

July 13, 2018

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Ketil Freeman, Council Central Staff
Subject: Clerk File (CF) 314356 – Contract Rezone Application and Appeal for 7009 Greenwood Ave North

On July 18, 2018, the Planning, Land Use and Zoning Committee (Committee) will consider an application by 70th & Greenwood Ave, LLC (Applicant) to rezone a property located at 7009 Greenwood Avenue North (Property) from Neighborhood Commercial 2 with a 40-foot height limit (NC2 40) to neighborhood Commercial 2 with a 55-foot height limit and M Mandatory Housing Affordability (MHA) suffix (NC2 55 (M)) and an appeal of that application by Irene Wall and Bob Morgan (Appellants).

This memorandum (1) provides an overview of the application to rezone the Property; (2) sets out procedural standards, such as the type of action, standard of review, and burden of proof that apply to the Council’s decision; and (3) summarizes issues on appeal.

Overview

The Applicant has applied for a Mater Use Permit (MUP) including a contract rezone for an approximately 21,000 square foot site located at 7009 Greenwood Avenue North. The Property is split-zoned: the western half of the Property is zoned NC2 40 and the eastern half of the Property is zoned Single Family 5000 (SF 5000). The Applicant is seeking to rezone the NC2 40 portion of the Property to NC2 55 (M). No rezone is proposed for the SF 5000 portion of the Property. The NC2 40-zoned portion of the Property is cleared; the SF-5000 zoned portion is currently developed with a single-family house and detached garage. The entire Property is treated as a “development site” for the purposes of the MUP application.

The Applicant plans to redevelop the Property with a 35-unit apartment building with approximately 6,000 square feet of retail space surrounding an interior courtyard. The Applicant proposes to participate in the multi-family tax exemption program, which would require that 20 percent of units be affordable to households at 60 to 80 percent of area median income. Sixty percent of the units are proposed to have two or more bedrooms. The building would have below-grade parking for 26 vehicles. The proposed structure would be approximately five stories tall with a deck, solar array, and greenhouse located on the roof.

The Applicant filed a rezone application in December 2016. That original application contemplated a rezone to a zone designation with a 65-foot height limit. The Applicant revised the application in February 2018 to seek a 55-foot height limit. On April 9, 2018, the Seattle Department of Construction and Inspections (SDCI) issued an affirmative rezone recommendation, State Environmental Policy Act decision, and design review decision. The Hearing Examiner held an open record hearing on the rezone recommendation on April 30, 2018. Eight people testified at the hearing, with testimony both for and against the proposal. On June 5, 2018, the Hearing Examiner issued a recommendation to Council to

approve the rezone subject to conditions in a Property Use and Development Agreement (PUDA). On June 19, 2018, the Appellants filed an appeal with the City Clerk.

In addition to the testimony at the hearing, the record for the application contains well over 100 individual pieces of public comment related to the project. This includes comments received by SDCI¹ and the Hearing Examiner².

Procedural Matters

Type of Action and Materials in the Record

A Council decision on a contract rezone is a quasi-judicial action. A quasi-judicial action is, “an action of the City Council that determines the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.”³ Quasi-judicial actions are subject to the state 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 is available for review in my office at Councilmembers’ convenience. SDCI’s recommendation; the Hearing Examiner’s exhibit list; minutes of the hearing; a full plan set; other, but not all, exhibits; and the Hearing Examiner’s recommendation are available in [CF 314356](#). This information, as well as an audio recording of the hearing, are also available through the Hearing Examiner at [HE File Number CF-314356](#).⁴

Pursuant to the Seattle Municipal Code, when the Hearing Examiner’s recommendation is appealed, the Council must issue its decision within 120 days of receiving the Hearing Examiner’s recommendation, meaning the Council must act by October 4, 2018.⁵

Standard of Review and Burden of Proof

In making its decision on a quasi-judicial rezone application, the Council applies the *substantial evidence standard of review*. This means that the Council’s decision to approve, approve with conditions, or deny the recommendation must be supported by substantial evidence in the record. The Appellant bears the burden of proving that the Hearing Examiner’s recommendation should be rejected or modified.⁶

Amended Clerk File Title

CF 314356 contains the application to rezone the Property. The original CF title does not accurately reflect the proposal as it was revised in February. The title will be revised as follows:

¹ Hearing Examiner’s Exhibit 54, available at <https://seattle.legistar.com/LegislationDetail.aspx?ID=2818084&GUID=EAC1BA09-5631-4BB3-B250-D358930231DE&Options=Advanced&Search>

² Hearing Examiner’s Exhibit 53, available at <https://seattle.legistar.com/LegislationDetail.aspx?ID=2818084&GUID=EAC1BA09-5631-4BB3-B250-D358930231DE&Options=Advanced&Search>

³ [Council Quasi-judicial Rules II.I.](#)

⁴ <https://web6.seattle.gov/Examiner/case/CF-314356>

⁵ [Seattle Municipal Code \(SMC\) 23.76.005.D.3.](#)

⁶ [SMC 23.76.056.A.](#)

Application of 70th & Greenwood Ave, LLC to rezone an approximately 12,188 square foot site located at 7009 Greenwood Avenue North from Neighborhood Commercial 2 with a 40 foot height limit (NC2 40) to Neighborhood Commercial 2 with a 65 55 foot height limit and M Mandatory Housing Affordability suffix (NC2-65 NC2 55 (M)) (Project No. 3023260; Type IV).

With these revisions, the CF title will accurately reflect the requested zoning designation and the addition of the MHA suffix to reflect the inclusionary zoning requirement.

Issues on Appeal

Issues on appeal are briefly summarized below. This summary is not intended to be exhaustive. Full copies of the appeal, responses to the appeal by the Applicant and SDCI, and a reply by the Appellants are contained in Clerk File 314356.

Issues

The Appellants assert that the Hearing Examiner's recommendation contains multiple errors. Issues that the Committee may hear oral argument about are:

- Whether the Hearing Examiner erred by recommending a rezone to the NC2 55 (M) zone designation;
- Whether the Hearing Examiner's findings of fact and conclusions related to application of rezone criteria are in error; and
- Whether the Hearing Examiner's recommended conditions related to rooftop features and affordable housing are sufficient.

Relief sought by the Appellants includes denying the application to rezone the Property or, alternatively, including conditions in the PUDA requiring setbacks from the adjacent single-family zone and reduced height of rooftop features.

Next Steps

At the meeting on July 18, the Committee will hear oral argument and may discuss the merits of the appeal and application. The Committee will make recommendations on the appeal and application at a subsequent committee meeting. The options before the Committee on the appeal and the rezone request include:

- Approving the rezone with conditions,
- Modifying proposed condition, or
- Denying the rezone.

Attachments

1. Hearing Examiner's recommendation
2. Appeal of the Hearing Examiner's recommendation – 6.19.2018
3. Applicant's response to the appeal – 7.9.2018
4. SDCI's response to the appeal – 7.9.2018
5. Appellants reply to the response – 7.16.2018 (anticipated, will be added when received).