Driscoll, Architect, and the Director was represented by Holly Godard, Senior Land Use Planner at the Department of Construction and Inspections (“Department”). No members of the public appeared to testify, and the public hearing was closed upon the conclusion of the presentations by the Department and the Applicant.

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

Findings of Fact

Site and Vicinity

1. The development site is 12,960 square feet. The rezone applies to the northernmost 4,280 square-foot parcel, which is presently zoned Lowrise 3 (“LR3”). The remainder of the site is Neighborhood Commercial 2 with a 75-foot height limit (“NC2-75 (M)”). The property is addressed as 4726 15th Avenue NE. The site fronts 15th Avenue NE to the west and is bounded by NE 47th Street to the south and NE 50th Street to the north. An alley borders the site to the east.

2. The project includes a seven-story apartment building containing 127 residential units above retail space and underground parking. Existing structures are to be demolished. The site itself is sloping with no mapped critical areas.
3. The site is within the University District Urban Center and is also located within the NE 45th Street Station Area Overlay District. Neighborhood Commercial 2-75' (M) extends both north and south of the site along the east side of 15th Avenue NE, except for this site. Directly across the street from the site on the west side of 15th Avenue NE, the zoning designation is Neighborhood Commercial 2 with a 65-foot height limit. To the south on the west side of 15th Avenue NE the zoning is LR3. Across the alley to the east of the site the zoning transitions to LR3.
4. The University District Urban Center is currently a mix of single-family dwellings, townhouses, and multi-family buildings. The University Christian Church is opposite the site on 15th Avenue NE. University Presbyterian Church is on the next block south and owns the parking lot south of the subject property. The University District also has extensive shopping, restaurants and entertainment geared toward the student population at nearby University of Washington. Directly to the north of the site is a mixed use structure with 133 residential units.
5. 15th Avenue NE is a wide principal arterial with parking along both sides. The subject property is well served by public transit. Sound Transit's U District Station is approximately one-quarter mile to the south and will provide light rail service south to Sea-Tac Airport and north to Northgate Station in 2021. The area is also served by numerous bus routes in the vicinity going both East-West and North-South.

Zoning History, Neighborhood Plan, and Potential Zoning Changes

6. The University Community Urban Center Plan ("the Plan") was adopted in November 1998. The Plan suggested several rezones in the area, but not for the property in question. The community's vision for the area includes an upgraded streetscape and campus edge along 15th Avenue NE. Because of the central location and visibility of the area, high urban design quality is particularly important in this area, according to the Plan.
7. As stated above, the property is currently zoned LR3. The proposed rezone of the property to NC2-65 (M) would allow the zoning to match the current zoning of most of the other parcels on the block, as described further in the paragraphs below.
8. The current zoning allows for a maximum height of 30 feet with a floor area ratio of 2.0. The proposed zone of NC2-65' (M) would allow for a maximum height of 65 feet with a floor area ratio of 4.75; the Applicant proposes a ratio of 4.72.

9. In 2012, the Seattle City Council approved a rezone of multiple parcels on 15th Avenue NE south of NE 50th Street, including the parcels north of the subject proposal (Ordinance Number 123826/Council File 309434). The Property Use and Development Agreement (“PUDA”) attached to the rezone stipulates that “all building elements above 13 feet shall be set back 30 feet from the east property line of parcels on the east side of 15th Avenue NE provided that one-half the width of the abutting alley may be counted as part of the required setback.” It continues to state that “[a] development standard Departure from the setback may be granted by the Department of Planning and Development through design review, as part of a master use permit, where it is found that any allowed reductions of this required setback adequately accomplish a sensitive and appropriate transition of height, bulk and scale across the alley to the east.” This subject property was not included in the 2012 rezone because the owner at that time declined to sign the PUDA.
10. The Housing Affordability and Livability Agenda (“HALA”) Advisory Committee delivered a set of recommendations to the Mayor and City Council in 2015 that included mandatory housing affordability for residential (“MHA-R”) and commercial (“MHA-C”) development. The Mandatory Housing Affordability (“MHA”) suffix requires that commercial and multi-family residential developments either include affordable housing units in the building or pay into a fund to provide housing affordable to low-income households, in exchange for increases in development capacity.
11. In 2019, the City implemented area-wide zoning map changes, expansions of some urban village boundaries, modifications to development standards and other actions to implement MHA requirements for multi-family and commercial development in certain areas. The 2019 City rezones did not include a change to the zoning of the subject site.
12. The 2035 Seattle Comprehensive Plan, which became effective on November 16, 2016, adopted a growth target for the University District Urban Center for 2,000 additional households and a target density of 25 households per acre by 2024.

Proposal

13. The Applicant seeks a rezone from LR3 to NC2-65 (M), subject to a property use and development agreement (“PUDA”). The terms of the PUDA are not disclosed in the record before the Examiner. The Applicant plans to construct a seven-story apartment building containing 127 residential units above commercial space and underground parking. The rezone is subject to Chapters 23.58B and 23.58C, the Affordable Housing Mitigation Development Program for Commercial Development (“MHA-C”), through the terms of the PUDA containing self-imposed restrictions.

14. According to the staff report, a PUDA will be executed and recorded as a condition of the contract rezone from LR3 to NC2-65 (M) with the condition that the development be in substantial conformance with the approved plans for Master Use Permit number 3025193-LU. The recorded condition will facilitate the use of the MHA suffix and any associated development standards identified in the Code for NC2-65 (M) zones.

15. A design review packet for the proposal was reviewed by the Northeast Design Review Board (“Board”). The Board considered the relationship of the building to the street and alley. It also considered the residential entry and materials. In response, the Applicant made the following changes:
 - **Relationship of Building to Street and Alley:** The Applicant responded to early design guidance and designed the building entries to be accessed at grade from a central entry. The retail, lobby, residential leasing and bicycle entry share a common entry point that is uncluttered and recognizable. The Board was supportive of the ground level organization of the building and changes the Applicant made to create transparency and visual connection to the street.
 - **Relationship of Building to Alley:** The Applicant proposed the rear units and light wells with as much space as possible for increased gardens and patios on the alley. In response to guidance, the Applicant widened the light wells and added landscaping. The Board discussed security and decorative fencing along the alley and asked the Applicant to pay special attention to creating a fence and green screen that is durable, can support plants, and is attached to planters built to code requirements or better for soil depth on structure.
 - **Residential Entry:** The Board supported the changes to the proposed residential entry stating it was more recognizable and inviting. In response to entry landscaping the Board asked the Applicant to revise the entry dry landscape (kare-sansui “dry landscape”) to a landscape that looks like a dry landscape, but is in fact set in mortar for longevity, durability, and maintenance. The Board conditioned the project to provide the specified changes.
 - **Materials:** The Board approved the Applicant’s choice of materials.

16. The Applicant requested three Departures. For each requested Departure, the Board made a recommendation. The requests for Departures and recommendations are set out below:
 - **Building Setbacks (SMC 23.47A.014.B.3.a & b):** The Code requires a setback of 15 feet above 13 feet in height and two additional feet for every 10 feet above 40 feet in height when across from residentially zoned properties.
 - Requested Departure: The Applicant proposes encroaching into the required setback above 40 feet.

- Board Recommendation: The Board supported the setback Departure, stating that the intrusion into the required setback was minimal and broken into separate parts along the building façade. The Board commended the Applicant for providing more than the code-required building setback at the base of the building and at the rear façade, which will help the Applicant provide a creative and modulated rear façade at the zone edge. Additional landscaping provided by the Applicant in the setback will allow a better building relationship to the public realm.
 - **Access to Parking (SMC 23.47A.032.A.1):** The Code requires alley vehicle access for lots with an alley.
 - Requested Departure: The Applicant proposes access to the parking garage off 15th Avenue NE.
 - Board Recommendation: Three of the four Board members present at the meeting indicated that they support vehicle access off 15th Avenue NE. The Board noted that they support a parking use at the site to benefit the neighborhood. Some of the Board members indicated that the topographic slope of the site inhibits locating a vehicle access off the alley and would cause the Applicant to consider less desirable parking configurations in the building or abandon the parking use, since it is not required. The alley elevation is too high to accommodate underground parking. The Board considered the impacts of the driveway crossing the sidewalk on 15th Avenue NE, and though the Applicant could choose mitigation measures like signage, lights, paving, and other elements to help indicate a driveway entry to pedestrians and remind drivers to slow down as they enter and exit, no conditions were imposed on the project. The Applicant testified at the hearing that these types of mitigation measures would be implemented as part of the project.
 - **Sight Triangle (SMC 23.54.030):** The Code requires two sight triangles on either side of the driveway.
 - Requested Departure: The Applicant proposes one sight triangle at the exiting (north) side of the driveway.
 - Board Recommendation: The Board indicated they supported the Departure and noted that the south sight triangle still exists in the proposal, but that a building pole is in part of the sight triangle. The Board mentioned that the mitigation measures as noted in the Departure regarding access to parking will help pedestrians recognize the driveway. The Board agreed with the Applicant that sight lines are good at this location for entering and exiting cars.
17. All four members of the Board recommended approval of the design and Departures with the following condition:

The Board conditioned the project to provide a set-in mortar “dry garden” at the entry of the building where the sand dry gardens are shown on the plan. (The north and south gardens do not need to be set in mortar.) (DC4D2, PL3A4)

18. The Director reviewed the Board’s decision as required by SMC 23.41.014.F and accepted the Board’s recommendation. The Director conditionally approved the proposed design and the requested Departures with the conditions.

Public Comment

19. Comments were received during the design review process for the proposal. They are summarized in the Director’s Report, Exhibit 1, at 3-4. Comments received were in support of the project but noted certain building design concerns for the Board’s consideration.
20. Three public comments were also received in 2017 and are located in the record at Exhibit 9. Two were from citizens who opposed the up-zone and asked for the residences existing on the property to stay as they are. The other comment was from King County Public Health concerning demolition of structures which may contain lead-based paint.
21. The public hearing was held July 10, 2019 with appropriate notice to the public. Although the Examiner called for public testimony, no member of the public appeared to testify.

Director’s Review

22. The Director’s report, Exhibit 1, analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

23. SMC 23.34.007 provides guidance on how to evaluate the appropriateness of a rezone. In particular, the following provisions are applicable:
 - A. The provisions of this chapter apply to all rezones except correction of mapping errors. In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets those provisions. In addition, the zone function statements, which describe the intended function of each zone designation, shall be used to assess the likelihood that the area proposed to be rezoned would function as intended.

- B. No single criterion or group of criteria shall be applied as an absolute requirement or test of the appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations, unless a provision indicates the intent to constitute a requirement or sole criterion.
24. 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; service capacities for access, streets, transit, parking, utility and sewer, and shoreline navigation; any relevant changed circumstances; and the presence of overlay districts or critical areas.
25. 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 Examiner has jurisdiction to make a recommendation to the City Council on the proposed contract rezone pursuant to SMC 23.76.052.
2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC are to be weighed and balanced together to determine the most appropriate zone and height designation. “No single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a zone designation ... unless a provision indicates the intent to constitute a requirement” SMC 23.34.007B.

Effect on Zoned Capacity (SMC 23.34.008.A)

3. SMC 23.34.008.A requires that, within an urban center or urban village, the zoned capacity, taken as a whole, is to be no less than 125 percent of the applicable adopted growth target, and not less than the density established in the Comprehensive Plan. The established growth strategy density target for the University Community Urban Center is 25 households per acre.
4. Effect on Zoned Capacity Conclusion. The proposed rezone would slightly increase the zoned capacity of this Urban Center and this increase does not reduce capacity below 125 percent of the Comprehensive Plan growth target. Therefore, the rezone contributes to the City’s ability to meet the population growth targets and densities in the Plan.

Match Between Zone Type /Locational Criteria and Area Characteristics (SMC 23.34.008.B)

5. The property is currently zoned LR3. This parcel exists as an anomaly along this portion of 15th Avenue NE, as the parcels on the north and south side of this small lot (4,380 square feet) are already zoned NC2-75 (M). The proposed rezone to NC2-65 (M) will match the current zoning on the block. (The area was rezoned due to the citywide rezone approved by the City Council on April 19, 2019).
6. Match Between Zone Type and Locational Criteria Conclusion. This area, with its close proximity to light rail and urban services such as grocery and other retail, is ideal for increasing density and providing more housing within an urban center that is walkable and accessible to transit. The new proposed zone of NC2-65 (M) matches the characteristics of the area of the University District Urban Center better than any other zoning designation.

Zoning History and Precedential Effect (SMC 23.34.008.C)

7. The Council-adopted portions of the University Community Urban Center Plan (adopted November 1998 per Ordinance 119230) do not identify any specific rezones for the subject property. The area has been used historically as multi-family housing for students attending the University of Washington (“UW”).
8. The current zoning allows for a maximum height of 30 feet with a floor area ratio of 2.0. The proposed zone of NC2-65 (M) would allow for a maximum height of 65 feet with a floor area ratio of 4.75. The Applicant’s building proposal has a floor area ratio of 4.72.
9. Zoning History and Precedential Effect Conclusion. The new zone would match development expectations for the area when compared with the City’s recent up-zone. This rezone would not set any new precedent in the area; it would only zone this small parcel to match others already zoned to increased densities.

Neighborhood Plan (SMC 23.34.008.D)

10. The subject property is part of the University District Urban Center Plan. The Plan generally describes the area of University Way NE and 15th Avenue NE as a corridor that includes an area with high pedestrian activity, retail, key transit routes, and the western edge of the UW campus. The proposed rezone is in keeping with the Plan, in that it has completed design review and will add necessary housing to the urban center, close to transit and to the UW campus.
11. Neighborhood Plan Conclusion. There are no specific policies to guide rezones for this particular site in the University Community Urban Center Neighborhood Plan. The proposed rezone is consistent with the density anticipated in and around the University District Urban Center as contemplated in the Seattle

Comprehensive Plan. The proposal will facilitate future development that is consistent with the City's planning objectives.

Zoning Principles (SMC 23.34.008.E)

12. The zoning principles listed in SMC 23.34.008.E are intended to minimize 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.
13. The property to the north and south is already zoned NC2-65, and after the recent up-zone the block face is now zoned NC2-75 (M). Therefore, zone transition boundaries are unnecessary to the south and north. The PUDA for this project allows zero lot line development at this site similar to the development to the north.
14. The subject property is across an alley from LR3 zoning to the east. Although a gradual transition between zoning and height categories is preferred by the rezone criteria, the proposed rezone does not change the long-standing zoning pattern in the neighborhood of larger and more dense properties lining the principal arterials in the area. The juxtaposition of zones and uses would not change with the rezone proposal. The proposed rezone fills a zoning gap mid-block along a NC2-75 (M) zone. The proposal provides light wells with as much space as possible for increased gardens and patios on the alley, which will provide a green transition to the LR3 zone. In addition, the zone transition area contains an alley, which provides a physical barrier that serves as a buffer between the zones.
15. In the case of development in an NC zone adjacent to a residential zone, the Land Use Code requires a standard "wedding cake" building form to lessen impacts. The first 13 feet of structure requires no setback; between 13 and 40 feet, a 15-foot setback is required; above 40 feet, an additional three feet of setback is required for every 10 feet above 40 feet. SMC 23.47A.014.B. The Applicant has requested a Departure from building setback standards at the upper levels. In return for the added density above, the Applicant proposes to provide a courtyard area in the rear of the building allowing a deeper setback to break the building façade into three parts. Exhibit 10 at 51. The Board agreed with this Departure and determined that the Design Review process produced a design with strategies to reduce the perceived impacts of additional height, bulk and scale to the adjacent sites, including setbacks and modulation. The Director also approved the Departure.
16. The maximum height limitation of the LR3 zone is 40 feet for an apartment building. The proposed rezone would allow maximum heights of 65 feet in the NC2-65(M) zone with a 14-foot wide alley separating properties. The proposed rezone has partially mitigated height, bulk and scale through a sensitive building

design that achieves a transition through a series of architectural setbacks, scale giving architectural elements, and landscaping. Exhibit 10 at 51.

17. Zoning Principles Conclusion. The Applicant, through its design with the Departure approved by the Director, provides an effective zone transition between 15th Avenue NE and the alley to the east. The proposed rezone includes a specific proposed development (with a 65-foot height) that has gone through Design Review per SMC Chapter 23.41. The Design Review process produced a design with specific strategies to reduce the impacts of additional height, bulk and scale to the adjacent sites, including setbacks and modulation. The physical buffer of the alley and the courtyard at the rear of the building with appropriate landscaping will provide the necessary transition between zones.

Impact Evaluation (SMC 23.34.008.F)

18. Housing. The proposed rezone would positively impact the housing supply, as it would add 127 new residential units. The PUDA will ensure that the property is subject to the provisions of Chapter 23.58B and 23.58C. Since commercial and residential property is proposed, participation in the program will yield affordable housing within the project or an equivalent in lieu payment. The tenant relocation process related to this project is underway. Tenant relocation materials have been delivered with determinations of eligibility forthcoming.
19. Public Services. Public services will be available to the project due to its location in a highly developed urban area. No appreciable impacts to public services are anticipated due to the additional housing made possible by the proposed zone change.
20. Environmental Factors. The proposed rezone will allow three stories of additional height and will allow additional street-level commercial uses on the property. The proposed project would not create appreciable negative environmental impacts associated with allowing additional housing at this urban site. However, some additional shading of properties to the north and northeast would occur due to the height increase.
21. Pedestrian Safety. The area is currently developed with sidewalks, streetlights and crosswalks.
22. Manufacturing Activity. Not applicable.
23. Employment Activity. New commercial uses along with residential uses will be developed to replace the single-family dwellings, which may provide additional employment opportunities.
24. Character of areas recognized for architectural or historic value. The Department of Neighborhoods has determined it is unlikely that any of the

existing buildings (the subject site and other buildings in the project area) would meet the standards for designation as an individual landmark, due in part to loss of historic materials and integrity. Exhibit 11.

25. Shoreline, view, public access and recreation. The site does not lie within a shoreline district, no public access is being impacted or removed with this proposal, and no existing recreational areas are being impacted or removed. There is no evidence in the record of view impact.
26. Impact Evaluation Conclusion. The proposed rezone will have little to no negative impact on the surrounding area since the block face is zoned NC2-75 (M). Positive impacts include added commercial, including increased employment opportunities, and well-designed pedestrian-oriented development. There are no adverse environmental impacts and public services have adequate capacity to function properly with the addition of the planned units in the proposal.

Changed Circumstances (SMC 23.34.008.G)

27. Evidence of changed circumstances must be taken into consideration in reviewing the proposed rezone but is not required to demonstrate its appropriateness. There are obvious changed circumstances in the area, given that the City Council has recently adopted a legislative rezone for the area to a higher zoning designation. According to the City Council, the impetus for the legislative rezone includes the need to use the limited land resources of the City more efficiently with a greater concentration of density around light rail. The City Council also seeks to foster a more diverse neighborhood character, to increase height and density to achieve more affordable housing, and to ensure consistency between the comprehensive plan and the zoning map. These changed circumstances and the need to provide more housing within the City of Seattle justify the proposed rezone.

Overlay Districts (SMC 23.34.008.H)

28. The site is within the 45th Street Station Area Overlay District, which encourages greater density in proximity to light rail. The proposal is only .25 miles from 45th Street Station, and therefore will provide greater density close to the station, consistent with the intent of the Overlay District.

Critical Areas (SMC 23.34.008.I)

29. The subject property is not within or adjacent to a critical area.

Height Limits

30. The proposed rezone would allow an additional 25 feet in zoned height. SMC 23.34.009 addresses the designation of height limits for proposed rezones. The issues to be considered include the function of the zone; the topography of the area and its surroundings, including public and private view blockage; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.
31. Function of the zone. Height limits are to be consistent with the type and scale of development intended for the zone classification. In addition, the demand for permitted goods and services and potential for displacement of preferred uses resulting from the proposed development are to be considered. The proposed rezone lies within the boundaries of the University District Urban Center, which permits increased density within its boundaries. The entire block face, with the exception of this one parcel of 4,280 square feet, is zoned NC2-75 (M). The proposal's residential uses with commercial elements would be consistent with the type and scale of development in the vicinity and the proposed NC2-65 (M) zoning, and would not change the variety and size of commercial uses that are presently allowed. There will be no displacement of preferred uses.
32. Topography of the area. Height limits are intended to "reinforce the natural topography of the area and its surroundings." In addition, the likelihood of view blockage is to be considered. There is no likelihood of view blockage of protected public views, because there are no public views in the vicinity of the proposal. The proposed structure may impact territorial views from adjacent properties.
33. 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 height of the development is consistent with the predominant height and scale of new development to the north, which is representative of the area's overall development potential. Older one and two-story development in the area is not representative of the development potential for zoning in this area.
34. 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 most of the actual and potential zoned heights in the surrounding area. The only transition is to the east, with the physical buffer of the alley and the voluntary extra setback provided on the floor levels of the back of the building.

35. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC2-65 (M) with a PUDA.

Recommendation

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

Recommended Conditions for Contract Rezone

Prior to Issuance of a Master Use Permit

1. The rezoned property shall be subject to a PUDA and the provisions of SMC 23.58B and/or 23.58C.

Prior to Issuance of a Building Permit

2. Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3025193-LU.

Recommended Conditions for Design Review

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

Prior to Issuance of a Master Use Permit

3. The project plans shall provide a set-in mortar “dry garden” at the entry of the building where the sand dry gardens are shown on the plan, as recommended by the Board. (The north and south gardens do not have to be set in mortar.)

Prior to Issuance of a Building Permit

4. The developer is to provide a set-in mortar “dry garden” at the entry of the building, as recommended by the Board. (The north and south gardens do not have to be set in mortar.)

For the Life of the Project

5. 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, holly.godard@seattle.gov) or a Seattle DCI assigned Land Use Planner.

Entered this 17th day of July, 2019.


Barbara Dykes Ehrlichman
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner's recommendation to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the recommendation in writing to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the recommendation of the Hearing Examiner, and be addressed to:

Seattle City Council
Planning, Land Use and Neighborhoods Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3
P.O. 94728
Seattle, WA 98124-4728

The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought. Consult the City Council committee named above for further information on the Council review process.

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

In the matter of the Petition:)	Clerk File 314359
Application of Matt Driscoll to)	FINDINGS, CONCLUSIONS,
rezone an approximately 4,320)	AND DECISION
square foot site located at 4730 15 th)	
Avenue Northeast from Lowrise 3)	
(LR3 (M)) multifamily residential)	
to Neighborhood Commercial 2)	
with a 65-foot height limit (NC2)	
65 (M1)) (Project Number)	
3025193; Type IV))	
)	
)	

Introduction

This matter involves a petition by Matt Driscoll (the “Applicant”), to rezone approximately 4,320 square feet of land located at 4730 15th Avenue NE (the “Property”) from Lowrise 3 (M) (LR3 M) to Neighborhood Commercial 2-65 (M1) (NC2-65 M1). Attachment A shows the area to be rezoned.

On June 10, 2019, the Director of the Seattle Department of Construction and Inspections (SDCI) recommended approval of the proposed rezone, with conditions. SDCI also issued a design review decision.

The Hearing Examiner held an open record hearing on the rezone recommendation on July 10, 2019. On July 17, 2019, the Hearing Examiner issued Findings and Recommendation that recommended approval of the rezone, subject to conditions. On September 4, 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 adopts the Hearing Examiner's Findings of Fact as stated in the Findings and Recommendation of the Hearing Examiner dated July 17, 2019, as amended below.

The Findings of Fact are amended as follows:

1. The development site is 12,960 square feet. The rezone applies to the northernmost ~~4,280~~ 4,320 square-foot parcel, which is presently zoned Lowrise 3 ("LR3 (M)"). The remainder of the site is Neighborhood Commercial 2 with a 75-foot height limit ("NC2-75 (M)"). The property to be rezoned is addressed as ~~4726~~ 4730 15th Avenue NE. The site fronts 15th Avenue NE to the west and is bounded by NE 47th Street to the south and NE 50th Street to the north. An alley borders the site to the east.

* * *

11. In 2019, the City implemented area-wide zoning map changes, expansions of some urban village boundaries, modifications to development standards and other actions to implement MHA requirements for multi-family and commercial development in certain areas. ~~The 2019 City rezones did not include a change to the zoning of the subject site.~~ The 2019 Citywide rezones included a change to the zoning of the subject site from LR3 to LR3 (M), applying a mandatory housing affordability requirement and increasing permitted heights on the site.

* * *

13. The Applicant seeks a rezone from LR3 (M) to NC2-65 (M1), subject to a property use and development agreement ("PUDA"). The terms of the PUDA are not disclosed in the record before the Examiner. The Applicant plans to construct a seven-story apartment building containing 127 residential units above commercial space and underground parking. The rezone is subject to Chapter 23.58B and 23.58C, the Affordable Housing Mitigation Development Program for Commercial Development and the Mandatory Housing Affordability for Residential Development, through the terms of the PUDA containing self-imposed restrictions.
14. ~~According to the Director's Report, According to the staff report,~~ a PUDA will be executed and recorded as a condition of the contract rezone from LR3 (M) to NC2-65 (M1) with the condition that the

development be in substantial conformance with the approved plans for Master Use Permit 3025193-LU. The recorded condition will facilitate the use of the MHA suffix and any associated development standards identified in the Code for NC2-65 (M1) zones.

* * *

The Council also makes the following finding of fact:

24. The proposed rezone area was rezoned through Ordinance 125791 from LR3 to LR3 (M). According to Table A for 23.34.006, NC2-65 (M) is one category higher than the existing LR3(M). Seattle Municipal Code Section 23.34.006 B states:

B. When the Council approves a Type IV amendment to the Official Land Use Map in an area to which Chapters 23.58B and 23.58C have previously been applied through the use of a mandatory housing affordability suffix, the suffix for the new zone shall be determined as follows:

* * *

2. If the rezone is to another zone that is one category higher than the existing zone according to Table A for 23.34.006, the new zone should:

a. Have a (M1) suffix if it currently has an (M) suffix; or

* * *

Conclusions

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated July 17, 2019, as amended below. The Council amends the conclusions as follows:

* * *

5. The property is currently zoned LR3 (M). This parcel exists as an anomaly along this portion of 15th Avenue NE, as the parcels on the north and south side of this small lot (4,3804,320 square feet) are already zoned NC2-75 (M). The proposed rezone to NC2-65 (M1) will match the current zoning on the block. (The area was rezoned due to the citywide rezone approved by the City Council on April 19, 2019).
6. *Match Between Zone Type and Locational Criteria Conclusion.* This area, with its close proximity to light rail and urban series such as grocery and other retail, is ideal for increasing density and providing more housing within an urban center that is walkable and accessible to transit. The new proposed zone of NC2-65 (M1) matches the

characteristics of the area of the University District Urban Center better than any other zoning designation.

* * *

8. The current zoning allows for a maximum height of ~~30~~50 feet with a floor area ratio of ~~2.0~~2.3. The proposed zone of NC2-65 (M1) would allow for a maximum height of 65 feet with a floor area ratio of 4.75. The Applicant's building proposal has a floor area ratio of 4.72.

* * *

15. In the case of development in an NC zone adjacent to a residential zone, the Land Use Code requires a standard "wedding cake" building form to lessen impacts. The first 13 feet of structure requires no setback; between 13 and ~~40~~65 feet, a ~~15~~10-foot setback is required; above ~~40~~65 feet, an additional ~~three feet one foot~~ of setback is required for every 10 feet above ~~40~~65 feet. SMC 23.47A.014.B. The Applicant has requested a Departure from building setback standards at the upper levels. In return for the added density above, the Applicant proposes to provide a courtyard area in the rear of the building allowing a deeper setback to break the building facade into three parts. Exhibit 10 at 51. The Board agreed with this Departure and determined that the Design Review process produced a design with strategies to reduce the perceived impacts of additional height, bulk and scale to the adjacent sites, including setbacks and modulation. The Director also approved the Departure.

16. The maximum height limitation of the LR3 (M) zone is ~~40~~50 feet for an apartment building in an urban center. The proposed zone would allow maximum heights of 65 feet in the NC2-65 (M1) zone with a 14-foot wide alley separating properties. The proposed rezone has partially mitigated height, bulk and scale through a sensitive building design that achieves a transition through a series of architectural setbacks, scale giving architectural elements, and landscaping. Exhibit 10 at 51.

* * *

31. Function of the zone. Height limits are to be consistent with the type and scale of development intended for the zone classification. In addition, the demand for permitted goods and services and potential for displacement of preferred uses resulting from the proposed development are to be considered. The proposed rezone lies within the boundaries of the University District Urban Center, which permits increased density within its boundaries. The entire block face, with the exception of this one parcel of ~~4,280,320~~ square feet, is zoned NC2-75 (M). The proposal's residential uses with commercial elements would be consistent with the type and scale of development in the vicinity and the proposed NC2-65 (M1) zoning, and would not change the variety and size of commercial uses that are presently allowed. There will be no displacement of preferred uses.

* * *

35. Section 23.34.006 B.2.a requires that a rezone from LR3 (M) to a zone with a height limit greater than 55 feet and equal to or less than 95 feet have a (M1) suffix.

~~35.36.~~ 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.

Decision

The Council hereby **GRANTS** a rezone of the Property from LR3 (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

