

January 11, 2017

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Aly Pennucci, Legislative Analyst
Subject: CF 314358: Application to rezone 1600 Dexter Avenue N
(SDCI Project No. 3021980)

At the meeting on January 17, 2018, the Planning Land Use and Zoning Committee (PLUZ) will consider an application by Brook V LLC, to rezone a property at 1600 Dexter Avenue North from Neighborhood Commercial 3 with a 40-foot height limit and a pedestrian zone designation (NCP3-40) to Neighborhood Commercial 3 with a 75-foot height limit, a pedestrian zone designation, and a mandatory housing affordability suffix (NCP3-75 (M1)).

On November 3, 2017, Londi Lindell (the Appellant), a neighboring property owner, filed an appeal of the Hearing Examiner's recommendation and a request to supplement the record. At the meeting on January 17, the Committee will receive an initial briefing on the application and the record forwarded by the City's Hearing Examiner and may:

- Consider and decide on the motion requesting to supplement the record;
- Consider requests to present oral argument and, if permitted, provide time for oral argument;
- Consider the merits of the appeal; and
- May vote on a recommendation on the rezone request to Full Council.

The Committee may also continue consideration of the matter to a subsequent meeting.

This memorandum (1) provides an overview of the application to rezone 1600 Dexter Avenue N; (2) sets out procedural standards, such as the type of action, standard of review, and burden of proof; and (3) summarizes issues on the request to supplement the record and the appeal.

Overview

Brook V LLC (the Applicant), has applied for a contract rezone of a property at 1600 Dexter Avenue North from NCP3-40 to NCP3-75 (M1). The Applicant plans to redevelop the site with a six-story apartment building with 4,000 square feet of retail space and one live-work unit at the street-level. Parking for 54 vehicles will be provided below grade. The proposed structure height would be approximately 65 feet in height.

The Applicant filed a rezone petition in October 2016. On September 5, 2017, the Seattle Department of Construction and Inspections (SDCI) issued an affirmative rezone recommendation, State Environmental Policy Act decision, and design review decision. The Deputy Hearing Examiner held an open record hearing on the rezone recommendation on September 27, 2017. On October 20, 2017, the Examiner issued his recommendation to Council to conditionally approve the rezone subject to a Property Use and Development Agreement (PUDA).

At the time this contract rezone was proposed, the Applicant sought a rezone of the property to NC3P-65 rather than NC3P-75 (M1). Because the Office of Planning and Community Development (OPCD) was

in the process of preparing a proposal for a legislative rezone to apply Mandatory Housing Affordability (MHA) requirements in existing multifamily and commercial zones in Seattle, including the subject property, the Applicant and the Department determined that NC3P-75 (M1) was the appropriate zone designation. This designation and suffix is consistent with Director's Rule 14-2016. However, the Department and the Hearing Examiner recommended approval with a condition limiting the height to 65 feet to remain consistent with heights of existing new development and the proposed zoning in the area.

Procedural Matters

Type of Action and Materials in the Record

The application for a contract rezone is a quasi-judicial action. A quasi-judicial action is, "an action of the City Council that determines the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding."¹ Quasi-judicial actions are subject to the state Appearance of Fairness Doctrine prohibiting ex-parte communication. Council decisions must be made on the record established by the Hearing Examiner. The Hearing Examiner establishes the record at an open-record hearing. The record may be supplemented through a timely request meeting the standards for supplementation. The record contains the substance of the testimony provided at the Hearing Examiner's open-record hearing and the exhibits entered into the record at that hearing.

The entire record, including audio recordings of the Hearing Examiner's open record hearing, are available for review in my office at Councilmembers' convenience. The Hearing Examiner's exhibit list, minutes of the public hearing, and the Hearing Examiner's recommendation are publicly available through the Hearing Examiner's record under HE File Number [CF 314358](#).²

Per the Seattle Municipal Code, when the Hearing Examiner's recommendation is appealed, the Council must issue its decision within 120 days of receiving the Hearing Examiner's recommendation, meaning the Council must act by February 19, 2018.³

Standard of Review and Burden of Proof

In making its decision on a quasi-judicial rezone application, the Council applies the *substantial evidence standard of review*. This means that the Council's decision to approve, approve with conditions, or deny the recommendation must be supported by substantial evidence in the record. The Appellant bears the burden of proving that the Hearing Examiner's recommendation should be rejected or modified.⁴

Request to Supplement

The record established by the Hearing Examiner may be supplemented if a timely request is filed that meets the standards for supplementation. When a Hearing Examiner recommendation is appealed the deadline for filing a request to supplement the record is the day reply briefs by appellants must be filed with the City Clerk. The Council may supplement the record if, "the new evidence or information was not available or could not reasonably have been produced at the time of the open record hearing before the Hearing Examiner."⁵

¹ [Council Quasi-judicial Rules II.I.](#)

² <https://web6.seattle.gov/Examiner/case/CF-314358>

³ SMC 23.76.005.D.3.

⁴ SMC 23.76.056.A.

⁵ SMC 23.76.054.E.

The Council received a timely request to supplement the record by the Appellant. Notified parties had the opportunity to respond and reply to the request to supplement.

Administrative correction

CF 314358 contains the application of Brook V LLC to rezone a property at 1600 Dexter Avenue North. The original CF title does not accurately reflect the proposal in the rezone application, so the title will be revised as follows:

Application of Brook V, LLC to rezone an approximately 14,000 square foot site located at 1600 Dexter Avenue North from Neighborhood Commercial 3 with a pedestrian designation and a 40-foot height limit (NC3P 40) to Neighborhood Commercial 3 with a pedestrian designation, a ~~((65))~~ 75-foot height limit, and the MHA suffix (NC3P ~~((65))~~ 75 (M1)) (Project No. 3021980; Type IV).

With these revisions, the CF title will accurately reflect:

- the requested zoning designation to NC3P-75 (not NC3P)
- the addition of the MHA suffix to reflect the inclusionary zoning requirement (M1)

Issues on Appeal

The Appellant submitted an appeal of the Hearing Examiner's recommendation on November 3, 2017. Included in the submission is a request to supplement the record and a request to present oral argument. Issues on appeal are briefly summarized below. This summary is not intended to be exhaustive. Full copies of the appeal, and responses to the appeal by the Applicant's attorney are contained in Clerk File [314358](#).⁶

Following submission of the appeal and request to supplement the record, all persons who were provided written notice of the Hearing Examiner's decision were notified of the appeal and the processes for responding to the appeal and how to reply to a response. On November 27, 2017, the Applicant's attorney submitted a response to the appeal; no replies to that response were submitted. On December 21, 2017, all parties of record were notified of the first hearing date for the application and the appeal.

Issues

Issues on appeal relate to, but are not limited to: (1) the proposed height and view blockage and (2) the determination that the request meets the general rezone criteria found in SMC 23.34.008 and the height limit criteria found in SMC 23.34.009. Relief sought by the Appellant includes denying the application to rezone the property at 1600 Dexter Avenue N, or remanding the application back to the Hearing Examiner to consider the additional evidence included in the Appellant's request to supplement the record.

Argument on Appeal

In its appeal of the Hearing Examiner's recommendation, the Appellant contends that the Hearing Examiner and the SDCI Director erred in their recommendations to approve the rezone because the

⁶ <http://seattle.legistar.com/LegislationDetail.aspx?ID=2849898&GUID=71B567CB-FE96-4B43-B2DF-5694C9A97090&Options=Advanced&Search=>

analysis failed “to satisfy the express criteria set forth in [Seattle Municipal Code \(SMC\) 23.34.004](#) and [SMC 23.34.009](#), criteria which must be satisfied in order to approve this rezone application.”

In her response, the Applicant’s attorney asserts that the Appellant “fails to demonstrate that the Examiner’s findings are not supported by substantial evidence in the record.”

Next Steps

At the meeting on November 17, the Committee will consider and decide on the motion to supplement the record. Following that decision, the Committee will consider requests to present oral argument and, if permitted, provide time for oral argument. If oral argument is allowed, the Committee may discuss the merits and vote at this meeting on its recommendation to the Council, or it may continue consideration of the matter to a subsequent committee meeting to discuss the merits and vote. The options before the Committee on the appeal and the rezone request include:

- Approve, approve with conditions, modify, or deny the rezone; or
- Remand the application if it has voted to supplement the record and determines that the Hearing Examiner or SDCI should reconsider the application in light of the new evidence.

Attachments

1. SDCI’s recommendation (Hearing Examiner Exhibit 16)
2. Hearing Examiner’s recommendation
3. Appeal of the Hearing Examiner’s recommendation and request to supplement
4. Applicant’s response to the appeal and request to supplement

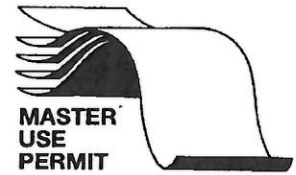
cc: Kirstan Arestad, Central Staff Director
Ketil Freeman, Supervising Analyst

Seattle Department of Construction and Inspections

Nathan Torgelson, Director

September 5, 2017

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NOTICE OF DECISIONS AND RECOMMENDATION OF THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS AND CITY OF SEATTLE HEARING EXAMINER PUBLIC HEARING

Area: MAGNOLIA/QUEEN ANNE **Address:** 1600 DEXTER AVE N
Project: 3021980 **Zone:** POTENTIAL SLIDE AREA, STEEP SLOPE ($\geq 40\%$), ARTERIAL WITHIN 100 FT., NEIGHBOR CMRCL 3-40' PEDESTRIAN, AIRPORT HEIGHT DISTRICT

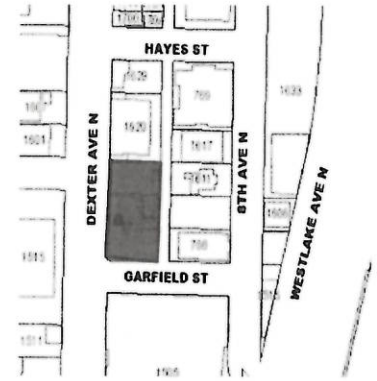
Notice Date: 09/05/2017

Contact: JILL BURDEEN - (206) 933-1150

Planner: DAVID LANDRY - (206) 684-5318

Clerk File Number: CF# 314358

The Director of the Seattle Department of Construction and Inspections (SDCI) has issued decisions and recommendations regarding the following project: Council Land Use Action to rezone a 13,785 sq. ft. portion of land from Neighborhood Commercial 3 with a 40' height limit (NC3-40') to Neighborhood Commercial 3 with a 65' height limit (NC3-65'), Pedestrian overlay to remain, and to allow a 6-story, 85-unit apartment building. Retail and one live-work unit will be located at street-level. Parking for 54 vehicles will be provided below grade. Review includes demolition of existing structures.



The top of this image is north. This map is for illustrative purposes only. In the event of omissions, errors or differences, the documents in SDCI's files will control.

ENVIRONMENTAL DETERMINATION

The Director has determined that the proposed project is not likely to result in significant, adverse environmental impacts and has issued a Determination of Non-Significance (DNS).

Design Review Decision

The Director conditionally grants Design review. Design review includes departures to:

- Allow access to parking from the alley and from Garfield Street; and
- Allow modification to residential and non-residential standards at street level

DECISIONS APPEALABLE TO THE SEATTLE HEARING EXAMINER

The decisions to issue a Determination of Non-Significance (DNS) and to conditionally grant Design Review are appealable to the Seattle Hearing Examiner.

HOW TO APPEAL THE DIRECTOR'S FINDINGS AND DECISION

Appeals of the Director's Decision must be received by the Hearing Examiner no later than 5:00 p.m. on **September 19, 2017**.

Appeals may be filed online at www.seattle.gov/examiner/efile.htm, delivered in person to the Hearing Examiner's office on the 40th floor of Seattle Municipal Tower at 700 Fifth Ave or mailed to the City of Seattle Hearing Examiner, P.O. Box 94729, Seattle, WA 98124-4729. (Delivery of appeals filed by any form of USPS mail service may be delayed by several days. Allow extra time if mailing an appeal.) An appeal form is available at www.seattle.gov/examiner/LANDUSEAPLFORM.pdf.

Appeals must be accompanied by an \$85.00 filing fee. The fee may be paid by check payable to the City of Seattle, by credit/debit card (Visa and MasterCard only) in person or by telephone at 206-684-0521. (The Hearing Examiner may waive the appeal fee if the person filing the appeal demonstrates that payment would cause financial hardship.)

The Hearing Examiner Rules and "Public Guide to Appeals and Hearings Before the Hearing Examiner" are available at www.seattle.gov/examiner/guide-toc.htm.

DIRECTOR'S RECOMMENDATION

The Director recommends that the Seattle City Council approve a rezone to NC3P-75 (M1) along with a Property Use and Development Agreement limiting development to the proposed 65 foot building and recommending other conditions.

The recommended conditions include:

1. Development of the rezoned property shall be subject to the requirements of SMC 23.58.B and 23.58.C.
2. Development of the rezoned property shall be in substantial conformance with the approved plans for this project, Master Use Permit number 3021980.

The Director also recommends the proposal be conditioned under the Council's Substantive SEPA authority. The recommended condition is to provide a Construction Management Plan approved by Seattle Dept. of Transportation to mitigate adverse construction impacts to the streets and sidewalks.

PUBLIC HEARING

A public hearing to take public comment on the Director's recommendations and to establish the record for this application will be held at **1:30 p.m. on September 27, 2017** at the Office of the Hearing Examiner (address below). The Office of the Hearing Examiner provides barrier free access.

Any appeal of the Directors decision to issue a DNS and conditionally approve Design Review will be heard at this hearing.

INFORMATION AVAILABLE

Copies of the Director's decision and recommendation, the project application materials and plans are available in SDCI's online Permit and Property Records or at the SDCI Public Resource Center, 700 5th Avenue, Suite 2000. The Public Resource Center is open 8:00 a.m. to 4:00 p.m. on Monday, Wednesday, Friday and 10:30 a.m. to 4:00 p.m. on Tuesday and Thursday. Questions may be directed to David Landry, 206-684-5318, david.landry@seattle.gov.

WRITTEN COMMENTS

Written comments will be accepted until the close of the hearing scheduled for **September 27, 2017**. Comments should be sent to:

**City of Seattle
Hearing Examiner
700 5th Avenue, Suite 4000
P.O. Box 94729
Seattle, WA 98124-4729**

Those persons who want to receive a copy of the Hearing Examiner's recommendation should specify that request in their comment letter.



If you wish to file written comments and/or receive a notice of the decision, please return this completed form with any written comments you have to: Seattle Department of Construction and Inspections, 700 5th Ave Ste 2000, PO Box 34019, Seattle, Washington 98124-4019 or e-mail PRC@seattle.gov

Name: _____ Project #3021980 – David Landry, 31st Fl

Address: _____

Zip: _____

Email Address: _____

Comment: _____



City of Seattle
Edward B. Murray, Mayor

Department of Construction and Inspections
Nathan Torgelson, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS**

Project Number: 3021980
Applicant: Jill Burdeen, for Nicholson Kovalchick Architects
Address of Proposal: 1600 Dexter Avenue North

SUMMARY OF PROPOSAL

Council Land Use Action to rezone a 13,785 sq. ft. portion of land from Neighborhood Commercial 3 with a 40' height limit (NC3-40') to Neighborhood Commercial 3 with a 65' height limit (NC3-65'), Pedestrian overlay to remain, and to allow a 6-story, 85-unit apartment building. Retail and one live-work unit will be located at street-level. Parking for 54 vehicles will be provided below grade. Review includes demolition of existing structures.

The following approvals are required:

Design Review with Departures (Seattle Municipal Code - SMC 23.41)
Departures are listed near the end of the Design Review Analysis in this document

Contract Rezone (SMC 23.34): Recommendation to Hearing Examiner

SEPA - Environmental Determination (SMC 25.05)

SEPA – Recommendation to City Council for mitigation (SMC 25.05)

SEPA DETERMINATION:

Determination of Non-significance

- No mitigating conditions of approval are imposed with the DNS but are recommended for consideration by City Council.
- Pursuant to SEPA substantive authority provided in SMC 25.06.660, the proposal has been conditioned to mitigate environmental impacts.

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BACKGROUND

ECA Steep Slope

The site was granted Relief on Steep Slope Development by the SDCI Geotechnical Engineer on December 3, 2015, per project #6505550. Based on a review of the City GIS system and the submitted information, SDCI concluded that the Steep Slope Critical Areas on the subject property are less than 20 feet in height and farther than 30 feet from other steep slope areas.

Consequently, the proposed development qualifies for Relief from Prohibition on Steep Slope Development, as described in SMC 25.09.180 B2c. Neither a ECA Steep Slope Variance nor Exception is required.

Mandatory Housing Affordability for Residential Development

In August 2016 the City Council passed Ordinance 125108 creating a new Land Use Code Chapter 23.58C, Mandatory Housing Affordability for Residential Development (MHA-R). The purpose of Chapter 23.58C is to implement an affordable housing incentive program authorized by RCW 36.70A.540. Chapter 23.58C specifies a framework for providing affordable housing in new development, or an in-lieu payment to support affordable housing, in connection with increases in residential development capacity.

SITE AND VICINITY

Site Zone: Neighborhood Commercial 3, Pedestrian Designation 40' height limit [NC3P-40]

Nearby Zones: North – NC3-40 & LR3
South – NC3-65 & C2-65
East – NC3-65
West - C1-65

Overlay Districts: Pedestrian Area
Frequent Transit

Site Size: 13,785 square feet (sq. ft.)

Environmental Critical Area (ECA):
Steep Slope (ECA-1)
Potential Slide Area (ECA-2)



PUBLIC COMMENT:

The public comment period ended on October 12, 2016. In addition to the comments received through the Design Review process, other comments were received and carefully considered, to

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the extent that they raised issues within the scope of this review. These areas of public comment related to inconsistencies with multiple contract rezone criteria, impacts to views, parking, inconsistencies with the existing neighborhood scale, and potential impact to vegetation and wildlife living in the vegetated areas of the site. Comments were also received that are beyond the scope of this review and analysis.

I. ANALYSIS – DESIGN REVIEW

CURRENT AND SURROUNDING DEVELOPMENT; NEIGHBORHOOD CHARACTER

The proposal site is located on the northeast corner of Dexter Avenue N and Garfield St. The site is made up of three distinct parcels; Parcel A, B & C, and when combined make up a total project area of 13,785 square feet. Parcels A & B which total 9,185 in area is currently occupied by a three level office use structure built in 1919, that ‘steps down’ from Dexter to an alley on the east side of the building. Parcel C located to the north of ‘A & B’ is currently vacant and makes up an area of 4,600 square feet.

The area is a major transportation corridor between downtown and North Seattle with three major arterial roads running north/south through the neighborhood as primary routes between downtown and Fremont, Ballard and Wallingford. Mercer St, a major east/west arterial connects Uptown with South Lake Union and primary access to Interstate-5. The site is also located one block north from the edge of the South Lake Union Urban Center Overlay District.

The area is made up of a mixture of condominiums, apartments, offices and commercial services, single-family residences and houseboats. The proposal site is in close proximity to midrise development (with 4-5 story buildings) located up slope to the west of Dexter, overlooking Lake Union and to the north with low rise development located to the north of there. There is also new development located to the south including a new residential development (Holland’s One Lakefront project) located one block south as well as other development located on both the east and west sides of Dexter between Aloha St and Comstock St. Located to the north of the project and on the east side of Dexter is a small number of older apartment or commercial buildings with a small number of older single-family residences to the north of there.

EARLY DESIGN GUIDANCE June 29, 2016

The packet includes materials presented at the meeting, and is available online by entering the project number (3021980) at the following website:
<http://www.seattle.gov/dpd/aboutus/news/events/DesignReview/SearchPastReviews/default.aspx>

The packet is also available to view in the file, by contacting the Public Resource Center at SDCI:

Mailing Address: **Public Resource Center**
700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Email: PRC@seattle.gov

PUBLIC COMMENT

At the EDG meeting, the following comments were provided:

- A member of the public wanted to know what will happen to the design if the contract rezone is not approved. Input from the applicant suggested that there would need to be a substantial redesign of the project. Staff followed by stating that a re-designed project would need to come back in front of the Board for at least one more EDG meeting.

PRIORITIES & BOARD RECOMMENDATIONS

After visiting the site, considering the analysis of the site and context provided by the proponents, and hearing public comment, the Design Review Board members provided the following siting and design guidance.

1. **Massing:** The Board was generally supportive of the preferred massing option as it successfully breaks up the volume of the building structure. However, the Board was concerned about how the courtyard would be activated and not be relegated to an empty space. While the size of the courtyard is appealing, the Board was concerned that there are not enough entry points into the courtyard and wanted to see this space further developed and programmed to be activated. Board members also supported the terracing approach of the building layout and the stepping down the slope to the alley. **(CS2-D, DC2-A, DC2-B, DC2-D, DC2-E)**
2. **Live/Work:** The Board was generally supportive of the live-work units as they appeared to be larger than other units they typically see and they especially liked the fact they are double floor height which allows for the full separation of the work from the living spaces. The Board members stressed that the streetscape connection detail will be important in finalizing the design concept. The Board also strongly agreed that the requirement for retail frontage is maintained in light of the requested rezone and departure. In their discussions, the Board added that the north facing wall of the commercial space should be as porous as possible as a means of helping to activate the courtyard. As such, the Board would like to see more details of the units and what is happening in relationship to the setbacks, slopes and at grade. The Board members also discouraged the sinking of living units as much as possible. It should be noted however that it was later determined after the recommendation phase of the project that a departure from this development is not allowed and the applicant has since withdrawn this departure request and changed one of the live-work units to commercial use. **(PL1-C, PL2-B, PL2-C, DC1-A, DC1-B)**
3. **Streetscape Response:** The Board was generally supportive of the conceptual architectural expression along Dexter and the live/work unit approach. However, they argued that the units need to be as porous as possible to activate the street along Dexter and engage the courtyard as much as possible. The Board debated the pros and cons of making the unit closest to the courtyard for a true commercial uses or as a live/work unit as a strategy for keeping that edge along the courtyard as porous as possible. The Board was concerned that if the space were used as live/work solely then the courtyard facing façade would need to be kept open and porous. Whichever use the space becomes, the Board wanted to make

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sure that the space aids in the activation of the courtyard, regardless of its function. Finally, the Board was in support of the level of vegetative planting proposed in the preferred option along with the response to the bike lane along Dexter and the use of a 'hitching post' bike rack. **(PL1-B, PL2-C,)**

4. **Architectural Response:** The Board generally supported the architectural precedent images of depicted in the EDG packet dated June 29, 2016 as a good starting point for the architectural expression of the project. The Board would like to see how the vertical striping represented in the massing options is translated in the more developed drawings. The image examples have more deep contrast verticality that is less apparent in the sketches of the preferred option. The Board would like to see how the depth of the façade and setbacks, depth and play will be detailed. As a next step, the Board would like to see elevations on all sides of the building, including the alley side of the building along with, sections, detailed elevations, pedestrian level views showing continuity along Dexter and adjacent buildings for the next meeting. Board members also wanted to see more clarity or clearer delineation between the 'terracing' elements. For example, it was suggested that the commercial base might have one distinctive material approach while the vertical residential element another with a third dedicated to the lower back part of the building. **(PL3-C, DC3-A, DC4-A)**
5. **Materials:** The Board agreed with the use of brick for the commercial podium and a different expression for the residential units above, but wanted to the see it further developed by accentuating the residential verses the commercial space. The Board was strongly in favor of the double story height approach at entry and live/work façade, but wanted to make sure that the two-story glass language was further explored at both the entry and courtyard areas. The Board suggested that there be some continuity so that the two floor height reads more cohesively. **(PL3-C, DC3-A, DC4-A)**
6. **Access:** The Board wanted to see the bike access located closer to the alley with the bike storage room closer to the garage. **(PL4-B, DC1-A, DC1-C)**

RECOMMENDATION March 1, 2017

The packet includes materials presented at the meeting, and is available online by entering the project number (3021980) at this website:

<http://www.seattle.gov/dpd/aboutus/news/events/DesignReview/SearchPastReviews/default.aspx>

The packet is also available to view in the file, by contacting the Public Resource Center at SDCI:

Mailing Public Resource Center
Address: 700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Email: PRC@seattle.gov

PUBLIC COMMENT

The following comments were offered by a single entity at the Recommendation meeting:

- Concerned that the Design Review process is backwards in relationship to the timing of the Contract Rezone.
- Feels that the Board should require the applicant to design a building that is consistent with existing zoning in case the Council does not approve the Contract Rezone.
- Feels that the project does not address the requirement of the Pedestrian zone where it is located.
- Feels design of project is not accommodating what the Code requires in terms of providing commercial frontage uninterrupted by housing.
- Concerned that the project will cause view blockage to buildings across the street, to the cityscape and to other buildings in the immediate vicinity.
- Feels that the proposed building is not consistent with the existing scale.
- Concerned that this project is not an ordinary design review project as it is connected to a request for a Contract Rezone.
- The Board should consider all rezone criteria in their consideration of this design review project.

PRIORITIES & BOARD RECOMMENDATIONS

After visiting the site, considering the analysis of the site and context provided by the proponents, and hearing public comment, the Design Review Board members provided the following recommendations.

1. **Massing and Overall Design:** In general the Board felt that the massing design responded well to their guidance given at the EDG meeting. Board members felt that the project had evolved and were supportive of the textures, materiality and the contrast between materials, activation and design of the streetscape façade which would provide a better environment for pedestrian and street life engagement. **(CS2-D, DC2-A, DC2-B, DC2-D, DC2-E, DC3-A-1)**
2. **Courtyard:** The Board was pleased to see the conversion of the one live-work unit to commercial space which they felt would help activate the central courtyard. Overall the Board supported the architectural parti and the use of balconies designed to create façade depth, the double height spaces along the building façade, and the window treatments at the residential street level along with the activation of the courtyard through the landscape and lighting. **(PL1-A-2, PL3-A-2, DC2-D-1, PL3-C-2, DC3-A-1, DC4-D-2)**
 - a. The Board spent a fair amount of time discussing the need to resolve the interior courtyard gasket - possibly making it a strong statement or somehow capping the double height space and encouraged the applicant to explore alternatives such as a recess, patterning or other element to make that area as special as the rest of the building elements. **(CS2-A-2, DC2-C)**

CS1-C-2. Elevation Changes: Use the existing site topography when locating structures and open spaces on the site. Consider “stepping up or down” hillsides to accommodate significant changes in elevation.

CS2 Urban Pattern and Form: Strengthen the most desirable forms, characteristics, and patterns of the streets, block faces, and open spaces in the surrounding area.

CS2-C. RELATIONSHIP TO THE BLOCK

CS2-C-1. Corner Sites: Corner sites can serve as gateways or focal points; both require careful detailing at the first three floors due to their high visibility from two or more streets and long distances. Consider using a corner to provide extra space for pedestrians and a generous entry, or build out to the corner to provide a strong urban edge to the block.

CS3 Architectural Context and Character: Contribute to the architectural character of the neighborhood.

CS3-A. RELATIONSHIP TO THE BLOCK

CS3-A-2. Contemporary Design: Explore how contemporary designs can contribute to the development of attractive new forms and architectural styles; as expressed through use of new materials or other means.

CS3-A-4. Evolving Neighborhoods: Explore how contemporary designs can contribute to the development of attractive new forms and architectural styles; as expressed through use of new materials or other means.

PUBLIC LIFE

PL1 Connectivity: Complement and contribute to the network of open spaces around the site and the connections among them.

PL1-C. OUTDOOR USES AND ACTIVITIES

PL1-C-1. Selecting Activity Areas: Concentrate activity areas in places with sunny exposure, views across spaces, and in direct line with pedestrian routes.

PL1-C-2. Informal Community Uses: In addition to places for walking and sitting, consider including space for informal community use such as performances, farmer’s markets, kiosks and community bulletin boards, cafes, or street vending.

PL1-C-3. Year-Round Activity: Where possible, include features in open spaces for activities beyond daylight hours and throughout the seasons of the year, especially in neighborhood centers where active open space will contribute vibrancy, economic health, and public safety. These may include:

- a. seasonal plantings or displays and/or water features;
- b. outdoor heaters;
- c. overhead weather protection;
- d. ample, moveable seating and tables and opportunities for outdoor dining;
- e. an extra level of pedestrian lighting;
- f. trees for moderate weather protection and shade; and/or
- g. 24-hour Wi-Fi service.

PL2 Walkability: Create a safe and comfortable walking environment that is easy to navigate and well-connected to existing pedestrian walkways and features.

PL2-B. SAFETY AND SECURITY

PL2-B-1. Eyes on the Street: Create a safe environment by providing lines of sight and encouraging natural surveillance through strategic placement of doors, windows, balconies and street-level uses.

PL2-B-2. Lighting for Safety: Provide lighting at sufficient lumen intensities and scales, including pathway illumination, pedestrian and entry lighting, and/or security lights.

PL2-B-3. Street Level Transparency: Ensure transparency of street-level uses (for uses such as nonresidential uses or residential lobbies), where appropriate, by keeping views open into spaces behind walls or plantings, at corners, or along narrow passageways. Choose semi-transparent rather than opaque screening.

PL2-C. WEATHER PROTECTION

PL2-C-1. Locations and Coverage: Overhead weather protection is encouraged and should be located at or near uses that generate pedestrian activity such as entries, retail uses, and transit stops. Address changes in topography as needed to provide continuous coverage the full length of the building, where possible.

PL2-C-2. Design Integration: Integrate weather protection, gutters and downspouts into the design of the structure as a whole, and ensure that it also relates well to neighboring buildings in design, coverage, or other features.

PL2-C-3. Street Level Transparency: Ensure transparency of street-level uses (for uses such as nonresidential uses or residential lobbies), where appropriate, by keeping views.

PL3 Street-Level Interaction: Encourage human interaction and activity at the street-level with clear connections to building entries and edges.

PL3-C RETAIL EDGES

PL3-C-1. Porous Edge: Engage passersby with opportunities to interact visually with the building interior using glazing and transparency. Create multiple entries where possible and make a physical and visual connection between people on the sidewalk and retail activities in the building.

PL3-C-2. Visibility: Maximize visibility into the building interior and merchandise displays. Consider fully operational glazed wall-sized doors that can be completely opened to the street, increased height in lobbies, and/or special lighting for displays.

PL3-C-3. Ancillary Activities: Allow space for activities such as sidewalk vending, seating, and restaurant dining to occur. Consider setting structures back from the street or incorporating space in the project design into which retail uses can extend.

PL4 Active Transportation Incorporate design features that facilitate active forms of transportation such as walking, bicycling, and use of transit.

PL4-B PLANNING AHEAD FOR BICYCLISTS

PL4-B-1. Early Planning: Consider existing and future bicycle traffic to and through the site early in the process so that access and connections are integrated into the project along with other modes of travel.

PL4-B-2. Bike Facilities: Facilities such as bike racks and storage, bike share stations, shower facilities and lockers for bicyclists should be located to maximize convenience, security, and safety.

PL4-B-3. Bike Connections: Facilitate connections to bicycle trails and infrastructure around and beyond the project. Design bicycling access points so that they relate to the street grid and include information about connections to existing trails and infrastructure where possible. Also consider signage, kiosks, building lobbies, and bicycle parking areas, where provided, as opportunities to share bicycling information.

DESIGN CONCEPT

DC1 Project Uses and Activities Optimize the arrangement of uses and activities on site.

DC1-A ARRANGEMENT OF INTERIOR USES

DC1-A-1. Visibility: Locate uses and services frequently used by the public in visible or prominent areas, such as at entries or along the street front.

DC1-B VEHICULAR ACCESS AND CIRCULATION

DC1-B-1. Access Location and Design: Choose locations for vehicular access, service uses, and delivery areas that minimize conflict between vehicles and non-motorists wherever possible. Emphasize use of the sidewalk for pedestrians, and create safe and attractive conditions for pedestrians, bicyclists, and drivers by:

- a. using existing alleys for access or, where alley access is not feasible, choosing a location for street access that is the least visually dominant and/or which offers opportunity for shared driveway use;
- b. where driveways and curb cuts are unavoidable, minimize the number and width as much as possible; and/or

DC2 Architectural Concept: Develop an architectural concept that will result in a unified and functional design that fits well on the site and within its surroundings.

DC2-B ARCHITECTURAL AND FACADE COMPOSITION

DC2-B-1. Façade Composition: Design all building facades—including alleys and visible roofs—considering the composition and architectural expression of the building as a whole. Ensure that all facades are attractive and well-proportioned.

DC3 Open Space Concept Integrate open space design with the design of the building so that each complements the other.

DC3-A BUILDING-OPEN SPACE RELATIONSHIP

DC3-A-1. Interior/Exterior Fit: Develop an open space concept in conjunction with the architectural concept to ensure that interior and exterior spaces relate well to each other and support the functions of the development.

DEVELOPMENT STANDARD DEPARTURES

The Board's recommendation on the requested departure(s) will be based on the departure's potential to help the project **better meet both the Citywide design guidelines priorities and achieve a better overall project design** than could be achieved without the departure(s).

At the time of the Recommendation meeting, the following departures were identified:

1. **Live-Work Units at Street Level (SMC 23.47A.004.G.2):** The Code requires that in pedestrian designated zones, live-work units shall not occupy more than 20 percent of the street-level street-facing facade along designated principal pedestrian streets listed in subsection 23.23.47A.005.D. The applicant is proposing that the live-work units occupy 24.4 percent of the street-level street-facing facade.

The Board supported this departure as they felt that specific design moves designed to help the live /work units become viable spaces had been achieved. These moves included creating larger sized unit and mezzanine level which would allow for a physical separation between work and living spaces, instead of just living spaces located within a live-work unit. The Board also felt that their earlier design guidance of converting one of the live-work units adjacent to the courtyard to commercial space would aid the transitioning from live-work units to a commercial zone aiding in activation of the pedestrian designated zone as well as maximizing courtyard use. **(CS2 Urban Pattern and Form, PL3-A Entries, PL3-B-3 Buildings with Live-Work, Residential Entries, PL3-C-1 Porous Retail Edge, PL3-C-2 Visibility, DC1-A-1 Visibility in Arrangement of Uses, DC3-A-1 Interior/Exterior Fit)**

The Board voted unanimously in support of this departure. However it was subsequently determined that a departure from this development is not allowed and the applicant has since withdrawn this departure request and changed one of the live-work units to commercial use.

2. **Residential Uses at Street Level (SMC 23.47A.005.C.1):** The Code requires that residential uses may occupy no more than 20 percent of the street-level street-facing façade.

The applicant is proposing 27.2 percent of the street-level street facing façade to be occupied by residential uses consisting of the courtyard which provides access to the residential lobby, commercial parking, and a porous edge along the commercial space along Dexter Avenue.

The Board felt that the additional non-residential street-level street facing façade establishes a strong connection to the street and pedestrian amenities and the potential for outdoor activity. The Board also felt that their earlier design guidance to widen the vestibule leading into the lobby area and the conversion of the single live-work unit to commercial space allows for greater activation of both the streetscape and the courtyard space and therefore supported the approval of the requested departure. **(PL1 Connectivity, PL2-B-1 Eyes on the Street, PL3 Street Level Interaction, DC3-A-1 Interior/Exterior Fit)**

The Board voted unanimously in support of the departure.

- 3. Residential Uses at Street Level (SMC 23.47A.005.D.1):** The Code requires that in pedestrian-designated zones the locations of uses are regulated as follows:

Along designated principal pedestrian streets, approved uses should occupy 80 percent of the street-level, street-facing facade in accordance with the standards provided in subsection 23.47A.008.C.

The design proposal identifies that the approved listed uses will occupy 75.6 percent of the street-level street-facing facade on Dexter Ave N.

The Board was supportive of the conversion of the live-work unit to a commercial space, creating opportunities for commercial uses on both the north and south sides of the courtyard, in addition to the creation of larger, more viable of live-work units with larger street frontage, which they felt would aid in the activation of both the streetscape and the courtyard and therefore supported the approval of the requested departure. **(CS1 Natural Systems and Site Features, CS2 Urban Pattern and Form, PL1 Connectivity, PL2-B Safety and Security, PL3 Street-Level Interaction, DC2 Architectural Concept, DC3 Open Space Concept)**

The Board voted unanimously in support of the departure.

- 4. Street Level Development Standards (SMC 23.47A.008.B.4):** The Code requires that height provisions for non-residential uses in new structures at street level must have a floor-to-floor height of at least 13 feet.

The live-work and converted commercial floor spaces have been designed with a mezzanine located over the rear portion of each unit. The applicant is requesting a departure that would allow a floor-to-floor height of the rear portion of the unit to be 9 feet 6 inches.

The Board felt that the live-work units because they have a depth of 15 feet 6 inches measured from the outer edge of the floor, greater than the minimum of 15 feet and because of their larger overall sizes which allows for better separation between the living and work spaces making it be more conducive to a successful work space instead of just a living space within a live-work unit and therefore supported the requested departure. **(PL3 Street-Level Interaction, DC1 Project Uses and Activities, DC2 Architectural Concept)**

The Board voted unanimously in support of the departure.

- 5. Dwelling Unit Location (SMC23.47A.008.D.2):** The Code requires that where residential uses are located along a street-level street-facing façade, the floor of a dwelling unit located along the street-level street-facing facade shall be at least 4 feet above or 4 feet below sidewalk grade or set back at least 10 feet from the sidewalk.

The applicant is requesting a departure for a 6.8 x 7 area of a residential unit to be located 3 feet from the sidewalk along Garfield St. The approval would allow for a consistent commercial and living unit finish floor heights as well as a consistent build-edge along the street-level similar to the Lake Union Tower Apartments located to the east. To buffer the living unit, a 3'-0" deep landscape buffer will be located along the length of the affected living unit which will provide a physical barrier between the unit and the sidewalk, which the Board had requested at EDG. The steep topography along Garfield will also aid in providing an additional physical barrier between the sidewalk and a portion of the living unit and thus a degree of privacy from the sidewalk while adding "eyes on the street".

The Board agreed with the design solutions that addressed the steep slope conditions of the proposal site and were happy that the continuity of the punched openings and window placement could be maintain rather than a blank façade along Garfield and therefore were in favor of supporting the departure request. **(CS1 Natural Systems and Site Features, PL2-B-1 Eyes on the Street, PL3 Street-Level Interaction, DC-3-A-1 Building-Open Space Relationship)**

The Board voted unanimously in support of the departure.

- 6. Parking Access (SMC23.47A.032.A.1):** The Code requires access to parking shall be from the alley if the lot abuts an alley improved to the standards of subsection 23.53.030.C, or if the Director determines that alley access is feasible and desirable to mitigate parking access impacts.

The proposed design requests a departure to allow a secondary parking access off of Garfield Street. The Board spent a great deal of time discussing this departure and whether the departure results in a better design or better meet the design guidelines. Per the applicant, if the requested departure were not supported by the Board, the project could not provide the required parking spaces without eliminating the commercial mezzanine floor area in addition to losing at least two living units. This is due to the internal access ramp off the alley to a second parking level which would reduce space available for two required parking spaces and the elimination of two living units at the northeast corner of the building. In addition, the parking ramp would also eliminate the mezzanine levels of commercial spaces. The applicant stated that if they were required to provide only one access off the alley then they would prefer to eliminate the commercial floor area all together even though with ramping the (space) volume of the commercial area would remain the same. It was also stated that there would also be a blank wall on the northeast corner of the building as a result of an access ramp.

Some Board members stated that it is helpful that the parking being accessed via the proposed curb cut and that the driveway would be dedicated to the commercial use. There was strong support for more generous spaces for the live-work and more commercial floor area around the courtyard which would make commercial use more successful even though the area is a pedestrian, bike, transit corridor. Other Board members stated that this involves a curb cut and access on a neighborhood street which they did not feel was justified. Other members stated

that they were more interested in not seeing the mezzanine within the commercial space which they intimated would be essential to its success as a more activated space. It was also noted that because the street is steep and visibility is poor, along a street that should be walkable, a curb cut would maintain a safer street edge if the departure were not granted. **(CS1, PL2, DC1)**

The Board was initially split with one against, two in favor and one undecided but eventually voting in favor to support the departure for a final vote of 3 in favor and 1 opposed, therefore the determination will be made by SDCI and informed by the Board's comments and concerns noted above.

ANALYSIS & DECISION – DESIGN REVIEW

Director's Analysis

The design review process prescribed in Section 23.41.014.F of the Seattle Municipal Code describing the content of the SDCI Director's decision reads in part as follows:

The Director's decision shall consider the recommendation of the Design Review Board, provided that, if four (4) members of the Design Review Board are in agreement in their recommendation to the Director, the Director shall issue a decision which incorporates the full substance of the recommendation of the Design Review Board, unless the Director concludes the Design Review Board:

- a. Reflects inconsistent application of the design review guidelines; or
- b. Exceeds the authority of the Design Review Board; or
- c. Conflicts with SEPA conditions or other regulatory requirements applicable to the site; or
- d. Conflicts with the requirements of state or federal law.

Subject to the recommended conditions, the design of the proposed project was found by the Design Review Board to adequately conform to the applicable Design Guidelines.

At the conclusion of the Recommendation meeting held on March 1, 2017, the Board recommended approval of the project with the conditions described in the summary of the Recommendation meeting above.

Four members of the four Design Review Board were in attendance and provided recommendations (listed above) to the Director and identified elements of the Design Guidelines which are critical to the project's overall success. The Director must provide additional analysis of the Board's recommendations and then accept, deny or revise the Board's recommendations (SMC 23.41.014.F3).

The Director agrees with the Design Review Board's conclusion that the proposed project and conditions imposed result in a design that best meets the intent of the Design Review Guidelines and accepts the recommendations noted by the Board.

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Following the Recommendation meeting, SDCI staff worked with the applicant to update the submitted plans to include the recommendations of the Design Review Board.

Applicant response to Recommended Design Review Condition:

The applicant responded with a memo dated May 5, 2017, noting, that the MUP plan set was updated to be consistent with the recommendation packet and conditions of approval provided by the Board. The updates consist of the following items that were added to the latest MUP submittal plan set.

1. Reduced number of Apartment Units to 85 plus 2 Live/Work Units.(A0.00, A0.10)
2. Slab for Commercial Space 215 raised to sidewalk level and entry door relocated. Commercial space now double-height with mezzanine. (A0.10, A0.11, A1.10, A2.12, A2.13, A3.00, A4.00, A4.02, C1.00)
3. Courtyard revised to be at a single elevation. Layout for planters revised and stoop added for Commercial Space 202. (A1.10, A2.12, A4.00, C1.00, L1.01)
4. Residential entry canopy shape revised. (A1.10, A2.12, A2.13)
5. Mezzanine added to Commercial Space 202 (A0.10, A0.11, A2.12, A2.13)
6. West façade set back 2'-2" to meet SCL clearance requirements. (A0.10, A0.11, A1.20, A2.10-A2.17)
7. East façade shifted toward alley by 6". (A0.10, A0.11, A2.10-A2.17)
8. Overall building width (in N-S direction) increased by 8" on Levels 1-6M. (A0.10, A0.11, A2.11-A2.17)
9. Courtyard west façade shifted to west to create inset at Levels 1 & 2 storefront. Windows on this façade enlarged and now have black frames. (A0.10, A0.11, A2.12, A2.13, A3.00, A3.10, A4.00, A4.01)
10. Stack of windows removed from Courtyard north and south facades. (A3.04, A4.01)
11. Flex Space moved to Level 3 overlooking courtyard. (A2.13)
12. Leasing office moved to southwest corner of lobby and mailboxes moved into Lobby. (A2.12)
13. Unit 104 turned into Studio. (A2.11)
14. Unit 209 turned into 'Urban' 1 Bedroom Unit. (A2.12)
15. Storefront materials were revised to replace wood panels with translucent glass and opaque white panels. Storefront panel divisions were revised. (A0.10, A3.00, A3.01, A3.04, A3.10, A3.11, A4.00, A4.01)
16. West massing parapet height lowered by 6". (A0.10, A2.17, A3.00, A3.01, A3.03, A3.04, A4.00-A4.02)
17. Floor-to-floor heights revised at Levels 4-6M. (A3.00-A3.04, A4.00-A4.02)
18. Vent shrouds added to drawings. (A3.00-A3.04, A3.10-A3.13, A4.00, A4.01)
19. Building, Commercial, and Live/Work signage added to drawings. (A3.00, A3.01, A3.03, A3.10, A3.11, A3.13, A4.00, A4.01)

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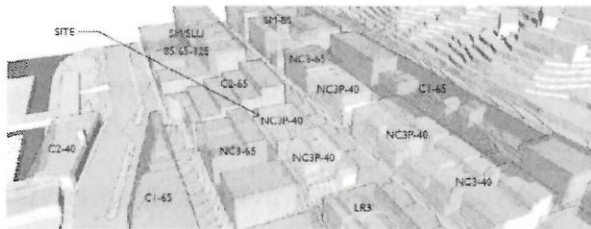
CONTEXT ANALYSIS

Rezoning Proposal

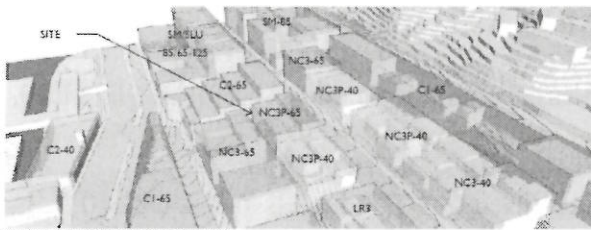
The project site is currently zoned NC3P-40. The project is seeking a contract rezone to NC3P-65 to provide a more contextual density and massing transition from the C2-65 zone to the south and NC3-65 zone to the east. The additional height allows the building to closely relate to the scale of adjacent existing structures, provide more affordable dwelling units, and respond more appropriately to the site's topography. The project will designate 6% of the dwelling units as affordable housing for residents with incomes below 60% of AMI (30% median income).

Zoning Map Key

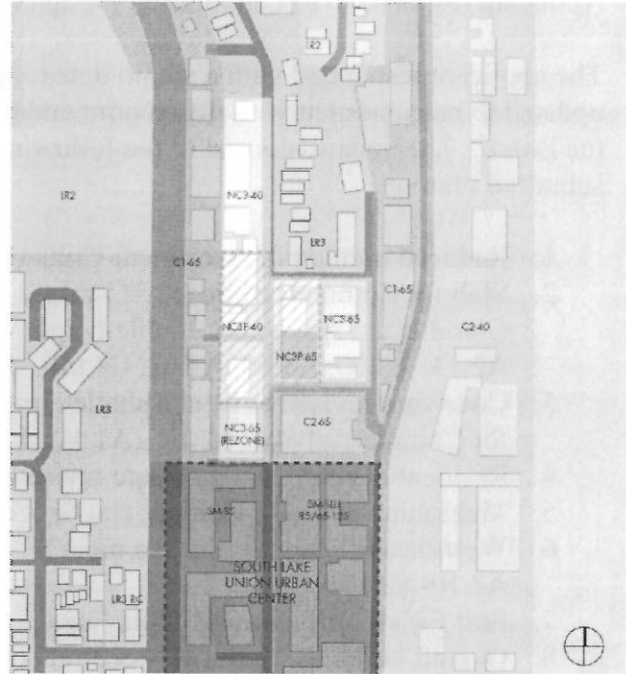
- IR2
- IR3/IR3 KC
- NC3-40/NC3P-40
- NC3-65/NC3P-65
- C2-40
- C1-65/C2-65
- SM185/SM-SU 85/65-125
- PEDESTRIAN-DESIGNATED ZONE



MASSING WITH CURRENT NC3P-40 ZONING



MASSING WITH PROPOSED NC3P-65 ZONING



nk

stream

Design: [unreadable] | [unreadable]

It should be noted that the project design has changed and therefore does not need a live-work departure.

The applicant shall be responsible for ensuring that all construction documents, details, and specifications are shown and constructed consistent with the approved MUP drawings.

The Director of SDCI has reviewed the recommendations of the Design Review Board made by the 4 members present at the decision meeting and finds that they are consistent with the City of Seattle Design Review Guidelines.

DIRECTOR'S DECISION

The Director accepts the Design Review Board's recommendations and **CONDITIONALLY APPROVES** the proposed design and the requested departures as summarized below:

- **Residential Uses at Street Level (SMC 23.47A.005.C.1):** The Code requires that residential uses may occupy no more than 20 percent of the street-level street-facing façade. **Residential Uses at Street Level (SMC 23.47A.005.C.1):** The Code requires that residential uses may occupy no more than 20 percent of the street-level street-facing

façade. The applicant is proposing 27.2 percent of the street-level street facing façade to be occupied by residential uses. Departure is granted.

- **Residential Uses at Street Level (SMC 23.47A.005.D.1):** The Code requires that in pedestrian-designated zones the locations of uses are regulated as follows: Along designated principal pedestrian streets, approved uses should occupy 80 percent of the street-level, street-facing facade in accordance with the standards provided in subsection 23.47A.008.C. The design proposal identifies that the approved listed uses will occupy 75.6 percent of the street-level street-facing facade on Dexter Ave N. Departure is granted.
- **Street Level Development Standards (SMC 23.47A.008.B.4):** The Code requires that height provisions for non-residential uses in new structures at street level must have a floor-to-floor height of at least 13 feet. The live-work and converted commercial floor spaces have been designed with a mezzanine located over the rear portion of each unit. The applicant is requesting a departure that would allow a floor-to-floor height of the rear portion of the unit to be 9 feet 6 inches. Departure is granted.
- **Dwelling Unit Location (SMC23.47A.008.D.2):** The Code requires that where residential uses are located along a street-level street-facing façade, the floor of a dwelling unit located along the street-level street-facing facade shall be at least 4 feet above or 4 feet below sidewalk grade or set back at least 10 feet from the sidewalk. The applicant is requesting a departure for a 6.8 x 7 area of a residential unit to be located 3 feet from the sidewalk along Garfield St. Departure is granted.
- **Parking Access (SMC23.47A.032.A.1):** The Code requires access to parking shall be from the alley if the lot abuts an alley improved to the standards of subsection 23.53.030.C, or if the Director determines that alley access is feasible and desirable to mitigate parking access impacts. The proposed design requests a departure to allow a secondary parking access off of Garfield Street. Departure is granted.

II. ANALYSIS – REZONE

Seattle Municipal Code (SMC) Chapter 23.34, “Amendments to Official Land Use Map (Rezoning),” allows the City Council to approve a map amendment (rezone) according to procedures as provided in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions. The owner/applicant has made application, with supporting documentation, per SMC 23.76.040.D, for an amendment to the Official Land Use Map. Contract rezones and Property Use and Development Agreements (PUDAs) are provided for in the Code at SMC 23.34.004.

The applicable requirements for this rezone proposal are stated in SMC Sections 23.34.004 (contract rezones), 23.34.007 (rezone evaluation), 23.34.008 (general rezone criteria) 23.34.009

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(height limits), 23.34.078 Neighborhood Commercial 3 (NC3) zones, function and locational criteria and 23.34.086 (Pedestrian designation (suffix P), function and locational criteria).

Applicable portions of the rezone criteria are shown in italics, followed by analysis in regular typeface.

SMC 23.34.004 Contract Rezones.

- A. Property Use and Development Agreement. The Council may approve a map amendment subject to the execution, delivery, and recording of a property use and development agreement (PUDA) executed by the legal or beneficial owner of the property to be rezoned containing self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone. All restrictions imposed by the PUDA shall be directly related to the impacts that may be expected to result from the rezone.***

A Property Use and Development Agreement (PUDA) will be executed and recorded as a condition of the contract rezone. The Director recommends that the PUDA should require development of the rezoned property that is in substantial conformance with the approved plans for Master Use Permit number 3021980.

- B. Notwithstanding any contrary provision of subsection 23.34.004.A, the Council may approve a map amendment subject to execution, delivery, and recording of a property use and development agreement (PUDA) executed by the legal or beneficial owner of the property to be rezoned containing self-imposed restrictions applying the provisions of Chapter 23.58B or Chapter 23.58C to the property. The Director shall by rule establish payment and performance amounts for purposes of subsection 23.58C.040.A and 23.58C.050.A that shall apply to a contract rezone until Chapter 23.58C is amended to provide such payment and performance amounts for the zone designation resulting from a contract rezone.***

The project will comply with Chapter 23.58B and 23.58C. Chapter 23.58C has been amended to provide payment and performance amounts.

- C. A contract rezone shall be conditioned on performance or compliance with the terms and conditions of the PUDA. Council may revoke a contract rezone or take other appropriate action allowed by law for failure to comply with a PUDA. The PUDA shall be approved as to form by the City Attorney, and shall not be construed as a relinquishment by the City of its discretionary powers.***

A PUDA will be executed and recorded as a condition for the contract rezone from NC3-40 to NC3-75 (M1) with the condition that development will be limited to the project proposal. The recorded condition will facilitate the use of an MHA suffix and any associated development standards identified in the code for NC zones with a 75' height limit which will accommodate the proposed FAR for the project as designed.

- D. Waiver of Certain Requirements. The ordinance accepting the PUDA may waive specific bulk or off-street parking and loading requirements if the Council determines that the waivers are necessary under the agreement to achieve a better development than would otherwise result from the application of regulations of the zone. No waiver of requirements shall be granted that would be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.***

No waivers from bulk or off-street and loading requirements are needed for this proposal.

SMC 23.34.007 Rezone Evaluation.

- A. The provisions of this chapter shall apply to all rezones, except correction of mapping errors. In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets these provisions. In addition, the zone function statements, which describe the intended function of each zone designation, shall be used to assess the likelihood that the area proposed to be rezoned would function as intended.***

This rezone is not proposed to correct a mapping error, and therefore the provisions of this chapter apply. In evaluating the proposed rezone, the provisions of this chapter have been weighed and balanced together to determine which zone and height designation best meets the provisions of the chapter. Additionally, the zone function statements have been used to assess the likelihood that the proposed rezone will function as intended.

- B. No single criterion or group of criteria shall be applied as an absolute requirement or test of the appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations, unless a provision indicates the intent to constitute a requirement or sole criterion.***

This analysis evaluates the full range of required criteria as they apply to the subject rezone and as identified in Chapter 23.34 Amendments to Official Land Use Map (Rezones) and Seattle Municipal Code (listed at the beginning of this “Analysis” section) and subject to the requirements of SMC 23.58.B and 23.58.C.

- C. Compliance with the provisions of this chapter shall constitute consistency with the Comprehensive Plan for the purpose of reviewing proposed rezones, except that Comprehensive Plan Shoreline Environment Policies shall be used in shoreline environment redesignations as provided in SMC subsection 23.60A.042.C.***

The proposed rezone is not a shoreline environment redesignation and so the Comprehensive Plan Shoreline Policies were not used in this analysis. Therefore the proposal is consistent with the Comprehensive Plan since it is in compliance with the provisions of this chapter.

- D. Provisions of this chapter that pertain to areas inside of urban centers or villages shall be effective only when a boundary for the subject center or village has been established in the Comprehensive Plan. Provisions of this chapter that pertain to areas outside of urban villages or outside of urban centers shall apply to all areas that are not within an adopted urban village or urban center boundary.*

The entire development site, including the parcel proposed for rezone, is located outside of the an Urban Center and outside of an Urban Village. The provisions of this chapter that pertain to areas inside of urban villages do not apply to the proposal.

- E. The procedures and criteria for shoreline environment redesignations are located in Sections 23.60A.042, 23.60A.060 and 23.60A.220.*

The subject rezone is not a redesignation of a shoreline environment and so is not subject to Shoreline Area.

- F. Mapping errors due to cartographic or clerical mistakes may be corrected through process required for Type V Council land use decisions in SMC Chapter 23.76 and do not require the evaluation contemplated by the provisions of this chapter.*

The subject rezone is not a correction of a mapping error and so should not be evaluated as a Type V Council land use decision.

SMC 23.34.007 Conclusion: The proposed rezone meets the requirements of SMC 23.34.007, per the analysis above.

SMC 23.34.008 General rezone criteria.

- A. To be approved a rezone shall meet the following standards:*
- 1. In urban centers and urban villages, the zoned capacity for the center or village taken as a whole shall be no less than 125% of the growth targets adopted in the Comprehensive Plan for that center or village.*
 - 2. For the area within the urban village boundary of hub urban villages and for residential urban villages taken as a whole the zoned capacity shall not be less than the densities established in the Urban Village Element of the Comprehensive Plan.*

The site is not located in an urban center or urban village.

- B. Match between Established Locational Criteria and Area Characteristics. The most appropriate zone designation shall be that 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.*

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The Director recognizes that at this time, NC3P-65 would not be an appropriate zone designation because it does not exist with a required MHA suffix. Therefore the Director is recommending a rezone to NC3P-75 with the M1 suffix, consistent with SDCI Director's Rule 14-2016, with the condition that the property be limited by PUDA condition to the proposed building, which would comply with a 65-foot height limit. It is also worth noting that the proposed building, while compliant with a 65 foot zoned structure height, is proposed to exceed the Floor Area Ratio (FAR) that would be allowed under 65ft zoning. The proposed structure would be compliant with FAR for a 75 foot height limit. In order to properly apply an M1 suffix and in order to be compliant with FAR, the Director is recommending a rezone to NC3P-75 with the M1 suffix with the condition that the property use and Development Agreement limits development to the proposed building.

To restate, the height restriction is because an NC3P-65 zone with an MHA suffix or performance/payment schedule; (the mandatory requirement for developers to comply with the affordable housing act by either providing affordable housing or paying into a Seattle Office of Housing fund), does not currently exist. The next available zone with an MHA (performance/payment schedule) suffix is NC3P-75'. Rezoning to the next higher zone will facilitate the use of the MHA suffix in addition to accommodating the FAR of the project as currently designed. After the rezone occurs, all redevelopment in the rezoned area will be required to either provide on-site affordable housing or pay an affordable housing fee to the City. The M1 designation is the performance/payment schedule or suffix for the NC3P-75 rezone category.

Please see the functional and locational criteria analyses for the relevant zones below.

C. Zoning History and Precedential Effect. Previous and potential zoning changes both in and around the area proposed for rezone shall be examined.

The project area had the zoning designation of Second Residential District in 1923. In 1947 the project was rezoned to Commercial District. The area was rezoned NC2-40. On April 04 1995 City Ordinance number Ord. 117434, NC2-40 and designated again NC2-40, through City Ordinance Ord. 117919 on January 12 1995. The area was re-designated NC3P-40 through City Ordinance number Ord. 124770 on June 14, 2015 which it remains today.

A contract rezone to rezone a property located at 1511 Dexter Avenue North from NC3P-40 to NC3P-65 for an affordable housing project was approved (August 8, 2016) by the City Council (Project No. 3015682). That rezone is located across Dexter Avenue to the southwest of the project site. It is anticipated that neighborhoods will eventually be upzoned via the MHA-R process which will essentially add 10 feet of height to all properties. Timing for the MHA-R rezone is proposed for some time later in 2017.

D. Neighborhood Plans

- 1. For the purposes of this title, the effect of a neighborhood plan, adopted or amended by the City Council after January 1, 1995, shall be as expressly established by the City Council for each such neighborhood plan.***

While the City Council adopted the Seattle 2035 Comprehensive Plan in October of 2016, (Ordinance #125173) this project is not located within a neighborhood plan and therefore not applicable to this project proposal.

- 2. Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.***

The subject property is not located within an Urban Village nor within the Queen Anne neighborhood plan area which is the closest neighborhood to the project site. The Comp Plan does not have any neighborhood specific criteria for a rezone of the proposed project site that would apply.

- 3. Where a neighborhood plan adopted or amended by the City Council after January 1, 1995, establishes policies expressly adopted for the purpose of guiding future rezones, but does not provide for rezones of particular sites or areas, rezones shall be in conformance with the rezone policies of such neighborhood plan.***

Neither the Comprehensive Plan nor the Queen Ann neighborhood plan establish policies expressly for the purpose of guiding future rezones. The Seattle Comprehensive Plan was amended in 1999 to adopt portions of the Queen Ann Neighborhood Plan. The Comp Plan does not specifically address land uses or future rezone on the subject property or in this specific neighborhood, other than to identify Dexter Avenue North as a bicycle beltway.

- 4. If it is intended that rezones of particular sites or areas identified in a Council adopted neighborhood plan are to be required, then the rezones shall be approved simultaneously with the approval of the pertinent parts of the***

This rezone is not of a particular site or area identified in a City Council adopted Neighborhood Plan that was to be required for rezone.

E. Zoning Principles. The following zoning principles shall be considered:

- 1. The impact of more intensive zones on less intensive zones or industrial and commercial zones on other zones shall be minimized by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.***

The proposed rezone proposes a change from the existing 40' (NC3P-40') height limit to 65' NC3P-65 zone in which an MHA suffix currently does not exist and therefore SDCI is recommending the next available zone of NC3P-75' which facilitates the use of an MHA suffix in addition to accommodating the FAR of the project as designed. An analysis of the transition between heights has identified that the proposal site is surrounded by properties zoned with a maximum height of 65' which is the same height as the proposed structure for the project site. The property located immediately to the south is zoned C2-65 and has an existing structure which steps down the hill but still has a maximum height of 65'. Properties located downslope, to the east and northeast with other properties located to the southwest have been zoned NC3-65 and have structures with existing heights of 65'.

2. *Physical buffers may provide an effective separation between different uses and intensities of development. The following elements may be considered as buffers:*
 - a. *Natural features such as topographic breaks, lakes, rivers, streams, ravines and shorelines;*
 - b. *Freeways, expressways, other major traffic arterials, and railroad tracks;*
 - c. *Distinct change in street layout and block orientation;*
 - d. *Open space and greenspaces.*

Effective separation, including physical buffer is not very necessary for this proposal since there is not much difference in type and intensity of uses in the area.

The subject property is surrounded by properties zoned NC3P-65 to the east, south, southwest, and northwest. The zoning across Dexter Avenue North (an 80' foot wide right-of-way) to the west and adjacent to the site to the north is NC3P-40. The proposal site shares a boundary line with the adjacent NC3P-40 zoned property to the north, which is currently developed with a five-story apartment building.

The proposal site experiences a 27-foot grade change sloping from west to east. The proposed structure steps down the hill with the topography, minimizing view blockage while allowing for a large roof deck that takes advantage of the views of Lake Union.

The street-level commercial uses add an element that eases the transition to the north with the inclusion of live-work units at the north end, which would likely be occupied by less intensive commercial uses due to the smaller nature of the spaces. The larger commercial space located at the southwest corner of the project faces toward the large commercial building located immediately south of the project, across Garfield Street.

Combined with the physical buffers the proposal results in a gradual transition between different uses and intensities of development categories and height limits.

3. *Zone Boundaries.*
 - a. *In establishing boundaries the following elements shall be considered:*
 - (1) *Physical buffers as described in subsection E2 above;*

Limited physical buffers exist, mostly in the form of wide right -of-way although little if any buffer is needed due to similar height of nearby development and zones.

(2) *Platted lot lines.*

The zoning boundaries would continue to follow platted lot lines and/or street rights of way.

- b. Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas. An exception may be made when physical buffers can provide a more effective separation between uses.***

The entire block face facing Dexter Avenue North is zoned NC3P, which faces away from adjacent residential areas.

- 4. In general, height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty (40) feet may be considered outside of urban villages where higher height limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or where the designation would be consistent with the existing built character of the area.***

The site is not located within an urban village although both Uptown and South Lake Union Urban Centers are nearby with some taller height limits. In addition, this rezone is not for a particular site or area identified in a Council adopted neighborhood plan that was to be required for rezone. It can be noted that existing development directly adjacent to the project site to the north is designated NC3P-40 but developed with a five-story apartment building that is a vestige of a previous zoning designation. The additional 25' in increased height is consistent with the existing built character of the area.

- F. Impact Evaluation. The evaluation of a proposed rezone shall consider the possible negative and positive impacts on the area proposed for rezone and its surroundings.***

- 1. Factors to be examined include, but are not limited to, the following:***

- a. Housing, particularly low-income housing;***

The proposal will construct additional housing unit in the area without demolishing any housing units. In addition the PUDA will ensure that the provisions of Chapters 23.58B and 23.58C will apply to the project proposal. Participation in the program under Chapter 23.58C (or Chapter 23.58B) will yield affordable housing within the project or an equivalent in lieu payment.

- b. Public services;***

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Public services will be available to the project due to its location in a highly developed urban area. No appreciable impacts to public services are anticipated due to the additional housing made possible by the zone change. The project has obtained confirmation that adequate water, sewer, stormwater, and electrical services exist to serve the proposed project. The Preliminary Assessment Report (PAR) which is a report that lists the results of a preliminary assessment of project requirements by various city departments and a part of the Master Use Permit record or (MUP), the review process that typically includes discretionary review of specific criteria defined in the Seattle Municipal Code (SMC) record reflects the adequacy of public services.

c. Environmental factors, such as noise, air and water quality, terrestrial and aquatic flora and fauna, glare, odor, shadows, and energy conservation;

The proposed rezone with the condition that the Property Use and Development Agreement will allow two stories of additional height building to the proposed design, and will include additional street-level retail/commercial uses as what currently exists on site. The proposed project will not create significant long-term negative environmental impacts associated with allowing additional housing at this urban site. The additional height will not significantly increase shadow impacts as the only shared lot line condition is to the north of the proposal which reduces the overall amount of any potential shadow impacts. Please see the comparative shadow study submitted as part of the Early Design Guidance packet on page 34. The proposed materials for the building was reviewed by the Design Review Board and should not produce glare. No odor or noise producing uses are proposed as part of the project; however should a restaurant become part of the commercial space, it will be vented to the roof.

d. Pedestrian safety;

The area is currently developed with sidewalks, street lights and crosswalks and will continue to be so developed as part of the proposal. The project will increase the amount of space for pedestrians by setting the building back from the property line. The proposal includes a 1-foot dedication and substantial street improvements, including new curb, sidewalk and planting strip, on Garfield Street and generous setbacks, planting strips, and overhead weather protection along Dexter Avenue for pedestrian comfort.

e. Manufacturing activity

There are no anticipated positive or negative impacts on manufacturing activity.

f. Employment activity;

The previous office use employed between 20 and 25 people. The proposed commercial uses located at ground level will likely employ a somewhat smaller number of people on-site, depending on the use that is established.

g. Character of areas recognized for architectural or historic value;

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This area has not been recognized for historic or architectural value. Furthermore, the existing building is not listed on the City's historic building survey as warranting landmark nomination. The Department of Neighborhoods has determined that a landmark nomination is unnecessary.

There are no designated landmarks surrounding the project site, nor are there any properties listed for potential landmark status surrounding the project site. Overall, this area is not recognized for architectural or historic value.

h. Shoreline view, public access and recreation.

The proposal steps down the hillside and the additional height related to the rezone should only have a minimal impact to nearby shoreline views. Because all of the properties step up/down the hill, shoreline views are fairly protected in the area. No public access or recreational opportunities are being changed as part of the proposal. The project will increase recreational opportunities for on-site residents by adding a rooftop deck to the site.

2. Service Capacities. Development which can reasonably be anticipated based on the proposed development potential shall not exceed the service capacities which can reasonably be anticipated in the area, including:

- a. Street access to the area;***
- b. Street capacity in the area;***
- c. Transit service;***
- d. Parking capacity;***
- e. Utility and sewer capacity;***
- f. Shoreline navigation.***

A traffic and parking study has been prepared and submitted to address anticipated impacts. No capacity or access issues were identified as potential impacts as a result of this proposal. In addition, no major transit capacity issues have been identified to be associated with the project as there is transit service on Aurora Ave N, Dexter Ave N and Westlake Ave.

With respect to utility and sewer capacity, a Water Availability Certificate has already been Approved with No Changes (reference number 20151346), and no issues of water or sewer capacity are anticipated given infrastructure upgrades implemented by SPU.

The proposal is located upland from the Shoreline and will not impact shoreline navigation.

G. Changed Circumstances. Evidence of changed circumstances shall be taken into consideration in reviewing proposed rezones, but is not required to demonstrate the appropriateness of a proposed rezone. Consideration of changed circumstances shall be limited to elements or conditions included in the criteria for the relevant zone and/or overlay designations in this chapter.

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There are changing circumstances in the area given that the City is proposing a rezone in this area in 2017 for purposes of implementing MHA-R affordable housing legislation. In addition, an approved contract rezone by the City Council located south-west and kitty-corner from the project site, from NC3P-40 to NC3P-65 gives an indication that there are changing circumstances in the area as properties are starting to be upzoned in the area.

H. Overlay Districts. If the area is located in an overlay district, the purpose and boundaries of the overlay district shall be considered.

The site is not located within an Overlay District

I. Critical Areas. If the area is located in or adjacent to a critical area (SMC Chapter 25.09), the effect of the rezone on the critical area shall be considered.

The site is located in a steep slope erosion hazard area and a potential slide Environmental Critical Area (ECA). A Request for Relief from Prohibition on Steep Slope Development was approved under project number 6505550. In general, slope stability will be the same or will increase due to redevelopment of the site as stormwater will be controlled and any potentially unstable soils will be remediated or removed.

J. Incentive Provisions. If the area is located in a zone with an incentive zoning suffix, a rezone shall be approved only if one of the following conditions are met:

The proposal site and area are not located in a zone with an incentive zoning suffix.

<p><u>SMC 23.34.008 Conclusion:</u> The proposed rezone will allow for the proposed development to be constructed 25' taller than the maximum height limit permitted in the current zoning (40'). Director recommends that a rezone be approved to NC3-75 (M1) with the condition that the development be limited to the proposed design. The proposed development has been reviewed through the Design Review process, including strategies to ease the transition to less intensive adjacent zones. The proposed rezone meets all other requirements of SMC 23.34.008, per the analysis above.</p>

SMC 23.34.009 Height Limits of the Proposed Rezone

If a decision to designate height limits in residential, commercial or industrial zones is independent of the designation of a specific zone, in addition to the general rezone criteria of Section 23.34.008, the following shall apply:

A. Function of the zone. Height limits shall be consistent with the type and scale of development intended for each zone classification. The demand for permitted goods and services and the potential for displacement of preferred uses shall be considered.

The proposed 65-foot height limit is consistent with the general character of the existing area's development, including the five-story apartment building adjacent to the site to the north in addition to two 6-story apartment buildings across the alley to the east.

The proposed contract rezone from NC3-40 to NC3-75 conditioned for compliance with conditions of a PUDA so that the property use and Development Agreement limits the development to a building height consistent with 65 foot zoning, is consistent with the general character of the existing area's development, including the five-story apartment building adjacent to the site to the north.

The proposal does not displace a preferred use but instead provides the mixed use building desired by the neighborhood. The proposal also infills an existing surface parking lot.

B. Topography of the Area and Its Surroundings. Height limits shall reinforce the natural topography of the area and its surroundings, and the likelihood of view blockage shall be considered.

There are no topographical features present that make the rezone inappropriate. The proposal site has a descending slope from Dexter Ave N in a west to an east direction. The height of the existing structure is two stories tall and currently blocks some views to the east. The proposed project design takes into account the existing sloping topography and steps the building down the hill, reinforcing the natural topography of the area and minimizing impacts to existing views to Lake Union.

C. Height and Scale of the Area.

1. The height limits established by current zoning in the area shall be given consideration.

The height limits established by current zoning are 40 feet. The rezone to the requested 65 feet allows for additional residential units, including affordable units, which is consistent with City policies to add residential density in areas with good pedestrian, bicycle, and transit service. The project itself will be consistent with the scale of development that exists and is currently being developed in the project area. It is also consistent with adjacent zoning to the east with existing buildings developed to NC3-65'.

The recommendation to rezone to NC3P-75 M1 with a Property Use and Development Agreement (PUDA) which limits development to the proposed 65-foot building height is generally equivalent to a rezone to NC3P-65.

2. In general, permitted height limits shall 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.

The 65-foot height limit is compatible with existing development in the area. The project to the east is zoned NC3-65' and existing buildings developed to a height of 65'. A contract rezone was recently approved by the City Council kitty-corner from the proposal site allowing a change from NC3-40 to NC3-65. The project site is also located one block north of the edge of the South

Lake Union Urban Center with buildings in the area built to a height of 65' zone. Existing development along Dexter is developed at height of 65' or at 5 stories even though the adjacent is zoned NC3-40 such as the building located to the north, developed as a 5-story apartment building. The clear zoning pattern in this area supports NC3-65 zoning facing Dexter Avenue. The project proposal will be consistent with the scale of development that exists and is currently being developed in the project area. The height limit of 75-feet, accompanied by a PUDA limits development to the proposed 65-foot building height is similarly compatible with a 65-foot rezone.

D. Compatibility with Surrounding Area.

- 1. Height limits for an area shall be compatible with actual and zoned heights in surrounding areas excluding buildings developed under Major Institution height limits; height limits permitted by the underlying zone, rather than heights permitted by the Major Institution designation, shall be used for the rezone analysis.***

The project site is located one block north of the edge of the South Lake Union Urban Center with buildings in the area built to a height of 65' zone. Existing development along Dexter is developed at height of 65' or at 5 stories even though the adjacent is zoned NC3P-40 such as the building located to the north, developed as a 5-story apartment building. The clear zoning pattern in this area supports NC3P-65 zoning facing Dexter Avenue. The scale of the existing development in the area is also consistent with the project proposal. There are no buildings developed under major institutional height limits in the surrounding area. The project is there for clearly compatible with existing and zoned heights in the surrounding area.

- 2. A gradual transition in height and scale and level of activity between zones shall be provided unless major physical buffers, as described in Subsection 23.34.008.D.2, are present.***

The proposed structure height of 65-foot height is consistent with the character of the existing development in the area. In addition, streets and alleys (defined as "major physical buffers" in 23.34.008.D.2) buffer three of the four sides of the proposed project from adjacent sites. The only actually adjacent site is to the north, where the existing development is 5 stories tall, very similar to the height bulk and scale of the proposed project.

E. Neighborhood Plans.

- 1. Particular attention shall be given to height recommendations in business district plans or neighborhood plans adopted by the City Council subsequent to the adoption of the 1985 Land Use Map.***
- 2. Neighborhood plans adopted or amended by the City Council after January 1, 1995 may require height limits different than those that would be otherwise established pursuant to the provisions of this section and Section 23.34.008.***

The Council has not adopted a Neighborhood Plan for this area that has applicable height recommendations or requirements.

SMC 23.34.009 Conclusion: The additional height increase that would result in a change of zoning from NC3P-40 to NC3P-65 would meet the criteria of SMC Section 23.34.009, as described above. No additional views from private property would significantly be blocked by the additional building height resulting from the contract rezone. In order to achieve development of 65 ft. height while adopting an M1 suffix, NC3P-75 (M1) coupled with a PUDA limiting development as proposed to a building allowable with a 65 foot height, would be appropriate.

SMC 23.34.078 Neighborhood Commercial 3 (NC3) zones, function and locational criteria

A. Function. To support or encourage a pedestrian-oriented shopping district that serves the surrounding neighborhood and a larger community, citywide, or regional clientele; that provides comparison shopping for a wide range of retail goods and services; that incorporates offices, business support services, and residences that are compatible with the retail character of the area; and where the following characteristics can be achieved:

1. A variety of sizes and types of retail and other commercial businesses at street level;

The project site is located outside of an urban center or urban village in an area connected to an array of public transit and bicycle lanes to Aurora Avenue, Queen Anne Hill, Lake Union, and Belltown, all active commercial areas. The site is also located within an area that is transitioning into a neighborhood of single purpose commercial structures, office buildings, multi-story mixed-use and residential structures, with variety of sizes and types of retail and other commercial establishments. The proposed mixed use project and associated contract rezone is an appropriate use for the site as it will promote both human scale pedestrian and commercial activity along Dexter Ave N.

2. Continuous storefronts or residences built to the front lot line;

A number of locations along Dexter Ave N, just south of the project site have recently or are in the process of being redeveloped with single-purpose commercial structures, office buildings, multi-story mixed-use and residential structures with non-residential uses occupying the street frontage along a designated Pedestrian Overlay zone.

3. Intense pedestrian activity;

The area is currently developed with sidewalks, street lights and crosswalks and will continue to be so developed as part of this and other development proposals. The project will increase the amount of space dedicated to pedestrian activities as a result of setting the building back away from the property line to allow for landscaping and other amenities. In addition, the proposal calls for a 1-foot dedication and substantial street improvements, including new curb, sidewalk and planting strip, on Garfield Street and generous setbacks, planting strips, and overhead weather protection along Dexter Avenue for pedestrian comfort.

4. Shoppers can drive to the area, but walk around from store to store;

Dexter Avenue has a relatively high walking score between 77 and 81 out of 100. The area is very walkable due to the number of storefronts in the immediate area offering a variety of services in addition its close proximity to Queen Ann Hill, Lake Union and the Belltown neighborhoods which are active commercial centers with many retail establishments.

5. Transit is an important means of access.

The project area is a major transportation corridor between downtown and North Seattle with three major arterial roads cutting through the neighborhood as the primary routes from downtown to Fremont, Ballard and Wallingford. The site is also located one block north from the edge of the South Lake Union Urban Center Overlay District.

A traffic and parking study has been prepared and submitted to address anticipated impacts from this project proposal. No capacity or access issues were identified as potential impacts as a result of this project proposal. Numerous transit routes travel through the area including Metro Rapid Ride Line "E" and Metro routes 5, 26, 28, 62, and 40. Further, no major transit capacity issues were identified in relationship to the project proposal as there are many transit options on Aurora Ave N, Dexter Ave N and Westlake Ave as well as an updated buffered bicycle lane along Dexter Ave leading to both downtown and Fremont areas.

B. Locational Criteria. A Neighborhood Commercial 3 zone designation is most appropriate on land that is generally characterized by the following conditions:

1. The primary business district in an urban center or hub urban village;

The project site is located outside of an urban center or urban village within a community area that is connected to Queen Anne Hill and Lake Union, and is within walking distance of Belltown and other parts of Downtown or via an array of public transit and bicycle lanes. The project proposal is designed to introduce human scaled shopping experiences in an area that is transitioning into a neighborhood of single purpose commercial structures, office buildings, multi-story mixed-use and residential structures, and where non-residential uses occupy the street front.

2. Served by principal arterial;

The area is a major transportation corridor between downtown and North Seattle with major arterial roads passing through the neighborhood: Mercer St, Aurora Ave N, Westlake Ave N, and Dexter Ave N, The site is also located one block north from the edge of the South Lake Union Urban Center Overlay District.

3. Separated from low-density residential areas by physical edges, less-intense commercial areas or more-intense residential areas;

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The proposal site experiences a 27-foot grade change sloping from west to east. The proposed structure steps down the hill with the topography, minimizing view blockage while allowing for a large roof deck that takes advantage of the views of Lake Union.

The proposal features two distinct commercial spaces around a semipublic courtyard. The street-level commercial uses add an element that eases the transition to the north with the inclusion of live-work unit at the north end immediately adjacent to single and multi-family structures. One of the commercial spaces is located immediately south of the live-work space, just to the north of the courtyard. The larger commercial space located at the southwest corner of the project faces toward the large commercial building located immediately south of the project, across Garfield Street.

Combined with the physical buffers the proposal results in a gradual transition between different uses and intensities of development categories and height limits.

4. Excellent transit service.

Dexter Ave N, which is characterized as a three-lane street with buffered bike lanes and bus bulbs, runs north from Belltown, west of Lake Union. The street is located in a mixed-use area zoned for multi-family housing, with the northern reaches dotted primarily with single-family residences. The area has many transit options with transit service on Aurora Ave N, Dexter Ave N and Westlake Ave in addition to other transit options including zip cars along with other options. No capacity or access issues were identified as potential impacts as a result of this project proposal a traffic and parking study submitted to address anticipated impacts from this project proposal.

Numerous transit routes that travel through the area including Metro Rapid Ride Line “E” and Metro routes 5, 26, 28, 40, 62. Further, no major transit capacity issues were identified in relationship to the project proposal as there are many transit options on Aurora Ave N, Dexter Ave N and Westlake Ave as well as an updated buffered bicycle lane along Dexter Ave leading to both downtown and Fremont areas.

SMC 23.34.078 Neighborhood Commercial 3 (NC3) zones: Conclusion: The additional height increase that would result in a change of zoning from NC3P-40 to NC3P-65 or NC3P-75 would meet the criteria of SMC Section 23.34.078, as described above. The project would support pedestrian-oriented shopping which is supported by a variety of transit options.

SMC 23.34.086 Pedestrian designation (suffix P), function and locational criteria

A. Function. To preserve or encourage an intensely retail and pedestrian-oriented shopping district where non-auto modes of transportation to and within the district are strongly favored, and the following characteristics can be achieved:

1. A variety of retail/service activities along the street front;

2. *Large number of shops and services per block;*
3. *Commercial frontage uninterrupted by housing or auto-oriented uses;*
4. *Pedestrian interest and activity;*
5. *Minimal pedestrian-auto conflicts.*

The entire proposal site is currently zoned NC3P-40. The proposed rezone would not change the 'P' Pedestrian Overlay designation of the proposal site. The site is located at the southeast corner of Dexter Avenue N. and Garfield Street. There are a variety of commercial uses including (retail, restaurants, offices, athletic clubs, etc.), located to the south of the project site along Dexter Avenue and multi and single-family development located to the north. The existing pattern of the commercial frontages along Dexter Avenue includes some pedestrian oriented uses and vehicular access to non-pedestrian uses and accessory parking areas. The proposed rezone would allow new development on an underutilized site that provides both residential and pedestrian oriented commercial opportunities. The project will provide additional residential density in close proximity to various commercial enterprises. The project will create additional pedestrian amenities in the way of ground-level retail, a semipublic courtyard, seating to help connect the courtyard to the public realm, and overhead weather protection along Dexter designed to enhance the pedestrian realm.

B. Locational criteria. Pedestrian-designated zones are most appropriate on land that is generally characterized by the following conditions:

1. *Pedestrian district surrounded by residential areas or major activity centers; or a commercial node in an urban center or urban village;*
2. *NC zoned areas on both sides of an arterial, or NC zoned block fronts across an arterial from a park, major institution, or other activity center; and*
3. *Excellent access for pedestrians, transit, and bicyclists.*

The proposed rezone lies within the boundaries of a designated Pedestrian Overlay along Dexter Avenue N. The Dexter corridor has been undergoing vast redevelopment in the last few years extending north from South Lake Union. This new development is primarily mixed-use apartment buildings with ground-level retail. The predominant zoning along both sides of Dexter and in the vicinity of the project site is neighborhood commercial (NC).

The site is well served by transit in the north-south direction, with connections to Fremont to the north and Downtown to the south. Public transit and bicycle lanes are located immediately adjacent to the proposal site along Dexter. There is also a pedestrian overpass at Galer Street, one block to the south, which connects the neighborhood to the rest of Queen Anne Hill across Aurora, as well as to the Lake Union waterfront across Westlake.

This proposed rezone which lies within a designated pedestrian zone is appropriate as the pedestrian designation will not change. In addition, the project proposal supports and encourage the development of a pedestrian-friendly environment along Dexter Avenue at Garfield Field.

SMC 23.34.086 Conclusion: The proposed rezone would allow for the pedestrian designation to remain unchanged while remaining consistent with the pedestrian designation function and locational criteria of SMC 23.34.009 as described above.

RECOMMENDATION – REZONE

Based on the analysis undertaken in this report, the SEPA analysis of the rezone and project proposal, and the provisions in SMC 23.34, the Director recommends that the proposed contract rezone from Neighborhood Commercial three with a 40-foot height limits (NC3P-40) to Neighborhood Commercial Three with a 75' height limit (NC3P-75) (M1), be **CONDITIONALLY APPROVED** with the condition that the property use and Development Agreement limits development to the proposed building which is approximately 65-feet in height, subject to the conditions summarized at the end of this report.

III. ANALYSIS – SEPA

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated September 14, 2016. The Seattle Department of Construction and Inspections (SDCI) has annotated the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the project file submitted by the applicant or agents; and any pertinent comments which may have been received regarding this proposed action have been considered. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically these are: the Seattle Land Use and Zoning Code (SMC 23), the Stormwater Code (SMC 22.800-808), the Grading Code (SMC 22.170), the Street Use Ordinance (SMC Title 15), the Seattle Building Code, and Regulations for Environmentally Critical Areas (SMC 25.09).

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, “*Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*” subject to some limitations.

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Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short Term Impacts

Construction activities could result in the following adverse impacts: construction dust and storm water runoff, erosion, emissions from construction machinery and vehicles, increased particulate levels, increased noise levels, occasional disruption of adjacent vehicular and pedestrian traffic, a small increase in traffic and parking impacts due to construction related vehicles, and increases in greenhouse gas emissions. Several construction-related impacts are mitigated by existing City codes and ordinances applicable to the project such as: the Stormwater Code (SMC 22.800-808), the Grading Code (SMC 22.170), the Street Use Ordinance (SMC Title 15), the Seattle Building Code, and the Noise Control Ordinance (SMC 25.08). Puget Sound Clean Air Agency regulations require control of fugitive dust to protect air quality. The following analyzes greenhouse gas emissions, construction parking/traffic and noise, and environmental health impacts, as well as mitigation.

Greenhouse Gas Emissions

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse and no further mitigation is warranted pursuant to SMC 25.05.675.A.

Construction Parking and Traffic

Increased trip generation is expected during the proposed demolition, grading, and construction activity. The area is subject to significant traffic congestion during peak travel times along Dexter Ave N and Garfield St. Large trucks turning onto these streets would be expected to further exacerbate the flow of traffic.

The area includes very limited, timed on street parking along both Dexter Ave N and Garfield St. Additional parking demand from construction vehicles would be expected to further exacerbate the supply of on-street parking. It is the City's policy to minimize temporary adverse impacts associated with construction activities.

Pursuant to SMC 25.05.675.B (Construction Impacts Policy), additional mitigation is warranted and a Construction Management Plan is required, which will be reviewed by Seattle Department of Transportation (SDOT). The requirements for a Construction Management Plan include a Haul Route and a Construction Parking Plan. The submittal information and review process for Construction Management Plans are described on the SDOT website at: <http://www.seattle.gov/transportation/cmp.htm>.

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Construction Impacts - Noise

The project is expected to generate increased noise levels during demolition, grading and construction. The Seattle Noise Ordinance (SMC 25.08.425) permits increases in permissible sound levels associated with private development construction and equipment between the hours of 7:00 AM and 7:00 PM on weekdays and 9:00 AM and 10:00 PM on weekends and legal holidays in Neighborhood Commercial zones.

If extended construction hours are desired, the applicant may seek approval from SDCI through a Noise Variance request. The applicant's environmental checklist does not indicate that extended hours are anticipated.

A Construction Management Plan will be required prior to issuance of the first building permit, including contact information in the event of complaints about construction noise, and measures to reduce or prevent noise impacts. The submittal information and review process for Construction Management Plans are described on the SDOT website at: <http://www.seattle.gov/transportation/cmp.htm>. The limitations stipulated in the Noise Ordinance and the CMP are sufficient to mitigate noise impacts; therefore no additional SEPA conditioning is necessary to mitigation noise impacts per SMC 25.05.675.B.

Construction Impacts – Mud and Dust

Approximately 6,550 cubic yards of material will be excavated and removed from the site. Transported soil is susceptible to being dropped, spilled or leaked onto City streets. The City's Traffic Code (SMC 11.74.150 and .160) provides that material hauled in trucks not be spilled during transport. The City requires that loads be either 1) secured/covered; or 2) a minimum of six inches of "freeboard" (area from level of material to the top of the truck container). The regulation is intended to minimize the amount of spilled material and dust from the truck bed en route to or from a site.

No further conditioning of the impacts associated with these construction impacts of the project is warranted pursuant to SEPA policies (SMC 25.05.675.B).

Earth

The ECA Ordinance and Director's Rule (DR) 5-2016 require submission of a soils report to evaluate the site conditions and provide recommendations for safe construction in landslide prone areas. Pursuant to this requirement the applicant submitted a geotechnical engineering study (PanGeo, Incorporated, September 18, 2015, Siew L. Tan, P.E. Principal Geotechnical Engineer). The study has been reviewed and approved by SDCI's geotechnical experts, who will require what is needed for the proposed work to proceed without undue risk to the property or to adjacent properties. The existing Grading and Stormwater Codes will sufficiently mitigate adverse impacts to the ECAs. No additional conditioning is warranted pursuant to SEPA policies (SMC 25.05.675.D).

Long Term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including: greenhouse gas emissions; parking; potential blockage of designated sites from the Scenic Routes nearby; possible increased traffic in the area. Compliance with applicable codes and ordinances is adequate to achieve sufficient mitigation of most long-term impacts and no further conditioning is warranted by SEPA policies. However, greenhouse gases, historic resources, height bulk and scale, plants and animals, and parking and traffic warrant further analysis.

Greenhouse Gas Emissions

Operational activities, primarily vehicular trips associated with the project construction and the project's energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse no further mitigation is warranted pursuant to SMC 25.05.675.A.

Historic Resources

The existing structure on site are more than 50 years old. These structure were reviewed for potential to meet historic landmark status. The Department of Neighborhoods reviewed the proposal for compliance with the Landmarks Preservation requirements of SMC 25.12 and indicated the 98 year old structure on site is unlikely to qualify for historic landmark status (Landmarks Preservation Board letters, reference number LPB 307/17). Per the Overview policies in SMC 25.05.665.D, the existing City Codes and regulations to mitigate impacts to historic resources are presumed to be sufficient, and no further conditioning is warranted per SMC 25.05.675.H.

Height, Bulk, and Scale

The proposal has gone through the Design Review process described in SMC 23.41. Design Review considers mitigation for height, bulk and scale through modulation, articulation, landscaping, and façade treatment.

Section 25.05.675.G.2.c of the Seattle SEPA Ordinance provides the following: "The Citywide Design Guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and scale impacts addressed in these policies. A project that is approved pursuant to the Design Review Process shall be presumed to comply with these Height, Bulk, and Scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. Any additional mitigation imposed by the decision maker pursuant to these height, bulk, and scale policies on projects that have undergone Design Review shall comply with design guidelines applicable to the project."

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The height, bulk and scale of the proposed development and relationship to nearby context have been addressed during the Design Review process. Pursuant to the Overview policies in SMC 25.05.665.D, the existing City Codes and regulations to mitigate impacts to historic resources are presumed to be sufficient, and additional mitigation is not warranted under SMC 25.05.675.G.

The proposal includes a contract rezone request from NC3-40 to NC3-65 to allow additional building mass and an additional 25' height at this site. The additional height will allow the building to relate more closely to the scale of adjacent existing structures, provide more affordable dwelling units, increase residential density in the area, and respond more appropriately to the site's topography. The project will designate required dwelling units as affordable housing for residents with incomes below 60% of AMI (area median income) or pay required MHA fee. The height, bulk and scale of the proposed development and relationship to nearby context have been addressed during the Design Review process. Pursuant to the Overview policies in SMC 25.05.665.D, the existing City Codes and regulations to mitigate impacts to height bulk and scale are presumed to be sufficient, and additional mitigation is not warranted under SMC 25.05.675.G.

Transportation

A Traffic Impact Analysis prepared by Gibson Traffic Consultants, dated, September 13, 2016, indicated that the project is expected to generate a net total of 266 new weekday daily vehicle trips, three trips occurring during the weekday AM peak hours and 15 occurring during the weekday PM peak hour. Further the transportation concurrency analysis indicated in the study for traffic generated by the project, identifies v/c (volume to capacity) ratios are less than the City (v/c) threshold; thus, the project would meet the City's concurrency requirements.

Based on this analysis, the project would not result in significant adverse impacts to traffic operations. Further these trips are not expected to adversely affect traffic safety within the vicinity of the project site or at the site access driveway.

According to the September 2016 traffic analysis, the project is anticipated to generate approximately 266 new daily trips, three new AM peak-hour trips and 15 new PM peak-hour trips per standard ITE trip generation data. The project proposal is required to provide 44 onsite parking spaces per City Municipal Code if frequent transit requirements are met. The project is providing 54 vehicle parking spaces. It is anticipated that 50 residents of the development will use local transit with nine residents expected to walk, while four individuals are expected to bike per City studies. The project will have a City of Seattle mitigation fee of \$55,505.25 for the 85 apartment units, two live-work units and 2,115 SF of retail space. The SDCI Transportation Planner reviewed the information and determined that no mitigation is warranted per SMC 25.05.675.R.

Transportation

A Traffic Impact Analysis prepared by Gibson Traffic Consultants, dated September 2016, indicated that the project is expected to generate a net increase of 266 daily vehicle trips over

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existing uses, with an increase of three trips in the AM peak hour and 15 trips in the PM peak hour. Additionally, the transportation concurrency analysis in the study indicated that the volume/capacity ratios at nearby screenlines with project traffic would be less than the City's volume/capacity thresholds; thus, the project would meet the City's transportation concurrency requirements.

Based on this forecasted small increase in traffic, the project is not expected to result in noticeable impacts to traffic operations. Further, these trips are not expected to adversely affect traffic safety within the vicinity of the project site or at the site access driveway. No mitigation for transportation impacts pursuant to SMC 25.05.675R is recommended.

Parking

The proposed development will provide 54 off-street vehicular parking spaces. The Traffic Impact Analysis prepared by Gibson indicated that the residential component of the project (86 apartments and two live-work units) would have an expected peak parking demand for 59 vehicles. The 2,115 square feet of retail space would be expected to have a peak demand for five vehicles. The overall peak project demand would occur at night, when residential parking demand is at its highest. At this time, there likely would be no retail parking demand during the peak demand time of the project, so the peak project demand would be for 59 vehicles overnight. Based on these forecasts, it is likely that the project would generate off-site demand for approximately five vehicles. This small amount of additional off-site demand is not expected to be significant. No mitigation for parking impacts pursuant to SMC 25.05.675 M is recommended.

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

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This DNS is issued after using the optional DNS process in WAC 197-11-355 and Early review DNS process in SMC 25.05.355. There is no further comment period on the DNS.

CONDITIONS – DESIGN REVIEW

Prior to Certificate of Occupancy

1. The Land Use Planner shall inspect materials, colors, and design of the constructed project. All items shall be constructed and finished as shown at the design recommendation meeting and the subsequently updated Master Use Plan set. Any change to the proposed design, materials, or colors shall require prior approval by the Land Use Planner (David Landry, david.landry@seattle.gov) or a Seattle DCI assigned Land Use Planner.

For the Life of the Project

2. The building and landscape design shall be substantially consistent with the materials represented at the Recommendation meeting and in the materials submitted after the Recommendation meeting, before the MUP issuance. Any change to the proposed design, including materials or colors, shall require prior approval by the Land Use Planner (David Landry, david.landry@seattle.gov) or a Seattle DCI assigned Land Use Planner.

RECOMMENDED CONDITIONS – REZONE

The Director recommends approval of the contract rezone from NC3P-40 to NC3P-75 (M1) subject to the following conditions, which should be contained in the PUDA:

Prior to Issuance of a Master Use Permit

3. Provide an executed Property Use and Development Agreement that includes the following:
 - The rezoned property shall be subject to the requirements of SMC 23.58B and 23.58C.
 - Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3021980.

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RECOMMENDED CONDITIONS – SEPA

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

4. 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 at: <http://www.seattle.gov/transportation/cmp.htm>.

David Landry, AICP, Land Use Planner Date: September 5, 2017
Seattle Department of Construction and Inspections

DL:bg

Landry/3021980 Rezone recommendation different than zone requested by applicant.docx

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

In the Matter of the Application of

CF 314358

JILL BURDEEN

Department Reference:
3021980

for a contract rezone for property located
at 1600 Dexter Avenue North

Introduction

Jill Burdeen, Kovalchick Architects, applied for a rezone of property located at 1600 Dexter Avenue North from Neighborhood Commercial Three with a Forty-foot height limit and a pedestrian overlay (“NC3P-40”) to Neighborhood Commercial Three with a Seventy Five-foot height limit and a pedestrian overlay (“NC3P-75”) with a property use and development agreement (“PUDA”) condition restricting height to 65-feet. The Director of the Department of Construction and Inspections ("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, which were not appealed.

A hearing on the rezone application was held before the Hearing Examiner on September 27, 2017. The Applicant was represented by Courtney Kaylor attorney-at-law, and the Director was represented by David Landry, Land Use Planner. Following the Hearing Examiner's site visit on October 6, 2017 the record closed.

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

Findings of Fact

Site and Vicinity

1. The subject site is located at the northeast corner of Dexter Avenue N and Garfield Street. The site consists of 3 parcels, each running east to west, and labeled in order from the southernmost lot to the northernmost lot Parcels A, B, and C. The three lots together total 13,785 square feet. Parcels A and B are currently occupied by a 3-story office use structure built in 1919 that steps down from Dexter Avenue N to an alley that runs north/south on the east side of the building. Parcel C is a vacant lot. The property is bound by Dexter Avenue N to the west, Garfield Street to the south, the alley to the east, and a multi-use 5 story structure to the north. *See* Exhibit 16. Lake Union is to the east of the site.

2. The subject site is zoned NC3P-40 with a pedestrian overlay. Properties to the north are zoned Lowrise Three (“LR3”). Lots to the east are zoned NC3-65. Properties to the south are zoned NC3-65 and Commercial Two with a 65-foot height limit (“C2-65”). Lots to the west across Dexter Avenue N are zoned Commercial 1 with a 65-foot height limit (“C1-65”).
3. The area of the proposal consists of a mixture of condominiums, apartments, office and commercial services, single-family residences and houseboats. Across Dexter Avenue N to the west are midrise development directly to the west of the proposal, and low-rise development located to the north of this, both of which overlook Lake Union and to the east. To the south is new development including a new residential development located one block south of the proposal, and development located on both the east and west sides of Dexter Avenue N between Aloha Street and Comstock Street. Located to the north of the project and on the east side of Dexter Avenue N are a small number of older apartment and commercial buildings with a small number of older single-family residences further north of these. To the east of the proposal, across the alley, are two 6-story apartment buildings.
4. The area is a major transportation corridor between downtown and North Seattle, and includes three major arterial streets – Aurora Avenue N, Dexter Avenue N and Westlake Avenue N - running north/south through the neighborhood as primary routes between downtown and Fremont, Ballard and Wallingford. Mercer Street, a major east/west arterial connects Uptown with South Lake Union and is a primary access to Interstate-5. The site is also located one block north from the edge of the South Lake Union Urban Center Overlay District, but is not included in this urban center.
5. The current height limit for the site is 40 feet. The current height limit on property to the north is also 40 feet. The current height limit on properties to the east, west and south is 65 feet.
6. The site has a 27-foot grade change sloping from west to east. The site was granted relief on steep slope development by the Department. The steep slope Environmentally Critical Area on the site is less than 20 feet in height and farther than 30 feet from other steep slope areas. Therefore, SMC 25.09.180.B.2.a’s criteria for relief from the prohibition on development in steep slopes and their buffers is applicable.

Zoning History and Potential Zoning Changes

7. The project area was zoned Second Residential District in 1923. In 1947 the property was rezoned to Commercial District. In 1995 the area was rezoned NC2-40. The area was re-designated NC3P-40 in 2015.
8. A contract rezone to rezone a property near the proposal located at 1511 Dexter Avenue N from NC3P-40 to NC3P-65, for an affordable housing project, was approved by the City Council in 2016. That rezone is located across Dexter Avenue N to the southwest of the project site.
9. In August 2016 the City Council passed Ordinance 125108 creating a new Land Use Code Chapter 23.SSC, Mandatory Housing Affordability for Residential Development (“MHA-R”). The purpose of Chapter 23.SSC is to implement an affordable housing incentive program

authorized by RCW 36.70A.540. Chapter 23.S8C specifies a framework for providing affordable housing in new development, or an in-lieu payment to support affordable housing, in connection with increases in residential development capacity.

10. The City is proposing a rezone in this area for purposes of implementing MHA-R affordable housing legislation. That rezone will essentially add 10-feet of potential development height to all properties. Timing for the MHA-R rezone is proposed for some time later in 2017.

Neighborhood Plan

11. The site is not located in an urban center or urban village, and is not subject to a neighborhood plan.

Proposal

12. The Applicant seeks to have the property rezoned from NC3P-40 with a PUDA. The terms of the PUDA are not disclosed in the record before the Hearing Examiner. The Applicant proposes to construct a six-story apartment building with a total of 85 units. The proposal includes one live-work unit, and retail use located at street level. The project will include parking for 54 vehicles in a below grade garage. See Exhibit 16. The PUDA will ensure that the provisions of Chapters 23.58B SMC and 23.58C SMC will apply to the project proposal.
13. The rezone application sought to rezone the property to NC3P-65. However, in anticipation of the Council adopting an MHA-R rezone for the area, the Department and the Applicant determined that NC3P-65 zoning would not be an appropriate zone designation. NC3P-65 zoning does not exist with a required MHA suffix. Therefore, the rezone is instead seeking NC3P-75 with an MI suffix, which is the most appropriate zoning in anticipation of the MHA-R rezone, and is consistent with SDCI Director's Rule 14-2016. The proposal is recommended to be further conditioned under the PUDA to be limited to a 65-foot height limit to remain consistent with heights of existing new development and proposed zoning. The proposed structure will be compliant with FAR for a 75-foot height limit. Rezoning to NC3P-75 will facilitate the use of the MHA suffix, and its associated affordable housing performance/payment schedule, in addition to accommodating the FAR of the project as currently designed.
14. The proposed rezone will allow approximately two stories of additional building height to be added to the proposed design, and will include additional street-level retail/commercial uses beyond what currently exists on site.
15. The proposal was reviewed by the Design Review Board ("DRB"). The DRB recommended a design with specific strategies to reduce the impacts of additional height, bulk, and scale to the adjacent sites. The DRB unanimously recommended approval of the proposal, including requested development standard departures.
16. The site lies within a frequent transit corridor. The project would increase ridership but will not impede transit service to the area. The Applicant completed a traffic and parking analysis. The traffic analysis indicated that the project is anticipated to generate approximately 266 new daily

trips, three new AM peak-hour trips, and 15 new PM peak-hour trips, and that this amount of traffic would not exceed the City's volume/capacity thresholds for the area. The parking study determined that project peak demand would be 59 vehicles. The proposal includes 54 off-street parking spaces, therefore the project would generate off-site demand for approximately five vehicles during peak demand. *See Exhibit 23.* The traffic study determined that this amount of off-site demand was not expected to be significant.

17. The Applicant performed a study of the shadow impacts of potential build-out under NC3P-75 zoning. *See Exhibit 30.* The study shows only minimal shadow impacts from the proposal.
18. The Applicant's analysis found that due to the topographical features of the site, and the predominant view being Lake Union to the east development under the proposed zoning would not significantly impact views. No SEPA-protected views would be impacted by the proposal. *See Exhibit 30.*

Public Comment

19. Comments were received during the design review process for the proposal. They are summarized in the Director's Report, Exhibit 16, at 4-6.
20. Many of the issues raised in early comments were addressed by the Applicant during, and following the design review process.
21. Issues raised in comments received following the design review process were related to impacts on views, parking impacts, inconsistencies with existing neighborhood scale, and impacts to vegetation and wildlife in the vegetated area of the site.

Director's Review

22. The Director reviewed the Design Review Board's recommendations and agreed that the proposed project results in a design that best meets the intent of the Design Review Guidelines, and accepted the Board's recommendations. The Director approved the design. Exhibit 16 at 14-17.
23. The Director also analyzed the proposal's potential long-term and short-term environmental impacts, and recommended conditions to mitigate construction-related impacts.
24. The Director's report, Exhibit 16, analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

25. 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.

26. 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.
27. SMC 23.34.007.C provides that compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones, but the Comprehensive Plan may be considered where appropriate.

Conclusions

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

Effect On Zoned Capacity

4. The proposal is not within an urban center or urban village.

Match Between Zone Criteria and Area Characteristics

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

¹ 23.34.078 - Neighborhood Commercial 3 (NC3) zones, function and locational criteria.

A. Function. To support or encourage a pedestrian-oriented shopping district that serves the surrounding neighborhood and a larger community, citywide, or regional clientele; that provides comparison shopping for a wide range of retail goods and services; that incorporates offices, business support services, and residences that are compatible with the retail character of the area; and where the following characteristics can be achieved:

1. A variety of sizes and types of retail and other commercial businesses at street level;
2. Continuous storefronts or residences built to the front lot line;

Neighborhood Plan

6. As indicated above, the site is not subject to a neighborhood plan.

Zoning Principles/Precedential Effect

7. The zoning principles listed in SMC 23.34.008.E are generally aimed at minimizing the impact of more intensive zones on less intensive zones, if possible. They express a preference for a gradual transition between zoning designations, including height limits, if possible, and potential physical buffers to provide an effective separation between different uses and intensities of development.
8. There is some effective separation between the proposal and adjacent and nearby properties provided by topographic changes, adjacent streets to the west and south, and an alley to the east.
9. The rezone has been reviewed by the Director who concluded the proposed building would cause additional height to be visible above that allowed by the current zoning, but the impact on views of Lake Union are negligible in the context of existing adjacent structures and existing and proposed zoning for the area.
10. The proposed 75-foot height limit, with a PUDA condition restricting height to 65 feet, is consistent with new development in the area and anticipated zoning changes.

Impact Evaluation

11. The proposed rezone would positively impact the housing supply, as it would add 85 new residential units.
12. 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, air, water, 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

-
- 3. Intense pedestrian activity;
 - 4. Shoppers can drive to the area, but walk around from store to store;
 - 5. Transit is an important means of access.

B. Locational Criteria. A Neighborhood Commercial 3 zone designation is most appropriate on land that is generally characterized by the following conditions:

- 1. The primary business district in an urban center or hub urban village;
- 2. Served by principal arterial;
- 3. Separated from low-density residential areas by physical edges, less-intense commercial areas or more-intense residential areas;
- 4. Excellent transit service.

regulations. As noted, height, bulk and scale impacts, including shadow impacts, were reviewed and addressed through the design review process.

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

Changed Circumstances

15. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. The City's proposed rezone in this area for purposes of implementing MHA-R affordable housing legislation, and a recent contract rezone located southwest from the project site, from NC3P-40 to NC3P-65, indicate an up-zone pattern consistent with the proposal.

Overlay Districts

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

Critical Areas

17. As noted above, the Director determined that the proposal qualified for a limited Relief for Prohibition on Development in Steep Slopes and their Buffers. *See Exhibit 16.*

Height Limits

18. The proposed rezone would allow an additional 25 feet in zoned height. SMC 23.34.009 addresses the designation of height limits for proposed rezones. The issues to be considered include the function of the zone; the topography of the area and its surroundings, including view blockage; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.
19. Function of the zone. Height limits are to be consistent with the type and scale of development intended for the zone classification, and the demand for permitted goods and services and potential for displacement of preferred uses are to be considered. The proposed mixed-use project is consistent with the type and scale of development intended for the NC3 zone in urban centers, as discussed above. There will be no displacement of preferred uses.
20. 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 proposed structure steps down the west to east with the topography of the property, minimizing view blockage while providing a large roof deck that will allow residents of the proposal views of Lake Union.

21. Height and scale of the area. The height limits established by current zoning in the area are to be considered. In general, permitted height limits are to “be compatible with the predominant height and scale of existing development, particularly where existing development is a good measure of the area’s overall development potential.” SMC 23.34.009.C.

The proposed development would be consistent with the predominant height and scale of nearby newer development, which is representative of the area’s overall development potential.

22. Compatibility with surrounding area. Height limits are to be compatible with actual and zoned heights in surrounding areas. In addition, a gradual transition in height and scale and level of activity between zones is to be provided unless major physical buffers are present. Physical buffers exist, mostly in the form of streets and an alley. However, the proposal is compatible in height with nearby and planned development and zones. The height limit of 65-feet would be compatible with the actual and zoned heights in the surrounding area, and consistent with the transition of zoned heights and scale of development in the area.
23. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC3P-75 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 Master Use Permit

1. Provide an executed Property Use and Development Agreement that includes the following:
 - a. The rezoned property shall be subject to the requirements of SMC 23.58B and 23.58C.
 - b. Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3021980.

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 at: <http://www.seattle.gov/transportation/cmp.htm>.

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


Prior to Certificate of Occupancy

1. The Land Use Planner shall inspect materials, colors, and design of the constructed project. All items shall be constructed and finished as shown at the design recommendation meeting and the subsequently updated Master Use Plan set. Any change to the proposed design, materials, or colors shall require prior approval by the Land Use Planner (David Landry, david.landry@seattle.gov) or a Seattle DCI assigned Land Use Planner.

For the Life of the Project

2. The building and landscape design shall be substantially consistent with the materials represented at the Recommendation meeting and in the materials submitted after the Recommendation meeting, before the MUP issuance. Any change to the proposed design, including materials or colors, shall require prior approval by the Land Use Planner (David Landry, david.landry@seattle.gov) or a Seattle DCI assigned Land Use Planner.

Entered this 20th day of October, 2017.



Ryan Vancil
Deputy Hearing Examiner

Concerning Further Review

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

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

Seattle City Council
 Planning, Land Use and 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 the **Jill Burdeen Rezone Application**, Council File: **CF-314358** in the manner indicated.

Party	Method of Service
Applicant Legal Counsel Courtney Kaylor courtney@mhseattle.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department David Landry SDCI David.Landry@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
City Contacts Nathan Torgelson Director, SDCI Nathan.Torgelson@seattle.gov Roger Wynne City Attorney's Office Roger.Wynne@seattle.gov Ketil Freeman City Council Ketil.Freeman@seattle.gov Public Resource Center PRC@seattle.gov SCI Routing Coordinator SCI Routing Coordinator@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>Sue Putnam Sue.Putnam@seattle.gov</p>	
<p>E-mail jill@nkarch.com marc@streamre.com shivelj@gmail.com rick@aramburu-eustis.com idamlaj@gmail.com carol@aramburu-eustis.com howard@washingtonappeals.com jessie@mhseattle.com llindell@live.com katherineidziorek@gmail.com Hmnishiwaki@gmail.com janet@accentconsult.net Charrington@gglo.com shirlee.tan@kingcounty.gov Annette.Pearson@seattle.gov</p>	<p><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>
<p>U.S. Mail SUQUAMISH TRIBE PO BOX 498 SUQUAMISH, WA 98392 DUWAMISH TRIBE 4705 W MARGINAL WAY SW SEATTLE, WA 98106 KAREN WALTER WATERSHEDS AND LAND USE TEAM LEADER MUCKLESHOOT INDIAN TRIBE FISHERIES DIVISION HABITAT PROGRAM 39015 172ND AVE SE AUBURN, WA 98092</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 <input type="checkbox"/> Legal Messenger</p>
<p>Inter-office Mail Public Review Documents Quick Information Center Seattle Public Library LB-03-01</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input checked="" type="checkbox"/> Inter-office Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>

<p>E-mail & U.S. Mail ENVIRONMENTAL REVIEW SECTION DEPARTMENT OF ECOLOGY PO BOX 47703 OLYMPIA WA 98504-7703 separegister@ecy.wa.gov</p> <p>GARY KRIEDT KING COUNTY METRO 201 S JACKSON ST MS KSC-TR-0431 SEATTLE WA 98104-3856 Gary.Kriedt@kingcounty.gov</p> <p>MR RAMIN PAZOOKI WSDOT NORTHWEST REGION 15700 DAYTON AVE N SEATTLE WA 98133 Ramin.pazooki@wsdot.wa.gov</p> <p>PUGET SOUND CLEAN AIR AGENCY 1904 3RD AVE STE 105 SEATTLE WA 98101-3317 SEPA@pscleanair.org</p> <p>RAD CUNNINGHAM DEPT OF HEALTH ENVIRONMENTAL HEALTH DIVISION PO BOX 47820 OLYMPIA WA 98504-7822 rad.cunningham@doh.wa.gov kelly.cooper@doh.wa.gov</p>	<p><input checked="" 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>
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Dated: October 20, 2017


Alayna Johnson
Legal Assistant

**APPEAL TO SEATTLE CITY COUNCIL
OF FINDINGS AND RECOMMENDATION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

LONDI LINDELL,

CF 314358

Appellant

Department Reference: 021980

In the Matter of the Application of

Appeal of Hearing Examiner Contract
Rezone with PUDA for Property located
At 1600 Dexter Avenue North

JILL BURDEEN

Facts

Applicant Jill Burdeen (“Applicant”) is seeking to rezone property located at 1600 Dexter Avenue North (“Rezone Property”) from Neighborhood Commercial Three with a forty-foot (40’) height limit (NCP-40) to Neighborhood Commercial Three *with a seventy five-foot (75’) height limit* (NCP-75) with a property use and development agreement possibly restricting the height of the building to 65 feet at some future date. However, the rezone will approve building a structure to 75’ on this parcel.

This appeal is being brought by Londi K. Lindell, property owner of certain real property commonly known as 1530 Aurora Avenue N, Seattle, Washington 98109 a 5 unit condominium building lying west of the Rezone Property (“Marcus Condominiums”). Appellant purchased the Marcus Condominiums in September 2017 principally due to the spectacular views of Lake Union from each of the condominium units. The listing is attached as Exhibit A to this Appeal which states “THE VIEWS ARE INSANE”. The Rezone Property and additional 25’ of building height will block each of the views from these units devaluing the Marcus Condominiums by hundreds of thousands of dollars.

The Applicant concedes their proposed 6-story building will exceed the height of the adjacent a 5-story apartment building to the north of the Rezone Property (“Union View Apartments”) by at least a full story in height. See attached Exhibit B from the Hearing Record, a color elevation of Dexter Avenue North facade in relationship to Union View Apartments, the tallest abutting existing structure in our neighborhood. Further, the attached photographs of both existing views and the likely view blockage from the construction of the proposed 6 story building show future view blockage from this project. See Exhibit C. These photographs show both the Union View

Apartments (beige building with peaked roof) and the existing undeveloped Rezone Property (brown and yellow 3 story building).

This appeal is respectfully requesting the right to supplement the Hearing Examiner's record with the photographs (Exhibit C) and listing information (Exhibit A). This appeal challenges the Hearing Examiner and the Director's report on the additional height recommended as it fails to satisfy the express criteria set forth in Seattle Municipal Code (SMC) 23.34.004 and SMC 23.34.009, criteria which must be satisfied in order to approve this rezone application. In addition to this appeal, Appellant requests the right to present oral argument to the Seattle City Council Planning, Land Use and Sustainability Committee, as allowed pursuant to SMC 23.76.054.

Argument

Rezone

SMC Chapter 23.34, "Amendments to Official Land Use Map (Rezoning)," allows the City Council to approve a map amendment or rezone only if an applicant satisfies certain criteria as provided in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions. The criteria are set forth in SMC Sections 23.34.004 (general rezone criteria) and 23.34.009 (height limits).

This appeal is being made because the Hearing Examiner based his decision on factual error associated with view blockage in determining both whether the general rezone criteria of SMC 23.34.004 and the height limits criteria set forth in SMC 23.34.009 height limits have been satisfied as described below.

General Criteria

SMC 23.34.008 sets forth the general rezone criteria and in order to be approved a rezone at a minimum the Applicant must meet *all* of these criteria including in pertinent part the following:

- **There must be a match between Established Locational Criteria and Area Characteristics.** The Director admits that this criterion has not been satisfied on page 21 of his Notice of Decision dated September 5, 2017 ("NOD") when he acknowledges "The Director recognizes that at this time, NC3P-65 would not be an appropriate zone designation because it does not exist". See SMC 23.34.008 (B). It was error for the Hearing Examiner to conclude this criterion has been satisfied based upon the reasoning that a zoning of NC3-40 is no different than a zoning of NC3-65 with a future unknown contract rezone to be determined. All NC3 zonings are not identical and clearly allowing 25' to 35' of additional building height is an element which must be weighed and balanced to determine whether or not it is an appropriate zone designation for this area. As evidenced by the existing zones and buildings immediately adjacent to the subject site, this higher height is not appropriate and is not a "match between established locational criteria and area characteristics". Accordingly, this criteria has not been satisfied and this rezone cannot be approved.

- **Approval of This Rezone Will Result In No Gradual Transition in Height Limits from Aurora Avenue North to Lake Union.** The SMC requires a “gradual transition between zoning categories, *including height limits*”. SMC 23.34.008(E)(1). The NOD was relied upon by the Hearing Examiner in recommending approval of this rezone and the Director states on page 23 of the NOD that “An analysis of the transition between heights has identified that the proposal site is *surrounded by properties zoned with a maximum height of 65’ which is the same height as the proposed structure for the project site.* [Emphasis added]. This information is misleading. In considering the height of both the surrounding zones and of the existing buildings it is important to consider the view corridor. The views to protect are of Lake Union and the topography is a steep slope commencing at Aurora Avenue North and then continuing downward until Lake Union. Thus, the buildings whose views will be adversely impacted are those located west of the Rezone Property moving upward to Aurora Avenue N. The buildings located east of the Rezone Property will not have any view obstruction because they are between the Rezone Property and Lake Union.

Attached as Exhibit D is a map showing the existing zoning surrounding the subject site which is principally NC3P-40 (maximum building height of 40’) and the height of the existing buildings in the area which are 1 to 3 stories in height verified by the attached highlighted King County Parcel GIS data. The Director tells the Examiner the Rezone Property is “surrounded by properties zoned with a maximum height of 65’” and by stating properties immediately to the west are zoned “C1-65 (See page 1 of NOD). Immediately west of the Rezone Property and across the street from the Rezone Property on Dexter Ave North *all* of the properties are zoned NC3P-40 with a maximum height of 40’ not 65’ as the Director advised the Examiner. Further, all of the existing buildings currently are constructed at a height of much less than 40’ with the exception of an affordable housing project to the southwest which the City Council approved through a contract rezone.

The Director also focused the Examiner’s attention on the height of the properties “downslope” of the Rezone Property” in considering both view impact and transition of building height. For example, the NOD states “There is also a new development located to the south including a new residential development (Holland’s One Lakefront project)”. The address of One Lakefront apartments is 1287 Westlake Avenue North which is not located in close proximity to the Rezone Property as those properties identified *adjacent* to the Rezone Property shown on Exhibit D.

The City Council should deny the rezone because it will not result in a gradual transition of height limits between zones and the decision was based on factual error. The Hearing Examiner was advised the Rezone Property was surrounded by buildings having zones allowing buildings to be constructing up to 65’ and the built environment allowed construction up to 65’. This was error. The surrounding and adjacent zones are principally NC3P-40 allowing a maximum of

40' in building height and the built environment is an average of 4 stories or less in building height.

- **Height Limits Limited to 40' Except in Urban Centers.** SMC 23.34.008E(4) provides as follows:

Height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty (40) feet may be considered outside of urban villages where higher height limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or where the designation would be consistent with the existing built character of the area.

The Director notes in the NOD that “The site is not located within an urban village” and is not in “a Council adopted neighborhood plan”. The Director incorrectly states “The additionally 25' in increased height is consistent with the existing built character of the area”. This cannot be considered accurate even when considering the five-story Union View Apartments building built to the north in the NC3P-40 zone. The Applicant's own submittal concedes it is not consistent with the existing built character of the area. See attached Exhibit B showing the proposed building exceeding the height of the Union View Apartments which is the tallest structure in our neighborhood. Attached Exhibit D and the Exhibit C King County GIS data provides contrary evidence showing the majority of the “existing built character” of the neighborhood is comprised of 1 and 3-story buildings. The proposed 6-story building is also in the view corridor between the existing buildings to the west adversely impacting views of Lake Union. Accordingly, a height limit greater than 40' should be limited to urban villages and not approved as part of this rezone.

Height Criteria

SMC 23.34.009 sets forth additional criteria which must be satisfied if the rezone seeks additional building height. In this application, the Applicant is seeking to build 25 feet higher than the allowed 40 feet and accordingly the Hearing Examiner must have been satisfied that all of these criteria were also met. The Hearing Examiner based his conclusions on error as follows:

View Blockage not Properly Considered or Mitigated.

SMC 23.24.009(B) requires the City fully “consider the likelihood of view blockage” prior to approving any increase in height. The Examiner notes he is required to consider the “likelihood of view blockage” as a criterion in the SMC. See Section 20 of Conclusions in Findings and Recommendation of the Hearing Examiner. However, he failed to consider the likelihood of view blockage to the Marcus Condominiums or the view blockage to any buildings to the west of the Rezone Property resulting from approval of this rezone application. In fact, the Examiner wrongly refers to “a large roof deck (on the Rezone Property)” that will allow residents of the proposal views of Lake Union” as satisfying this criterion.

SMC 23.34.009 (B) “Height limits of the proposed rezone” mandates that “height limits shall be consistent with the type and scale of development intended for each zone classification. . .and the likelihood of view blockage shall be considered”. It is important to note that the use of the

term “shall” makes the City Council’s legislative directive mandatory and not discretionary. Further, The City Council’s legislative intent was to protect views of its existing Seattle owners, citizens and residents and not the promotion of future views of future residents as the Examiner describes. This is an error and fails to properly consider the likelihood of view blockage of the existing neighborhood as intended by the City Council.

The record also evidences the Hearing Examiner based his decision on faulty information received from the Director. See Paragraph 9 of the Hearing Examiner’s Conclusions wherein the Examiner indicates “impact on views of Lake Union are negligible in the context of existing adjacent structures”. The NOD wrongly concluded that “No additional views from private property would significantly be blocked by the additional building height resulting from the contract rezone”. See page 30 of the NOD. Attached as Exhibit C are photographs of the existing views from the Marcus Condominiums and then anticipated view obstructions resulting from the 6-story proposed project. Although the Director notes I submitted comments regarding view obstruction, he did not include the specifics of such view obstruction for the Examiner. It is error for the Examiner to approve this rezone because it is inconsistent with SMC 23.34.009(B) as it will significantly and adversely block views to the properties to the west including the Marcus Condominiums. It is further error because the Hearing Examiner based his decision on faulty information as he believed a 65’ tall building would only have a “negligible” impact on views to surrounding structures and this is not accurate. Accordingly, the decision should be reversed for failure to satisfy SMC 23.34.009(B).

Not Compatible with Existing Development

SMC 23.34.009(C)(2) and (D) require that “permitted height limits *shall be compatible with the predominant height and scale of existing development and the surrounding area* and provides in pertinent part as follows:

C. Height and scale of the area

1. The height limits established by current zoning in the area shall be given consideration.
2. In general, permitted height limits shall 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.

D. Compatibility with surrounding area

1. Height limits for an area shall be compatible with actual and zoned heights in surrounding areas. . .

The foregoing requires that first, the existing height limit of a maximum height of 40 feet “shall” be given consideration. Neither the Hearing Examiner nor Director discussed whether or not the Rezone Property should remain at the existing height limit of 40’ and accordingly failed to properly give consideration to maintaining this maximum height limit. Thus, the Rezone application should be denied for failing to meet this criteria.

Second, in considering whether the Rezone Property proposal was compatible with the height and scale of existing development, the Examiner based his decision on misinformation. The NOD considered by the Hearing Examiner states “The 65-foot height limit is compatible with existing development in the area”. The rezone is to NC3P-75 M1. There is no Property Use and

Development Agreement (PUDA) approved by the City Council at this time so it was error for the Director to imply a limitation of a 65' maximum height limit. That limitation may be set forth in a subsequent contract rezone but the Hearing Examiner is basing its decision on a future promise which cannot be a basis of a quasi judicial decision and clearly cannot meet this criteria. The Hearing Examiner also relied on the Director's statement that the subject project would be compatible with the predominant height and scale of existing 65' tall buildings but this also is incorrect. See Exhibit D and the below chart listing the surrounding and adjacent building's addresses, zoning and building heights as follows:

Address	Zoning	Number of Stories
1600 Dexter Ave N. – Subject Site	NC3P-40	3 (Seeking 6 stories)
1607 Dexter Ave N.	NC3-40	4
1620 Dexter Ave N.	NC3P-40	5
1515 Dexter Avenue N	NC3P-40	3
1601 Dexter Ave N	NC3P-40	1

Based upon the foregoing table, it was error for the Hearing Examiner to conclude that a 6-story or 75' maximum height zone was compatible with the predominant height and scale of the existing development in the area having a zoning allowing a maximum building height of 40 feet and with existing development comprised of one-story, three-story, four-story and a single five-story building. It was improper for the Director and Hearing Examiner to give more weight to properties located further away from the Rezone Property than the foregoing properties in determining compatibility with predominant height and scale of existing development.

Proposed Height is Incompatible with Surrounding Zoning.

SMC 23.34.009(D) also requires the City ensure height limits be consistent and compatible with the type and scale of development in the surrounding area. The Examiner notes that the City approved a developer agreement, which is basically a variation from the Council's adopted code previously to allow *one building* located one block from the subject site to be constructed 65' in height in a similar NCP-40 zone. The argument is basically if the City was willing to make one exception the City should approve the Rezone Property application. However, this is faulty reasoning. The exception should not be the controlling rule and not be representative of the character of the surrounding area. SMC 23.34.009 requires the Council to look further than one approved contract rezone and consider the surrounding area and existing buildings.

In reviewing Exhibit D, the attached photos, the foregoing table and the record, it is clear there are approximately 11 buildings surrounding the subject site which are all either zoned to a maximum 40 foot height limit and/or currently have a maximum constructed height averaging 4 stories or less. The view corridor is located to the west of the Rezone Property because these are the buildings which will have views to Lake Union blocked from the construction of a 6 story building. To the west of the Rezone Property directly across Dexter Avenue No is a 3-story commercial structure and the 3-story Marcus Condominiums. The Hearing Examiner notes that "on the west side of Dexter Avenue N" there are a number of older apartment and commercial buildings. The Hearing Examiner's decision should be reversed for failure to satisfy SMC 23.34.009(D).

Relief Sought

Appellant Lindell respectfully requests that the City Council either:

- DENY the requested rezone subject to a PUDA; or alternatively
- REMAND this matter back to the Hearing Examiner requesting the record be supplemented and reconsidered in light of the new evidence set forth in this appeal and direct that additional findings of fact and conclusions be made in connection with SMC 23.34.008 and SMC 23.34.009 as follows:
 1. The likelihood of view blockage from construction of the additional 25' in building height and directing the Hearing Examiner to reduce the maximum building height to one compatible with the surrounding zones, surrounding neighborhood and height and scale of existing adjacent development;
 2. The likelihood of view blockage from construction of the additional 25' in building height and directing the Hearing Examiner to include mitigation conditions for the protection for the properties to the west in the record for such view blockage such as view corridors, building fenestration or modulation or other mitigation to minimize or prevent view blockage; and
 3. Ensuring any allowed height over the existing maximum of 40' is consistent and compatible with all surrounding buildings in the neighborhood and directing the Hearing Examiner to set a maximum building height not to exceed the height of the existing 5-story Union View Apartments adjacent building to the north; and
 4. Make Council's approval of a Contract Rezone a Condition of any Rezone approval.

DATED this 23rd day of October, 2017



Londi K. Lindell
Appellant
Owner of Marcus Condominiums
1530 Aurora Avenue N.
Seattle, Washington 98109

EXHIBIT
A
LISTING
INFORMATION

EXHIBIT A

REDFIN

City, Address, School, Agent, ZIP

1-844-759-7732

Buy

Sell

Real Estate Agents

Londi



1530 Aurora Ave N
Seattle, WA 98109

\$2,550,000

Sold Sep 22, 2017

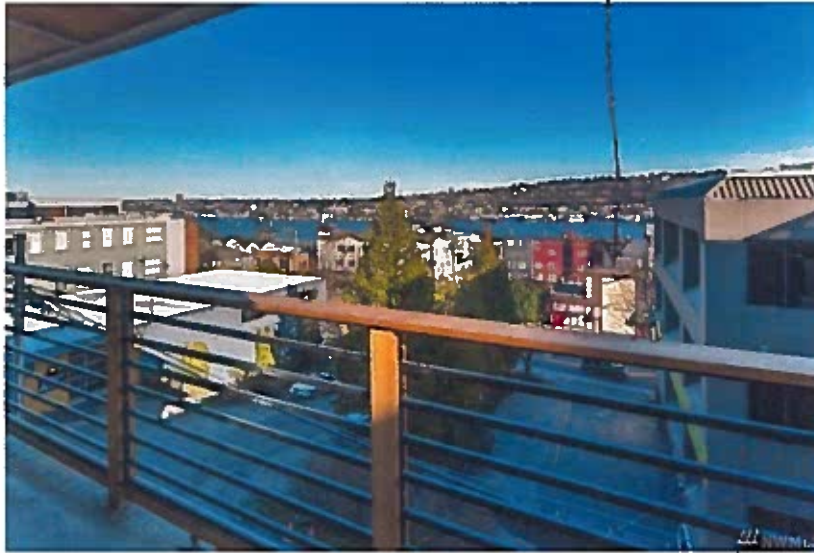
Built: 1981 Lot Size: 3,891 Sq. Ft. Sold On: Sep 22, 2017
Status: Sold

7
Beds

7.5
Baths

4,948 Sq. Ft.
\$515 / Sq. Ft.

REZONE PROPERTY
SUBJECT SITE



Forrest Moody

REDFIN Real Estate Agent

★★★★★
73 client reviews

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1 of 2 Redfin Agents in this area

(206) 202-4036

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Track this home's estimate in our Home Report email.



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THE VIEWS ARE INSANE, FIRST TIME EVER ON MARKET! Extremely rare property to own, 5 unit condo building is in like new condition after a \$500,000.00 dollar renovation! Every surface of the building is new from the inside out. Unbelievable views of LK Union and Seattle skyline. Large view decks attached to every unit, incredible finishes, modern designer level materials. high efficiency heating, Walking distance to Amazon all S Lake union amenities. C165 ZONING Fully rented. Turn key investment

Property Type	Multi-Family	Style	5-9 Units
Stories	2	View(s)	City, Lake, Mountain(s), Territorial
Community	Lake Union	County	King
MLS#	1086888		

Listing provided courtesy of
Ky DeWald, Capture Realty LLC

Buyer's Agent
Tamara Dean, Windermere Real Estate/East

Redfin last checked: 2 minutes ago | Last updated: 1 month ago



Redfin has the best data. Why?

EXHIBIT

B

APPLICANT'S

WEST FAÇADE

COMPARED TO

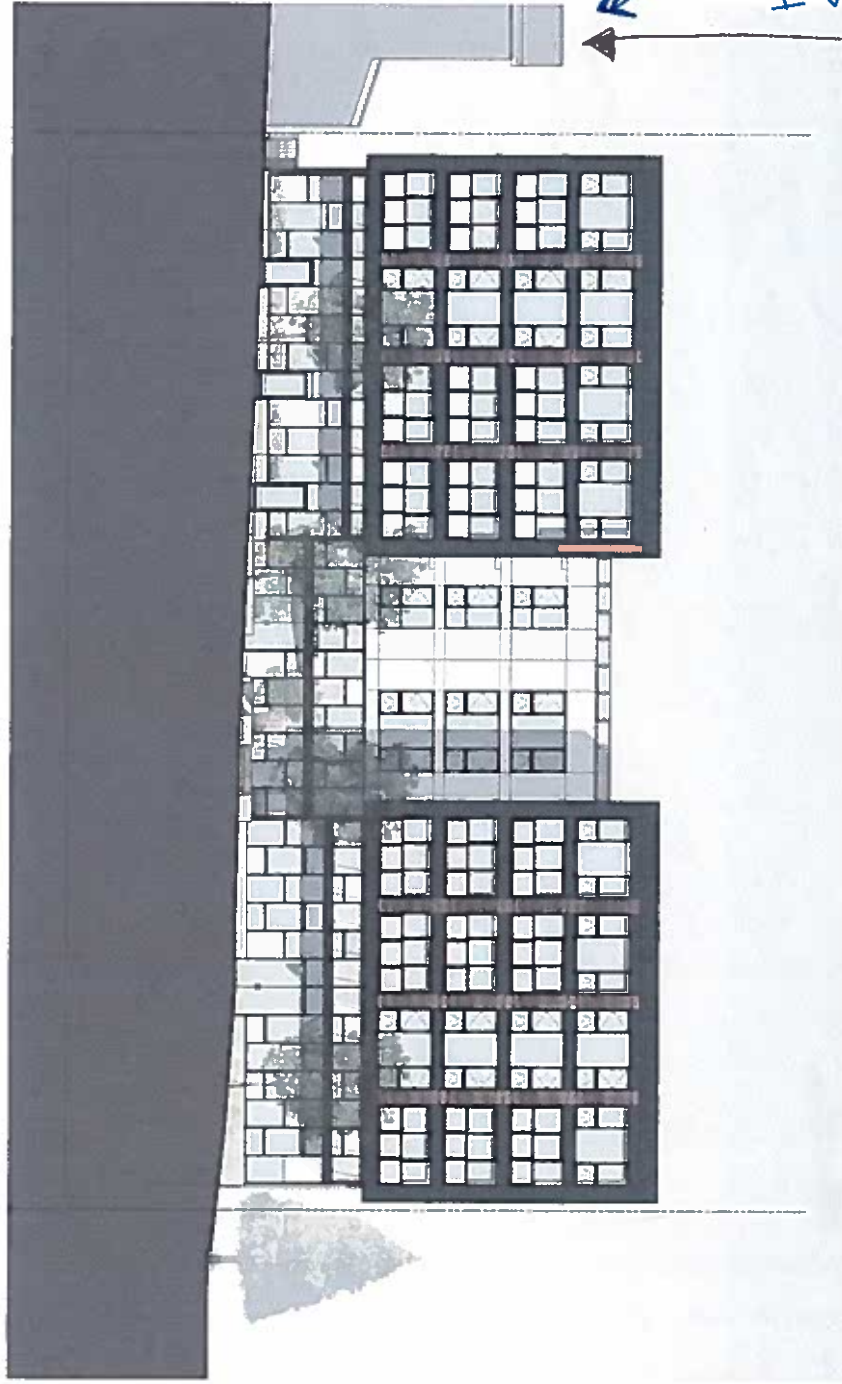
UNION VIEW APARTMENTS

Exhibit B

BUILDING
TO NORTH

5-STORY
UNION VIEW
APARTMENTS

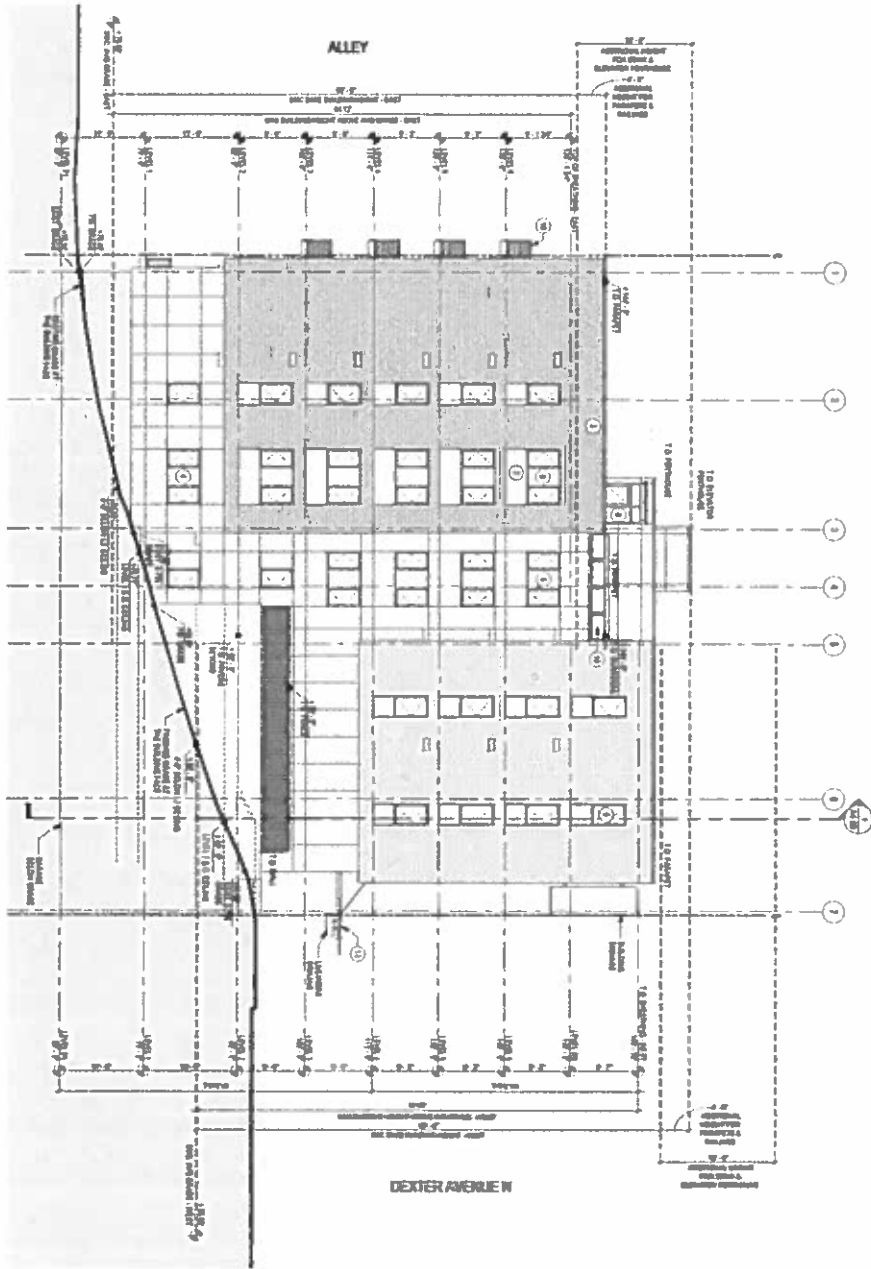
1 COLOR ELEVATIONS - WEST



<p>PROJECT 4 LAND DRAWING NO. 40 CHECKED BY: 40 FILE NAME: 10011</p> <p>A3.10</p>	<p>COLOR ELEVATIONS - WEST</p>	<p>STREAM DEXIOS 1600 & 1612 DEXTER AVE N BROOK V, LLC</p>	<p>DATE: 10/11/11</p>	<p>SCALE: 1/8" = 1'-0"</p>	<p>BY: [Signature]</p>	<p>DATE: 10/11/11</p>	<p>SCALE: 1/8" = 1'-0"</p>	<p>BY: [Signature]</p>	<p>DATE: 10/11/11</p>	<p>SCALE: 1/8" = 1'-0"</p>	<p>BY: [Signature]</p>
			<p>DATE: 10/11/11</p>	<p>SCALE: 1/8" = 1'-0"</p>	<p>BY: [Signature]</p>	<p>DATE: 10/11/11</p>	<p>SCALE: 1/8" = 1'-0"</p>	<p>BY: [Signature]</p>			



1 NORTH ELEVATION



- 1. Project: Stream Dexios, 1600 & 1612 Dexter Ave N
- 2. Architect: MK
- 3. Date: 11/11/11
- 4. Description: North Elevation
- 5. Scale: 1/8" = 1'-0"
- 6. Projected: 11/11/11
- 7. Projected: 11/11/11
- 8. Projected: 11/11/11
- 9. Projected: 11/11/11
- 10. Projected: 11/11/11
- 11. Projected: 11/11/11
- 12. Projected: 11/11/11
- 13. Projected: 11/11/11
- 14. Projected: 11/11/11
- 15. Projected: 11/11/11
- 16. Projected: 11/11/11
- 17. Projected: 11/11/11
- 18. Projected: 11/11/11
- 19. Projected: 11/11/11
- 20. Projected: 11/11/11


	1600 & 1612 DEXTER AVE N DEXTER AVENUE NORTH PROJECT NO. 11111 DRAWN BY: MK CHECKED BY: MK FILE NAME: 11111	PROJECT: 11111 DRAWN BY: MK CHECKED BY: MK FILE NAME: 11111	PROJECT NO. 11111 DRAWN BY: MK CHECKED BY: MK FILE NAME: 11111
	1600 & 1612 DEXTER AVE N DEXTER AVENUE NORTH PROJECT NO. 11111 DRAWN BY: MK CHECKED BY: MK FILE NAME: 11111	PROJECT: 11111 DRAWN BY: MK CHECKED BY: MK FILE NAME: 11111	PROJECT: 11111 DRAWN BY: MK CHECKED BY: MK FILE NAME: 11111

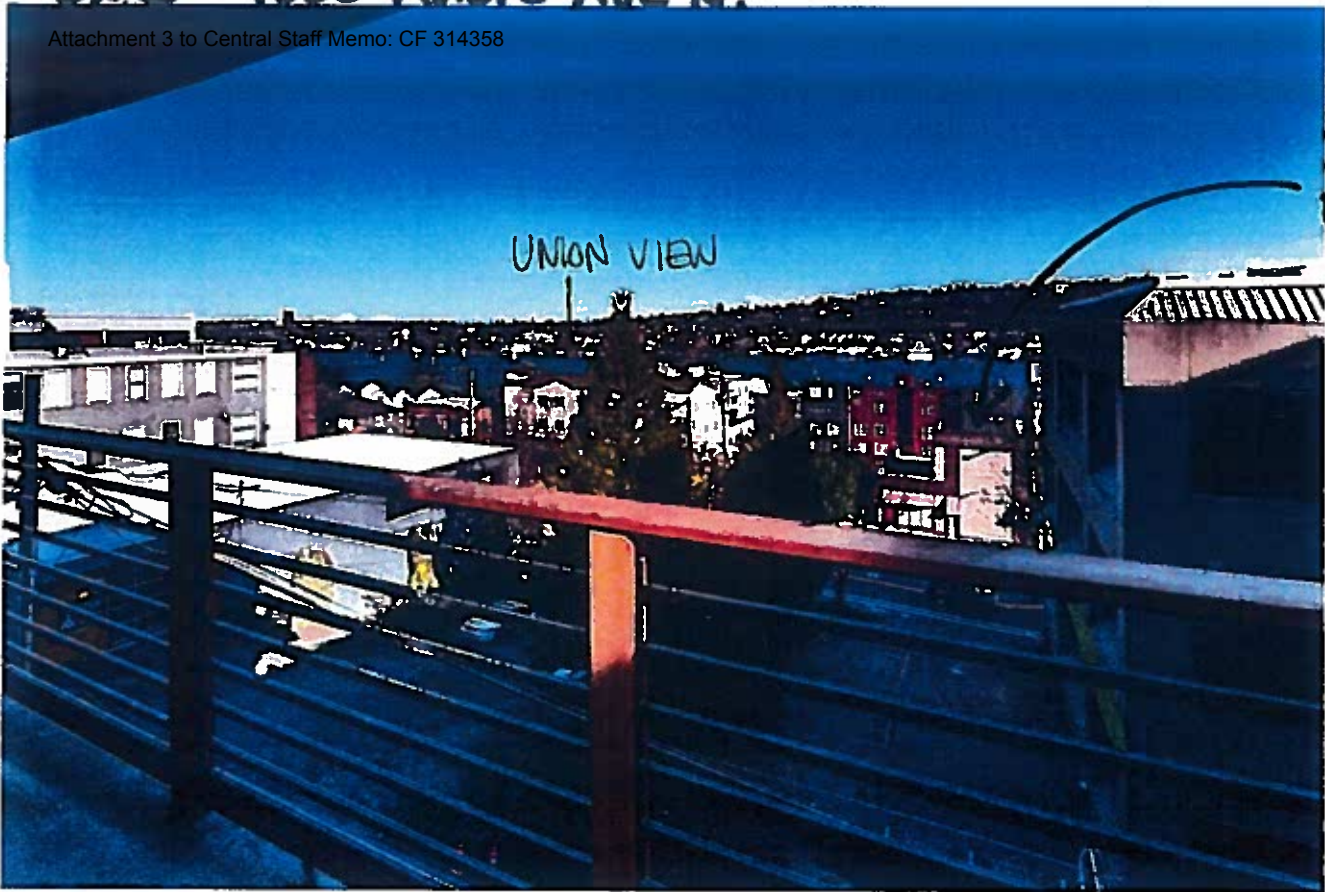
EXHIBIT
C
PHOTOGRAPHS
MARCUS
CONDOMINIUMS
VIEWS OF LAKE UNION

EX C-1530 Aurora Ave N

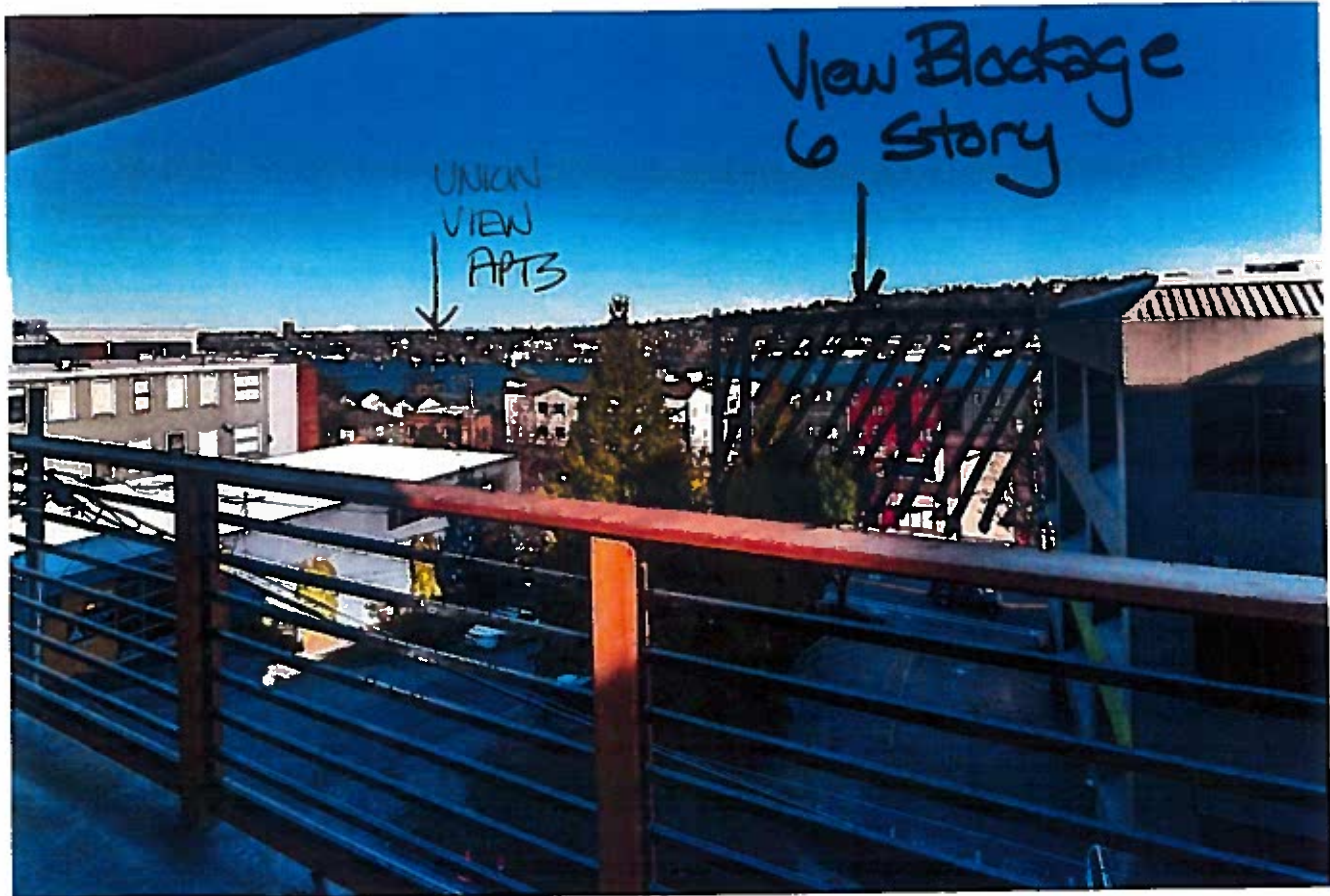


EX.C - 1530 Avilo & Ave N.

Attachment 3 to Central Staff Memo: CF 314358



SUBJECT
SITE
EXISTING
3
STORY





TOTAL VIEW BLOCKAGE WITH 6 STORIES



EXHIBIT

C

KING COUNTY

GIS PARCEL DATA

ADJACENT PROPERTIES

ZONED NC3P-40

(MAXIMUM 40' HEIGHT)

ONLINE MBA IN 1 YEAR

Online MBA in 1 Year.

ADVERTISEMENT

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- Print Property Detail

SUBJECT SITE

Parcel	880790-0200
Name	BROOK V LLC
Site Address	1600 DEXTER AVE N 98109
Geo Area	20-60
Spec Area	
Property Name	1600 DEXTER BLDG ASSOC W/0210 (NEW MIXED USE DEVELOPMENT)

PARCEL DATA

Jurisdiction	SEATTLE
Levy Code	0010
Property Type	C
Plat Block / Building Number	6
Plat Lot / Unit Number	6 & 7
Quarter-Section-Township-Range	SE-19-25-4

Legal Description

UNION LAKE SUPL LESS ST
Plat Block: 6
Plat Lot: 6 & 7

LAND DATA

Highest & Best Use As If Vacant	COMMERCIAL SERVICE
Highest & Best Use As Improved	PRESENT USE
Present Use	Office Building
Land SqFt	9,179
Acres	0.21

Percentage Unusable	
Unbuildable	NO
Restrictive Size Shape	NO
Zoning	NC3P-40
Water	WATER DISTRICT
Sewer/Septic	PUBLIC
Road Access	PUBLIC
Parking	ADEQUATE
Street Surface	PAVED

Views

Rainier	
Territorial	
Olympics	
Cascades	
Seattle Skyline	
Puget Sound	
Lake Washington	
Lake Sammamish	
Lake/River/Creek	
Other View	

Waterfront

Waterfront Location	
Waterfront Footage	0
Lot Depth Factor	0
Waterfront Bank	
Tide/Shore	
Waterfront Restricted Access	
Waterfront Access Rights	NO
Poor Quality	NO
Proximity Influence	NO

Designations

Historic Site	
Current Use	(none)
Nbr Bldg Sites	
Adjacent to Golf Fairway	NO
Adjacent to Greenbelt	NO
Other Designation	NO
Deed Restrictions	NO
Development Rights Purchased	NO
Easements	NO
Native Growth Protection Easement	NO
DNR Lease	NO

Nuisances

Topography	YES
Traffic Noise	
Airport Noise	
Power Lines	NO
Other Nuisances	NO

Problems

Water Problems	NO
Transportation Concurrency	NO
Other Problems	NO

Environmental

Environmental	NO
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BUILDING

Building Number	1
Building Description	OFFICE & APT
Number Of Buildings Aggregated	1
Predominant Use	OFFICE BUILDING (344)
Shape	Rect or Slight Irreg
Construction Class	WOOD FRAME
Building Quality	LOW COST
Stories	3

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PARCEL DATA

Parcel	880790-0260
Name	MONNAHAN BROTHERS JOINT VEN
Site Address	1607 DEXTER AVE N 98109
Geo Area	20-60
Spec Area	
Property Name	office/retail/warehouse

Jurisdiction	SEATTLE
Levy Code	0010
Property Type	C
Plat Block / Building Number	7
Plat Lot / Unit Number	2
Quarter-Section-Township-Range	SE-19-25-4

Legal Description

UNION LAKE SUPL LESS ST
PLat Block: 7
Plat Lot: 2

LAND DATA

Highest & Best Use As If Vacant	COMMERCIAL SERVICE
Highest & Best Use As Improved	PRESENT USE
Present Use	Office Building
Land SqFt	5,410
Acres	0.12

Percentage Unusable	
Unbuildable	NO
Restrictive Size Shape	NO
Zoning	NC3P-40
Water	WATER DISTRICT
Sewer/Septic	PUBLIC
Road Access	PUBLIC
Parking	ADEQUATE
Street Surface	PAVED

Views

Rainier	
Territorial	
Olympics	
Cascades	
Seattle Skyline	
Puget Sound	
Lake Washington	
Lake Sammamish	
Lake/River/Creek	
Other View	

Waterfront

Waterfront Location	
Waterfront Footage	0
Lot Depth Factor	0
Waterfront Bank	
Tide/Shore	
Waterfront Restricted Access	
Waterfront Access Rights	NO
Poor Quality	NO
Proximity Influence	NO

Designations

Historic Site	
Current Use	(none)
Nbr Bldg Sites	
Adjacent to Golf Fairway	NO
Adjacent to Greenbelt	NO
Other Designation	NO
Deed Restrictions	NO
Development Rights Purchased	NO
Easements	NO
Native Growth Protection Easement	NO
DNR Lease	NO

Nuisances

Topography	YES
Traffic Noise	
Airport Noise	
Power Lines	NO
Other Nuisances	NO

Problems

Water Problems	NO
Transportation Concurrency	NO
Other Problems	NO

Environmental

Environmental	NO
---------------	----

BUILDING

Building Number	1
Building Description	office
Number Of Buildings Aggregated	1
Predominant Use	OFFICE BUILDING (344)
Shape	Rect or Slight Irreg
Construction Class	WOOD FRAME
Building Quality	AVERAGE

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PARCEL DATA

Parcel	880790-0215
Name	UNION VIEW APARTMENTS LLC
Site Address	1620 DEXTER AVE N 98109
Geo Area	20-60
Spec Area	100-55
Property Name	UNION VIEW APTS

Jurisdiction	SEATTLE
Levy Code	0010
Property Type	C
Plat Block / Building Number	6
Plat Lot / Unit Number	9-10 & A
Quarter-Section-Township-Range	SE-19-25-4

Legal Description

UNION LAKE SUPL LOTS 9-10 & TR A LESS ST
PLat Block: 6
Plat Lot: 9-10 & A

LAND DATA

Highest & Best Use As If Vacant	COMMERCIAL SERVICE
Highest & Best Use As Improved	PRESENT USE
Present Use	Apartment(Mixed Use)
Land SqFt	9,501
Acres	0.22

Percentage Unusable	
Unbuildable	NO
Restrictive Size Shape	NO
Zoning	NC3P-40
Water	WATER DISTRICT
Sewer/Septic	PUBLIC
Road Access	PUBLIC
Parking	ADEQUATE
Street Surface	PAVED

Views

Rainier	
Territorial	AVERAGE
Olympics	
Cascades	
Seattle Skyline	
Puget Sound	
Lake Washington	
Lake Sammamish	
Lake/River/Creek	AVERAGE
Other View	

Waterfront

Waterfront Location	
Waterfront Footage	0
Lot Depth Factor	0
Waterfront Bank	
Tide/Shore	
Waterfront Restricted Access	
Waterfront Access Rights	NO
Poor Quality	NO
Proximity Influence	NO

Designations

Historic Site	
Current Use	(none)
Nbr Bldg Sites	
Adjacent to Golf Fairway	NO
Adjacent to Greenbelt	NO
Other Designation	NO
Deed Restrictions	NO
Development Rights Purchased	NO
Easements	NO
Native Growth Protection Easement	NO
DNR Lease	NO

Nuisances

Topography	YES
Traffic Noise	
Airport Noise	
Power Lines	NO
Other Nuisances	NO

Problems

Water Problems	NO
Transportation Concurrency	NO
Other Problems	NO

Environmental

Environmental	NO
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BUILDING

Building Number	1
Building Description	UNION VIEW APTS
Number Of Buildings Aggregated	1
Predominant Use	MIXED RETAIL W/RES UNITS (459)
Shape	Long Rect or Irreg

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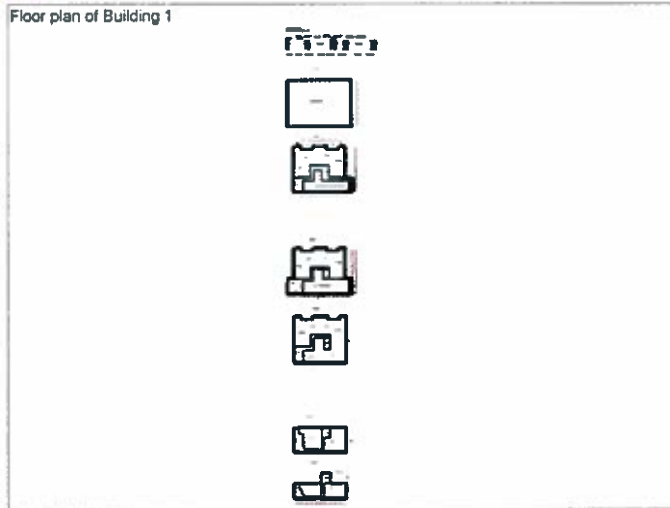
Construction Class	WOOD FRAME
Building Quality	AVERAGE
Stories	5
Building Gross Sq Ft	31,266
Building Net Sq Ft	17,462
Year Built	1998
Eff. Year	1998
Percentage Complete	100
Heating System	ELECTRIC
Sprinklers	Yes
Elevators	Yes

Picture of Building 1



Click the camera to see more pictures

Floor plan of Building 1



Section(s) Of Building Number: 1

Section Number	Section Use	Description	Stories	Height	Floor Number	Gross Sq Ft	Net Sq Ft
2	OFFICE BUILDING (344)		1	10		1,963	1,963
1	APARTMENT (300)		5	10		21,930	15,499
4	BASEMENT, PARKING (706)		1	9		7,373	0

Accessory

Accessory Type	Picture	Description	Qty	Unit Of Measure	Size	Grade	Eff Yr	% Value	Date Valued
Pkg: Open, Unsec			8			(unknown)			
Pkg: Covrd, Sec			18			(unknown)			

Apartment / Condo Complex Data

Complex Type	Commercial Complex
Complex Description	
Value Distribution Method	
# of Bldgs	1
# of Stories	5
# of Units	18
Avg Unit Size	861
Land Per Unit	0
Project Location	AVERAGE
Project Appeal	AVERAGE
% With View	11
Construction Class	WOOD FRAME
Building Quality	AVERAGE
Condition	Average
Year Built	1998
Eff Year	1998
% Complete	100
Elevators	Y
Security System	Y

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PARCEL DATA

Parcel	880790-0070
Name	GROUP HEALTH CREDIT UNION
Site Address	1515 DEXTER AVE N 98109
Geo Area	20-60
Spec Area	
Property Name	ASSOCIATION CENTER

Jurisdiction	SEATTLE
Levy Code	0010
Property Type	C
Plat Block / Building Number	2
Plat Lot / Unit Number	4 THRU 7 & A
Quarter-Section-Township-Range	SE-19-25-4

Legal Description

UNION LAKE SUPL LESS ST
PLat Block: 2
Plat Lot: 4 THRU 7 & A

LAND DATA

Highest & Best Use As If Vacant	COMMERCIAL SERVICE
Highest & Best Use As Improved	PRESENT USE
Present Use	Office Building
Land SqFt	22,019
Acres	0.51

Percentage Unusable	
Unbuildable	NO
Restrictive Size Shape	NO
Zoning	NC3P-40
Water	WATER DISTRICT
Sewer/Septic	PUBLIC
Road Access	PUBLIC
Parking	ADEQUATE
Street Surface	PAVED

Views

Rainier	
Territorial	
Olympics	
Cascades	
Seattle Skyline	
Puget Sound	
Lake Washington	
Lake Sammamish	
Lake/River/Creek	
Other View	

Waterfront

Waterfront Location	
Waterfront Footage	0
Lot Depth Factor	0
Waterfront Bank	
Tide/Shore	
Waterfront Restricted Access	
Waterfront Access Rights	NO
Poor Quality	NO
Proximity Influence	NO

Designations

Historic Site	
Current Use	(none)
Nbr Bldg Sites	
Adjacent to Golf Fairway	NO
Adjacent to Greenbelt	NO
Other Designation	NO
Deed Restrictions	NO
Development Rights Purchased	NO
Easements	NO
Native Growth Protection Easement	NO
DNR Lease	NO

Nuisances

Topography	YES
Traffic Noise	
Airport Noise	
Power Lines	NO
Other Nuisances	NO

Problems

Water Problems	NO
Transportation Concurrency	NO
Other Problems	NO

Environmental

Environmental	NO
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BUILDING

Building Number	1
Building Description	OFFICE BLDG
Number Of Buildings Aggregated	1
Predominant Use	OFFICE BUILDING (344)
Shape	Rect or Slight Irreg
Construction Class	MASONRY
Building Quality	AVERAGE
Stories	3
Building Gross Sq Ft	30,408

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PARCEL DATA

Parcel	880790-0255
Name	MONNAHAN BROTHERS JOINT VEN
Site Address	1601 DEXTER AVE N 98109
Geo Area	20-60
Spec Area	
Property Name	warehouse-workout gym

Jurisdiction	SEATTLE
Levy Code	0010
Property Type	C
Plat Block / Building Number	7
Plat Lot / Unit Number	1
Quarter-Section-Township-Range	SE-19-25-4

Legal Description

UNION LAKE SUPL LESS ST
PLat Block: 7
Plat Lot: 1

LAND DATA

Highest & Best Use As if Vacant	COMMERCIAL SERVICE
Highest & Best Use As Improved	INTERIM USE
Present Use	Industrial(Light)
Land SqFt	5 410
Acres	0 12

Percentage Unusable	
Unbuildable	NO
Restrictive Size Shape	NO
Zoning	NC3P-40
Water	WATER DISTRICT
Sewer/Septic	PUBLIC
Road Access	PUBLIC
Parking	ADEQUATE
Street Surface	PAVED

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Views

Rainier	
Territorial	
Olympics	
Cascades	
Seattle Skyline	
Puget Sound	
Lake Washington	
Lake Sammamish	
Lake/River/Creek	
Other View	

Waterfront

Waterfront Location	
Waterfront Footage	0
Lot Depth Factor	0
Waterfront Bank	
Tide/Shore	
Waterfront Restricted Access	
Waterfront Access Rights	NO
Poor Quality	NO
Proximity Influence	NO

Designations

Historic Site	
Current Use	(none)
Nbr Bldg Sites	
Adjacent to Golf Fairway	NO
Adjacent to Greenbelt	NO
Other Designation	NO
Deed Restrictions	NO
Development Rights Purchased	NO
Easements	NO
Native Growth Protection Easement	NO
DNR Lease	NO

Nuisances

Topography	YES
Traffic Noise	
Airport Noise	
Power Lines	NO
Other Nuisances	NO

Problems

Water Problems	NO
Transportation Concurrency	NO
Other Problems	NO

Environmental

Environmental	NO
---------------	----

BUILDING

Building Number	1
Building Description	SHOP
Number Of Buildings Aggregated	1
Predominant Use	INDUSTRIAL LIGHT MANUFACTURING (494)
Shape	Rect or Slight Irreg
Construction Class	MASONRY
Building Quality	AVERAGE

Stories	1
Building Gross Sq Ft	4,000
Building Net Sq Ft	4,000
Year Built	1977
Eff. Year	1990
Percentage Complete	100
Heating System	SPACE HEATERS
Sprinklers	No
Elevators	

Picture of Building 1



Section(s) Of Building Number: 1

Section Number	Section Use	Description	Stories	Height	Floor Number	Gross Sq Ft	Net Sq Ft
1	INDUSTRIAL LIGHT MANUFACTURING (494)		1	16		4,000	4,000

TAX ROLL HISTORY

Account	Valued Year	Tax Year	Omit Year	Levy Code	Appraised Land Value (\$)	Appraised Imps Value (\$)	Appraised Total Value (\$)	New Dollars (\$)	Taxable Land Value (\$)	Taxable Imps Value (\$)	Taxable Total Value (\$)	Tax Value Reason
880790025501	2017	2018		0010	811,500	1,000	812,500	0	811,500	1,000	812,500	
880790025501	2016	2017		0010	757,400	1,000	758,400	0	757,400	1,000	758,400	
880790025501	2015	2016		0010	703,300	1,000	704,300	0	703,300	1,000	704,300	
880790025501	2014	2015		0010	649,200	1,000	650,200	0	649,200	1,000	650,200	
880790025501	2013	2014		0010	568,000	1,000	569,000	0	568,000	1,000	569,000	
880790025501	2012	2013		0010	568,000	1,000	569,000	0	568,000	1,000	569,000	
880790025501	2011	2012		0010	595,100	1,000	596,100	0	595,100	1,000	596,100	
880790025501	2010	2011		0010	595,100	1,000	596,100	0	595,100	1,000	596,100	
880790025501	2009	2010		0010	676,200	1,000	677,200	0	676,200	1,000	677,200	
880790025501	2008	2009		0010	676,200	1,000	677,200	0	676,200	1,000	677,200	
880790025501	2007	2008		0010	541,000	1,000	542,000	0	541,000	1,000	542,000	
880790025501	2006	2007		0010	513,900	1,000	514,900	0	513,900	1,000	514,900	
880790025501	2005	2006		0010	459,800	1,000	460,800	0	459,800	1,000	460,800	
880790025501	2004	2005		0010	405,700	1,000	406,700	0	405,700	1,000	406,700	
880790025501	2003	2004		0010	378,700	1,000	379,700	0	378,700	1,000	379,700	
880790025501	2002	2003		0010	378,700	1,000	379,700	0	378,700	1,000	379,700	
880790025501	2001	2002		0010	378,700	1,000	379,700	0	378,700	1,000	379,700	
880790025501	2000	2001		0010	324,600	1,000	325,600	0	324,600	1,000	325,600	
880790025501	1999	2000		0010	135,200	130,300	265,500	0	135,200	130,300	265,500	
880790025501	1998	1999		0010	135,200	130,300	265,500	0	135,200	130,300	265,500	
880790025501	1997	1998		0010	0	0	0	0	135,200	130,300	265,500	
880790025501	1996	1997		0010	0	0	0	0	135,200	34,800	170,000	
880790025501	1994	1995		0010	0	0	0	0	135,200	34,800	170,000	
880790025501	1992	1993		0010	0	0	0	0	135,200	34,800	170,000	
880790025501	1990	1991		0010	0	0	0	0	81,100	68,900	150,000	
880790025501	1988	1989		0010	0	0	0	0	81,100	68,900	150,000	
880790025501	1986	1987		0010	0	0	0	0	81,100	52,900	134,000	
880790025501	1984	1985		0010	0	0	0	0	81,100	52,900	134,000	
880790025501	1982	1983		0010	0	0	0	0	37,200	75,100	112,300	

SALES HISTORY

Excise Number	Recording Number	Document Date	Sale Price	Seller Name	Buyer Name	Instrument	Sale Reason
2078214	20041013000232	10/6/2004	\$500,000.00	BECK BUILDING LLC	MONNAHAN BROTHERS JOINT VENTURE	Statutory Warranty Deed	None

EXHIBIT

D

EXISTING BUILT NEIGHBORHOOD

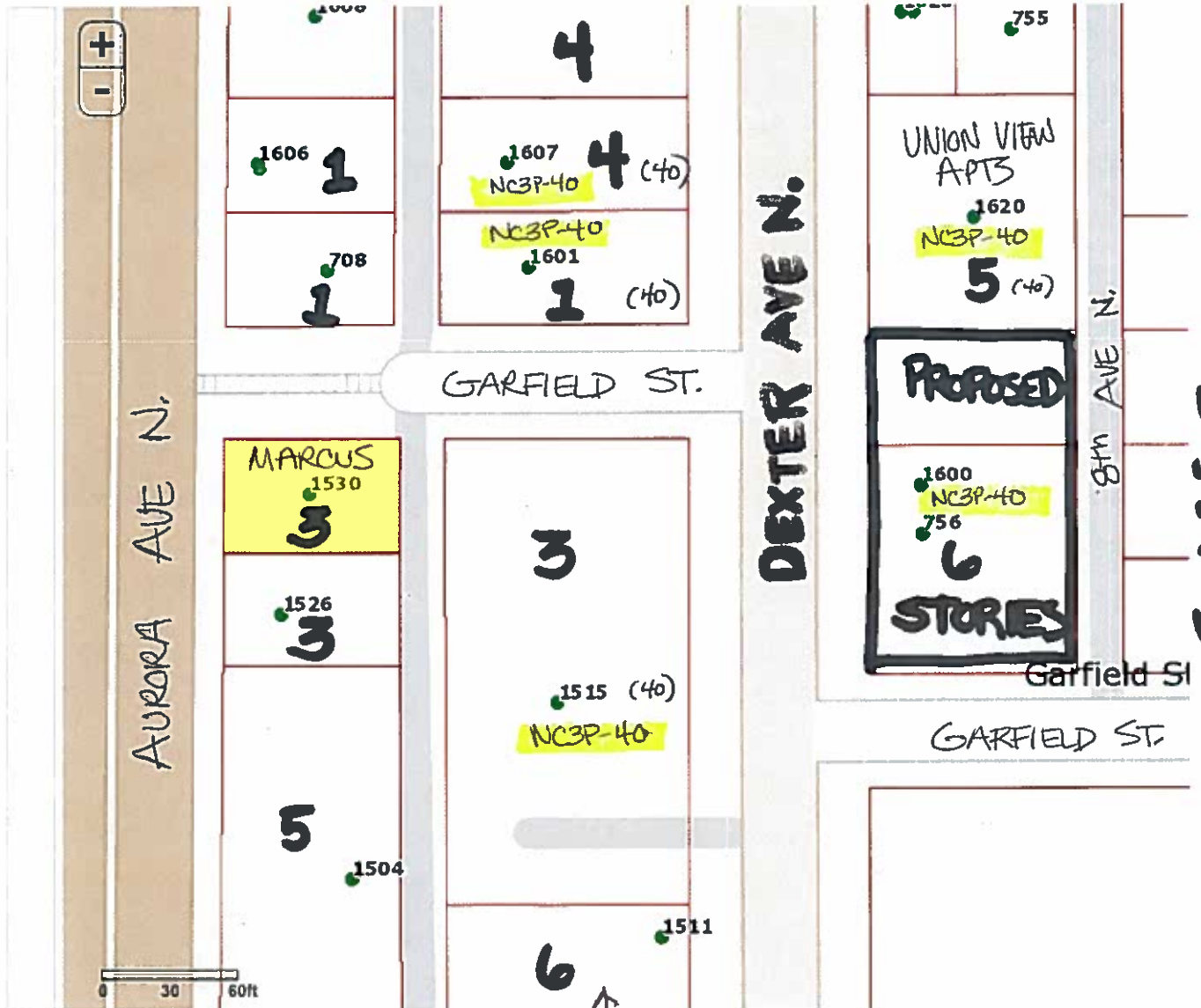
1-5 STORY BUILDINGS

AVERAGE:

4 STORIES OR LESS

Exhibit D

1530 Aurora Ave N by: Search



6 ↑
Subsidized
Affordable
Housing

PROPOSED
6
STORES

~
LAKE
UNION
~
↓
VIEWS

Address	Zoning	Number of Stories
1600 Dexter Ave N. – Subject Site	NC3P-40	3 (Seeking 6 stories)
1607 Dexter Ave N.	NC3-40	4
1620 Dexter Ave N.	NC3P-40	5
1515 Dexter Avenue N	NC3P-40	3
1601 Dexter Ave N	NC3P-40	1

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BEFORE THE SEATTLE CITY COUNCIL

<p>In the Matter of the Appeal of:</p> <p>Londi Lindell,</p> <p>Of the Hearing Examiner’s Recommendation.</p>	<p>CF 314358</p> <p>SDCI Reference: 3021980</p> <p>APPLICANT’S RESPONSE TO APPEAL AND OPPOSITION TO MOTION TO SUPPLEMENT THE RECORD</p>
---	---

I. FACTS

Brook V LLC (“Applicant”) proposes a contract rezone to NC3P-75 M1, self-limiting height to NC3P-65, in order to construct a six-story, 85-unit mixed use building with 4,000 s.f. of retail (“Project”). The Project, in compliance with Director’s Rule 14-2016, will comply with the affordable housing/MHA requirements contained in Chapter SMC 23.58C. Exhibit 28.

The Project site is located at 1600 Dexter Avenue North. CITE. It is located directly north of C1-65 zoned land, directly east of NC3-65 zoned land, and is half a block north of the South Lake Union Urban Center, which portion is zoned SM-SLU 100/95. Exhibit 2. A contract rezone to NC3P-65 from NC3P-40 was approved kitty-corner from the Project site for a Bellwether housing project. Exhibit 30, pp. 4-5 (see attached).

1 The Director recommended, with routine conditions, to approve the contract rezone, and
2 issued a Determination of Nonsignificance pursuant to the State Environmental Policy Act
3 (“SEPA”). Exhibit 16. The Appellant, Londi Lindell, filed a comment letter with the Seattle
4 Department of Construction and Inspections (“SDCI”) related to view impacts¹. Exhibit 15. No
5 SEPA appeal was filed. Hearing Examiner Recommendation, p. 1.

6
7 The Hearing Examiner held an open record public hearing on September 27, 2017. Id.
8 No members of the public attended or submitted evidence at the hearing. Id. The Appellant did
9 not attend the hearing or submit evidence for consideration before the Examiner. Id. SDCI
10 presented information supporting its recommendation to approve the contract rezone. The
11 Applicant presented information supporting its contract rezone application. Id. Specifically, the
12 Applicant presented information related to the relative surrounding height, bulk, and scale of
13 both existing conditions and of zoned conditions. Exhibit 30, pp. 4-7. The Applicant presented
14 detailed shadow studies comparing the proposed contract rezone with a no-rezone condition.
15 Exhibit 30, pp. 18-19. Finally, and most relevant to the current appeal, the Applicant presented
16 extensive view studies to show view impacts related to the Project. Exhibit 30 pp. 20-27.
17 Importantly, one of the view studies presented to the Hearing Examiner was a view study from
18 the Marcus Condominiums, the Appellant’s property. Exhibit 30, pp. 25-26. This view study
19 was developed using photos of the property from Zillow, and using the Project’s plans to place
20 the Project in the photo. Testimony of Jill Burdeen.²

21
22
23
24 Following a site visit, and a full consideration of the evidence in the record, including the
25 impact to views from the Marcus Condominiums, the Hearing Examiner issued a

26
27 ¹ / Though, it must be noted that the Appellant’s comment letter specifically states that it is to do with “SEPA
28 view impacts,” which are neither present nor relevant to this proceeding. Exhibit 15.

1 recommendation to approve the contract rezone, with a condition to self-limit the height of the
 2 building to 65 feet through the use of Property Use and Development Agreement (“PUDA”).
 3 Hearing Examiner Recommendation, p. 10. The Appellant filed a timely appeal of the Hearing
 4 Examiner’s recommendation. The appeal included a motion to supplement the record with hand-
 5 drawn view studies, and a motion for oral argument before the Hearing Examiner. The appeal
 6 raises several claims, each of which is unsupported by the evidence in the record and the
 7 applicable law. The Applicant respectfully requests the City Council: a) reject the motion to
 8 supplement the record; and b) deny the appeal and approve the contract rezone with the Hearing
 9 Examiner’s recommended conditions.
 10

11 **II. ARGUMENT**

12 **A. The City Council should reject the Appellant’s motion to supplement the record.**

13 A contract rezone is a Type IV decision. SMC 23.76.036.A. As a Type IV decision, the
 14 record is created before the Hearing Examiner in an open public hearing. SMC 23.76.052.F.
 15 The Hearing Examiner is required to accept evidence and comments related to the decision; the
 16 Hearing Examiner may also consider written comments received prior to the close of the hearing.
 17 SMC 23.76.052.G. The record is then forwarded to the City Council; Council action shall be
 18 based on the record established by the Examiner. SMC 23.76.054.E. Council may only
 19 supplement the record with new evidence or information
 20

21 if the Council determines that the new evidence or information was not available or could
 22 not reasonably have been produced at the time of the open record hearing before the
 23 Hearing Examiner.
 24

25 SMC 23.76.054.E.
 26

27 ² / Note that the pictures used for the Applicant’s view study are the same photos used by the Appellant in her
 28 “Exhibits.”

1 Here, the evidence sought to be added to the record clearly was available or could have
2 reasonably been produced at the time of the open record hearing. The Appellant used the same
3 photos used by the Applicant to create her “view study.” Exhibit 30, pp. 25-27. Clearly, because
4 the Appellant utilized the same pictures, the pictures were in existence at the time of the hearing
5 and could have been submitted by the Appellant. The information related to the zoning and
6 height of properties surrounding the Project is also clearly information that was in existence at
7 the time of the hearing. The fact that, for whatever reason, the Appellant did not attend the
8 hearing and did not submit the evidence at the hearing despite the opportunity to do so is not
9 relevant to the Council’s decision in the motion to supplement. Because this information was
10 available at the time of the hearing, the Council cannot grant the motion to supplement.
11

12
13 Finally, to allow evidence to be entered into the record in this manner would be
14 prejudicial to the Applicant. If the Appellant had submitted this evidence at the hearing as she
15 was able to do, the Examiner could have asked her questions about how she completed her view
16 study, and could have asked her questions related to her claims. The Applicant could have asked
17 similar questions or could have presented information to rebut Appellant’s claims. Because the
18 record has already been made, no such opportunities exist for the Council to verify the veracity
19 of information, and no opportunity exists for the applicant to submit new evidence to rebut the
20 claims.³ The policy of the rule disfavoring supplementation is clear—without context it is
21 difficult for a decisionmaker to review information in a vacuum. The motion must be rejected.
22

23
24 In short, Appellant has provided no evidence, explanation, or argument as to how her
25 motion meets the requirement of SMC 23.76.054.E. The evidence was clearly available at the
26

27
28 ³ / Thus, the policy of the code is clear—this could become an endless “additional evidence loop.”

1 time of the hearing and it was incumbent upon the Appellant to submit the evidence then.⁴ The
2 Council must deny the motion to supplement.

3 **B. The City Council must reject the appeal, and must approve the contract rezone with**
4 **conditions.**

5 **1. Standard of Review.**

6 The Council’s decision in a contract rezone shall be based on applicable law and
7 supported by substantial evidence in the record. SMC 23.76.056.A. It is the Appellant’s burden
8 to prove why the Hearing Examiner’s recommendation should be rejected or modified. *Id.*

9 Courts interpret the “substantial weight” requirement as mandating the clearly erroneous
10 standard of review. *Indian Trail Property Owner’s Ass’n. v. City of Spokane*, 76 Wn. App. 430,
11 431, 886 P.2d 209 (1994); *Brown v. Tacoma*, 30 Wn. App. 762, 764, 637 P.2d 1005 (1981).

12 Under the clearly erroneous standard, reviewing bodies do not substitute their judgment for that
13 of the agency but may invalidate the decision only when left with the definite and firm
14 conviction that a mistake has been committed. *Whatcom County Fire District No. 21 v.*
15 *Whatcom County*, 171 Wn.2d 421, 427, 256 P.3d 295 (2011), *citing Norway Hill Pres. and Prot.*
16 *Ass’n. v. King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976) (internal quotations
17 omitted).

18 An Appellant does not meet its burden to show a decision is clearly erroneous if the
19 evidence shows only that reasonable minds might differ with the decision. Mere complaints, or
20 claims without the production of affirmative evidence showing that a decision was erroneous, are
21

22
23
24
25
26
27 ⁴ / Many of Appellant’s claims relate to her contention that the Examiner “failed to consider” evidence related
28 to views. Appellant had the ability to submit this information for consideration, and had the ability to show up to the
hearing to advocate for her position. She did neither.

1 insufficient to satisfy an Appellant's burden. *Boehm v. City of Vancouver*, 111 Wn. App. 711,
2 47 P.3d 137, 140 (2002); *see also Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).

3 Because the City Council is considered an appellate body under SMC 23.76.065(A), its
4 determination is based "solely on the original record, it is not empowered to substitute its
5 judgment for that of the examiner, and it must sustain the examiner's findings of fact if they are
6 supported by substantial evidence." *PT Air Watchers v Dep't of Ecology*, 179 Wn2d 919, 319
7 P.3d 23, 27 (2014); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 801-2, 801 P.2d 985
8 (1990). Substantial evidence is considered evidence that is sufficient "to persuade a fair-minded,
9 rational person of the truth of a declared premise." *Alejandro v. Bull*, 159 Wn.2d 674, 681, 153
10 P.3d 864, 867 (2007) (citations omitted). Appellant fails to demonstrate that the Examiner's
11 findings are not supported by substantial evidence in the record. The Appellant's claims must be
12 denied, and the rezone approved.
13
14

15 2. Appellant misunderstands the contract rezone request.

16 The Appellant alleges that the contract rezone should be denied because the rezone from
17 NC3P-40 to NC3P-75 does not satisfy the locational criteria and area characteristics. Appellant
18 misunderstands the contract rezone request and the purpose of locational criteria and area
19 characteristics. The Applicant is not seeking to change the zone—indeed, the Property is already
20 zoned NC3P. Instead, the Applicant is seeking to change the height limit. There are not
21 different locational criteria and area characteristics for different height limits—see SMC
22 23.34.078 for the NC3 locational criteria. The Hearing Examiner rightly found that "the site and
23 its relation to adjacent zoning matches the NC3 zone function and locational criteria...so the
24 designation is appropriate." Conclusion 5. This conclusion is supported by substantial evidence
25 in the record; the Director's report outlines the function and locational criteria and how the site
26
27
28

1 meets the NC3P criteria. Exhibit 16, pp. 30-34. The Appellant fails to cite to any substantial
2 evidence in the record that would support her claims. The Appellant’s claim must be rejected.

3 **3. The rezone request meets SMC 23.34.008.E.1 (gradual transition).**

4 The Appellant alleges that the contract rezone does not meet SMC 23.34.008.E.1 related
5 to a gradual transition in height and intensity of zones. Appeal, p. 3. The Appellant alleges that
6 the surrounding NC3P-40 zone is the predominant zone and therefore a 65-foot height limit does
7 not create a gradual transition. Appellant alleges factual error related to the Examiner’s finding
8 related to gradual transition, stating essentially that the Examiner was misled into thinking that
9 the Property is surrounded entirely by 65-foot tall zoning.⁵ Appeal, p. 3. The Appellant’s
10 allegations are not supported by substantial evidence in the record and must be rejected.
11

12
13 First, the Appellant cites to no evidence in the record to support her claims. On this basis
14 alone, her claims must be rejected. Second, the Appellant either misunderstands or purposely
15 misstates the evidence upon which the Examiner’s conclusions are based. SMC 23.34.008.E.1
16 states:

17
18 The impact of more intensive zones on less intensive zones or industrial and commercial
19 zones on other zones shall be minimized by the use of transitions or buffers, if possible.
20 A gradual transition between zoning categories, including height limits, is preferred.

21 SMC 23.34.008.E.1. The Examiner specifically concluded: “There is some effective separation
22 between the proposed and adjacent and nearby properties provided by topographic changes,
23 adjacent streets to the west and the south, and an alley to the east.” Conclusion 8. The
24

25 ⁵ / The Appellant cites to claimed errors in the Director’s report to support her claim that the Examiner’s
26 conclusions are in error. There are two things wrong with this approach: 1) while the Examiner obviously took the
27 Director’s report into account, there was much more evidence in the record than simply the report, and 2) If the
28 Appellant had a problem with the Director’s report and recommendation which is issued well prior to the hearing,
and she received notice of the Director’s report, she had the opportunity to show up at the hearing and make her
comments known at that time. She did not do so.

1 Examiner's conclusion is supported by substantial evidence in the record. Indeed, the Property is
2 located directly north of a site zoned C2-65, directly east of sites zoned NC3-65, kitty-corner
3 from a site zoned NC3-65, and across the street from properties zoned NC3P-40. The only
4 directly adjacent condition of the Property with a 40-foot zone is with the property directly north
5 of the site. Exhibit 3. Substantial evidence also supports the Examiner's conclusion that
6 topography assists the gradual transitions. Exhibit 30, p. 4. Finally, the view studies completed
7 by the Applicant also show the appropriate gradual transitions in zoning height and intensity that
8 will occur with the contract rezone. Exhibit 30, pp 20-21 shows how the building's massing fits
9 with its neighbors along Dexter and to the east. Similarly, Exhibit 30 pp. 22-23 also shows the
10 gradual transition that will occur. Substantial evidence in the record supports the Examiner's
11 conclusion that the contract rezone meets SMC 23.34.008.E.1. The Appellant has failed to cite
12 to any substantial evidence in the record that would support her claim. It must be rejected.
13
14

15 **4. The contract rezone proposal complies with SMC 23.34.008.E.4 as it is**
16 **consistent with the existing built character of the area.**
17

18 Appellant claims that the rezone should be rejected because it is not located in an Urban
19 Center or Village, and SMC 23.34.008.E.4 does not permit zoning heights above 40 feet outside
20 Urban Centers or Villages. Appellant also claims that the contract rezone is not consistent with
21 the existing built character of the area. Appellant's claims are not supported by substantial
22 evidence in the record.
23

24 First, the South Lake Union Urban Center ends one block to the south of the site, at Galer
25 Street. Exhibit 3. Despite this, the predominate zoning heights surrounding the property are 65
26 feet; clearly the City when it zoned these properties believed that 65 feet was an appropriate zone
27 outside the Urban Center or Village. Second, the proposal is consistent with the existing built
28

1 character of the area. The Appellant has selectively chosen smaller buildings “as evidence” that
 2 the proposal does not fit with the existing character. Substantial evidence in the record refutes
 3 Appellant’s claims. The site is surrounded by 4 to 6 story buildings. The building to the south
 4 of the site is 6 stories. The building to the east of the site is 6 stories. The building to be built
 5 kitty-corner to the southwest is six stories. Exhibit 30, p. 4. Even the new building proposed in
 6 the NC3P-40 zoning across the street is 4 stories with stepping as it moves up the hill. Exhibit
 7 30, p. 5 (‘N’ Habit Dexter, located at 1701 Dexter Avenue North). See also Examiner’s Finding
 8 3. Appellant’s claims related to this criterion are not supported by substantial evidence in the
 9 record and must be rejected.
 10

11 **5. The Examiner properly considered view impacts; substantial evidence in**
 12 **the record supports his conclusions.**
 13

14 Appellant alleges that the Examiner failed to consider the likelihood of view blockage,
 15 including view blockage specifically of views from the Marcus Condominiums, which she owns.
 16 Appeal, pp. 4-5. Nothing could be further from the truth.
 17

18 SMC 23.34.009.B requires a rezone analysis related to a height limit to review the
 19 topography of the area and consider the likelihood of view blockage:

20 Topography of the area and its surroundings. Height limits shall enforce the natural
 21 topography of the area and its surroundings, and the likelihood of view blockage shall be
 22 considered.

23 SMC 23.34.009.B. Importantly, the criterion does NOT say that a rezone shall not be approved
 24 if any views are partially blocked.

25 The Examiner specifically addressed the substantial evidence in the record related to
 26 views and topography in Finding 18:
 27

1 The Applicant’s analysis found that due to the topographical features of the site, and the
2 predominant view being Lake Union to the east development under the proposed zoning
3 would not significantly impact views. No SEPA-protected views would be impacted by
the proposal.

4 Hearing Examiner Recommendation, p. 7. The Examiner based his conclusion and
5 recommendation on this substantial evidence, in Conclusion 20:

6 The proposed structure steps down the west to east with the topography of the property,
7 minimizing view blockage while providing a large roof deck that will allow residents of
8 the proposal views of Lake Union.

9 Hearing Examiner Recommendation, p. 7. Indeed, the substantial evidence in the record
10 supports the Examiner’s findings and conclusions. The Applicant completed no fewer than eight
11 separate view studies, including two from the Marcus Condominiums. Exhibit 30, pp. 25-26.
12 These view studies were presented to the Hearing Examiner at the hearing and were considered
13 in his decision. The view studies show that the Marcus Condominiums still enjoy a view from
14 the third floor of Lake Union even with the project, and from the top floor deck there is very
15 little view impact from the project on the Lake Union View. Id. ⁶

17 The Examiner’s recommendation is supported by substantial evidence in the record; the
18 Examiner properly considered the likelihood of view blockage and correctly determined that
19 views would not be significantly impacted. Indeed, the substantial evidence in the record shows
20 that the views from Marcus Condominiums will be minimally impacted by the proposal. The
21 Appellant’s claims related to views must be rejected.

22
23
24
25 ⁶⁶ / The Appellant has submitted her own “view studies” as evidence that her views will be blocked. The view
26 studies consist of sharpie drawing over the same view study pictures completed by the Applicant in its exhibit 30.
27 There is no information submitted with the Appellant’s “view studies” that tell us anything about her assumptions in
28 creating the studies—did she use a scale, has she completed a view study before, etc. As a result, the submittal of
this information without the ability to cross examine or rebut would be problematic for the Council to give the
evidence its proper weight, and is potentially very prejudicial to the Applicant.

6. **The Project is compatible with the height and scale of development in the surrounding area.**

Appellant alleges that the Project should not be approved because is it not compatible with the scale of surrounding existing development. The substantial evidence in the record shows that Appellant’s allegations cannot stand.

SMC 23.34.009.C states:

C. Height and Scale of the area

1. The height limits established by current zoning shall be given consideration.
2. In general, permitted height limits shall 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.

Appellant argues that because four buildings in the surrounding area are fewer than 6 stories⁷ that the rezone should not be approved. But this is not the standard. As stated above, the Examiner should give “consideration” to the current height limit. The Examiner did this by acknowledging the current height limit for the property and surrounding properties. Hearing Examiner Recommendation, p. 2, Finding 5. Then, the Examiner must determine whether a height limit is 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.2. Here, the Examiner outlined the scale of development surrounding the site (see Hearing Examiner Recommendation, Finding 3, p. 2). He also discussed a contract rezone approved kitty-corner from the site to NC3P-65 (Hearing Examiner Recommendation, Finding 8, p.2), and outlined the Citywide MHA rezone which will add an

⁷/ It should be noted that the City of Seattle’s zoning is not measured in stories, but is measured in feet; this is a consistent issue related to Appellant’s allegations—the number of stories do not matter, a building could be two stories but 65 feet tall.

1 additional 10 feet to all properties (Hearing Examiner Recommendation, Findings 9-10, p, 3).

2 Based on these findings of fact, the Hearing Examiner concluded:

3 The proposed development would be consistent with the predominant height and scale of
4 nearby newer development, which is representative of the area’s overall development
5 potential.

6 Hearing Examiner Recommendation, Conclusion 21, p. 8.

7 Indeed, the Examiner’s findings and conclusions are supported by substantial evidence in
8 the record. The predominant zoning designation in the area is 65-foot tall. There are several
9 buildings that are 65-foot tall in the area (see Exhibit 30, pp. 4-5). The newer developments are
10 what the Examiner focused on, because these newer buildings are more representative of the
11 area’s overall development potential. The Appellant’s statements are without support of the
12 substantial evidence in the record.

13
14 Finally, the Appellant argues that a 65-foot tall building should not be considered
15 relevant, because the rezone is to NC3P-75 M1 and “there is no Property Use and Development
16 Agreement (PUDA) approved by the City Council at this time...” Appeal, pp. 5-6. This
17 statement reflects a misunderstanding of the process and the proposal. Contract rezones are a
18 “contract” between the City and the Applicant where an Applicant may agree to self-imposed
19 restrictions (in this case a height restriction) in exchange for a rezone. See SMC 23.34.004. It
20 would not be proper procedurally for a PUDA to have been completed yet, as it is only the City
21 Council who can approve a rezone and require the execution of a PUDA. Again, the Appellant’s
22 claims are without support of the substantial evidence in the record or the code, and they must be
23 rejected.
24
25

26 **7. The Proposed Height is Compatible with Surrounding zoning.**

1 Appellant alleges that the proposed project height of 65 feet is not compatible with
2 surrounding zoning. This is not supported by the substantial evidence in the record.

3 As previously stated, the Project site is on the border between existing 40-foot zoning to
4 the east and the north, and 65-foot tall zoning to the east and to the south. In addition, a contract
5 rezone was approved to change the zoning of a parcel kitty-corner from the site from NC3P-40 to
6 NC3P-65, essentially the same request as the current rezone. Exhibit 30, p. 4. Thus, half of the
7 border of the project site borders 40-foot zoning, and half of it borders 65-foot zoning. Clearly
8 the 65-foot height limit is compatible with existing zoning.
9

10 Appellant also makes an argument that the site is in a “view corridor” to the west of the
11 rezone property because all of the buildings to the west are built to lower heights. There is no
12 evidence at all to support the idea of a view corridor; there are no SEPA-protected views
13 impacted by the Project, and there is no “view corridor” by which private views are magically
14 protected by zoning. This argument must be rejected.
15
16

17 **8. Appellant misunderstands the contract rezone standards.**

18 Throughout the appeal, Appellant argues that because (in her opinion) a rezone criterion
19 has not been met, the individual criterion alone is grounds for denial of the contract rezone. The
20 code explicitly states the opposite. See SMC 23.34.007 (emphasis added):
21

22 Rezone evaluation.

- 23 A. The provisions of this chapter apply to all rezones except correction of mapping
24 errors. In evaluating proposed rezones, the provisions of this chapter shall be
25 weighed and balanced together to determine which zone or height designation best
26 meets those provisions. In addition, the zone function statements, which describe the
27 intended function of each zone designation, shall be used to assess the likelihood that
28 the area proposed to be rezoned would function as intended.
- B. No single criterion or group of criteria shall be applied as an absolute requirement or
test of the appropriateness of a zone designation, nor is there a hierarchy or priority of

rezone considerations, unless a provision indicates the intent to constitute a requirement or sole criterion.

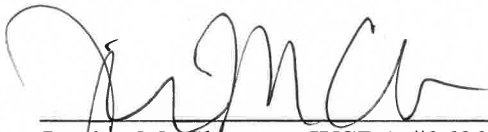
Thus, even if the contract rezone did not meet a specific criterion, a contract rezone can be approved by weighing and balancing several factors; no individual criterion is given priority. Appellant misunderstands the criteria outlined in SMC 23.34.008. Further, the Hearing Examiner correctly found that the Project met all the criteria. The Appellants unsupported claims must be dismissed.

III. CONCLUSION

The Hearing Examiner’s recommendation is supported by substantial evidence in the record. The Appellant has failed to support its allegations with clear and convincing evidence that an error has been made. As a result, the appeal must be rejected, the motion to supplement should be denied, and the contract rezone must be approved.

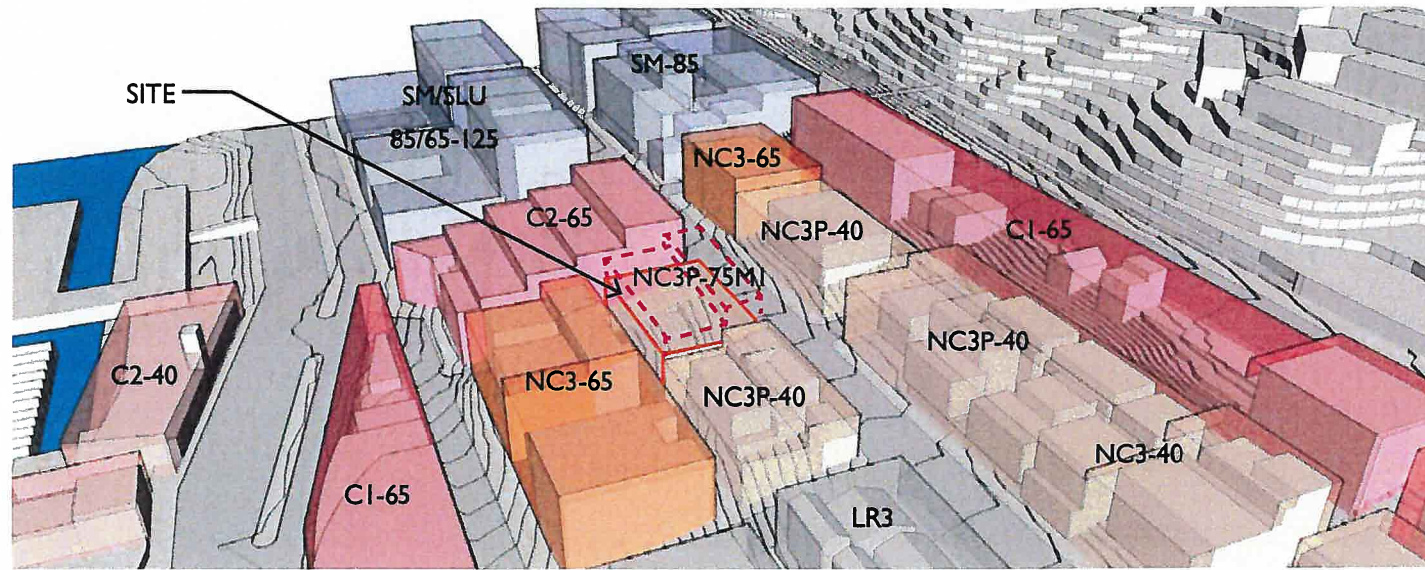
DATED this 27th day of November, 2017.

MCCULLOUGH HILL LEARY, P.S.

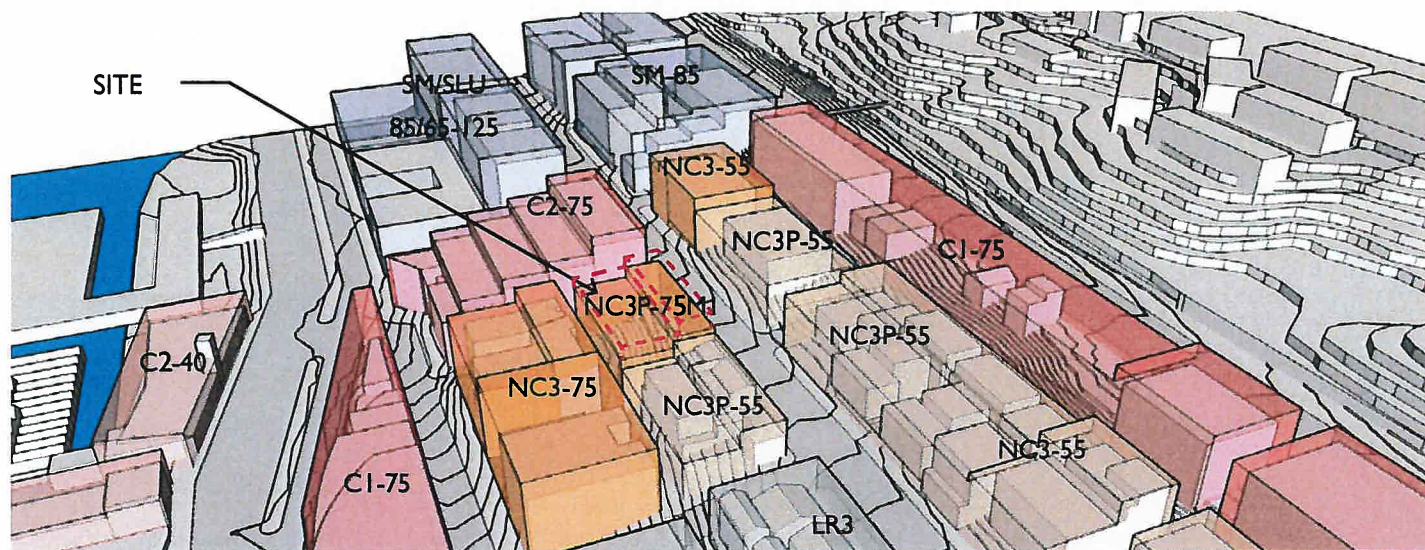
By: 

Jessica M. Clawson, WSBA #36901
Attorneys for Applicant

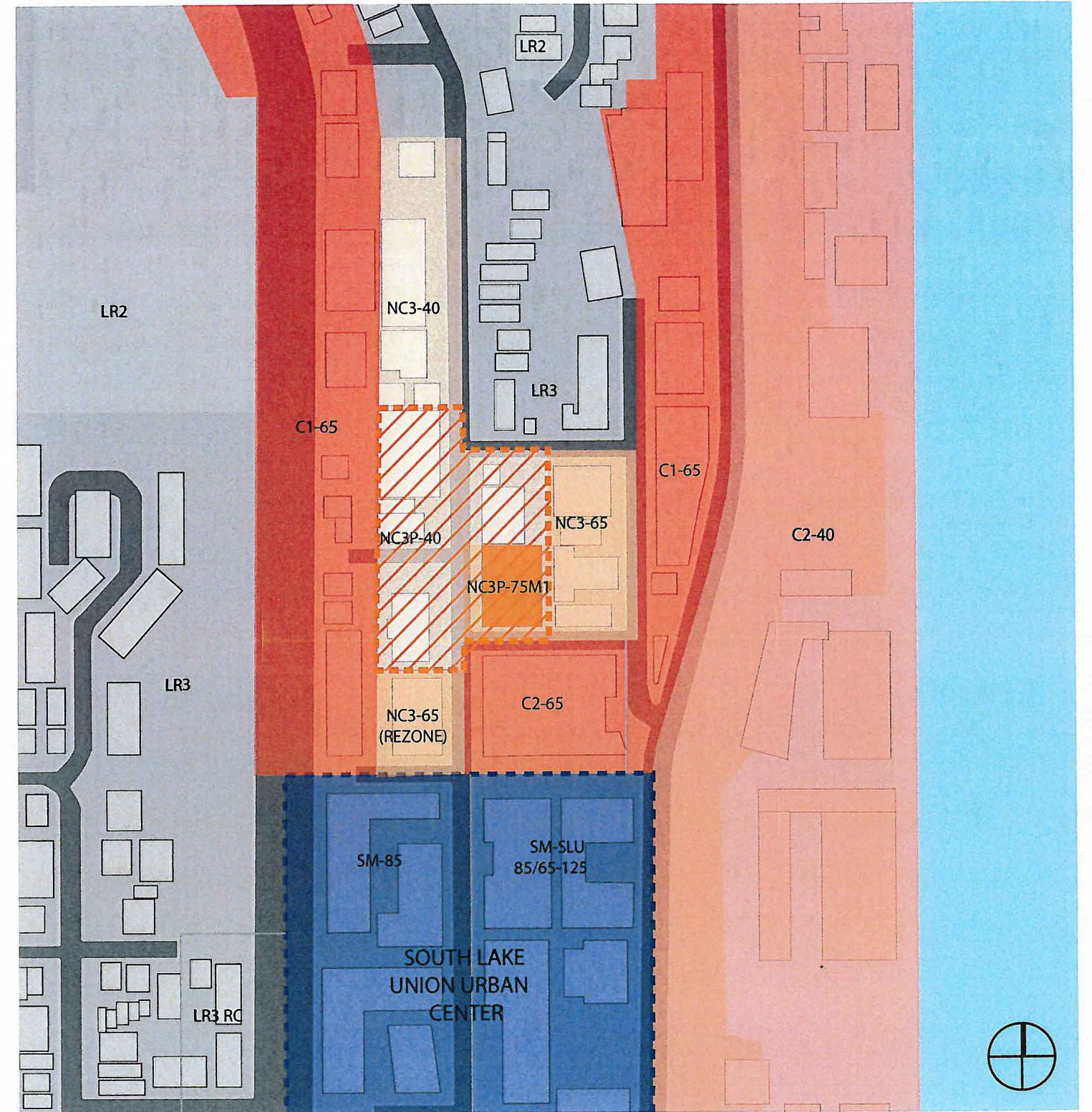
ZONING ANALYSIS



MASSING WITH CURRENT NC3P-40 ZONING



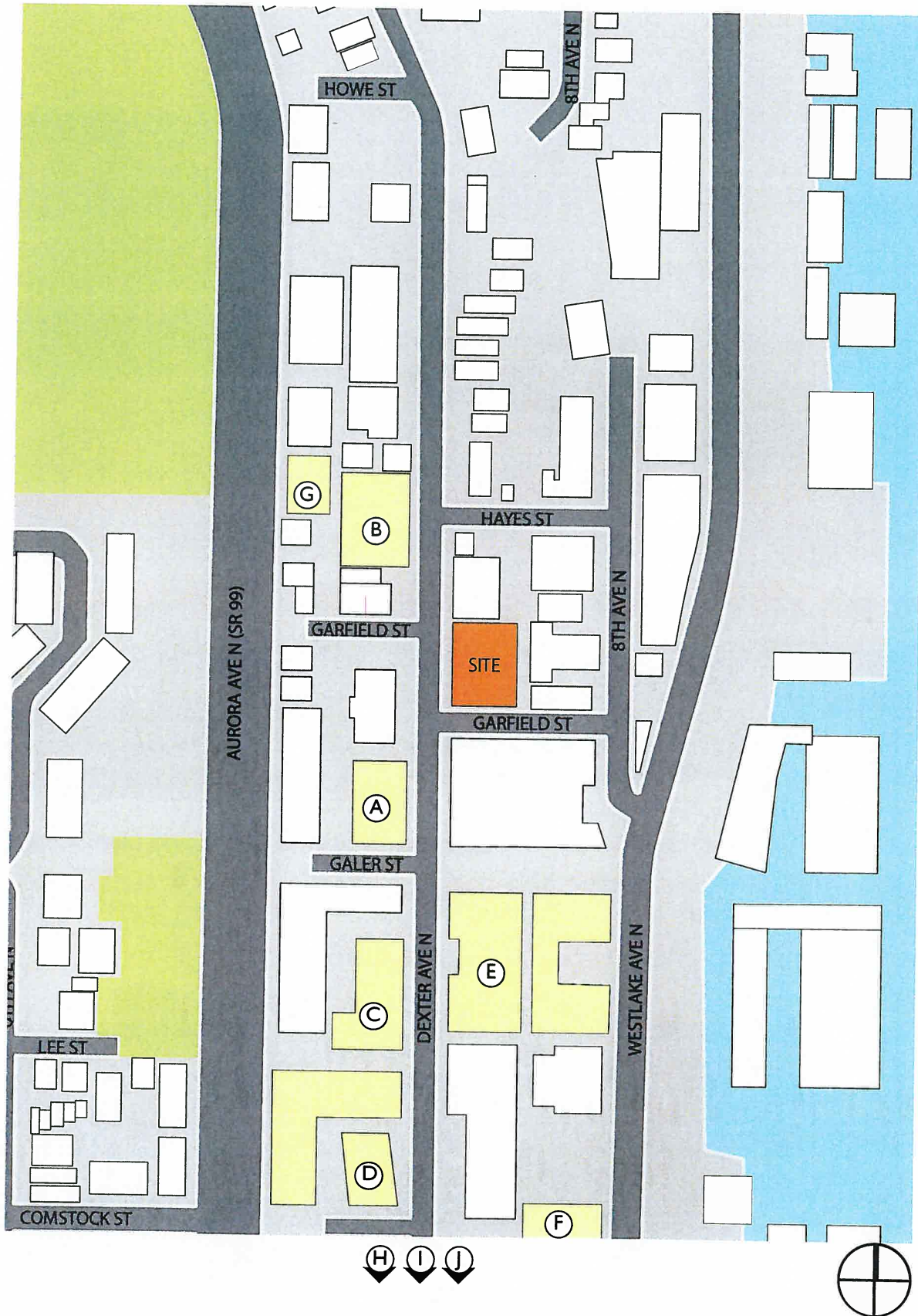
MASSING WITH PROPOSED MHA NC3P-75 MI ZONING



- | | | | |
|------------|-------------|----------------|----------------------------|
| LR2 | C2-40 | NC3-40/NC3P-40 | SM-85/SM-SLU 85/65-125 |
| LR3/LR3 RC | C1-65/C2-65 | NC3-65/NC3P-65 | PEDESTRIAN-DESIGNATED ZONE |

Zoning Map Key

NEIGHBORHOOD CONTEXT ANALYSIS



(A) 1511 Dexter Avenue N **MIXED USE**



(B) 'N' Habit Dexter 1701 Dexter Avenue N **MIXED USE**



(C) Shea Properties 1319 Dexter Avenue N **MIXED USE**



(D) 1405 Dexter Avenue N **MIXED USE**



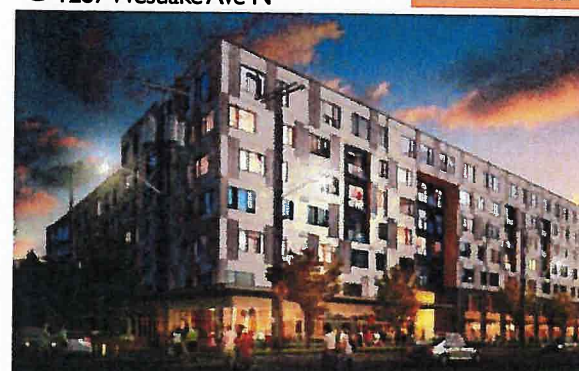
(E) Westlake Steps 1287 Westlake Ave N **MIXED USE**



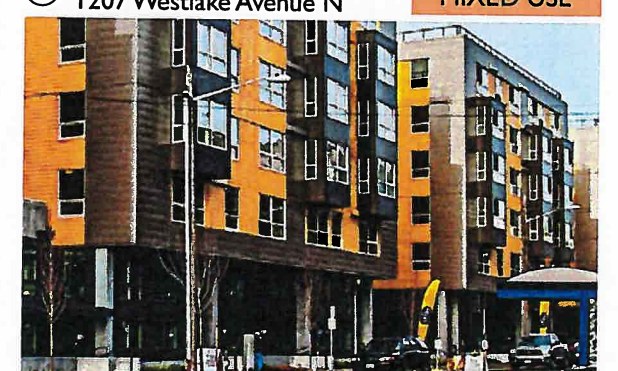
(F) Westlake Steps 1207 Westlake Avenue N **MIXED USE**



(G) 1622 Aurora Avenue N **MIXED USE**



(H) 810 Dexter Avenue N **MIXED USE**



(I) Union SLU 905 Dexter Avenue N **MIXED USE**



(J) Dexter Station **COMMERCIAL**