

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

In the Matter of the Application of

CF 314325

MARTIN LIEBOWITZ

Department Reference:
3020405

for a contract rezone for property located
at 1106 34th Avenue

Introduction

Martin Liebowitz, applied for a rezone of property located at 1106 34th Avenue from Lowrise Two ("LR2") to Neighborhood Commercial One with a 30 foot height limit ("NC1-30"). 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 State Environmental Policy Act ("SEPA") Determination of Non-significance, which was not appealed.

A hearing on the rezone application was held before the Hearing Examiner ("Examiner") on July 10, 2017. The Applicant Martin Leibowitz ("Applicant"), represented himself, and the Director was represented by Colin R. Vasquez, Senior Land Use Planner. The Examiner visited the site on July 27, 2017. Following the submission of additional comments by the parties in response to questions from the Examiner, the record closed on July 31, 2017.

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

Findings of Fact

Site and Vicinity

1. The subject site is located at the northeast corner of the intersection of 34th Avenue and East Spring Street. The site contains 2 parcels with 2 existing residential buildings. The parcels that comprise the area addressed by the rezone proposal collectively total 10,917 square feet. The site is bounded on the south by East Spring Street, to the west by 34th Avenue, and to the east by an unimproved alley. The neighborhood generally includes multi-family housing and commercial service. Thirty-Fourth Avenue is characterized by several multi-story, mixed use structures and one-story commercial services. Most of the neighborhood buildings are between one and two-stories high with a few three and four-story structures. Services within walking distance of the site include grocery stores, restaurants, retail, and parks including Madrona Park approximately five blocks to the east on the shores of Lake Washington. Martin Luther King Jr. Way is located six blocks to the west of the site. Under current development standards, access to the site will be from the alley

on the east side of the property. The site slopes down approximately 4 feet from west to east along East Spruce Street.

2. The majority of the subject site is zoned Lowrise Two ("LR2"), but the northern part of the north parcel is zoned Neighborhood Commercial One with a 30 foot height limit ("NC1-30"), and both parcels are developed with single family homes. To the north of the site is a one story commercial building at 1112 34th Avenue in an area zoned NC1-30. Across 34th Avenue to the west, properties are zoned NC1-30, and are developed for residential use including an apartment structure and single-family homes. Properties to the east are zoned Single Family 5000 ("SF5000") and are developed with residential homes. Lots to the south are zoned LR2. Across East Spring Street to the southwest is the Madrona Playfield with various recreation and play facilities, directly to the south are multi-story townhouses, and to the southeast is the playground for the nearby St. Therese School. Recent new developments have trended away from small residential development, towards small commercial and multi-unit residential dwellings.
3. Thirty Fourth Avenue is designated a collector arterial. Transit improvements to increase transit speed and reliability have been implemented since the most recent zoning change for the area in 2011.

Zoning History and Potential Zoning Changes

4. On January 24, 1964, the property was zoned Multiple Low Density Zone ("RM"), and this was changed to Lowrise Two ("L2") in a rezone of the property on June 9, 1986. The most recent zoning change to the site occurred in 2011, when the zoning changed from L2 to LR2 for this site and similarly zoned sites throughout the City.
5. The Director reports that there are no City initiated zoning changes proposed for the neighborhood, or sites surrounding the subject property.

Neighborhood Plan

6. There is no Council adopted neighborhood plan for this site.

Proposal

7. The proposed rezone does not include a specific development.
8. The Applicant seeks to rezone the site from LR2 to NC1-30 with a property use and development agreement ("PUDA"). The terms of the PUDA are not disclosed in the record before the Examiner.
9. The current height limit for the site is 30 feet. The proposed rezone would not increase the building height that could be achieved under current zoning.

Public Comment

10. Written comments were received during the comment period. Comments on the proposal raised concerns regarding the amount of undeveloped commercial property available, existing inadequacy of on street parking, mass of potential larger buildings in relation to adjacent residential buildings, additional commercial uses in a residential area, and traffic. Additional comments favored the addition of new commercial space. *See Exhibit 2.*
11. Neighbors Leila Kirske and Jim Mattson testified at the hearing expressing their concerns regarding the proposal related to potential traffic, parking, massing, and development impacts, and the lack of an actual project proposal associated with the rezone. The Examiner also received one written comment at the hearing that expressed concerns related to development impacts, and proposed use of the alley to the east of the site for access to the proposal. Exhibit 3.

Director's Review

12. The Director analyzed the proposal's potential long-term and short-term environmental impacts, and issued a Determination of Non-significance.
13. The Director's report, Exhibit 2, analyzes the proposed contract rezone and recommends that it be approved with one condition.

Applicable Law

14. 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.
15. 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 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.

Effect On Zoned Capacity

3. The rezone parcels are not located within an urban center or urban village; therefore, this criterion does not apply.

Match Between Zone Criteria and Area Characteristics

4. 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 subject property is part of a blockfront that is zoned NC1-30. The northern part of the north parcel is already zoned NC1-30. Expanding this commercial zoning to the south would support the ability of this blockfront to function as a small shopping area for the adjacent residential neighborhood. The proposed rezone would be consistent with the adjacent zoning to the north, and across 34th Avenue to the west. Currently, the site and its relation to adjacent zoning matches the NC1 zone function and locational criteria, found in SMC 23.34.074,¹ so the designation is appropriate. For example, 34th Avenue includes a variety of small neighborhood-serving businesses, is characterized by continuous storefronts built to the front lot line, and is a collector arterial. In addition, the site is outside of urban centers and urban villages, has small parcel sizes, and has only the alley to the east to serve as a physical edge to buffer the residential area.

Precedential Effect

5. There do not seem to be properties in the vicinity for which this rezone will set a precedent. The rezone fits a pattern of NC1-30 zoning established on both sides of 34th Avenue for two blocks between East Spring Street and East Pike Street. This site is located at the edge of that area. Past that edge are parcels developed with established residential neighborhoods, parks and institutional uses such as schools that do not fit the criteria for NC1-30 zoning.

¹ 23.34.074 - Neighborhood Commercial 1 (NC1) zones, function and locational criteria.

A. Function. To support or encourage a small shopping area that provides primarily convenience retail sales and services to the adjoining residential neighborhood, where the following characteristics can be achieved:

1. A variety of small neighborhood-serving businesses;
2. Continuous storefronts built to the front lot line;
3. An atmosphere attractive to pedestrians;
4. Shoppers walk from store to store.

B. Locational Criteria. A Neighborhood Commercial 1 zone designation is most appropriate on land that is generally characterized by the following conditions:

1. Outside of urban centers and urban villages, or within urban centers or urban villages where isolated or peripheral to the primary business district and adjacent to low-density residential areas;
2. Located on streets with limited capacity, such as collector arterials;
3. No physical edges to buffer the residential areas;
4. Small parcel sizes;
5. Limited transit service.

Neighborhood Plan

6. As indicated above, there is no adopted or amended neighborhood plan established by the City Council for this site, therefore this criterion does not apply.

Zoning Principles

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 residentially zoned properties provided by adjacent streets to the west and south. In addition, an alley separates the site from residential structures to the east.
9. The proposed rezone would continue an existing pattern by extending NC1-30 zoning south along 34th Avenue where commercially zoned properties face commercially zoned properties across this street, and for commercially zoned properties to transition to properties zoned SF 5000 to the east across the alley.

Impact Evaluation

10. If the property is redeveloped for commercial use only, then the current two residential structures will be lost to the housing supply. If the property is redeveloped for mixed commercial and residential uses, the proposal has the potential to increase housing supply. The proposed rezone will positively impact the affordable housing supply, as the PUDA will ensure compliance with SMC 23.58B and 23.58C.
11. 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, school capacity, public park capacity, energy availability, street capacity, transit service and parking capacity were shown to be sufficient to serve the potential commercial and residential uses that would be allowed by the rezone. The Director has evaluated impacts on public services and service capacities, as well as noise, air, water, flora and fauna, glare, odor, shadows, energy, and other environmental impacts, pursuant to SEPA, and has identified conditions to mitigate impacts that are not otherwise adequately addressed through existing regulations.
12. 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

13. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. The immediate neighborhood has witnessed an increase in the number of office, retail and residential dwelling projects being permitted. In general, several

new buildings have been built along 34th Avenue in the last ten years and increased density is a trend that is expected to continue. Area development patterns continue to change from small residential development, towards small commercial and multi-unit residential dwellings. In addition, transit improvements have been implemented since the most recent zoning change for the area in 2011.

Overlay Districts/Critical Areas

14. The subject property is not within an overlay district or critical area; therefore, these criteria do not apply.
15. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC1-30 with a PUDA.

Compliance with Mandatory Housing Affordability

The Applicant has challenged the Council's authority to condition the proposal pursuant to SMC 23.58.B and 23.58.C. The Council's authority is clearly provided in the Code:

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 subsections 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.

SMC 23.34.004.B. SMC 23.58B.015 states that "This Chapter 23.58B contains provisions that apply where the provisions of the zone refer to this Chapter 23.58B, or through the terms of a contract rezone according to Section 23.34.004." SMC 23.58C.015 provides that "This Chapter 23.58C contains requirements that apply only where provisions of the zone refer to this Chapter 23.58C, or through the terms of a contract rezone according to Section 23.34.004."

Recommendation

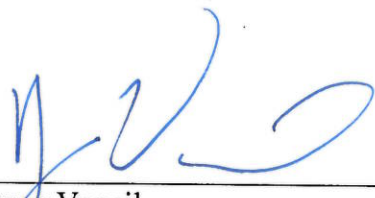
The Examiner recommends that the City Council **APPROVE** the requested rezone subject to a PUDA that incorporates the following condition recommended by the Director:

Prior to Issuance of a Master Use Permit

Development of the rezoned property shall be subject to the requirements of SMC 23.58.B. and/or 23.58.C. The rezoned property shall be subject to the provisions of SMC 23.47A.017 that apply to

NC zones with a mandatory housing affordability suffix. The PUDA shall specify the payment and performance calculation amounts for purposes of applying SMC 23.58.C.

Entered this 5th day of September, 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 Corrected Findings and Recommendation to each person listed below, or on the attached mailing list, in the matter of Martin Liebowitz Rezone Application. Council File: CF 314325 in the manner indicated.

Party	Method of Service
Lish Whitson Lish.whitson@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

Dated: September 5, 2017



Alayna Johnson
Legal Assistant