



Seattle City Council

Central Staff - Memorandum

Date: March 30, 2016

To: Councilmember Rob Johnson, Chair
Councilmembers Mike O'Brien, Lisa Herbold and Lorena González, Members
Planning, Land Use and Zoning (PLUZ) Committee

From: Lish Whitson, Council Central Staff

Subject: **Clerk File (CF) 314127:** Application of 2203 Eastlake Ave East LLC to rezone land at 2203 Eastlake Ave East from Neighborhood Commercial 1P-30 (NC 1P-30) and Low Rise 2 Residential Commercial (LR2 RC) to Neighborhood Commercial 2 Pedestrian 40 (NC2P-40) for demolition of an existing structure and construction of a new five story structure containing 45 residential units with below grade parking for 39 vehicles, and 3,006 square feet of commercial space at ground level, including 7,800 cubic yards of grading (Project 3016024, Type IV).

Council Bill (CB) 118654: AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 91 of the Official Land Use Map to rezone property located at 2203 and 2209 Eastlake Avenue E from Neighborhood Commercial 1 Pedestrian-30 (NC1P-30) and Lowrise 2 Residential Commercial (LR2 RC) to Neighborhood Commercial 2 Pedestrian-40 (NC2P-40), and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by Maria Barrientos, C.F. 314127, DPD Project 3016024)

On April 5, 2016, the PLUZ Committee will discuss and possibly vote on the proposed contract rezone of property located at 2203 Eastlake Avenue E. The Committee previously heard oral argument and discussed the proposal at its March 15 meeting.

Overview

Maria Barrientos has proposed a contract rezone of a 12,300 square foot site located at 2203 Eastlake Avenue East from Neighborhood Commercial 1 30 with a Pedestrian designation (NC1P-30) and Lowrise 2 Residential Commercial (LR2 RC) to Neighborhood Commercial 2 40 with a Pedestrian designation (NC2P-40). The site is located in the Eastlake Residential Urban Village. The two parcels that comprise the rezone area occupy the northwest corner of Eastlake Avenue E and E Boston Street. A map of the rezone area is attached to this memorandum.

Development Proposal

The rezone proposal, which identifies this matter as a contract rezone, includes specific development plans for the site. The plans call for the construction of a four to five story, 44-foot tall, 45-unit mixed-use residential building containing 3,423 square feet of commercial space at ground level and below-grade parking for 39 vehicles. The project would include nine affordable units under the Multifamily Tax Exemption (MFTE) program. The building would be 44 feet tall. Entry to the garage would be from the alley that runs west of the site. The building would be set back 2.5 feet from East Boston Street and would have a 700 square foot residential entry plaza at the corner of Eastlake and Boston. Retail entries would be along Eastlake Avenue.

Type of Action

Because the rezone is site specific, the Seattle Municipal Code categorizes it as quasi-judicial. Quasi-judicial rezones are permitted pursuant to rezone criteria contained in [Seattle Municipal Code Section 23.34](#). Those criteria and the City's policies do not prohibit rezones of sites where legislative rezone determinations have been previously made.

Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine, which prohibits ex-parte communication. The Council must base decisions on quasi-judicial rezones on the record established by the Hearing Examiner.

The Record

The entire Hearing Examiner's record is kept in my office and available for review at the Councilmembers' convenience. The following selected documents and exhibits form the record and are attached to the April 5 PLUZ Committee agenda along with this memorandum.

1. Department of Planning and Development Analysis and Recommendation
2. Written public comments submitted to DPD or the Hearing Examiner
3. Minutes from the Hearing Examiner's hearing
4. Corrected Findings and Recommendation of the Hearing Examiner for the City of Seattle
5. Appeal of Mid-Eastlake Neighbors, et al. of the Hearing Examiner's recommendation
6. Maria Barrientos' response to Mid-Eastlake Neighbors' appeal
7. Reply of Mid-Eastlake Neighbors, et al. to Maria Barrientos' response

Timeline

The Department of Planning and Development (DPD) analyzed the application, conducted environmental review under the State Environmental Policy Act (SEPA), issued a SEPA determination of non-significance with conditions, and recommended approval of the rezone on September 10, 2015.

The Seattle Hearing Examiner held a public hearing on the Director's Recommendation and a related appeal of the Director's decision to approve design review for the proposed project and on January 11, 2016, published a corrected recommendation to approve the rezone with conditions.

On Monday, January 25, 2016, Mid-Eastlake Neighbors and 13 individuals together filed a single appeal of the Hearing Examiner's recommendation. The appeal requests that the rezone be denied. The matter is now before the Planning, Land Use and Zoning (PLUZ) Committee. On February 12, 2016, Maria Barrientos responded to the Mid-Eastlake Neighbors' appeal. On February 19, 2016, Mid-Eastlake neighbors replied to Maria Barrientos' response.

On March 15, 2016, the PLUZ Committee had its initial briefing on this matter, and heard oral argument from the appellants and the respondent.

On April 5, 2016, the PLUZ Committee will further discuss and may vote on the rezone application.

According to the SMC, in the case of an appeal, the Council must issue its decision within 120 days of receiving the Hearing Examiner's recommendation, meaning the Council must act by May 10, 2016.

DPD and Hearing Examiner Recommendations

Both DPD and the Hearing Examiner recommended approval of the proposed rezone subject to conditions, including the execution of a Property Use and Development Agreement (PUDA) that would require the proposed development project to be in substantial conformance with the approved plans for Master Use Permit 3016024. The Design Review and SEPA conditions included in the DPD Director's MUP decision are listed on page 50 of DPD's report, and on page 13 of the Hearing Examiner's Corrected Findings and Recommendation.

The Hearing Examiner's Corrected Findings and Recommendation, dated January 11, 2016, drew the following conclusions based on testimony at the open record hearing, submitted exhibits and analysis:

Standard of Analysis

SMC 23.34.007 provides that the applicable sections of SMC Chapter 23.34 are to be weighed and balanced together to determine the most appropriate zone and height designation... "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... "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.

Match between Zone Criteria and Area Characteristics

The rezone area does not function well as an LR2 or LR3 zone. The area meets the functional criteria of the NC1 zone and two out of five locational criteria for the NC1 zone. It meets all threshold criteria for the designation of commercial

zones and meets the functional criteria for the NC2 zone and all but one of the locational criteria for the NC2 zone. Instead of having limited or moderate transit service, it has frequent transit service.

Neighborhood Plan/Precedential Effect

The proposed rezone is generally consistent with the applicable portions of the Neighborhood Plan. It would reflect the neighborhoods scale and would bring new retail and service-oriented businesses to the area, and would provide both affordable and market rate housing. The proposal could serve as a precedent for future rezones to spur the redevelopment of the underdeveloped property located within the same block and on the other corners of the intersection of Eastlake Avenue East and East Boston Street.

Zoning Principles

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. The pattern within the Eastlake neighborhood generally consists of Neighborhood Commercial and Multifamily Residential/Commercial zoning along Eastlake with lowrise multifamily to the east and west and single family zoning farther east and west. The proposed rezone to NC2P-40 would transition to NC1P-30 upslope and across Eastlake Avenue East, as well as across East Boston Street to the south. There would be no separation between the proposed rezone and the LR2 RC zoning to the north, which contains a surface parking lot and motel. To the west, a 20-foot wide alley would separate the proposed zone from the adjacent LR3 zoning.

Impact Evaluation

The proposed rezone would positively impact the housing supply, as it would add 45 new residential units, including family-sized units and nine low-income units. 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 of DPD has identified conditions to mitigate impacts that are not otherwise adequately addressed through existing regulations. Height, bulk and scale impacts, including shadow impacts, were reviewed and addressed through the design review process. Some private views of Lake Union would be blocked by the proposal or by development under existing zoning, but as a result of the design review process, public views of the lake from East Boston Street would be enhanced.

Height Limits

The proposed rezone would allow an additional 10 feet in zoned height. In general, permitted heights 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.

Height limits under current zoning in the area range from 30 feet to 40 feet, with some additional height allowed in NC zones for rooftop features and provision of 13-foot floor-to-floor heights for nonresidential uses at street level. The 40-foot height limit requested as part of the rezone would be consistent with the newer development in the area, which is representative of the area's overall development potential. The requested height limit of 40 feet would be compatible with the actual and zoned heights in the surrounding area.

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

Issues on Appeal

The Council's rules on quasi-judicial rezone applications allow appeals of the Hearing Examiner recommendation. The burden of proof lies with the appellants to show that the Hearing Examiner's recommendation was erroneous. Mid-Eastlake Neighbors, and thirteen neighbors of the project individually, appealed the Hearing Examiner's recommendation to approve the rezone with conditions. The appellants presented six objections to the Hearing Examiner's recommendation:

1. The rezoning sought by Barrientos LLC was specifically rejected by the City Council acting in its legislative capacity based on neighborhood input.
2. The rezoning sought by Barrientos LLC is an undisguised effort to accomplish an area wide rezone, a legislative act involving much more public involvement, by shortcutting the process with an inappropriate contract rezone.
3. The rezoning sought is portrayed as necessary to meet Eastlake's 2005-2024 growth targets, but Eastlake has already met more than double those targets and, if permitted projects are included, Eastlake has met more than triple those targets.
4. The most appropriate zoning is the way the property is currently zoned at a maximum height of 30 feet.
5. There is NO substantial public benefit.
6. Numerous errors made by the Hearing Examiner.

The appellants' complete appeal is attached to the agenda for the April 5 PLUZ Committee meeting.

The applicant, Maria Barrientos, has provided a response to these six objections, which is also attached to the agenda for the April 5 PLUZ Committee meeting. Her response states:

1. Conversations from the 1980s do not trump the City's codified contract rezone approval criteria. Contract rezones are permitted under the Seattle Municipal Code.
2. The proposal is for a site-specific rezone, not an area-wide rezone.
3. The code does not cap growth in urban villages.

4. Unchallenged findings and conclusions support the Hearing Examiner's recommendation that the NC2P-40 zone is the most appropriate zone for the property.
5. The proposal provides myriad public benefits.
6. The three contested findings provide no basis for overturning the Hearing Examiner's recommendation.

The appellants replied to Barrientos' response. Their reply is attached to the agenda for the meeting.

Clerk File 314127 and Council Bill 118654

In the event the PLUZ Committee would like to take action on the proposed rezone at its April 5 meeting, the following documents have been prepared for Committee members' review: draft Council Findings, Conclusions and Decision for CF 314127, a draft PUDA, and CB 118654.

Clerk File 314127 (Proposed Council Findings, Conclusion and Decision)

Clerk File 314127 contains the content of the record established by the Hearing Examiner. If the Committee decides to approve the rezone, a statement of Council Findings, Conclusion and Decision would be added to the Clerk File. The Council Findings document would adopt the Hearing Examiner's Findings and Conclusions with amendments discussed below, and indicate a Decision to adopt the proposed rezone. A copy of the draft Findings, Conclusions and Decision (labeled "draft") is attached to the April 5 PLUZ Committee agenda.

The draft Council Findings, Conclusion and Decision for the Clerk File would reject the appeal and adopt the Hearing Examiner's Recommendation with two corrections based on the record and appeals. Three of the Hearing Examiner's findings were the subject of appeal. Two of those findings, #6 and #13 are not supported by substantial evidence, and the respondent did not challenge the appellant's arguments. The draft Findings, Conclusions and Decision for CF 314127 include amendments to correct these findings as follows:

Finding 6 would be amended to clarify the arterial status of East Boston Street, as follows:

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

Finding 13 would be amended to clarify building setbacks at the corner of Eastlake and Boston, as follows:

13. The Applicant met with neighborhood groups, who expressed a desire for the dynamic of a public gathering place in conjunction with the proposal, and the proposal evolved during the design review process. The structure will be eroded at the corner of Eastlake Avenue East and East Boston Street to provide for a courtyard corner plaza that also encompasses the walkway to the building entry. See Exhibit R31. The structure will be set back ~~75 feet from~~ 30 feet west of Eastlake Avenue East, 60 feet from and 20 feet north of East Boston Street at the corner of Eastlake Avenue East and East Boston Street., ~~and 20 feet from the~~ The 20-foot wide alley to the west will provide access from East Boston Street and East Lynn Street to the underground parking.

CB 118654

CB 118654 would amend the Official Land Use Map to reflect the proposed change in zone designation at 2203 and 2209 Eastlake Avenue East from NC1-30 and LR2 RC to NC2-40. It would also accept a PUDA that would place conditions on the rezone. A draft PUDA is included with the bill. The rezone conditions included in the PUDA are copied below. They were adapted from DPD's and the Hearing Examiner's reports. If the Committee recommends approval of the rezone, Staff will work with the applicant to execute the PUDA and add it to the bill prior to Council action.

Proposed Conditions

Future development of the Rezone Site is restricted to a project that complies with Master Use Permit # 3016024, once the Seattle Department of Construction and Inspections (SDCI) issues that Master Use Permit. Prior to issuing the Master Use Permit, SDCI must confirm that the drawings substantially comply with the conditions established during the design review process, including the structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage, and site lighting.

Future development of the Rezone Site must conform to the conditions in the Hearing Examiner's recommendation, dated January 11, 2016:

- Prior to the Issuance of a Demolition, Grading, or Building Permit the applicant shall provide a copy of a Construction Haul Route, approved by Seattle Department of Transportation to SDCI; and
- A Construction Parking Plan, approved by the Land Use Planner, is required. The Plan shall demonstrate the location of the site, the peak number of construction workers on site during the construction, the location of nearby parking lots that are identified for potential pay parking for construction workers, the number of stalls per parking lot identified, and a plan to reduce the number of construction workers to the site.

Next Steps

A Committee recommendation on April 5 would enable a Full Council vote on both CB 118654 and CF 314127 on April 11. If the Committee does not take action on the rezone on April 5, its next opportunity to discuss the matter will be on April 19.

Attachment 1: Rezone Area

