

October 17, 2023

MEMORANDUM

To: Land Use Committee
From: Ketil Freeman, Analyst
Subject: Clerk File 314474 – Contract Rezone, 2210 East Cherry Street

On October 20, the Land Use Committee (Committee) will have a briefing and may make a recommendation to City Council on [Clerk File \(CF\) 314474](#), which is an application by Acer House, LLC, for a contract rezone of a site located in the 23rd & Union-Jackson urban village and addressed as 2210 East Cherry Street. If the Committee recommends approval of the rezone, a Council Bill (Exhibit 1) to effectuate the rezone will be introduced for action at the City Council alongside CF 314474.

This memorandum: (1) provides an overview of the rezone application contained in CF 314474; (2) describes the contents of Council decision documents, which would grant the rezone application, including a summary of the draft Council 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 (3) describes next steps.

Overview of Rezone Application

Acer House, LLC (Applicant) has applied for a contract rezone of an approximately 19,000 square foot site located at the northwest corner of the intersection of East Cherry Street and 23rd Avenue. The site is split-zoned with the eastern portion zoned Neighborhood Commercial 1 with a 40-foot height limit and M Mandatory Housing Affordability (MHA) suffix (NC1-40 (M)) and the western portion zoned Neighborhood Commercial 1 with a 40-foot height limit and M2 MHA suffix (NC1 40 (M2)). The proposed rezone would be to a Neighborhood Commercial 1 zone with a 65-foot height limit. The MHA suffix for the eastern portion of the site would increase to M1 and stay at M2 for the western portion.

The application includes a Master Use Permit to redevelop the site with a mixed-use building developed in an Afro-futurist style and palette with 114 apartment units and street-level commercial uses. The Applicant intends to satisfy MHA program requirements through on-site performance and participate in the Multi-family Tax Exemption Program.

On June 8, 2023, the Seattle Department of Construction and Inspections (SDCI) issued an affirmative recommendation to conditionally approve the application. On July 19, 2023, the Hearing Examiner held an open-record public hearing on the proposed rezone. On August 17, 2023, the Hearing Examiner recommended conditional approval.

The Hearing Examiner's recommended conditions are included in his Findings and Recommendation (Exhibit 2) at page 11.

Type of Action

A Council decision on the rezone application is quasi-judicial.¹ Quasi-judicial decisions are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication and are governed by the Council's Quasi-judicial Rules.²

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.

Audio recordings of the approximately hour-long hearing can be accessed through the Hearing Examiner's website.³ Excerpts from the record, the SDCI recommendation, public comments letters, and an analysis by the Applicant of how the proposed rezone meets the rezone criteria in [SMC Chapter 23.34](#) are contained in the Legistar record for CF 314474.

Committee Decision Documents

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

CF 314474 - Findings, Conclusions and Decision

Council staff has drafted a proposed Council Findings, Conclusions and Decision (Exhibit 3), which:

- Adopts the Hearing Examiner's findings and conclusions and
- Adopts the rezone conditions recommended by the Hearing Examiner.

Since CF 314474 was created, the Applicant has revised their application to seek a taller height limit. To accurately reflect the rezone recommended by SDCI and the Hearing Examiner the title to the CF should be amended as follows:

Application of Acer House, LLC for a contract rezone of a 19,343 square foot site located at ~~701 23rd Avenue~~ 2210 East Cherry Street from Neighborhood Commercial 1-40 with an M MHA suffix (NC1-40 (M)) ~~to Neighborhood Commercial 1 with a 65 foot height limit and M1 Mandatory Housing Affordability suffix (NC1-65 (M1))~~ and from Neighborhood Commercial 1 with a 40 foot height limit and M2 Mandatory Housing Affordability suffix (NC1 40 (M2)) ~~to Neighborhood Commercial 1 with a 65 foot height limit and M2 Mandatory Housing Affordability suffix (NC1-65 (M2))~~ ~~and partially with an~~

¹ [Seattle Municipal Code \(SMC\) Section 23.76.036](#).

² Adopted by [Resolution 31602](#) (2015).

³ [Case Details for CF-314474 \(seattle.gov\)](#).

~~MHA 2 suffix (NC1-40 (M2)) to Neighborhood Commercial 1-55 (NC1-55 (M) and NC1-55 (M2))~~ (Project No. ~~3037717-EG~~ 3037185-LU; Type IV).

Rezone Bill

A Council Bill to amend the Official Land Use Map to rezone the site and approve and accept an executed PUDA included with Exhibit 1 should be introduced and passed alongside the Clerk File. This bill would effectuate the rezone.

Next Steps

The rezone application will be considered by the Committee for a potential recommendation to City Council on October 20. If the Committee recommends approval of the rezone, the Council Bill included as Exhibit 1 to this memo will be introduced at the City Council meeting on Tuesday, October 24. Depending on Committee action, a City Council vote on the bill would occur at the November 7 City Council meeting.

cc: Esther Handy, Executive Director
Aly Pennucci, Deputy Director
Yolanda Ho, Supervising Analyst

Exhibits:

1. Draft Council Bill
2. Findings and Recommendation of the Hearing Examiner
3. Draft Findings, Conclusions and Decision

Ketil Freeman
LEG 2210 E Cherry Rezone ORD
D1a

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 112 of the Official Land Use Map to rezone parcels located at 2210 East Cherry Street from Neighborhood Commercial 1 with a 40 foot height limit and M Mandatory Housing Affordability suffix (NC1-40 (M)) to Neighborhood Commercial 1 with a 65 foot height limit and M1 Mandatory Housing Affordability suffix (NC1-65 (M1)) and from Neighborhood Commercial 1 with a 40 foot height limit and M2 Mandatory Housing Affordability Suffix (NC1 40 (M2)) to Neighborhood Commercial 1 with a 65 foot height limit and M2 Mandatory Housing Affordability suffix (NC1-65 (M2)) and accepting a Property Use and Development Agreements as a condition of rezone approval. (Application of Acer House, LLC, C.F. 314474, SDCI Project 3037185-LU)

..body

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This ordinance rezones the following legally described property commonly known as 2210 East Cherry Street:

PARCELS #912610--1695, 912610--1685 & 912610--1681

(PER STEWART TITLE INSURANCE COMPANY ORDER NO. 820537, DATED JUNE 30, 2020)

PARCELS A, C, AND C, CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 3032095-LU, RECORDED UNDER RECORDING NO. 20181024900003, RECORDS OF KING COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF KING STATE OF WASHINGTON.

PARCEL #912610--1705

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3523432, DATED JULY 15, 2020)

1 THE EASTERLY 2/3 OF LOTS 11 AND 12, BLOCK 17, WALLA WALLA
2 ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF
3 RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY,
4 WASHINGTON.

5 PARCEL #912610--1725

6 (PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--
7 3547292, DATED AUGUST 07, 2020)

8 LOT 13, BLOCK 17 WALLA WALLA ADDITION TO THE CITY OF SEATTLE,
9 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS,
10 PAGE 81, IN KING COUNTY, WASHINGTON.

11 PARCEL #912610--1730

12 (PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--
13 3547283, DATED AUGUST 07, 2020)

14 LOT 14, BLOCK 17 WALLA WALLA ADDITION TO THE CITY OF SEATTLE,
15 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS,
16 PAGE 81, IN KING COUNTY, WASHINGTON.

17 PARCEL #912610--1706

18 (PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--
19 3523524, DATED JULY 15, 2020)

20 THE WEST ONE-THIRD OF LOTS 11 AND 12, BLOCK 17, WALLA WALLA
21 ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF
22 RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY,
23 WASHINGTON.

1
2 Section 2. Page 112 of the Official Land Use Map, Seattle Municipal Code Section
3 23.32.016, is amended to rezone parcels 912610-1705, 912610-1725, 912610-1730, and 912610-
4 1706 of the Property described in Section 1 of this ordinance from Neighborhood Commercial 1
5 with a 40 foot height limit and M Mandatory Housing Affordability suffix (NC1-40 (M)) to
6 Neighborhood Commercial 1 with a 65 foot height limit and M1 Mandatory Housing
7 Affordability suffix (NC1-65 (M1)) and to rezone parcels 912610-1695, 912610-1685, and
8 912610-1681 of the Property from Neighborhood Commercial 1 with a 40 foot height limit and
9 M2 Mandatory Housing Affordability Suffix (NC1 40 (M2)) to Neighborhood Commercial 1
10 with a 65 foot height limit and M2 Mandatory Housing Affordability suffix (NC1-65 (M2)), all
11 as shown in Exhibit A to this ordinance. Approval of this rezone is conditioned upon complying
12 with the Property Use and Development Agreement (PUDA) approved in Section 3 of this
13 ordinance.

14 Section 3. The PUDA attached to this ordinance as Exhibit B is approved and accepted.

15 Section 4. The City Clerk is authorized and directed to file the PUDA with the King
16 County Recorder's Office; to file the original PUDA along with this ordinance at the City
17 Clerk's Office upon return of the recorded PUDA from the King County Recorder's Office; and
18 to deliver copies of the PUDA and this ordinance to the Director of the Seattle Department of
19 Construction and Inspections and to the King County Assessor's Office.

1 Section 5. This ordinance, effectuating a quasi-judicial decision of the City Council and
2 not subject to Mayoral approval or disapproval, shall take effect and be in force 30 days from
3 and after its passage and approval by the City Council.

4 Passed by the City Council the _____ day of _____, 2023,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2023.

7 _____
8 President _____ of the City Council

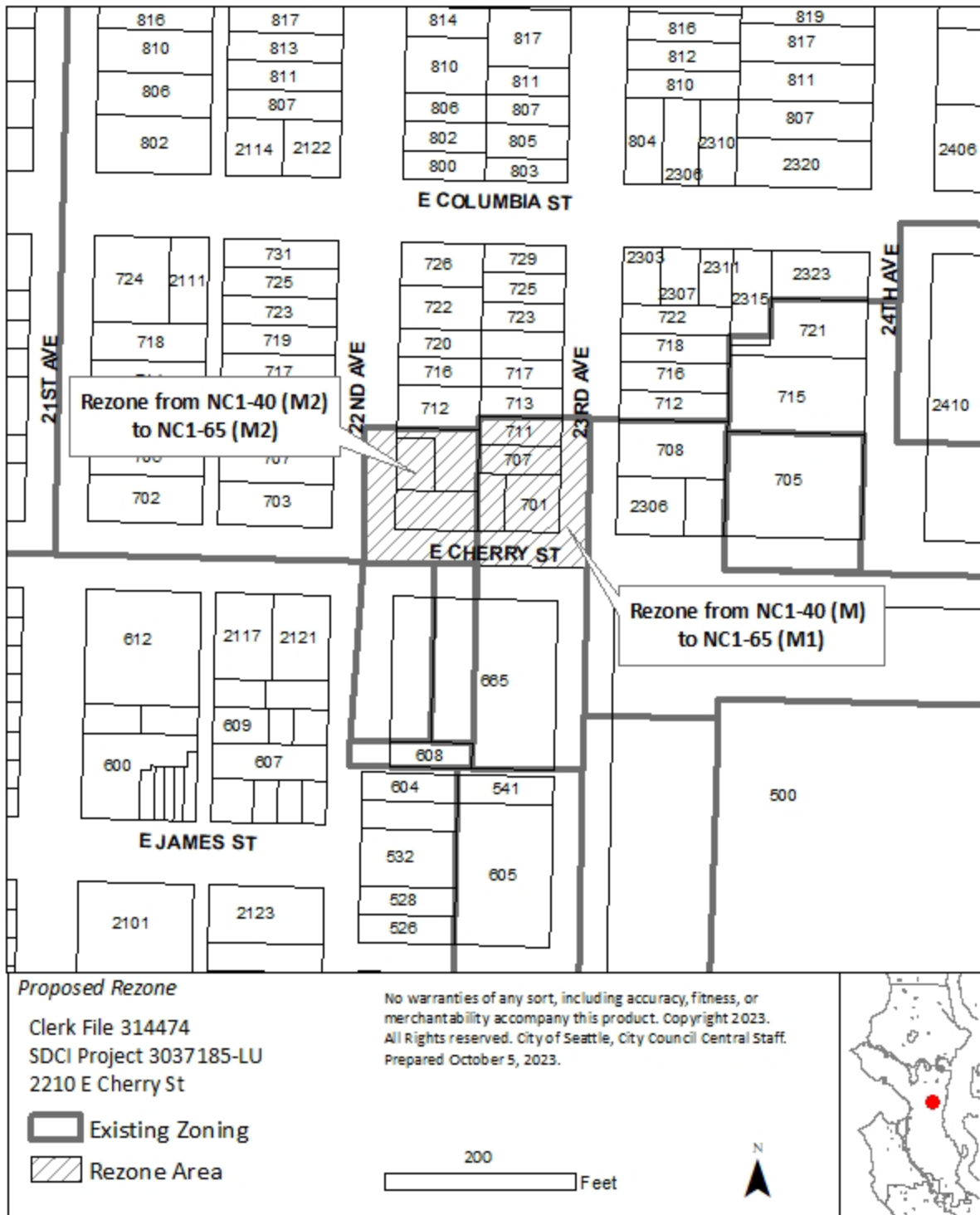
9 Filed by me this _____ day of _____, 2023.

10 _____
11 Scheereen Dedman, City Clerk

12 (Seal)

- 13 Exhibits:
14 Exhibit A – Rezone Map
15 Exhibit B – Property Use and Development Agreement for 2210 East Cherry Street
16

Exhibit A – Rezone Map
V1



Property Use and Development Agreement

<i>When Recorded, Return to:</i>	
THE CITY CLERK 600 Fourth Avenue, Floor 3 PO Box 94728 Seattle, Washington 98124-4728	

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s):	Acer House, LLC
Grantee:	The City of Seattle
Legal Description <i>(abbreviated if necessary):</i>	See Attachment B
Assessor's Tax Parcel ID #:	Parcels: 912610-1695, 912610-1685, 912610-1681, 912610-1705, 912610-1725, 912610-1730, and 912610-1706

Reference Nos. of Documents Released or Assigned:	n/a
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THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the “Agreement”) is executed this ___ day of _____, 2023, in favor of the CITY OF SEATTLE (the “City”), a Washington municipal corporation, by ACER HOUSE, LLC, a Washington Limited Liability Company (“Owner”).

RECITALS

A. ACER HOUSE, LLC, is the owner of that certain real property, addressed as 2210 East Cherry Street, consisting of seven parcels (collectively “Property”) in the City of Seattle currently zoned Neighborhood Commercial 1 with a 40 foot height limit and M Mandatory Housing Affordability suffix (NC1-40 (M)) and Neighborhood Commercial 1 with a 40 foot height limit and M2 Mandatory Housing Affordability Suffix (NC1 40 (M2)), shown in Attachment A and legally described in Attachment B.

B. In July 2021, the Owner submitted to the City an application under Project No. 3037185-LU to rezone parcels 912610-1705, 912610-1725, 912610-1730, and 912610-1706 of the Property from NC1-40 (M) to Neighborhood Commercial 1 with a 65 foot height limit and M1 Mandatory Housing Affordability suffix (NC1-65 (M1)) and parcels 912610-1695, 912610-1685, and 912610-1681 of the Property from NC1 40 (M2) to Neighborhood Commercial 1 with a 65 foot height limit and M2 Mandatory Housing Affordability suffix (NC1-65 (M2)) (the “Rezone”), shown in Attachment A.

C. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone subject to “self-imposed restrictions” upon the development of the Property.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to Seattle Municipal Code Section (“SMC”) 23.34.004, the Owner covenants, bargains, and agrees, on behalf of itself and its successors and assigns that it will comply with the following conditions in consideration of the Rezone:

Prior to Issuance of a Building Permit

1. Plans for development of the rezoned property shall be in substantial conformance, as determined by the Director, with the approved plans for Master Use Permit (MUP) Number 3037185-LU.

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

1. Provide a Construction Management Plan that has been approved by the Seattle Department of Transportation (SDOT). The submittal information and review process for Construction Management Plans are described on the SDOT website.
2. Provide an archaeological monitoring and inadvertent discovery plan prepared by a qualified professional and include statement that the Duwamish Tribe shall be notified in the event of archaeological work.

For the Life of the Project

1. The building and landscape design shall be substantially consistent with the materials presented at the Design Review Board 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 a Land Use Planner at the Seattle Department of Construction and Inspections.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants contained in this Agreement shall attach to and run with the land and be binding upon the Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owner.

Section 3. Amendment. This Agreement may be amended or modified by agreement between the Owner and the City; provided any amendments are approved by the City Council by ordinance.

Section 4. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 5. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to the Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 6. Repeal as Additional Remedy. Owner acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if the Owner avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

- a. Revoke the rezone by ordinance and require the use of the Property to conform to the requirements of the previous zoning designation or some other zoning designation imposed by the City Council; and
- b. Pursue specific performance of this Agreement.

[signature and acknowledgment on following pages]

Exhibit B - Property Use and Development Agreement

SIGNED this ____ day of ____, 2023.

ACER HOUSE, LLC, a Washington Limited Liability Company

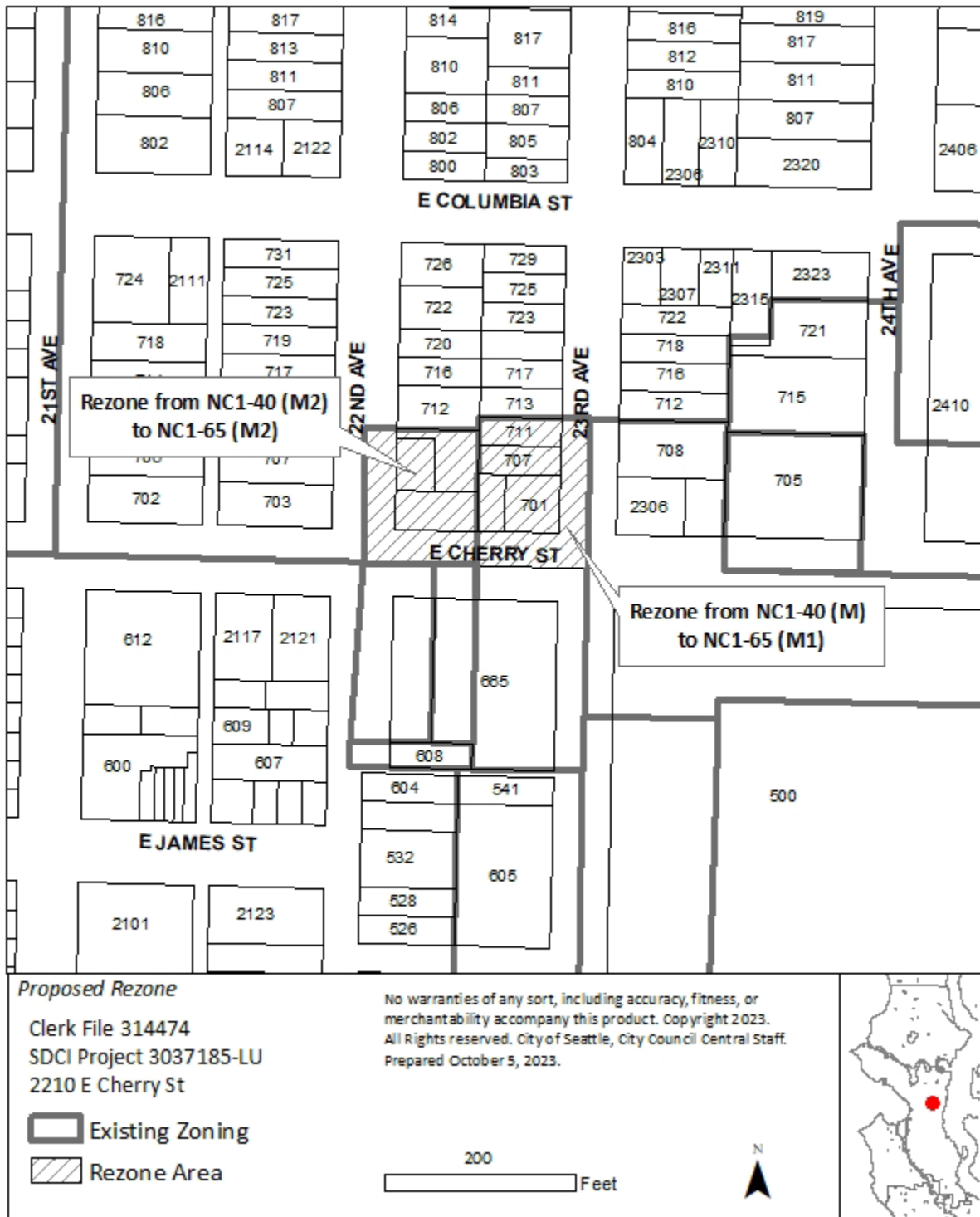
By: ____

On this day personally appeared before me ____, to me known to be the ____, of ____, a Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ____ day of ____, 2023.

		Printed Name _____
		NOTARY PUBLIC in and for the State of Washington, residing at _____
		My Commission Expires _____
STATE OF WASHINGTON COUNTY OF KING	}	ss.

ATTACHMENT A



ATTACHMENT B

PARCELS #912610--1695, 912610--1685 & 912610--1681

(PER STEWART TITLE INSURANCE COMPANY ORDER NO. 820537, DATED JUNE 30, 2020)

PARCELS A, C, AND C, CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 3032095-LU, RECORDED UNDER RECORDING NO. 20181024900003, RECORDS OF KING COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF KING STATE OF WASHINGTON.

PARCEL #912610--1705

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3523432, DATED JULY 15, 2020)

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PARCEL #912610--1725

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3547292, DATED AUGUST 07, 2020)

LOT 13, BLOCK 17 WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

PARCEL #912610--1730

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3547283, DATED AUGUST 07, 2020)

LOT 14, BLOCK 17 WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

PARCEL #912610--1706

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3523524, DATED JULY 15, 2020)

THE WEST ONE-THIRD OF LOTS 11 AND 12, BLOCK 17, WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

Exhibit 2 - Hearing Examiner Findings and Recommendation

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

In the Matter of the Application of

CF-314474

BENJAMIN MARITZ

Department Reference:
3037185-LU

for a contract rezone for property located
at 2210 E Cherry St

Introduction

Benjamin Maritz, (“Applicant”) applied for a rezone of 7 parcels of land located at 2210 E Cherry St. The Director of the Department of Construction and Inspections (“SDCI” or “Director”) submitted a report recommending that the rezone be approved. The Director's report included a SEPA Determination of Non-significance (“DNS”), which was not appealed.

A hearing on the rezone application was held before the Hearing Examiner on July 19, 2023. The Applicant was represented by Kateesha Atterberry and Benjamin Maritz, and the Director was represented by David Sachs. The Hearing Examiner visited the site following the hearing on August 1, 2023, and the record closed on that date.

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 development site consists of 7 tax parcels located on the northwest corner of 23rd Ave and E Cherry St in the 23rd and Union-Jackson Residential Urban Village.
2. The approximate eastern half of the site is zoned Neighborhood Commercial 1-40 with an “M” suffix (“NC1-40 (M)”) and the approximate western half of the site is zoned NC 1-40 with an “M2” suffix (“NC1-40 (M2)”).
3. Properties to the north and west are zoned Residential Small Lot (M) (“RSL (M)”). Properties to the east are zoned NC1-40 (M). Properties to the south are zoned NC1-40 (M) and NC1-40 (M1).
4. The entire subject site is located within the 23rd and Union-Jackson Residential Urban Village with boundaries as established in the Comprehensive Plan.

5. Two commercial structures built in 1907 and 1914 and two single-family residences built in 1900 are located on the eastern portion of the site; the western portion is vacant.
6. The site slopes downward northwest to southeast approximately 16 feet.
7. Single-family residences are located on adjacent properties to the north and west; and commercial structures are adjacent to the east and south. The immediate vicinity is largely comprised of single-family residences. Small-scale commercial uses and lowrise multifamily developments front 23rd Ave and E Cherry St in the proximate blocks.
8. Community facilities, including Garfield Community Center, Medgar Evers Pool, Garfield High School, and the Quincy Jones Performing Arts Center, occupy the block to the southeast.
9. 23rd Ave is a principal arterial providing north-south circulation through the Central Area. E Cherry St is a minor arterial providing east-west circulation.
10. The neighborhood is characterized by a variety of building scales and uses, with many of the older commercial and residential structures dating from the early 1900s. Smaller scale structures front E Cherry St, comprising a mix of older multistory apartment buildings and small, single story businesses. In the blocks to the northwest, existing small-scale residential structures exhibit similar massing and siting patterns, and generally traditional architectural styles with some recent contemporary developments throughout. Large, mature street trees enhance the pedestrian environment.
11. There are no mapped environmentally critical areas on the subject site.

Proposal

12. The proposal is to rezone 7 parcels of land:
 - 3 parcels from NC1-40 (M2) (Neighborhood Commercial 1 with a 40' height limit and an MHA suffix of (M2)) to NC1-65 (M2) (Neighborhood Commercial 1 with a 65' height limit and a MHA suffix of (M2)); and
 - 4 parcels from NC1-40 (M) (Neighborhood Commercial 1 with a 40' height limit and an MHA suffix of (M)) to NC1-65 (M1) (Neighborhood Commercial 1 with a 65' height limit and a MHA suffix of (M1)).
13. The proposed contract rezone is limited to an increase in height and resulting change in MHA suffix for a portion of the site.
14. The proposed project includes a 6-story, 114-unit apartment building with retail and restaurant elements. No parking is proposed.

15. Vehicular access is proposed from 22nd Ave. Pedestrian access is proposed from 23rd Ave and E Cherry St.
16. Existing structures are planned for demolition.

Zoning History and Potential Zoning Changes

17. The site is situated on a zone boundary: the western half of the site was rezoned from Single-family 5,000 to Neighborhood Commercial 1-40 (M2) on August 25, 2017, and the eastern half was rezoned from Neighborhood Commercial 1-30 to Neighborhood Commercial 1-40 (M) on that same date.
18. The zoning history (prior to 2017) for the western half of the property seeking a rezone (PIN 912610-1685, 1681, and -1695) is as follows:
 - 1947 Zoning Map: The zoning classification is identified as B.
 - 1973 Zoning Map (Ordinance 102076): The zoning classification is identified as RD5000.
 - 1995 Zoning Map (Ordinance 117434): The zoning classification is identified as Single Family 5000 (SF 5000).
19. The zoning history (prior to 2017) for the eastern half of the property seeking a rezone (PIN 912610-1730, 1725, and -1706) is as follows:
 - 1947 Zoning Map: The zoning classification is identified as B.
 - 1973 Zoning Map (Ordinance 102076): The zoning classification is identified as BN.
 - 1995 Zoning Map (Ordinance 117434): The zoning classification is identified as Neighborhood Commercial 1 with height limit 30' (NC1-30'v).
20. The 23rd and Union-Jackson Residential Urban Village was established through ordinance 117221 in 1994 and was zoned to its current zoning (NC1-40 (M2) and NC1 40 (M)) in 2017.
21. On November 9, 2017, the City issued the MHA SEPA Final Environmental Impact Statement (FEIS). The citywide rezone was adopted, effective April 19, 2019, changing the zoning designation of the eastern portions of the parcel subject to the proposed rezone from NC1-30 to its current designation of NC1-40 (M). The western portions of the parcel were rezoned from SF 5000 to NC1-40 (M2). The MHA zoning changes generally rezoned large areas and did not examine the site-specific issue of this split-zoned parcel.

Urban Center Plan and Neighborhood Plan

22. The subject site is located within the area of the Central Area Neighborhood Plan. The original Central Area Neighborhood Plan was adopted on July 25, 1994 through Ordinance 117221 with additional portions adopted by City Council in 1998 (Ordinance #119216). The adopted Seattle 2035 Comprehensive Plan contains goals and policies specific to the Central Area Neighborhood.

23. Applicable sections of the Comprehensive Plan contain goals and policies specific to the Central Area Neighborhood. The following policies apply to the proposed rezone:

Policy CA-P1 Strengthen a unique identity for the Central Area that celebrates its culture, heritage, and diversity; enhance the sense of community; and increase the feeling of pride among Central Area residents, business owners, employees, and visitors through excellent physical and social environments.

Policy CA-P31 Encourage affordable housing in close proximity or with easy access to community assets and amenities.

Policy CA-P39 Support vibrant, diverse, and distinct commercial districts that provide a range of goods and services for the entire community.

Policy CA-P59 Seek opportunities within the commercial districts to create open spaces for community gathering. Policy

CA-P66 Preserve small-scale neighborhood character, immigrant- and refugee-owned businesses while providing a greater variety of shops and services at 23rd and Cherry and an activated street frontage.

24. The adopted portions of the Central Area Neighborhood Plan located within the Seattle 2035 Comprehensive Plan include the following policy (CA-P7) that specifically refers to rezones:

Policy CA-P7 Create a vibrant commercial district, encouraging dense urban development in the commercial areas and encouraging housing supportive of the community through land use tools, such as rezones, design guidelines, and incentives.

Public Comment

25. The original notice of application public comment period ended on August 23, 2021; the project was subsequently re-noticed with a public comment period that ended on March 29, 2023. In addition to the comments received through the Design Review process, other comments were received and carefully considered, to the extent that they raised issues within the scope of this review. These areas of public comment related to the proposed rezone, density, cultural resources, transportation/traffic, noise, and construction impacts.
26. At the July 19, 2023 public hearing on the rezone before the Hearing Examiner, public comment was received from several members of the neighborhood expressing concern. Yana Morgulis, owner of a home north of the proposal, expressed concern about solar impacts to neighborhood and incompatibility of project with the neighborhood. Tyler Gibson supports the proposal, but believes that it is out of scale with the neighborhood.
27. Kateesha Atterberry spoke to details of the proposal, and equity issues the proposal seeks to address.

28. Donald King, architect spoke to various elements of the proposal.

Director's Review

29. The Director analyzed the proposal's potential long-term and short-term environmental impacts and found that there would be no need to recommend conditions to mitigate proposal-related impacts, as there were no significant impacts identified or any impacts would be addressed by the requirements of the Code.
30. The Director's report, Exhibit 1, analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

31. 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.
32. 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.
33. SMC 23.34.007.C provides that compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones, but the Comprehensive Plan may be considered where appropriate.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.052, and makes a recommendation on the proposed rezone to the City Council.
2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC on rezones are to be weighed and balanced together to determine the most appropriate zone and height designation. In addition, the zone function statements are to be used "to assess the likelihood that the area proposed to be rezoned would function as intended." SMC 23.34.007.A. "No single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a zone designation ... unless a provision indicates the intent to constitute a requirement" SMC 23.34.007.B.
3. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B.

Effect On Zoned Capacity

4. SMC 23.34.008 requires that, within an urban center or urban village, the zoned capacity, taken as whole, is to be no less than 125 percent of the applicable adopted growth target, and not less than the density established in the Comprehensive Plan.
5. The site is located within the 23rd and Union-Jackson Residential Urban Village. The Growth Strategy Appendix of the 2035 Comprehensive Plan estimated 2015-2035 housing unit growth of 1,600 units in addition to the 5,451 existing units (2015 year-end total housing units); 7,051 total units. In 2022, there was an estimated 8,334 existing units with an additional capacity of 3,928-4,765 units under existing zoning. The proposed rezone would further increase existing zoned capacity.
6. The densities established for a Residential Urban Village in the Growth Strategy Element of the 2035 Comprehensive Plan is 12 dwelling units per gross acre. The boundary of the 23rd and Union-Jackson Residential Urban Village was expanded in 2019 to encompass 625 gross acres (Ord. 125790) and has an existing zoned capacity of 12,262-13,099 housing units as of 2022 (8,334 existing units with an additional capacity of 3,928-4,765 units), or 19.6-21.0 housing units per acre. The proposed rezone will increase zoned capacity and zoned density by allowing for additional building height of 25-feet and approximately 41 additional units. Therefore, the zoned capacity for the Residential Urban Village is not less than this density established in the 2035 Comprehensive Plan.
7. The proposed rezone is consistent with SMC 23.34.008.A.1 because the increase in zoned capacity does not reduce capacity below 125% of the 2035 Comprehensive Plan growth target.
8. The proposal is also consistent with SMC 23.34.008.A.2 because the proposed change would not result in less density for this zone than the density established in the Growth Strategy Element of the Comprehensive Plan.

Match Between Zone Criteria and Area Characteristics

9. 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.
10. No change to the existing NC1 zone designation is proposed, and the criteria for designation of commercial zones in SMC 23.34.072 are not part of this proposal. The NC1 zone criteria in SMC 23.34.074 continue to match the characteristics of the area. NC1 is the predominant commercial zone designation at the intersection of E Cherry St and 23rd Ave.

Neighborhood Plan/Precedential Effect

11. The proposed rezone is in conformance with the applicable policies of the Central Area Neighborhood Plan.

12. The site is located in the 23rd Ave and Union-Jackson Residential Urban Village. The development proposal associated with this rezone includes 9 non-residential spaces and 112 multi-family residential units, which is consistent with this policy to encourage vibrant commercial uses that activate the street frontage and affordable housing supportive of the community. The outdoor public amenity space flanked by small-scale community based retail will promote social gathering and express the Central Area's unique and diverse heritage and identity. Finally, the proposed rezone would provide more housing and retail at the 23rd Avenue and East Cherry Street intersection, increasing the number of people who will benefit from community assets including parks/open space, Garfield High School and Community Center, teen center, arts programs, and small businesses, in particular ethnic restaurants, that create a unique identity for this community-serving node.
13. Considering the denser development patterns and taller height limits found at the intersection of 23rd and Jackson (75' height) and 23rd and Union (75' height), along the 23rd Avenue corridor, the proposed rezone (65' height) allows for needed affordable housing, additional community-based retail, and community gathering spaces while maintaining the smaller-scaled node intent laid out in the 2035 Comprehensive plan.
14. The proposal is unlikely to have a precedential effect. This proposed rezone does not preclude other properties in the area from requesting a contract rezone, and as each proposal is evaluated individually in the context of the existing conditions, this rezone is not expected to be precedential.

Zoning Principles

15. 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.
16. The predominant zoning pattern within the immediate context is 30' height residential small lot to the north and west, 40' height lowrise residential and neighborhood commercial to the south, southwest and east, and 55' height neighborhood commercial further down East Cherry Street to the east. Although there are no examples of 65' height zones in the immediate context, there are locations within the 23rd and Union-Jackson Residential Urban Village, such as the context around the intersection of South Jackson Street and 23rd Avenue South a half mile to the south, and East Union Street and 23rd Ave a third of a mile to the north, where higher zoning (75' in height) exists with similar adjacent transitions to 30' height neighborhood residential and residential small lot zones. In some instances, the transition includes buffers, such as a right-of-way street/alley, but in other instances the transition occurs along shared property lines.

The development proposal utilizes top level setbacks along each of the 23rd Avenue and East Cherry Street frontages, larger than required setbacks on the top two floors along the north property line, and the large carve out that is the central public courtyard along East Cherry Street to help minimize the overall impact of the height, bulk, and scale on the adjacent properties and gradually

transition onsite to the lower zoning heights surrounding the development site and the 23rd and Union-Jackson Residential Urban Village.

Within the immediate vicinity, there is evidence of more intense commercial zones located adjacent to less intense neighborhood residential zones and many examples of transitions in zoning intensity at similar key intersections in the 23rd and Union Jackson Residential Urban Village.

17. The proposed rezone is limited to an increase in the height limit from 40' to 65' and change in MHA suffix for a portion of the site. Since the existing NC1 zoning designation is not proposed to change, the uses associated with the proposed development would be allowed under existing zoning and do not represent a change in the intensity of use than could otherwise occur.
18. 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 recommended for approval by the Design Review Board includes design strategies to address the appearance of height, bulk, and scale. The design review process also considered the transition to adjacent properties, to mitigate the impacts of the zone edge facing the neighboring properties.
19. The proposed rezone would maintain the existing pattern of commercially-zoned properties facing commercially-zoned properties across the street on both 23rd Avenue and East Cherry Street and commercially-zoned properties facing residential small lot properties across the street on 22nd Avenue. The proposed rezone will not create a new boundary between commercial and residential areas.
20. The proposed NC1-65 (M1/M2) zone would permit building heights greater than 55 feet. The site is located within the 23rd and Union-Jackson Residential Urban Village, thereby satisfying the rezone criteria in SMC 23.34.008.E.4.

Impact Evaluation

21. The proposed rezone would positively impact the housing supply, as it would increase residential unit supply.
22. 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.
23. The Director evaluated impacts on public services and service capacities, as well as noise, air quality, water quality, flora and fauna, glare, odor, shadows, energy, and other environmental impacts, pursuant to SEPA, and indicated that no additional conditions were required to mitigate impacts that are not otherwise adequately addressed through existing regulations. Height, bulk and scale impacts, including shadow impacts, will be reviewed and addressed through the design review process.

Changed Circumstances

24. Changed circumstances are to be considered, but are not required to demonstrate the appropriateness of a proposed rezone. The City has continued to emphasize growth in urban centers and villages in its Comprehensive Plan as the areas that are most appropriate for accommodating higher density development. The MHA upzone is a changed circumstance in the area effecting area zoning.

Height Limits

25. 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.
26. Function of the zone. The proposed rezone lies within the boundaries of the 23rd and Union-Jackson Residential Urban Village and would allow increased density in this urban village. The existing NC1-40 zoning allows a combination of multifamily and commercial uses. The proposed rezone would allow an additional 25' in height and would increase the capacity for multifamily residential uses. The variety and size of commercial uses that are allowed would not change. There will be no displacement of preferred uses.
27. 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 height increase associated with the rezone proposal combined with the nature of existing zoning heights and topography surrounding the site make significant impacts to views surrounding the site unlikely. The site sits at the northwest corner of the intersection of E Cherry St and 23rd Ave at a low point with topography generally increasing to the north and south along 23rd Avenue, and to the west along E Cherry Street. Topography remains relatively flat along E Cherry Street and then increases 6 blocks to the east.

The proposed rezone would result in a 25-foot increase in permitted height from the 40 foot limit in the current NC1-40 (M/M2) zone to a 65-foot limit in the proposed NC1-65 (M1/M2) zone. The additional 25-feet of permitted height is unlikely to impact views from adjacent sites as the site is surrounded by streets on three sides, is downslope from shorter permitted heights within the neighborhood to the west, and abuts existing two story residences along the north property line.

Although the placement of the proposed development may inhibit existing views from the two-story residences along the north property line, these views would also be inhibited by development reaching the currently permitted 40-foot height limit. Due to the relatively tall height allowed under current zoning and topography of the surrounding area, the additional 25 feet of height is unlikely to block views from surrounding or uphill vantage points.

28. 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. Further, height limits are to be compatible with actual and zoned heights in surrounding areas, and a gradual transition in height and scale and level of activity between zones is to be provided unless major physical buffers are present.

The existing zoning of this site is NC1-40 (M/M2). The proposed zoning is NC1 65(M1/M2). In the NC1-40 zone, an additional 4’ of building height may be obtained through the requirements in SMC 23.47A.012.A. A 65’ NC zone does not allow additional height per SMC 23.47A.012.A. Other rooftop features are permitted above the 40’ and 65’ height limit per SMC 23.47A.012.C, including mechanical equipment and stair/elevator penthouses such as the ones proposed with this development.

The current height limit at this site is 40’. Nearby zones include height limits of 30’, 40’, 55’ and 75’. The proposed development would be compatible with the predominant height and scale of nearby newer development elsewhere in the 23rd and Union-Jackson Residential Urban Village, which is representative of the area’s anticipated overall development potential.

The predominant existing development in this area is older, and generally not built to the 40’ height limit, and there is additional capacity for more retail and residential development. It appears, therefore, that existing development is not a good measure of the area’s existing development potential.

29. Compatibility with Surrounding Area.

The proposed development is 65’ in height (not inclusive of allowable rooftop features per SMC 23.47A.012.C), and includes setbacks and modulation at the west, east, north and south property lines. The proposed rezone would be consistent with the scale of newer development within the 23rd and Union-Jackson Residential Urban Village, such as the context around the intersection of South Jackson Street and 23rd Avenue South a half mile to the south, and East Union Street and 23rd Ave a third of a mile to the north, where higher zoning (75’ in height) exists with similar adjacent transitions to lower height neighborhood residential (30’ in height) and residential small lot zones.

The proposed development associated with the rezone has gone through the design review process per SMC 23.41. The design review process recommended a design with specific strategies to reduce the impacts of additional height, bulk, and scale to the adjacent sites, including upper-level massing setbacks along each frontage of the site. These upper-level massing setbacks were proposed through the design review process to allow the proposed mixed-use development to appropriately address the shorter building heights surrounding the development site and help mitigate the impact of the proposed 65-foot height limit.

30. Neighborhood Plans. The Central Area Neighborhood Plan policies included in the Seattle 2035 Comprehensive Plan do not explicitly address building heights. The proposed development has

gone through the Design Review process, which considered aspects of scale and context in the design recommendation.

31. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC1-65 (M2) for three parcels and NC1-65 (M1) for four parcels with a PUDA.

Recommendation

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

Prior to Issuance of a Building Permit

1. Plans for development of the rezoned property shall be in substantial conformance, as determined by the Director, with the approved plans for Master Use Permit number 3037185 LU.

The Director has recommended the following SEPA conditions:

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

1. Provide a Construction Management Plan that has been approved by SDOT. The submittal information and review process for Construction Management Plans are described on the SDOT website.
2. Provide an archaeological monitoring and inadvertent discovery plan prepared by a qualified professional and include statement that the Duwamish Tribe shall be notified in the event of archaeological work.

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

For the Life of the Project

1. The building and landscape design shall be substantially consistent with the materials presented 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.

Entered August 17, 2022.

/s/Ryan P. 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 **BENJAMIN MARITZ**. Case Number: **CF-314474** in the manner indicated.

Party	Method of Service
Applicant Benjamin Maritz admin@grtexp.co	<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
Department David Sachs SDCI David.Sachs@seattle.gov SCI Routing Coordinator SCI_Routing_Coordinator@seattle.gov Janet Oslund janet.oslund@seattle.gov SCI_LUIB SCI_LUIB@seattle.gov Nathan Torgelson nathan.torgelson@seattle.gov Roger Wynne roger.wynne@seattle.gov Ketil Freeman ketil.freeman@seattle.gov	<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

<p>Public Commentors</p> <p>Yana Morgulis 722 22nd Ave. Seattle, WA 98122</p> <p>Tyler Gibson 712 22nd Ave Seattle, WA 98122</p>	<p><input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>
<p>Mailing</p> <p>SARAH@SCHEMATAWORKSHOP.COM; ADMIN@GRTEXP.CO; BEN.MARITZ@GMAIL.COM; SHWETA@SCHEMATAWORKSHOP.COM; abutton@me.com; alexstonehill@gmail.com; anag@ggnltd.com; bakerew@hotmail.com; ben@grtexp.co; beth904@gmail.com; bill.zosel@gmail.com; camilaborgesm8@gmail.com; cavandervoort@gmail.com; dan.chhan@gmail.com; deoryp@gmail.com; ecotours@duwamishtribe.org; gr8gck@gmail.com; grace@schemataworkshop.com; hamaler78@gmail.com; io@nakanoassociates.com; jfoxcullen@gmail.com; jill.leininger@gmail.com; joeb@joebrotherton.com; joyjake5@msn.com; jsbjorn@icloud.com; kateesha@urbanblackllc.com; kenny@globalinvestorsolutions.com; kyra@grtexp.co; lawrencenorman@hotmail.com; liz@dunnandhobbes.com; MERYLDOUGLAS@GMAIL.COM; mia@grtexp.co; mike@schemataworkshop.com; mktyson@gmail.com;</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

<p> molly.odonnell@atelierdrome.com; pg@nakanoassociates.com; randicshaw@gmail.com; ron@seattlelandbroker.com; ronquesha@protonmail.ch; rosemarie@schemataworkshop.com; rkkbla@gmail.com; sdsharkey@gmail.com; sharonkhosla@hotmail.com; srhkeddy@gmail.com; timmckay@gmail.com; toptenns25@yahoo.com; tyler@snotmonkey.com; zentaye@yahoo.com; jgreene@kingcounty.gov; shirlee.tan@kingcounty.gov; annette.pearson@seattle.gov; SEPA.reviewteam@doh.wa.gov; SEPA@psc Clean Air.org; McCollD@wsdot.wa.gov; bpfeiffer@kingcounty.gov; Jim.Ishimaru@kingcounty.gov; lpa.team@kingcounty.gov; glen.stamant@muckleshoot.nsn.us; fisheries2@muckleshoot.nsn.us; fisheriescontact@muckleshoot.nsn.us; Jae.butler@muckleshoot.nsn.us; Ktsang@muckleshoot.nsn.us; toddgray@tulaliptribes-nsn.gov; preservationdept@duwamishtribe.org; KCWTD_otheragencyplanning@kingcounty.gov; justin.panganiban@seattle.gov; courtney.bobsin@gmail.com; mkazzi16@gmail.com; Ron@seattlelandbroker.com; joecolelights@gmail.com; ABUTTON@MAC.COM; ingrao94@yahoo.com; separegister@ecy.wa.gov </p>	
<p>Mailing</p> <p> ABDIRAHMAN MUHUMED 125 SW 112TH ST #306 SEATTLE WA 98146 </p>	<p> <input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery </p>

Legal Messenger

SOLEIMAN JAMA
16043 MILITARY RD S #209
SEATAC WA 98188

ABDIRAHMAN MOHAMED BILLE
27012 115TH PL SE
KENT WA 98030

MUKFAR RASHID
HODAN RAGE
3014 S WILLOW ST
SEATTLE WA 98108

ABDIHAKIM AL-HASSAN
6744 16TH AVE SW
SEATTLE WA 98106

SAKARIYA ARTAN HASSAN ADEM
AHMED ABDI
6801 S 133RD ST APT #C236
SEATTLE WA 98178

MOHAMUD HASSAN
YUSUF BURALE
7401 RAINIER AVE S #122
SEATTLE WA 98118

MOHAMED ADEN
DUR DUR CAFE
2212 E CHERRY ST
SEATTLE WA 98122

ADAL SHIMELIS
UPDATE BARBER SHOP
2210 E CHERRY ST
SEATTLE WA 98122

MOHAMED HASSAN
2210 E CHERRY ST #B
SEATTLE WA 98122

TSEGA MBUSE
2210 E CHERRY ST #201
SEATTLE WA 98122

<p>GHMAI GEBREHIWOK 2210 E CHERRY ST #202 SEATTLE WA 98122</p> <p>JOETTA SALES 2210 E CHERRY ST #203 SEATTLE WA 98122</p> <p>YEMANE WUNA 2210 E CHERRY ST #204 SEATTLE WA 98122</p> <p>SUQUAMISH TRIBE* PO BOX 498 SUQUAMISH, WA 98392</p>	
<p>Mailing</p> <p>QUICK INFORMATION CENTER SEATTLE PUBLIC LIBRARY LB-03-01</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input checked="" type="checkbox"/> Inter-office Mail</p> <p><input type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

Dated: August 18, 2023.

/s/ Angela Oberhansly
Angela Oberhansly
Legal Assistant

Exhibit 3 - Draft Findings, Conclusions and Decision

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

In the matter of the Petition:)	Clerk File 314474
)	
Application of Acer House, LLC, for a)	FINDINGS, CONCLUSIONS,
contract rezone of a site located at)	AND DECISION
2210 East Cherry Street from)	
Neighborhood Commercial 1 with a)	
40 foot height limit and M Mandatory)	
Housing Affordability suffix (NC1-40)	
(M)) to Neighborhood Commercial 1)	
with a 65 foot height limit and M1)	
Mandatory Housing Affordability)	
suffix (NC1-65 (M1)) and from)	
Neighborhood Commercial 1 with a)	
40 foot height limit and M2)	
Mandatory Housing Affordability)	
suffix (NC1 40 (M2)) to)	
Neighborhood Commercial 1 with a)	
65 foot height limit and M2)	
Mandatory Housing Affordability)	
suffix (NC1-65 (M2)) and accepting a)	
Property Use and Development)	
Agreements as a condition of rezone)	
approval. (Application of Acer House,)	
LLC, C.F. 314474, SDCI Project)	
3037185-LU).)	

Introduction

This matter involves a petition by Acer House, LLC (“Applicant”), for a contract rezone of an approximately 19,000 square foot site located at the northwest corner of the intersection of East Cherry Street and 23rd Avenue.

The site is split-zoned with the eastern portion zoned Neighborhood Commercial 1 with a 40-foot height limit and M Mandatory Housing Affordability (MHA) suffix (NC1-40 (M)) and the western portion zoned Neighborhood Commercial 1 with a 40-foot height limit and M2 Mandatory Housing Affordability suffix (NC1 40 (M2)). The proposed rezone would be to a

Neighborhood Commercial 1 zone with a 65-foot height limit. The Mandatory Housing Affordability suffix for the eastern portion of the site would increase to M1 and stay at M2 for the western portion. Attachment A shows the area to be rezoned. Attachment B provides a legal description of the site.

The Applicant has applied for a permit to redevelop the site with a mixed-use building developed in an Afro-futurist style and palette with 114 apartment units and street-level commercial uses. The Applicant intends to satisfy MHA program requirements through on-site performance and participate in the Multi-family Tax Exemption Program.

On June 8, 2023, the Seattle Department of Construction and Inspections (SDCI) issued an affirmative recommendation to conditionally approve the application. On July 19, 2023, the Hearing Examiner held an open-record public hearing on the proposed rezone. On August 17, 2023, the Hearing Examiner recommended conditional approval. On October 20, 2023, the Land Use 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 City Council.

Findings of Fact

The Council hereby adopts the Hearing Examiner's Findings of Fact as stated in the Clarified Findings and Recommendation of the Hearing Examiner dated August 17, 2023.

Conclusions

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Clarified Findings and Recommendation of the Hearing Examiner dated August 17, 2023.

Decision

The Council hereby **GRANTS** a rezone parcels 912610-1705, 912610-1725, 912610-1730, and 912610-1706 of the property from NC1-40 (M) to Neighborhood Commercial 1 with a 65 foot height limit and M1 Mandatory Housing Affordability suffix (NC1-65 (M1)) and parcels 912610-1695, 912610-1685, and 912610-1681 of the property from NC1 40 (M2) to Neighborhood Commercial 1 with a 65 foot height limit and M2 Mandatory Housing Affordability suffix (NC1-65 (M2)) of the property from, as shown in Attachment A.

The rezone is subject to the execution of a Property Use and Development Agreement (PUDA) requiring the owners to comply with certain conditions for the life of the project.

Those conditions are adopted by the Council as follows:

Prior to Issuance of a Building Permit

1. Plans for development of the rezoned property shall be in substantial conformance, as determined by the Director, with the approved plans for Master Use Permit (MUP) Number 3037185-LU.

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

1. Provide a Construction Management Plan that has been approved by the Seattle Department of Transportation (SDOT). The submittal information and review process for Construction Management Plans are described on the SDOT website.
2. Provide an archaeological monitoring and inadvertent discovery plan prepared by a qualified professional and include statement that the Duwamish Tribe shall be notified in the event of archaeological work.

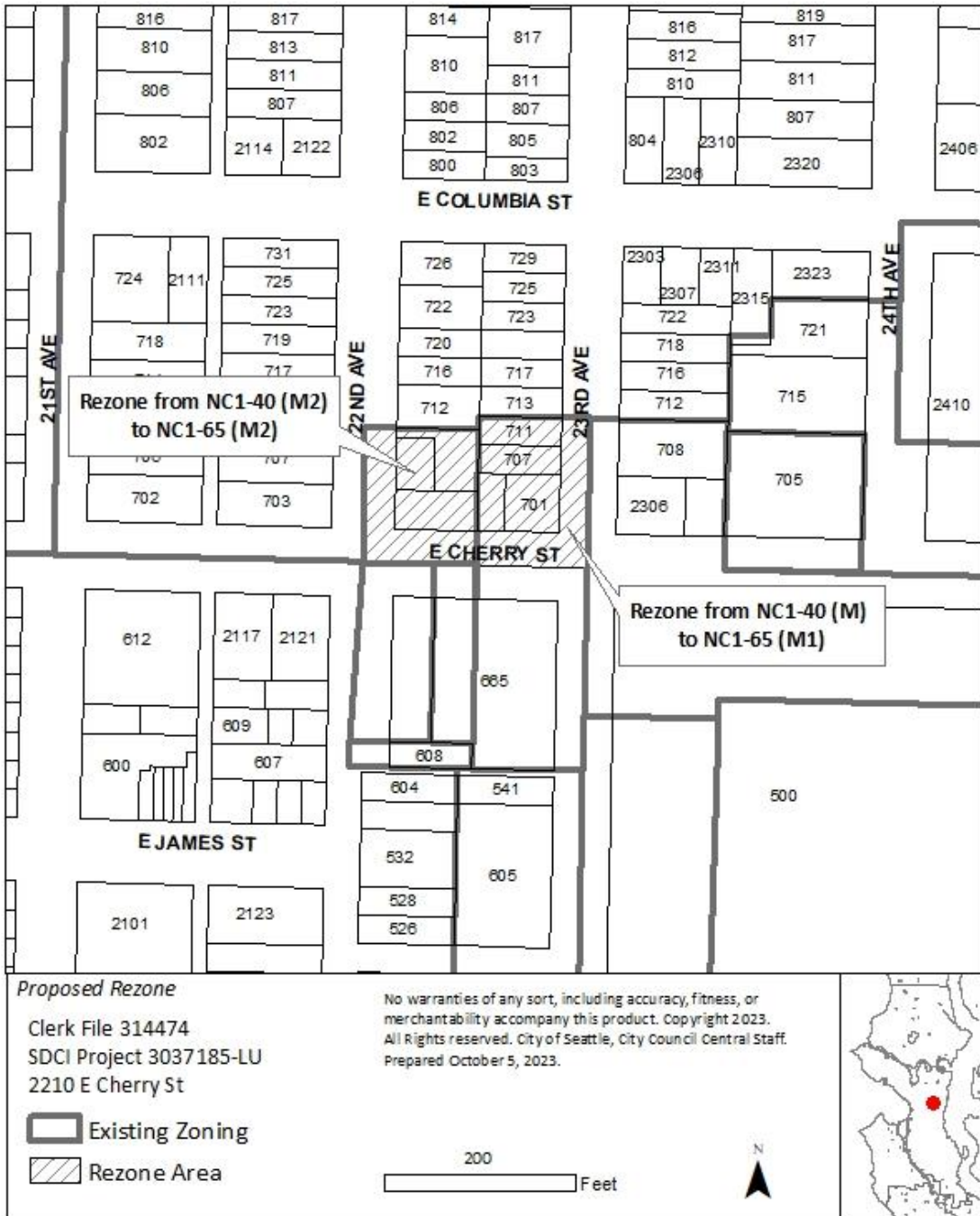
For the Life of the Project

1. The building and landscape design shall be substantially consistent with the materials presented at the Design Review Board 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 a Land Use Planner at the Seattle Department of Construction and Inspections.

Dated this _____ day of _____, 2023.

City Council President

ATTACHMENT A



ATTACHMENT B

PARCELS #912610--1695, 912610--1685 & 912610--1681

(PER STEWART TITLE INSURANCE COMPANY ORDER NO. 820537, DATED JUNE 30, 2020)

PARCELS A, C, AND C, CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 3032095-LU, RECORDED UNDER RECORDING NO. 20181024900003, RECORDS OF KING COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF KING STATE OF WASHINGTON.

PARCEL #912610--1705

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3523432, DATED JULY 15, 2020)

THE EASTERLY 2/3 OF LOTS 11 AND 12, BLOCK 17, WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

PARCEL #912610--1725

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3547292, DATED AUGUST 07, 2020)

LOT 13, BLOCK 17 WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

PARCEL #912610--1730

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3547283, DATED AUGUST 07, 2020)

LOT 14, BLOCK 17 WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

PARCEL #912610--1706

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3523524, DATED JULY 15, 2020)

THE WEST ONE-THIRD OF LOTS 11 AND 12, BLOCK 17, WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.