

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

In the Matter of the Application of

**CF 314127**

**MARIA BARRIENTOS**

Department Reference:  
3016024

for approval of a contract rezone for  
property located at 2203 and 2209  
Eastlake Avenue East

**Introduction**

Maria Barrientos applied for a rezone of property located at 2203 and 2209 Eastlake Avenue East from Neighborhood Commercial 1P-30 and Lowrise 2-RC to Neighborhood Commercial 2P-40. The Director of the Department of Planning and Development ("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. The Director's design review decision was appealed, and the Hearing Examiner has issued a separate decision on this date affirming it.<sup>1</sup>

A consolidated public hearing on the rezone application and appeal hearing on the design review appeal was held before the Hearing Examiner ("Examiner") on November 16, and 17, 2015. The Applicant was represented by Jeremy Eckert and Patrick J. Schneider, attorneys-at-law, the Appellants were represented by Sandra Wheeler, *pro se*, and the Director was represented by Shelley Bolser, Land Use Planning Supervisor, and Lindsay King, Land Use Planner. Following additional written public comment, submission of the parties' written closing arguments in the design review appeal, and the Examiner's site visit, the record closed on December 18, 2015.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code") unless otherwise indicated. Having considered the evidence in the record and reviewed the site, the Examiner enters the following findings of fact, conclusions and recommendation on the rezone application.

**Findings of Fact**

**Site and Vicinity**

1. The subject site is composed of two lots, which are addressed as 2203 and 2209 Eastlake Avenue East and located within the Eastlake Residential Urban Village. The north lot is approximately 4,100 square feet in area, and the south lot is approximately 8,200 square feet. The site is on the northwest corner of Eastlake Avenue East and East Boston Street, and there is a grade change of approximately 10 feet from Eastlake Avenue East to the west property line at

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<sup>1</sup>The file number for the design review appeal is MUP-15-027(DR).

the alley, which is the low point of the site. The west part of the site includes a Steep Slope Environmentally Critical Area for which a limited exemption was granted.

2. The zoning for the site is split between Neighborhood Commercial 1 with a Pedestrian Overlay and 30 foot height limit ("NC1P-30") and Lowrise 2 multifamily with a Residential Commercial Overlay and a height limit of 30 feet ("LR2 RC"). The Lowrise zoning covers approximately the north 20 feet of the property. The site is developed with two commercial buildings, a small mixed-use building on the south, which is used as a dry cleaning business and office space, and a former residential structure that has been enlarged and converted into an office building on the north.

3. To the north, the zoning is LR2 RC with a height limit of 30 feet, and then NC2P-40 with a height of 40 feet. To the south, the zoning is NC1P-30 with a height of 30 feet, and then LR3 with a height of 40 feet. The zoning pattern across Eastlake Avenue East is similar. To the west for several blocks across the alley, the zoning is LR3 with a height of 40 feet. *See Exhibits R30 and R32.*

4. Surrounding development consists of the two-story Eastlake Motel and parking lot to the north, a one-story restaurant to the south, an office building and multi-story residential structure to the east, and a four-story multifamily structure across the alley to the west. Lake Union is three blocks to the west, and Interstate 5 is two blocks to the east. The topography in the area slopes down from the freeway to the lake.

5. Eastlake Avenue East and the broader neighborhood include multifamily mixed use structures, one-story commercial structures, restaurants, retail outlets, community services, grocery stores, and parks. Existing structures vary in height from one to four stories, with some buildings that read as five stories.

6. Eastlake Avenue East has a 75-foot-wide right-of-way with two-way traffic and parking on both sides. It is designated a principal arterial street and is a major Metro bus corridor between downtown Seattle and areas north of Lake Union, with several bus stops and frequent transit service. Eastlake Avenue East also provides connections to the Burke Gilman Trail. East Boston Street has a 60-foot-wide right-of-way and is designated a collector arterial east of Eastlake Avenue East, and a non-arterial access street west of Eastlake Avenue East. Most other nearby non-arterial streets are at least 60 feet wide. The alley to the west of the subject site is 20 feet wide.

#### Zoning History and Potential Zoning Changes

7. In 1986, the south parcel, 2203 Eastlake Avenue East, was rezoned from a Neighborhood Business zone to NCI-30, and the north parcel, 2209 Eastlake Avenue East, was rezoned from a Multiple Residential Low Density Zone to L2-RC.

8. In 2007, an ordinance was adopted updating the commercial zones throughout the city, which resulted in the addition of the pedestrian overlay to the south parcel. In 2011, an ordinance

changed development standards and naming conventions for lowrise multifamily residential zones across the city. The L-2RC zoning designation at the site became LR2-RC.

9. The Director reports that there are no city-initiated zoning changes proposed for the Eastlake neighborhood or sites surrounding the subject property.

#### Neighborhood Plan

10. The site is located within the planning area of the adopted Eastlake Neighborhood Plan but is not expressly referenced in the Neighborhood Plan.

11. The Neighborhood Plan's "Community Design" policies tend to be oriented toward development of future zoning regulations and design guidelines. *See, e.g.,* EL-P3, EL-P5, and EL-P9. However, EL-P7 is relevant to a proposed rezone. It states that "[b]uildings are an important part of Eastlake's views and streetscapes, and their designs should reflect the neighborhood's lowrise, finely textured scale, comparatively small development sites, and the individuality of its architectural expressions." The "Main Street," "Diversity," and "Affordable Housing" goals and policies also provide guidance for the proposed rezone. EL-G9 envisions a "neighborhood where residents and employees also shop and dine, that attracts and retains quality retail and services businesses, that is lively and busy during the day and evening and that has a clean and vital Main Street that adds to the sense of community," and EL-P25 reads "Seek to attract new businesses." The diversity goal (also listed as EL-G9) envisions a "neighborhood in which neighbors ... value diversity [and] welcome people of any race, age, family makeup and economic status". EL-G10 pictures a "neighborhood including all socioeconomic groups with some housing units affordable to people with low incomes," and EL-P30 seeks to "expand housing opportunities in Eastlake for those with incomes under 80 percent, and especially for those under 50 percent of the citywide median income." Exhibit 23.

#### Proposal

12. The Applicant seeks to have the property rezoned from NCIP-30 and LR2-RC to NC2P-40 with a property use and development agreement ("PUDA"). The terms of the PUDA are not disclosed in the record before the Examiner. The Applicant proposes to construct a five-story structure that includes 45 residential units, 3,423 square feet of commercial space at ground level, and below-grade parking for 39 vehicles. *See* Exhibits A3 and A11. Existing structures would be demolished, although the dry cleaning business would return to the new building. The housing would include one-bedroom units, family-sized units and live-work units. Most units would be market-rate, but nine would be affordable housing units. *See* Exhibit R29.

13. The Applicant met with neighborhood groups, who expressed a desire for the dynamic of a public gathering place in conjunction with the proposal, and the proposal evolved during the design review process. The structure will be eroded at the corner of Eastlake Avenue East and East Boston Street to provide for a courtyard corner plaza that also encompasses the walkway to the building entry. *See* Exhibit R31. The structure will be set back 75 feet from Eastlake Avenue East, 60 feet from East Boston Street, and 20 feet from the alley to the west, which will provide access from East Boston Street and East Lynn Street to the underground parking.

14. A transportation analysis for the proposal, prepared by Heffron Transportation, Inc., showed that the proposal would result in a net increase of 100 daily vehicle trips, including 7 additional AM peak hour trips and 11 additional PM peak hour vehicle trips, over the number of trips that would be generated by potential development that could occur on the site under existing zoning. Exhibits R11 and R12.

15. Heffron Transportation also prepared a parking demand analysis for the proposal using two different methodologies. The initial parking analysis determined that the site could generate a peak parking demand of 23 vehicles with development under existing zoning, and that the proposal would generate a parking demand for 39 vehicles. Exhibit R11. Using King County's "Right-Size Parking" model, the traffic engineer determined that the proposal would generate a parking demand of 32 vehicles. Exhibit R13. The City's Transportation Planner determined that the Right-Size Parking model yielded the most accurate parking estimate. Exhibit R14. As noted, although no parking is required within the urban village, the proposal includes below-grade parking for 39 vehicles.

16. The Applicant secured a Water Availability Certificate for the proposal from Seattle Public Utilities. Exhibit R15.

17. The subject site is mapped as a Steep Slope Environmentally Critical Area. Geotech Consultants, Inc. performed a geological engineering study of the site and issued a report for the proposal. Exhibit R17. The Director determined from the report and a topographic survey that the proposal qualified for relief from the general prohibition on development in the critical area and its buffer. Exhibit R16.

18. From Eastlake Avenue East looking west down East Boston Street, there are street-level views of Lake Union and the east side of Queen Anne Hill. However, existing development and vegetation block all views of the lake across the site from Eastlake Avenue East and nearby streets to the east.

19. The Applicant performed a view analysis showing the impact on the street-level view, looking toward the property from the east side of Eastlake Avenue East, of: 1) permitted development height under the current NC1P and LR2 zoning; 2) maximum permitted development height under current zoning including additional Code-permitted height allowances; and 3) the proposed structure with the rezone to NC2P-40. Exhibit R8. This exhibit also shows the street-level view looking west down East Boston Street at its intersection with Eastlake Avenue East with: 1) the permitted development bulk under current zoning; 2) maximum permitted development bulk under current zoning including additional Code-permitted height allowances; and 3) the proposed structure with the rezone to NC2P-40.

20. The Applicant performed an additional view study that compares views from the east side of Eastlake Avenue East at street level and at an elevation of 45 feet of: 1) full build-out under current zoning; 2) full build-out under NC2P-40 zoning; 3) full build-out under NC2P-40 zoning with no setback at the north property line; and 4) full build-out under NC2P-40 zoning with a five foot setback at the north property line. Exhibit R4, Attachment B. The view study shows

that although there would be no impact to views at street level, there would be a partial view blockage at 45 feet.

21. The Applicant also performed a view study from a neighboring resident's deck in a residential building on the southeast corner of Eastlake Avenue East. Exhibit R4, Attachment C. The existing view across the property of part of Lake Union, the northeast side of Queen Anne Hill, the Aurora Bridge and the Olympic Mountains is partially blocked by existing vegetation and a telephone pole and wires. The study shows that development under the existing zoning, with Code-allowed bonuses, would block most of the existing view, and that the proposed building would block a small part of the remaining view of the Olympic Mountains but overall, would add very little view blockage .

22. The Applicant performed a study of the shadow impacts of potential build-out under the existing zoning, full build-out under NC2P-40 zoning and with 0 and 5-foot setbacks from the north property line, and under NC2P-40 zoning with the proposed structure. Exhibit R4, Attachment C. The study shows that shadow impacts are nearly the same for build-out under existing zoning and for the proposal under NC2P-40 zoning.

23. The proposal was reviewed by the East Design Review Board ("Board") at three meetings. At the early design guidance meeting, the Board heard the applicant's analysis of the proposal, took public comment, and identified the siting and design guidelines of highest priority for the proposal. At the second early design guidance meeting, the Board considered the applicant's response to the initial design guidance, heard additional public comment, and offered additional recommendations for the proposal to meet the priority design guidelines. At the final recommendation meeting, the Board reviewed the applicant's response to the additional design guidance, particularly on issues related to the height, bulk and scale of the proposal and the design response to both the adjacent block and the broader neighborhood; heard public comment; and unanimously recommended approval of the proposal, including requested development standard departures, without conditions.

#### Public Comment

24. Many public comments were received during the design review process for the proposal. They are summarized in the Director's Report, Exhibit A2, at 3-6. The Director received additional public comments on the proposed rezone. See Exhibit R-1. The Hearing Examiner received testimony from 12 members of the public as well as 16 public comment letters. See Exhibits R25 and R27.

25. Among the issues mentioned most frequently in testimony and comment in opposition to the proposed rezone were the perception that a contract rezone is de facto "spot zoning," the desire by some in the community to participate in an anticipated citywide rezone process to implement comprehensive plan updates before any site specific rezones are considered, concerns that the proposed project fails to fit in with the existing neighborhood character and a desire to maintain that character, concerns with private view blockage and its potential impact on property values, and concerns with insufficient on-street parking in the area.

26. Testimony and comment in support of the rezone frequently mentioned the need for additional community-oriented retail in this part of the Eastlake neighborhood, the fact that the proposal would provide additional housing in a close-in neighborhood that connects employment centers in the University District, South Lake Union and downtown via a major transit corridor, support for the proposal's contribution to the revitalization of the neighborhood, the opinion that the existing irregular zoning pattern along Eastlake Avenue East is baffling and serves no purpose, and the opinion that the rezone would advance the goals and vision in the Neighborhood Plan.

#### Director's Review

27. The Director reviewed the East Design Review Board's recommendations and agreed that "the proposed project design results in a design that best meets the intent of the Design Review Guidelines". The Director therefore approved the design subject to two standard design review conditions. Exhibit A2 at 15, 50. As noted, the Director's design review decision was appealed and is the subject of a separate decision.

28. The Director also analyzed the proposal's potential long-term and short-term environmental impacts and recommended conditions to mitigate construction-related impacts. The Director's SEPA Determination of Non-significance was not appealed.

29. The Director's report, Exhibit A2, analyzes the proposed contract rezone and recommends that it be approved without conditions.

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

- SMC 23.34.018 - Lowrise 2 (LR2) Zone, Function and Locational Criteria
- SMC 23.34.020 - Lowrise 3 (LR3) Zone, Function and Locational Criteria
- SMC 23.34.070 - Residential-Commercial (RC) zone, function and locational criteria
- SMC 23.34.072 - Designation of commercial zones
- SMC 23.34.074 - Neighborhood Commercial 1 (NC1) zones, function and locational criteria
- SMC 23.34.076 - Neighborhood Commercial 2 (NC2) zones, function and locational criteria

#### Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.052 and makes a recommendation on the proposed rezone to the City Council.

2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC on rezones are to be weighed and balanced together to determine the most appropriate zone and height designation. In addition, the zone function statements are to be used "to assess the likelihood that the area proposed to be rezoned would function as intended." SMC 23.34.007.A. "No

single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a zone designation ... unless a provision indicates the intent to constitute a requirement ...." SMC 23.34.007.B.

3. The general rezone criteria, including "zoning principles," are set forth in SMC 23.34.008. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B.

4. Compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones. SMC 23.34.007.C. Therefore, Plan goals and policies are not separately reviewed.

#### Effect On Zoned Capacity

5. SMC 23.34.008.A 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 adopted growth target for the Eastlake Residential Urban Village is for 250 additional dwelling units between 2004 and 2024, and the target density is 15 dwelling units per acre by 2024. The proposed rezone would increase both zoned capacity and zoned density. Under the current zoning, the site could produce approximately 22 dwelling units, whereas the proposed contract rezone would produce 45 units. The proposal meets the requirements of SMC 23.34.008.A.

#### Match Between Zone Criteria and Area Characteristics

6. The area does not really function well as an LR2 zone. It includes a mix of densities, from one-story to four-story mixed-use residential and commercial structures. Given existing development, particularly more recent development, it is highly unlikely that the area will develop into a low-scale, low-density multifamily neighborhood. Some of the low-scale, well maintained structures will likely remain, but the trend in the area is toward a moderate scale of development.

7. The area meets one of the locational criteria for the LR2 zone, in that it has local access and circulation conditions that accommodate low-density multifamily development as well as direct access to an arterial street with frequent transit service. However, it is not characterized by small-scale structures and would not provide a gradual transition between single-family and LR1 zoning. The closest single-family zoning is located three blocks to the west and is separated from the site by LR3 zoning.

8. It is possible, but not probable that the area could function as an LR3 zone. It is located within an urban village in an area that would accommodate redevelopment, but given the existing mix of low to moderate scale residential and commercial uses, it is unlikely that the area will be "established as a multifamily neighborhood of moderate scale and density". SMC 23.34.020.A.2.

9. The area meets some of the locational criteria for the LR3 zone. It is located within an urban village and in an area that is a mix of multifamily residential and commercial uses, but predominantly multifamily residential, and where structures are a mix of low and moderate scale. It is near neighborhood commercial zones with a comparable height and scale of 30 and 40 feet. It is well served by public transit, has direct access to an arterial street with sufficient width for two-way traffic and parking along at least one curb, and is well supported by facilities and services, with the exception of retail services, which are limited considering the density and intensity of surrounding residential development. However, a portion of the site has been designated environmentally critical. Further, an LR3 zone in this location would not provide a transition between LR1 and more intense multifamily or commercial zoning. Instead, the LR3 zone would be located between several parcels to the north zoned LR2-RC and a parcel zoned NCI-30 to the south. Since both of those zones allow a 30 foot height and allow commercial uses, an LR3 zone between them would not provide a perceptible transition in scale or intensity. Overall, the area around the proposal site is at or beyond the general density and scale intended for an LR3 zone.

10. The RC zoning designation is part of the LR2-RC zoning that covers the north 20 feet of the subject property and part of the block to the north. The area would not downzone strip commercial or small commercial areas that are not extensively developed with commercial uses or provide opportunities for needed parking. Parking is heavily utilized in the Eastlake neighborhood. It supports an existing commercial strip, rather than an existing commercial node. The physical appearance of some structures along Eastlake Avenue East resembles that of adjacent residential areas, but the trend is toward larger structures. Mixed use structures, as well as older one-story commercial structures, include small commercial uses at street level.

11. As to the locational criteria for RC zoning, the existing zoning of the subject site is a multifamily designation and appropriately paired with the RC zoning. The proposal would not be a multifamily designation. The area includes both residential and commercial uses, with predominantly residential uses to the east and west of Eastlake Avenue East, but the RC designation would not result in additional parking at the site. Neighborhood Commercial zoning abuts Lowrise zoning in the area with few or no buffers, but the Neighborhood Commercial and Lowrise zoning along Eastlake Avenue East does serve as a buffer between the arterial and adjacent residential uses. The streets in the area have adequate access and circulation, and there is insufficient on-street parking in much of the area.

12. The subject site and immediately surrounding area do not meet the functional criteria for the RC zone but do meet some of the locational criteria. If the area were to remain a lowrise residential zone, retaining the RC designation might be appropriate. But the subject site and its immediate surroundings appear beyond the scale and range of development intended for the RC zone.

13. The subject site meets all threshold criteria for the designation of commercial zones. Although the rezone would extend the site's commercial zoning into the LR2-RC zone to the north, the LR2-RC zone allows for limited commercial uses, and the adjacent site to the north is developed with a commercial use, the Eastlake Motel. Although compact commercial areas are preferred, existing commercial development in the Eastlake neighborhood is generally linear



along Eastlake Avenue East, and the rezone would fit with the existing pattern. The Eastlake Avenue East business district is well established, so the proposed rezone would not create a new business district.

14. The area meets the functional criteria of the NC1 zone. Most of the subject property is part of the intersection of Eastlake Avenue East and East Boston Street, which is zoned for commercial use (NC1-30). The proposed rezone would expand the commercial zone 20 feet to the north and, together with the small retail establishments to the north and south, enhance the intersection's function as a shopping area for adjacent residential areas, including storefronts generally built to the front lot line and an atmosphere attractive to pedestrians.

15. The area meets just two of the locational criteria for the NC1 zone: The parcels are small to medium size, ranging from 2,040 square feet to 12,300 square feet; and there are no physical edges to buffer the multifamily residential areas to the north and west from the commercially zoned property along Eastlake Avenue East. However, contrary to the other three locational criteria, the area is not isolated or peripheral to the primary business district, is not located on streets with limited capacity, and does not have limited transit service.

16. The area meets the functional criteria for the NC2 zone. Some nearby commercial uses are smaller, neighborhood-serving businesses, whereas others are larger and/or serve a broader clientele. The area also accommodates other uses compatible with its retail character, including housing and offices. Storefronts are generally built to the front lot line, the area has a pedestrian scale and amenities, and shoppers can drive to the area and walk from store to store. The proposed contract rezone would add a mixed use building with storefronts along Eastlake Avenue East and pedestrian amenities.

17. The area meets all but one of the locational criteria for the NC2 zone. It constitutes the primary business district within the Urban Village, is located on a principal arterial where there is a lack of strong edges to buffer adjoining residential areas from the commercial uses, and the parcels range from small to medium in size. However, the area has frequent, rather than limited or moderate transit service.

#### Neighborhood Plan/Precedential Effect

18. The proposed rezone is generally consistent with the applicable portions of the Neighborhood Plan. It would reflect the neighborhood's lowrise, finely textured scale and its individuality of architectural expression, would bring new retail and service-oriented businesses to the area, and would provide both affordable and market rate housing. The proposal could serve as a precedent for requested rezones to redevelop the underdeveloped property located within the same block and on the northeast corner and possibly the southwest corner of the intersection of Eastlake Avenue East and East Boston Street. *See* Exhibits R30 and R32. Such a result would be consistent with the Neighborhood Plan's Main Street goal and policies as well as the numerous public comments favoring more retail opportunities in the area. Depending upon what was built and how it was constructed, any precedential effect could also be consistent with Neighborhood Plan's EL-P7 policy and its Diversity and Affordable Housing goals.

## Zoning Principles

19. 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.

20. As discussed above, the pattern within the Eastlake neighborhood generally consists of Neighborhood Commercial and Multifamily Residential/Commercial zoning along Eastlake Avenue East, with a pocket of Lowrise Multifamily zoning near the site, Lowrise Multifamily zoning to the east and west, and Single Family zoning a few blocks further to the east and west. *See, e.g.,* Exhibit R30. Transitions between commercial zones along Eastlake Avenue East and adjacent zones to the east and west usually include an alley and the sloping topography. Also, NC2P-30 zoning is more prevalent along the east side of Eastlake Avenue East, and NC2P-40 is more prevalent along the west side, which fits with the sloping topography.

21. The proposed rezone to NC2P-40 would transition to NC1P-30 upslope and across Eastlake Avenue East, as well as across East Boston Street to the south. There would be no street or topographic separation between the proposed rezone and the LR2 RC zoning to the north, which includes a surface parking lot and two-story motel. Other multifamily residential buildings are located in the remainder of the LR2 RC zone to the north, and they border NC2P-40 zoning on the north with no transition at the zone edge. To the west, the proposed NC2P-40 zone would be separated from the adjacent LR3 zoning, with a 40 foot height limit, by a 20-foot-wide alley. The same transition is seen frequently along the zone edge west of Eastlake Avenue East. The design review process for the proposal included a thorough review of the site's zone edges, including strategies to minimize the appearance of height, bulk and scale.

22. With respect to zone boundaries, the proposal would be consistent with the general pattern of commercial uses facing each other across Eastlake Avenue East and facing away from adjacent residential areas. A small part of the rezone parcel would face residential zoning across Eastlake Avenue East, but this is not an unusual situation in the area, and the arterial is 75 feet wide, providing an effective separation between the two zones. The proposal is also consistent with the principle that height limits greater than 40 feet should generally be limited to urban villages.

## Impact Evaluation

23. The proposed rezone would positively impact the housing supply, as it would add 45 new residential units, including family-sized units and nine low income units.

24. 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. 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.

25. The proposal includes public right-of-way improvements for pedestrian safety. The proposed rezone would allow slightly more and varied commercial uses, which could result in a slight increase in employment activity in the area. Manufacturing activity and shoreline navigation are not factors in this rezone.

26. The proposal is located just over two blocks from the shoreline of Lake Union and will have no impact on public access to the shoreline or recreation. As noted, existing development and vegetation block views of the lake across the site. Some private views of the lake would be blocked by the proposal or by development under existing zoning, but as a result of the design review process, public views of the lake from the East Boston Street public right-of-way would be enhanced.

#### Changed Circumstances

27. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. Since adoption of the most recent zoning change in the Eastlake neighborhood in 1986, the City has adopted the Comprehensive Plan that created urban centers and villages and established housing unit growth targets for them. They are expected to accommodate most of the City's housing units. The Eastlake Residential Urban Village was defined, and in 2004, a 2024 growth target was adopted for it. In addition, the area has seen transportation improvements and has been designated a major Metro bus corridor that is provided with frequent transit service.

#### Overlay Districts

28. The proposed rezone is not located within any of the overlay districts included in the Land Use Code in Chapters 23.60 A through 23.74. The site does include a Pedestrian designation, which limits the types of commercial uses allowed to those most suited to the pedestrian environment, and a Frequent Transit designation, which includes reduced parking requirements. The proposed development would conform to the development standards and uses applicable to Pedestrian designations. Parking would be provided at less than a one to one ratio to residential units, so the proposal would comply with the Frequent Transit designation.

#### Critical Areas

29. As noted, a geological engineering study of the site was performed, and the Director determined that the proposal qualified for relief from the general prohibition on development within the Steep Slope Environmentally Critical Area on the site.

## Height Limits

30. The proposed rezone would allow an additional 10 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.

31. 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. NC2 zones are intended 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 ....” SMC 23.34.076.A. The proposed rezone to NC2P-40 would increase the capacity for multifamily residential uses and slightly increase the variety and size of commercial uses allowed at this intersection. (As noted, the Pedestrian designation limits the types of commercial uses allowed to those most suited to the pedestrian environment.) The proposal would not displace preferred uses and would respond to the demand for additional retail offerings in the area.

32. Topography of the area. Heights are to “reinforce the natural topography of the area and its surroundings, and the likelihood of view blockage” is to be considered. As noted, the Eastlake neighborhood slopes from east to west toward Lake Union, and the subject site includes a 10-foot change in topography in the same direction. The existing pattern of zoning transitions in the Eastlake neighborhood does not reinforce the area’s natural topography. Instead, the zoning pattern allows for higher structures along most of Eastlake Avenue East, with a gradual transition to lower heights along some parts of Lake Union and east of Interstate 5. The proposed rezone would not interrupt this pattern, and would establish a zoning transition that is repeated one block to the north on Eastlake Avenue East. *See* Exhibit R32.

33. As noted, there are no street-level views or views from public parks across the site to Lake Union, the Olympic Mountains or the Space Needle. Some private views would be blocked by the maximum allowed development under current zoning and by the proposed rezone and development. Views from the upper floors of some properties to the east that would not otherwise be blocked would be blocked by the proposed rezone and development. As mentioned above, the design review process addressed the arrangement of rooftop features and the combination of proposed setbacks at the north and south edges of the site. The approved configuration maximizes the width of public views down the East Boston Street right-of-way but does impact some views from private property to the east.

34. 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. As noted, height limits under current zoning in the area range from 30 feet to 40 feet, with some additional height

allowed in the NC1 and NC2 zones for certain roof-top features and provision of 13-foot floor to floor heights for nonresidential uses at street level. The 40-foot height limit requested as part of the rezone would be consistent with the newer development in the area, which is representative of the area's overall development potential. Some of the older, early- to mid-20<sup>th</sup> century development adds charm to the area but is not representative of its development potential.

35. 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 40 feet would be compatible with the actual and zoned heights in the surrounding area because, as discussed above, zoning patterns in the Eastlake neighborhood do not follow a gradual transition in height and scale. See Conclusion 20 and 21.

36. Neighborhood plans. "Particular attention" is to "be given to height recommendations in" adopted neighborhood plans. The adopted Eastlake Neighborhood Plan does not recommend specific height limits. The only potentially relevant Neighborhood Plan policy is EL-P7, which states that buildings are an important part of Eastlake's views and streetscapes "and their designs should reflect the neighborhood's lowrise, finely textured scale, comparatively small development sites, and the individuality of its architectural expressions". This policy is discussed above in Finding 11 and Conclusion 18.

37. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC2P-40 with a PUDA.


38. The Director has recommended that the following conditions be imposed pursuant to SEPA:

1. Prior to Issuance of a Demolition, Grading, or Building Permit the applicant shall provide a copy of a Construction Haul Route, approved by Seattle Department of Transportation. (LU Planner).
2. A Construction Parking Plan, approved by the Land Use Planner (shelley.bolser@seattle.gov), shall be required. The Plan shall demonstrate the location of the site, the peak number of construction workers on site during construction, the location of nearby parking lots that are identified for potential pay parking for construction workers, the number of stalls per parking lot identified, and a plan to reduce the number of construction workers driving to the site. (LU Planner).

### **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 Director's recommended SEPA conditions.

Entered this 11<sup>th</sup> day of January, 2016.

  
Sue A. Tanner  
Hearing Examiner

**Concerning Further Review**

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

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

Seattle City Council  
Planning, Land Use and Zoning Committee  
c/o Seattle City Clerk  
600 Fourth Avenue, Floor 3 (physical address)  
P.O. 94728 (mailing address)  
Seattle, WA 98124-4728

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