



# Seattle City Council

## Central Staff - Memorandum

**Date:** April 13, 2016

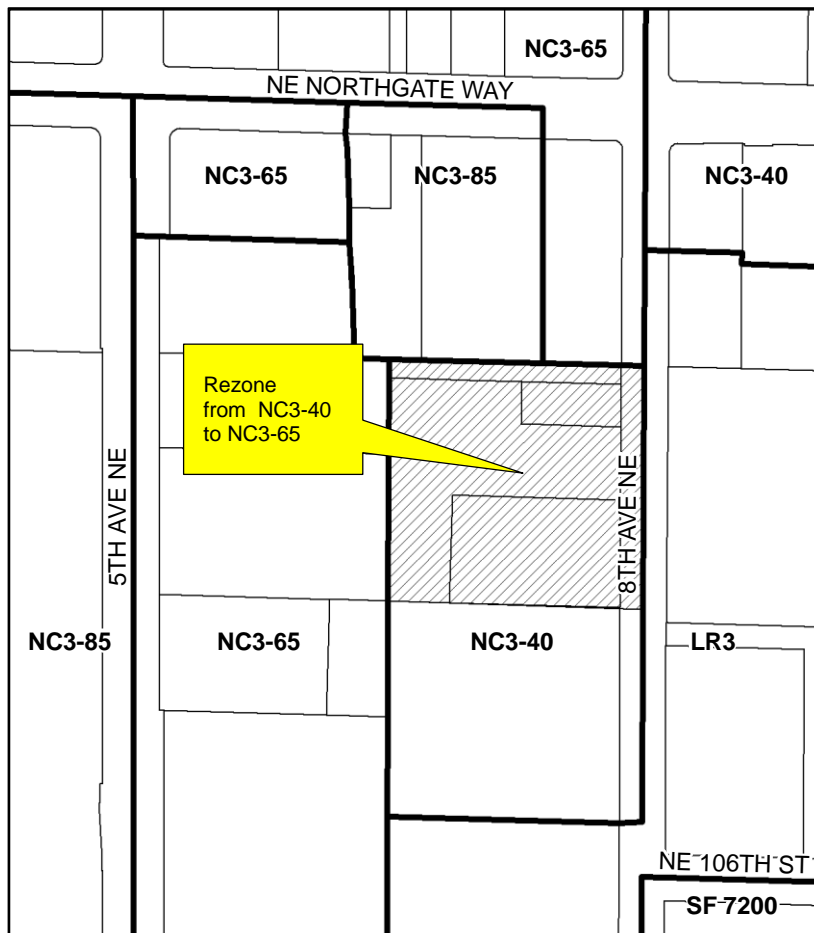
**To:** Planning, Land Use and Zoning Committee

**From:** Eric McConaghy, Council Central Staff

**Subject:** Clerk File (CF) 314287: Application of Wallace Properties to rezone land at 10711 8th Ave NE a 95,027 square feet of portion of land from Neighborhood Commercial 3-40 (NC3-40) to NC3-65 (Project No. 3018442, Type IV).

### I. Overview

Kevin Cleary of Baylis Architects proposes a rezone on a site addressed as 10711 8<sup>th</sup> Avenue NE. The rezone site (map below) consists of several tax parcels under two separate ownerships, Goodman Real Estate aka GRE and Wallace Properties, and totals approximately 95,027 square feet of land, about 2.2 acres.



The site is currently zoned Neighborhood Commercial 3 with a 40 foot height limit (“NC3-40”). The proponent has requested a rezone of the site to Neighborhood Commercial 3 with a 65 foot height limit (“NC3-65”).

Both the Director of the Seattle Department of Construction and Inspections (SDCI) and the Hearing Examiner find the proposal to be consistent with the City’s rezone criteria and recommend approval of the rezone.

*Map: Current Zoning, Parcels and Proposed Rezone Area, CF 314287*

## **II. Type of Action – Standard of Review - No Appeal or Request to Supplement the Record**

This rezone request applies to a specific site; it is not an area-wide amendment proposal. Therefore, it is a Type IV quasi-judicial rezone under Seattle Municipal Code (SMC)<sup>1</sup>. Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication and the Council's rules on quasi-judicial proceedings (Resolution 31602).

The Hearing Examiner establishes the record for the decision at an open-record hearing. After the hearing, the record may be supplemented through a timely request to Council only. No appeal of the Hearing Examiner's recommendation was filed, and there was no timely request to supplement the record.

Because there was no appeal or timely request to supplement the record, the Council's quasi-judicial rules require that the decision be based upon the record as submitted by the Hearing Examiner, and that no oral argument be presented by the parties to PLUS. The Council's quasi-judicial rules provide that the action by Council must be supported by substantial evidence in the record.

The record contains the substance of the sworn testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing. Those exhibits include but are not limited to:

- The recommendation of the Director of SDCI,
- The environmental (SEPA) checklist for the proposal;
- Rezone plans and photographs showing the rezone area;
- The rezone application, and other application materials; and
- An audio recording of the Hearing Examiner's open record hearing.

The entire Hearing Examiner's record is kept in my office and is available for your review. The [Hearing Examiner's Recommendation](#) (including the findings of fact and conclusions supporting the recommendation) and the [SDCI Director's Analysis and Recommendation](#) are posted online with [CF 314287](#).

## **III. Summary of the record**

The Hearing Examiner recommended that Council approve the rezone request, following a similar recommendation by SDCI, without conditions. The following is a summary of the record regarding the rezone proposal, zoning history, site and surrounding area characteristics, public comment, and the Hearing Examiner's conclusions and recommendation.

### **A. Rezone proposal**

The proposal includes several properties (see map above). According to the applicant, the purpose of consolidating properties for this rezone is to avoid inconsistent zoning within the block.

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<sup>1</sup> SMC Chapter 23.76.004 and 23.76.036

This rezone request applies to a specific site; it is not an area-wide amendment proposal. Therefore, it is a Type IV quasi-judicial rezone under Seattle Municipal Code (SMC). The proposal to rezone the site is not accompanied by a development project. So, it is not a contract rezone. For a contract rezone, the rezone is conditioned on performance or compliance of the accompanying project with the terms and conditions of the property use and development agreement (PUDA), the contract.

Because there were no development proposals actively under review by Seattle DCI for the rezone site at the time of the rezone application, the SDCI Director and the Hearing Examiner evaluated and made recommendations to approve the rezone on its own merit, independent of any specific development proposals.

According to the SDCI Director's Analysis and Recommendation, there "are no changes of use or other development, alterations or demolition proposed as part of this rezone application although some development is proposed (separate from the rezone application)."

"Specifically:

1. An applicant representing GRE (specifically GRE/NOP Northgate LLC) has submitted a Master Use Permit (MUP) application to Seattle DCI (#3019072) with the following project description:

*Land Use Application to allow a 4-story apartment building with 83 units located over 2 live-work units. Review includes re-striping existing surface parking lot for 41 spaces. Existing structure to be demolished. Early Design Guidance was conducted under project 3017692.*

"This proposal which includes design review and (State Environmental Policy Act) SEPA land use components is currently being reviewed by Seattle DCI staff. The submitted plans illustrate a proposal sited on portion of the rezone site (PINs 292604-9224 and 292604-9536, 10715 8th Avenue Northeast) that has been presented to be compliant with Land Use Code requirements for development zoned NC3-40 in a Northgate Overlay District. **Consequently, this proposal is not dependent on the outcome of this rezone application (emphasis mine).**

"2. The applicant for the rezone proposal has also submitted a Design Review Early Design Guidance (EDG) land use application to Seattle DCI (#3020189) on behalf of Wallace Properties (Wallace Properties – Northgate Eighth LLC) with the following project description:

*Design Review Early Design Guidance application for a 7-story building containing 148 residential units, and 3 live-work units. Parking for 145 vehicles to be provided at and below grade.*

“The submitted EDG material illustrates a proposal on the southeast corner of the rezone site (PIN 292604-9535, 10711 8th Avenue Northeast) presented to be developed to the NC3-65 and Northgate Overlay District development standards. **This proposal is dependent upon the outcome of this rezone application: however, (at the time of the rezone application) no MUP ...(had been) submitted to Seattle DCI yet (emphasis mine).**”

#### B. Zoning history

The rezone site has been zoned NC3-40 since 1993 in conjunction with the adoption of the Northgate Area Comprehensive Plan and Northgate Overlay District. The City last amended the Northgate Neighborhood Plan in 2012. The Neighborhood Plan does not recommend or require specific height limits for anywhere in the neighborhood.

The City issued the Final Environmental Impact Statement (FEIS) for the Northgate Urban Center Rezone in 2009, examining alternatives for zoning changes in the area. The FEIS included discussion of four alternatives: one no action and three action alternatives. Two of the action alternatives called for rezoning the area including the site to NC3-65. The third action alternative called for rezoning the area including the site to NC3-125, as contract rezones. The FEIS concluded that none of the alternatives, including one alternative with a 125-foot height limit, would result in significant, unavoidable land use impacts. The City did not adopt any of these alternatives; an area wide rezone did not follow. However, the analysis of the FEIS is relevant to the current consideration.

The Northgate Neighborhood Plan was adopted by the City Council in 1993 and most recently amended in 2012. Included in the 2012 amendments to the Comprehensive Plan was the addition of a policy to the Northgate Neighborhood Plan supporting “future potential rezones to higher intensity designations in the North Core Subarea.” (NG-P8.5) The rezone proposal falls in the North Core Subarea.

The policies of the Northgate Neighborhood Plan support rezones, especially in the Core, to higher densities and heights. The policies emphasize mixed use development at densities sufficient to support transit; transitions between different intensities of development and encouraging pedestrian activity.

The October 2015 Urban Center/Urban Village Residential Growth Report showed that the Northgate Urban Center had achieved only 41 percent of the 20-year growth target for dwelling units set in the 2004 Comprehensive Plan for the Northgate Urban Center.

In 2012, City Council approved a rezone for a nearby property: 11200 1<sup>st</sup> Avenue NE, two blocks west, was rezoned from Midrise to NC3-85 with a PUDA. In 2013, Council approved another rezone in the area: 525 Northgate Way, immediately to the north of the rezone proposal site, was rezoned from NC3-65 to NC3-85 with a PUDA limiting the height of the structure to 70 feet.

### C. Site and Surrounding Area Characteristics

Currently, the site is composed of several asphalt surface parking areas, a graveled vacant lot and an existing building, recently used by a beauty school. Some shrubs and grass grow in the proposal area. The topography descends from west to east and from north to south. Generally, the site is about ten feet lower than the property to the west and level with 8<sup>th</sup> Avenue NE and properties to the east. Much of the southern portion of the site is identified as Environmentally Critical Areas (ECA): Peat Settlement-Prone Areas and a small portion in the southwest corner is mapped as an ECA: Steep Slope.

Several curb cuts provide access to the site from 8<sup>th</sup> Avenue NE and 24-foot wide easement cuts across the site from 8<sup>th</sup> to 5<sup>th</sup>. Street trees grow along 8<sup>th</sup> Avenue NE adjacent to the site. The roadway of 8<sup>th</sup> Avenue NE is paved and is developed with curbs, gutters and sidewalks. Next to the site, 8<sup>th</sup> Avenue NE is classified as a non-arterial street. Overhead power lines run along the west side of 8<sup>th</sup> Avenue NE, past the rezone site. To the west of the rezone site, 5<sup>th</sup> Avenue NE is classified as a minor arterial and a major pedestrian street: a paved roadway with curbs, gutters, landscaped medians, sidewalks and street trees.

The site is currently zoned NC3-40 and this zoning designation continues to encompass parcels to the south until shifting to Lowrise 3 (LR3) zoning. The abutting properties to the north, along NE Northgate Way, and to the west, along 5<sup>th</sup> Avenue NE, are zoned NC3-85 and NC3-65, respectively. The assembled parcels of the rezone proposal roughly form a square located within the North Core Subarea of the Northgate Urban Center and within the Northgate Overlay District.

Nearby, a seven-story, mixed-use commercial and residential building and a one story retail building front NE Northgate Way. Two, one-story retail developments with multiple tenants are located along 5<sup>th</sup> Avenue NE. And Kindred Hospital, three-stories, is located to the south. The Park, a multiple-building, three-story residential development is across 8<sup>th</sup> Avenue NE from the proposal site.

### D. Public comment

SDCI received three public comment letters regarding the rezone application: one in support of development of the site but questioning the need for additional height and concerned about vehicular circulation and calling for a setback along 8th Avenue NE if the allowed height is increased; and two letters voicing concerns about traffic safety and congestion impacts of future projects under the proposed zoning.

The Hearing Examiner received no written public comments. One member of the public testified at the hearing in support of the rezone proposal as well as expressing concern about increased traffic and congestion on 8<sup>th</sup> Avenue NE and NE Northgate Way.

### E. Hearing Examiner's Conclusions

The Hearing Examiner has jurisdiction to make a recommendation to the City Council on rezones pursuant to SMC 23.76.052. Chapter 23.34 SMC provides that the criteria for rezones

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...” (SMC 23.34.007.B). Below, I summarize the Hearing Examiner’s conclusions:

1. Effect on zoned growth capacity:

The additional building height made possible by this rezone proposal would increase the zoned capacity of the Northgate Urban Center. This rezone would, therefore, be consistent with the criterion that within urban center, zoned capacity taken as a whole shall be no less than 125 percent of the applicable adopted growth target, and not less than the density established in the Comprehensive Plan (SMC 23.34.008.A).

2. Match between Zone Criteria and Area Characteristics

The proposed rezone area is zoned NC3, and the rezone proposal would only change the height allowed. The current zoning for the site is the already the most appropriate designation according to the function and the locational criteria for the zone, provided in SMC 23.34.078, and would not change. The NC3 designation remains appropriate.

3. Precedential Effect/Neighborhood Plan

The rezone proposal could be considered precedential for future rezones in the area. However, this is consistent with the support for higher intensity designations in the North Core Subarea found in the policies of the Northgate Neighborhood Plan. The rezone proposal is also consistent with Neighborhood goals and policies, such as: medium and high density residential and employment uses concentrated within a 10-minute walk of transit and integration of residential uses into areas with NC zoning designations.

4. Zoning Principles

The zoning principles guiding the evaluation of rezones (SMC 23.34.008.E) deal with minimizing the impact of more intensive zones on less intensive zones. The proposed rezone is consistent with the zoning principles because:

- the property to the south of the rezone site, zoned NC3-40, would provide a transition from the proposed NC3-65 to Lowrise 3 (LR3);
- the 60-foot right-of-way of 8<sup>th</sup> Avenue NE and the utility setback on the west side of 8<sup>th</sup> would provide a buffer between the rezone site and the LR3 zoned property on the east side of 8<sup>th</sup>;
- the LR3 property would provide a transition to single-family zoning to the east and the south;
- no discernable increase in shadow impact is expected;
- the rezone would follow existing property lot lines; and
- the rezone is located in the North Core Subarea where heights over 40 feet are anticipated.

#### 5. Impact evaluation

The Hearing Examiner stated that although the Northgate Urban Center Final Environmental Impact Statement (FEIS) is not in the record for the rezone proposal, it can be presumed that the FEIS provided some evaluation of the impacts of a rezone to 65 feet or even to 125 feet. The Hearing Examiner also stated that the SDCI Director's SEPA analysis for the proposal determined that it would have no significant adverse environmental impacts and that the rezone would not affect allowable uses on the site.

#### 6. Overlay Districts

The rezone site is located within the Northgate Overlay District and the proposed rezone would be consistent with the purposes of the District: create a pedestrian friendly environment; support commercial development; protect residential character; and support Northgate as a high capacity transportation center.

#### 7. Critical Areas

The proposed rezone itself would have no impact on the identified critical areas (see above.) The Hearing Examiner noted that the SDCI Director had reviewed geotechnical reports for the area and determined that any development in the area would require compliance with critical area regulations.

#### 8. Height Limits

The proposed increase in allowed structure height from 40 feet to 65 feet is consistent with the type and scale of development intended for the zone classification: "intense commercial activity with nearby residential housing." The combination of sloping topography, heights of existing structures on adjacent property, and previous excavation and grading provide a setting in which development according to the proposed height of 65 feet would result in rooflines lower than most on nearby structures. Also, the requested increase in height limit is consistent with the Neighborhood Plan (NG-P8.5) which supports rezones to higher intensity designations in the North Core Subarea.

#### F. Hearing Examiner's Recommendation

The Hearing Examiner weighed and balanced the applicable section of Chapter 23.34 SMC together, stated that the most appropriate zone designation for the site is NC-65, and recommended that the City Council approve the rezone without conditions.

#### **IV. Next Steps**

On April 19, 2016, I will brief the PLUZ Committee before discussion of this rezone. During the meeting, I will ask the Committee for direction on next steps to take, such as following up on questions arising from discussion and drafting legislation. Draft legislation would include Council Findings, Conclusion and Decision (F, C and D) on the rezone proposal and a Council Bill regarding the rezone. After the Council Bill is introduced, the matter may return to PLUZ for a vote on recommendation, as soon as May 3, 2016.