

**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

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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>
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E-mail & U.S. Mail

ENVIRONMENTAL REVIEW SECTION
DEPARTMENT OF ECOLOGY
PO BOX 47703
OLYMPIA WA 98504-7703
separegister@ecy.wa.gov

GARY KRIEDT
KING COUNTY METRO
201 S JACKSON ST MS KSC-TR-0431
SEATTLE WA 98104-3856
Gary.Kriedt@kingcounty.gov

MR RAMIN PAZOOKI
WSDOT NORTHWEST REGION
15700 DAYTON AVE N
SEATTLE WA 98133
Ramin.pazooki@wsdot.wa.gov

PUGET SOUND CLEAN AIR AGENCY
1904 3RD AVE STE 105
SEATTLE WA 98101-3317
SEPA@pscleanair.org

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

- U.S. First Class Mail, postage prepaid
- Inter-office Mail
- E-mail
- Fax
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Dated: October 20, 2017



Alayna Johnson
Legal Assistant