

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

In the Matter of the Application of

CF 314400

DANIEL GODDARD, WEINSTEIN A+U

Department Reference:
3030517-LU

for a contract rezone for property located
at 1620 16th Avenue

Introduction

Daniel Goddard, Weinstein A+U, applied for a rezone, on behalf of Jewish Family Service of Seattle, of property located at 1620 16th Avenue from Lowrise 3(M) (“LR3(M)”) to Neighborhood Commercial 3-65'(M1) (“NC3-65(M1)”) with a property use and development agreement (“PUDA”). The Director of the Department of Construction and Inspections (“Director”) submitted a report recommending that the rezone be approved.

A hearing on the rezone application was held before the Hearing Examiner on October 11, 2023. The Applicant was represented by Abigail DeWeese, attorney-at-law, and the Director was represented by Carly Guillory, Land Use Planner. Following the Hearing Examiner's site visit on October 25, 2023, the record closed.

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 on the east side of 16th Avenue. The site consists of two parcels, each running east to west, addressed as 1610 16th Avenue (parcel identification number (“PIN”) 723460-0465) to the south, and 1620 16th Avenue (PIN 723460-0470) to the north. The total square footage of the lots is 15,000 square feet. The south parcel is currently zoned NC3-75(M), and no zone change is proposed to this parcel. The north parcel contains an existing two-story apartment building with a detached garage structure, and the south parcel contains an existing surface vehicular parking area. The north parcel is zoned Lowrise 3 with a Mandatory Housing Affordability Suffix of “M” (“LR3(M)”). The site is bound by 16th Avenue to the west, and an alley to the south and east. To the north is a three-story residential building (Marquis Apartments – 1605 East Olive Street). *See* Exhibit 1.

2. Properties to the north are zoned LR3(M). Lots to the east and west are zoned LR3(M) and NC3-75(M). Properties to the south are zoned NC3-75(M).
3. Surrounding development includes a mix of commercial and residential structures of a variety of architectural styles and building heights. To the north is a three-story residential building (Marquis Apartments – 1605 East Olive Street). Across the alley to the east, is a three-story apartment building with accessory parking (Cascadia Apartments – 1621 17th Avenue) and an assisted living facility (Gaffney House – 1605 17th Avenue). To the south and southeast, across the alley, is a six-story commercial and residential building (Madison Crossing/Central Co-op – 1600 E Madison Street), a four-story apartment building (Garden Court Condominiums – 1631 16th Avenue), and a three-story commercial office building (Jewish Family Service Capitol Hill Campus – 1601 16th Avenue) are across 16th Avenue, west of the subject property. Institutional and commercial uses are primarily located in larger scaled buildings organized along E Madison Street with generally smaller-scaled residential buildings located a block north and south of E Madison Street. There are several exceptions in which larger residential buildings are located further from E Madison Street to the west and east of the project site.
4. East Madison Street, located half a block to the south, is a primary vehicular and pedestrian connection to Downtown from the surrounding neighborhood.
5. The subject site is located within the First Hill/Capitol Hill Urban Center.
6. The current height limit for the north lot is 50 feet. The current height limit on the lot to the south is 65 feet.
7. No mapped environmentally critical areas are on or near the site.

Zoning History and Potential Zoning Changes

8. The project area was zoned Commercial or Industrial in 1923. In 1947 the property was rezoned to Second Residential District (“R2D”). The property was rezoned to Multiple Residential (“RM”) in 1957. In 1991 the north parcel was rezoned to LR3, and the south parcel was rezoned to NC3-65.
9. In August 2016 the City Council passed Ordinance 125108 creating a new Land Use Code Chapter 23.SSC, Mandatory Housing Affordability for Residential Development (“MHA-R”). The purpose of Chapter 23.SSC is to implement an affordable housing incentive program authorized by RCW 36.70A.540. Chapter 23.S8C specifies a framework for providing affordable housing in new development, or an in-lieu payment to support affordable housing, in connection with increases in residential development capacity. The MHA citywide rezone changed the subject site’s zoning designations from the north parcel’s LR3 and the south parcel’s NC3-65 to LR3(M) and NC3-75(M) respectively.

Neighborhood Plan

10. The subject site is within the area included in the Capitol Hill Neighborhood Plan within the City of Seattle Comprehensive Plan, Adopted Neighborhood Plans section. This Neighborhood Plan was adopted in 1998.

Proposal

11. The proposal seeks to rezone only the north parcel portion of the property from Lowrise 3(M) LR3(M) to NC3-65(M1). The proposed development project includes a 7-story, 88-unit apartment building with a restaurant. Parking for 105 vehicles is proposed. The existing onsite building is proposed to be demolished.
12. The proposed rezone would maintain the existing pattern of commercially zoned properties generally fronting the E Madison Street corridor and commercial district, with residential uses to the north of this commercial district and corridor. The proposed rezone will move an existing boundary between commercial and residential zones approximately 60 feet to the north. A restaurant use is proposed at the southwest corner of the building, facing 16th Avenue. Residential uses occupy the remainder of the project's frontage and create a buffer or boundary between commercial and residential areas. Across the street to the west is the Jewish Family Service of Seattle, a nonresidential use fronting 16th Avenue and the proposed commercial use on site.

Public Comment

13. The public comment period ended on August 27, 2018. In addition to the comments received through the design review process, other comments were received and considered by the Department, to the extent that they raised issues within the scope of its review. These areas of public comment related to offering support for the project and sharing concerns with transportation, carbon emissions, height, density, and shadow impacts.
14. Comments were received at the public hearing before the Hearing Examiner:
- a. Marie Baeta expressed concern about removal of the existing building (which she believed may be a historical building, though this was not demonstrated in the record), sunlight blocking by the project, and tree removal.
 - b. Jack Hilovsky stated some support for aspects of the proposal but expressed concern about incompatibility of the project with the neighborhood due to height and density of the proposal.
 - c. Francesca Oaksford expressed support for the proposal.
15. Erin Wade submitted a written comment in advance of the hearing. She expressed concern about the removal of the existing building on the property and would like to see trees on or associated with the property preserved.

Director's Review

16. The Director reviewed the Design Review Board's recommendations and agreed that the proposed project results in a design that best meets the intent of the Design Review Guidelines, and accepted the Board's recommendations. The Director approved the design. Exhibit 16 at 14-17.
17. The Director's report (Exhibit 1) analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

18. 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.
19. 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.
20. 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. The subject site is located within the First Hill/Capitol Hill Urban Center. The growth target for this urban center is 6,000 housing units between the years 2015 and 2035 (Growth Strategy

Appendix, Comprehensive Plan/Seattle 2035) and the density sought is 15 housing units per acre (Land Use Appendix, Comprehensive Plan/Seattle 2035).

5. According to the SDCI Urban Center/Village Housing Unit Growth Report (dated July 8, 2022), the First Hill/Capitol Hill Urban Center has had a growth rate of 25.8%. The proposed rezone will not reduce the zoned capacity for the First Hill/Capitol Hill Urban Center. The proposed rezone will increase zoned capacity and zoned density by allowing for additional building height and 12 residential units. The 12 additional units are calculated based on the additional height and density allowed in the NC zoning versus the LR3 zoning, which results in an additional 6 units on levels six and seven. The proposed rezone is consistent with SMC 23.34.008.A.1. as the increase in zoned capacity does not reduce capacity below 125% of the Comprehensive Plan growth target.

Match Between Zone Criteria and Area Characteristics

6. 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. The proposed rezone would be consistent with the adjacent zoning in the area. Currently, the site and its relation to adjacent zoning matches the NC3 zone function and locational criteria, found in SMC 23.34.078,¹ so the designation is appropriate.

Neighborhood Plan

21. The applicable plan policies and goals from the Capitol Hill Neighborhood Plan portion of the Comprehensive Plan relate to housing, design, and zoning regulations generally, but not to rezones specifically. Those topical goals and policies include:

¹ 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.

CH-P4 Strengthen and enhance the character of the major residential neighborhoods and encourage a greater range of housing choices affordable to a broad spectrum of the entire community.

The project provides 88 residential units of studio and one-bedroom configurations and includes conformance with the requirements of the MHA program.

CH-G2 An enhanced neighborhood with diverse land uses, a mixture of housing types including single-family and dense multifamily, and vibrant commercial districts.

The character of the existing neighborhood along 16th Avenue between East Olive Street and E Madison Street includes three multifamily buildings and the Jewish Family Center's existing office building. The project would reflect this existing density.

CH-P5 Encourage the preservation of the neighborhood's architectural quality, historic character, and pedestrian scale.

The proposed design responds to the neighborhood's architectural quality, historic character, and pedestrian scale, with elements such as setbacks, weather protection, commercial uses, high-quality materials such as brick and glass, and expansive windows and metal framed decks.

CH-P8 Enhance and protect the character of the diverse residential districts.

The Project will enhance the character of the neighborhood by providing a thoughtfully designed building, additional residential use and neighborhood-scale commercial space.

CH-G3 A community with a full range of housing types from single-family homes to multifamily contributing to a diverse, densely populated neighborhood.

The project increases density and residential opportunities in the neighborhood.

CH-P15 Encourage the development of high-quality new housing that blends with historic housing.

The proposed design includes high-quality materials and design elements that respond to the nearby historic housing such as the Marquis Co-Op and Garden Court Apartments.

CH-G6 A pedestrian-oriented neighborhood with a balanced transportation environment that emphasizes public transit, yet also facilitates vehicular mobility and addresses the parking needs of businesses, residents, and students.

The Project will provide more potential riders of the transit infrastructure in the neighborhood, including Light Rail and frequent bus service. At the same time, the Project will address the parking needs of the immediate community by providing on-site parking for building residents and Jewish Family Service office uses.

Zoning Principles/Precedential Effect

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. There is some effective separation between the proposal and adjacent and nearby properties provided by topographic changes, adjacent streets to the west, and an alley to the east.
9. The Director considered the zone transition between the proposal and less intensive development to the north. Design elements have been employed in the proposal to mitigate possible impacts and create a gradual transition between zoning categories and height limits. These elements include shifting the massing (floors two through seven) 21 feet south of the adjacent site to the north, installation of a landscape buffer along the north property line, and fenestration patterns to maintain privacy of adjacent residents.
10. In addition, the Design Review process (SMC 23.41) also considers height, bulk and scale transitions to lower adjacent zones and response to existing context. The proposed rezone includes a specific proposed development that has gone through the Design Review process consistent with SMC 23.41. The design that has been approved by SDCI includes design strategies to address the project's height, bulk, and scale.
11. The proposed zoning aligns with existing lot lines and street centerlines. An established boundary between commercial and residentially zoned properties remains and is moved north 60 feet. A gradual transition between zoning categories is provided in the project design through use of setbacks and landscaping.
12. The proposed 65-foot height limit is consistent with new development in the area and anticipated zoning changes.
13. The proposed zone with a 65-foot height limit is consistent with the Capitol Hill Neighborhood Plan and existing built character of the area.

Impact Evaluation

14. The proposed rezone would positively impact the housing supply, as it would add 98 new residential units, with 12 new units created beyond the existing zoning.
15. 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. Height, bulk and scale impacts, including shadow impacts, were reviewed and addressed through the design review process.

16. The proposal will have a positive impact on the supply of housing in the area. The proposed rezone will add housing capacity to the neighborhood.
17. The site does not lie within a shoreline district, no public access is being impacted or removed with this proposal and no existing recreational areas are being impacted or removed.

Changed Circumstances

18. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. The City's proposed rezone in this area, for purposes of implementing MHA-R affordable housing legislation, indicates an up-zone pattern consistent with the proposal.

Overlay Districts

19. The site is within a Pedestrian overlay district. The overlay will not change with this rezone proposal.

Critical Areas

20. As noted above, there are no mapped environmentally critical areas on or near the site.

Height Limits

21. The proposed rezone would allow an additional 15 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 NC3 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 existing topography of the site is characterized at the four-foot-tall rockery and retaining wall along the west property line generally sloping upwards to the east at an approximately seven percent slope gaining an additional eight-feet in elevation for a difference in elevation of 12-feet. The existing zoning transition pattern in this area generally reinforces the natural topography of the area. Zoning to allow taller buildings is generally located along the East Madison Street corridor, with lower height zoning for properties to the north of this corridor. The proposed rezone would maintain this pattern and reinforce a transition in height, bulk, and scale from NC3-75(M) to the south to LR3(M) to the north.

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.

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. Physical buffers exist, mostly in the form of streets and an alley. However, the proposal is compatible in height with nearby and planned development and zones. The height limit of 65-feet would be compatible with the actual and zoned heights in the surrounding area, and consistent with the transition of zoned heights and scale of development in the area.
26. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC3-65(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:

The Director recommended approval with the following Design Review Conditions:

Prior to Issuance of a Construction Permit

1. Include in the construction permit plan set the following:
 - a. Those representative examples and details in section and plan shown on pages four and five of Design Recommendation Conditions of Approval Supplemental Information (WeinsteinA+U, August 13, 2020), including:
 - i. TYP Window Head & Sill with Break Metal (2/A471);
 - ii. TYP Corner Window Post with Metal Panel (5/A441); and
 - iii. TYP Intermediate Window Post with Break Metal (8/A441).
 - b. Details describing the equipment required for the operation of the overhead garage door (that equipment listed on page eight of the Design Recommendation Conditions of Approval Supplemental Information document (WeinsteinA+U, August 13, 2020)).
 - d. Details describing those measures/cueing devices/elements proposed to enhance pedestrian safety along 16th Avenue, which are described on pages 20-21 of Design Recommendation Conditions of Approval Supplemental Information (WeinsteinA+U, August 13, 2020) and summarized as: parking garage entry ramp

configuration, cast-in place vehicle detection loop, building setback and plantings, traffic mirror, and cast-in place drive-over lighting.

2. The design of exterior space abutting the commercial tenant space currently planned for outdoor dining associated with the restaurant use (adjacent 16th Avenue) shall be maintained in the final design and shall be dedicated for ancillary activities (seating, restaurant dining) to occur in the future if another commercial use is proposed for this space. Include in the construction permit plan set details demonstrating consistency with this condition.

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.

The Director recommended approval with the following rezone condition:

Prior to Issuance of a Master Use Permit

1. Submit a copy of the approved Property Use and Development Agreement (PUDA) (required pursuant to SMC 23.34.004) containing the following condition of approval: a. Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit 3030517-LU.

Entered November 11, 2023.

/s/Ryan Vancil
Ryan P. 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.

**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 **WEINSTEIN A+U**. Case Number: **CF-314400** in the manner indicated.

Party	Method of Service
Applicant Daniel Goddard Weinstein A+U danielg@weinsteinau.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Applicant Legal Counsel Abigail Pearl DeWeese Hillis Clark Martin & Peterson P.S. abigail.deweese@hcmp.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: November 16, 2023.

 /s/ Angela Oberhansly
Angela Oberhansly, Legal Assistant