

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

In the Matter of the Application of

CF 314287

**KEVIN CLEARY, BAYLIS
ARCHITECTS**

Department Reference:
3018442

for a rezone for property located
at 10711 8th Avenue Northeast

Introduction

Kevin Cleary of Baylis Architects seeks a rezone of property located at 10711 8th Avenue NE from Neighborhood Commercial 3 zoning with a 40 foot height limit ("NC3-40") to Neighborhood Commercial 3 zoning with a 65 foot height limit ("NC3-65"). The Director of the Seattle 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 ("DNS"), which was not appealed.

A public hearing on the rezone application was held before the Hearing Examiner on February 2, 2016. The Applicant was represented by Aaron M. Laing, attorney-at-law, and the Director was represented by Tami Garrett, Senior Land Use Planner. One member of the public attended the hearing. The record was held open for the Examiner's site visit on February 6, 2016.

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 application.

Findings of Fact

Site and Vicinity

1. The site is addressed as 10711 8th Avenue NE and consists of five tax parcels under multiple ownerships. It is located within the North Core Subarea of the Northgate Urban Center and within the Northgate Overlay District, but is not located within a zone with an incentive zoning suffix. The site is square in shape, approximately 95,027 square feet in size, and bounded on the north, south and west by commercially-zoned properties and on the east by 8th Avenue NE. It is developed with asphalt surface parking areas, a graveled vacant lot and an existing building. *See Exhibit 4.*

2. The topography in the area slopes gently from west to east and north to south, and the site includes similar slopes. The southeast quarter of the site is approximately eight to 10 feet lower than the rest of the site. The overall site is an average of approximately 10 feet lower than the property to the west but level with 8th Avenue NE and properties to the east. Most of the south portion of the site is designated as an Environmentally Critical Area (“ECA”) Peat Settlement Prone Area, and a small part of the southwest corner of the site is a mapped ECA Steep Slope Area. The site includes minimal vegetation.

3. Vehicular access to the site is via several curb cuts along 8th Avenue Northeast and from a 24-foot-wide east-west through-block ingress/egress easement between 8th Avenue NE and 5th Avenue NE. Eighth Avenue NE is classified as a non-arterial street and, beginning south of the site, as a partial Green Street Type III. Where it abuts the site, it is fully improved, and there are utility lines overhead on the west side.

4. Development within the area is generally characterized by a mix of multifamily residential structures, community services, restaurants, and retail and office structures. The Northgate Mall and other retail areas, the King County Metro Transit Northgate Station, the Northgate branch library, the Beaver Pond Natural Area on Thornton Creek, and the future Sound Transit Light Rail Station are all nearby.

5. Adjacent properties to the north, along NE Northgate Way, are zoned NC3-65 and developed with a one story retail structure, and NC3-85 (reduced to 70 feet through a PUDA) and developed with a seven story mixed use structure. Adjacent properties to the west are zoned NC3-65 and developed with two one story with basement multi-tenant retail structures. Adjacent property to the south is zoned NC3-40 and developed with a three story with basement hospital. Further south, the zoning changes to Lowrise 3 (“LR3”), which has a base height limit of 40 feet. To the southwest, along 5th Avenue NE, properties are zoned NC3-65. Across 8th Avenue NE to the east, the property is zoned LR3 and developed with a three story, multi-building residential development. Further south, development along 8th Avenue NE transitions to three to four story residential structures and lower scale commercial structures with accessory parking areas abutting the street.

Zoning History

6. Prior to 1993, the property was zoned Commercial 1 (“C1”) with a 40 foot height limit. In conjunction with the 1993 adoption of the Northgate Area Comprehensive Plan and Northgate Overlay District, the site and adjacent and surrounding parcels were rezoned from C1 to NC3, but height limits remained unchanged.

7. In 2009, the City issued the Northgate Urban Center Rezone Final Environmental Impact Statement (“FEIS”), which examined alternatives for zoning changes in the area. The FEIS discussed a “No Action” alternative and three “Action” alternatives for amending the subarea plan. Two of the Action alternatives called for rezoning the proposal site to NC3-65. The third Action alternative called for rezoning the site and surrounding properties to NC3-125 with required PUDAs. The FEIS concluded that none

of the alternatives would result in significant, unavoidable adverse land use impacts. However, an area-wide rezone did not follow.

8. The 2012 Comprehensive Plan update amended the Northgate Neighborhood Plan to add a policy that calls for support for “future potential rezones to higher intensity designations in the North Core Subarea.” NG-P8.5. During 2012 and 2013, two rezones were approved for the following nearby properties: 11200 1st Avenue NE, two blocks west of the subject site, was rezoned from Midrise to NC3-85 with a PUDA; and 525 NE Northgate Way, immediately north of the subject site, was rezoned from NC3-65 to NC3-85 subject to the PUDA that limits structure height to 70 feet.

9. The Northgate Urban Center has been targeted for additional residential growth. The 2004 Comprehensive Plan set a 20-year growth target for the Urban Center of 2,500 additional dwelling units by 2024, with a density of 15 dwelling units per acre. The October, 2015 Urban Center/Village Residential Growth Report states that the Northgate Urban Center had achieved only 41 percent of this target. Exhibit 9.

Neighborhood Plan

10. The Northgate Neighborhood Plan was adopted by the City Council in 1993 and most recently amended in 2012. As noted, the subject property is located within the North Core Subarea, and the Neighborhood Plan includes a policy for guiding future rezones or recommendations on heights. NG-P8.5 calls for support for “future potential rezones to higher intensity designations in the North Core Subarea” and cautions that in considering such rezones, particular attention is to be paid “to the development of an environment that creates a network of pedestrian connections and that encourages pedestrian activity”.

11. Other neighborhood plan goals and policies to be considered include NG-G4, which states that the “most intense and dense development activity is concentrated within the core,” NG-G7, which envisions medium and high density residential and employment uses “concentrated within a 10-minute walk of the transit center,” NG-P1, which calls for encouraging “development of the core as a major regional activity center for retail, commercial, office, multifamily residential, and educational uses with densities sufficient to support transit,” NG-P5, which calls for integrating residential uses into areas with NC zoning designations, NG-P7, which calls for a transition between zones that allow significantly different intensities of development, and NG-P11, which encourages pedestrian connections that are safe, interesting and pleasant.

Proposal

12. The Applicant seeks to have the property rezoned from NC3-40 to NC3-65. Several properties have been consolidated for the rezone application to assure that the zoning on the block remains consistent. The rezone does not include an application for development. However, development has been proposed for the site. A proposal for a four story apartment building with 83 units over two live-work units and 41 parking

spaces has been proposed for a portion of the rezone site. It includes design review and SEPA components and is consistent with the site's current zoning. A second proposal for a seven-story building with 148 residential units, three live-work units, and below-grade parking for 145 vehicles to be sited on the southeast corner of the rezone site has been submitted and is currently in the design review process. A MUP application has not yet been submitted. This proposal would be developed to NC3-65 and Northgate Overlay District development standards and thus, could not proceed without the proposed rezone.

13. The Applicant prepared a shadow study that provides a comparison between a 40 foot structure and a 65 foot structure on the site. Exhibit 17, Attachment G. Because the site is generally about 10 lower than the adjacent NC3-65-zoned property to the west, development at 65 feet on the site will not produce a noticeable increase in shadow impacts on properties to the east.

Public Comment

14. The Department received one public comment expressing concern about potential impacts to vehicular traffic and circulation in the general vicinity and making a specific complaint about existing conditions on NE 103rd and 105th Avenues. Another comment expressed concern about the potential impact of the proposed rezone on the pedestrian environment along 8th Avenue NE, and that the increased height being requested would lead to development that was not within the scale or character of the neighborhood plan for that street. The comment stated that if the rezone is approved, a setback from 8th Avenue NE should be required to buffer the pedestrian experience from future development. Two comments expressed a desire for a traffic revision to allow westbound left turns from 8th Avenue NE to NE Northgate Way, as that is the most direct route to Interstate 5. Exhibit 7.

15. The Hearing Examiner received no written public comments. One member of the public, the landlord for the property immediately north of the subject site, on the corner of NE Northgate Way and 8th Avenue NE, testified at the hearing. He spoke in support of the rezone but expressed concern that the traffic that would be generated by the proposed density would result in additional congestion at the intersection of NE Northgate Way and 8th Avenue NE. He, too, noted that a barrier in the center of NE Northgate Way at that intersection prevents westbound left turns from 8th Avenue NE and expressed a desire for the intersection configuration to be altered to allow those turns.

Director's Review

16. The Director examined the proposed rezone's potential short-term and long-term environmental impacts, including construction-related impacts and long-term land use and height, bulk and scale impacts. Exhibit 1 at 16-18. The Director issued a Determination of Non-significance for the proposal and recommended no SEPA-related conditions. The Director also recommended approval of the rezone without conditions. Exhibit 1 at 18.

Applicable Law

17. 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.

18. When 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.

19. 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 to make a recommendation to the City Council on this rezone pursuant to SMC 23.76.052.

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. "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. SMC 23.34.008.A requires that, within the urban center, the 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. The proposed rezone would increase the Northgate Urban Center's zoned capacity by providing for additional building height, and therefore additional residential units. Thus, it would be consistent with this criterion.

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 site is already zoned NC3, and the rezone would retain that

zoning designation. The site currently matches the NC3 zone function and locational criteria, found in SMC 23.34.078, so the designation remains appropriate.

Precedential Effect/Neighborhood Plan

5. The rezone could be considered a precedent for future rezones in the area, but that result is consistent with the Northgate Neighborhood Plan's support for "rezones to higher intensity designations within the North Core Subarea." The proposal is also consistent with the Neighborhood Plan goals and policies listed in Finding 11, particularly goals that envision medium and high density residential and employment uses concentrated within a 10-minute walk of transit, and policies that call for integrating residential uses into areas with NC zoning designations.

Zoning Principles

6. 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, and the proposed rezone would be consistent with them. The NC3-40-zoned property south of the subject site would continue to provide a transition from NC3-65 zoning to the LR3 zoning south of the Kindred Hospital site. The 60 foot right-of-way of 8th Avenue NE, and the utility setback required by the overhead power lines along the west side of the street, would continue to provide a physical buffer between the site and the LR3 zoning to the east. The LR3-zoned property would continue to provide a transition to the single-family zoning further east and south. As noted above, no discernable increase in shadow impacts is expected. Further, the rezone would follow existing platted lot lines, and is located in the North Core Subarea of the Northgate Urban Center where heights over 40 feet are anticipated.

Impact Evaluation

7. Although the Northgate Urban Center Rezone Environmental Impact Statement is not in the record, it can be presumed that that document provided some evaluation of the impacts of the rezones it considered, including a rezone of the subject site to 65, or even 125 feet. In addition, the Director's SEPA analysis for the proposal determined that it would have no significant adverse environmental impacts. The rezone would not affect allowable uses on the site. The Director's evaluation of the proposal's impacts, Exhibit 1 at 10-12, is incorporated here by reference.

Changed Circumstances

8. Changed circumstances are not required for a rezone, but may be considered. Since the property was zoned to its current designation in 1993, the City has adopted 2024 growth targets for the Northgate Urban Center, which are not being met at present; the Comprehensive Plan has been amended to add language that encourages higher intensity designations in the North Core Subarea of the Northgate Urban Center; substantial street and transit investments and improvements have been made in the area; and an adjacent

property north of the subject site has been rezoned to NC3-85 with a PUDA that reduces height to 70 feet. All of these changes support the proposed rezone.

Overlay Districts

9. The site is located within the Northgate Overlay District, which identifies its purposes as “A. Create an environment in the Northgate Area that is more amenable to pedestrians and supportive of commercial development; and B. To protect the residential character of residential neighborhoods; and C. Support the use of Northgate as a regional high-capacity transportation center.” The proposed rezone would accommodate a greater density in the North Core Subarea of the Northgate Urban Center, which would increase pedestrian activity, support the Subarea’s commercial center, and leverage investments in transit. Thus, it would be consistent with the Overlay District’s purposes.

Critical Areas

10. As noted, most of the south portion of the site is identified as an ECA Peat Settlement Prone Area, and a small area at the southwest corner is mapped as an ECA Steep Slope. The Director has reviewed geotechnical reports for the site and determined that any development of it would require compliance with applicable critical area regulations. However, the proposed rezone itself would not impact the identified critical areas.

Height Limits

11. The NC3 zoning designation assumes intense commercial activity with nearby residential housing. Thus, the proposed height limit of 65 feet is consistent with the type and scale of development intended for the zone classification. Transitions to adjacent zones and development are discussed above. The increased height would allow for increased residential density, increased commercial development, or mixed use, all of which would support existing businesses and transit investments. There would be no displacement of preferred uses.

12. As noted, the topography of the area generally slopes from west to east and north to south. The sloping topography, combined with the heights of existing structures on adjacent properties, and past excavation and grading, creates a setting in which development to 65 feet in height on the site will result in a roofline that is lower than most existing or planned adjacent development. The likelihood of additional view blockage is minimal, and the proposed height would be compatible with the predominant height and scale of existing development and with actual and zoned heights in the surrounding area. Transitions in height and scale are discussed above.

13. The final issue to be addressed in evaluating a requested height limit is any height recommendations that are included in neighborhood plans. As discussed above, the proposed rezone to add 25 feet in height is consistent with policy NG-P8.5 in the

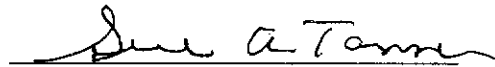
Northgate Neighborhood Plan, which supports rezones to higher intensity designations in the North Core Subarea.

14. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the site is NC3-65.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone without conditions.

Entered this 19th day of February, 2016.



Sue A. Tanner
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 Zoning 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.