FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of Application of

ANDREW KLUESS, CARON ARCHITECTURE,

For a Rezone of Property at
1000 and 1020 NE Northgate Way.

Hearing Examiner Files:
CF 314513-LU

Department References:
3039050-LU

FINDINGS OF FACT

1. Introduction. Request for a contract rezone from one Neighborhood Commercial designation to another, NC3-55' (M) to NC3-65' (M1) at 1000 and 1020 NE Northgate Way, in the Northgate Overlay District and Urban Center. The project includes construction of a 7-story, 184-unit apartment building with retail and parking for 88 vehicles, on a 40,285 square foot site.

2. Hearing. A properly noticed public hearing[1] was held remotely and in person August 14, 2023. The Seattle Department of Construction and Inspections ("Department"), through David Landry, AICP, described the proposal. The Applicant, represented by Abigail Pearl DeWeese, Hillis Clark Martin & Peterson P.S., introduced the project and called two witnesses. Emily Thompson, of GMD Development LLC, provided project background and described the public funding aspect. Aaron Blaha, of Axis/GFA, the architecture firm which designed the project, provided detail on project design and fit with the surrounding area. No member of the public indicated a wish to testify, but in case anyone had technical difficulty connecting, the record was kept open through day end. No public comment was received.

3. Exhibits. The Department submitted Exhibits 1-27. The Applicant submitted three exhibits (Exhibits 28-30), with an updated version of Exhibit 28 submitted after the hearing. All exhibits were admitted without objection. No written public comment was submitted to the Examiner.

4. Site Visit. The Examiner visited the site on August 24, 2023. The visit provides context, but is not evidence.

5. Site and Area. The site contains a restaurant (Patty's Eggnest), an auto related use (Jiffy Lube), and accessory parking. The site is surrounded on four sides by NC3-55(M) zoning, with some LR2(M) zoning to the south. The area includes residential and commercial development ranging in height from one to two stories for older development, with newer development being five stories. Immediately north is a QFC grocery, which shares an access easement with the project site, with a Roosevelt Way NE curb cut providing access to both properties. Roosevelt Way NE is

[1] Exhibit 26; SMC 23.76.052(C). No concerns on notice were raised.

a Special Landscape Arterial (SMC 23.71.012). It has sidewalks and a bus stop at the corner of NE Northgate Way near the access easement shared with QFC.

North of the QFC is the recently completed Noren Pinehurst Townhouses and Live Work Units. A gas/service station and mini mart is at NE Northgate Way/Roosevelt Way NE's southeast corner, with Walgreens on the southwest corner and commercial uses further west. Roosevelt Way NE's west side houses the Northgate Village Shopping area which includes a TJ Maxx department store and other retail establishments amidst surface parking. To the east is a bio-retention pond and beyond the pond is Victory Creek Park, along 12th Ave NE's west side. The area also includes Hubbard Homestead Park, Northgate North shopping center, and Northgate Mall.

6. Written Comments. Public review was afforded through the Early Design Guidance Meeting and environmental review. The Department reviewed and conditionally approved the Design Review Board recommendation, finding it consistent with the Design Review Guidelines. The Department also reviewed the project through the State Environmental Policy Act, Ch. 43.21C, identifying conditions and finding the proposal does not have significant environmental impacts. These decisions were not appealed. The Department Recommendation addressed comments received, which are included in the exhibits.[2] Several comments supported the added housing; others did not. Several comments identified parking adequacy concerns while others appreciated the 88 spaces provided. No public comments were submitted directly to the Examiner.

7. Project Details. The rezone is coupled with a specific development project. The below image is not to scale, but provides an illustration:[3]

VIEW FROM SOUTHWEST

[2] Exhibit 25 (Staff Report), pp. 506-507 of PDF or 505-506 of paper; Exhibits 9b and10b.
[3] Exhibit 28 (Applicant Power Point), p. 13, *see also* pp. 12 and 14-17, for pictures from varying perspectives.

8. Department Review. The Department recommended approval with conditions. The three proposed rezone conditions ensure development is constructed as proposed. Five conditions address the design review and the two SEPA conditions on construction management and trees are recommended subject to Council review. The attachment at the end of this Recommendation lists all conditions. The Department Recommendation includes considerable detail on the rezone criteria and is incorporated as supplemental findings.[4]

CONCLUSIONS OF LAW

1. Jurisdiction. The Hearing Examiner has jurisdiction to issue a recommendation on the rezone, while the Council makes the final decision.[5]

2. Criteria, Summary. Criteria for assessing a site-specific rezone request are at SMC 23.34.004 (contract rezones), 23.34.006 (MHA suffixes), 23.34.007 (rezone evaluation), 23.34.008 (rezone criteria), 23.34.009 (height limits), and 23.34.078 (NC3 zones). Despite the considerable level of often overlapping criteria, the key consideration is zoning compatibility with the land use planning for the area.

3. Contract Rezone. As this is a contract rezone, a Property Use and Development Agreement or PUDA will be executed and recorded.[6] The code details payment and performance requirements.[7] The PUDA should include conditions requiring property development to substantially conform with the approved plans for Master Use Permit #3039050-LU.

4. "**M" Suffix: Mandatory Housing Affordability, SMC 23.34.006**. With the proposed zoning, the site is subject to MHA requirements at SMC 23.58B and/or 23.58C. The existing zoning contains an "M" suffix and the site should have an "M" suffix under the proposed zoning.[8] As zoned capacity would increase (Category 3 to 4) an updated M1 suffix should apply.[9] The development is for 100% affordable, so exceeds MHA requirements.

5. Rezone Evaluation, SMC 23.34.007. Applicable sections of Ch. 23.34 SMC on rezones are weighed and balanced together to determine the most appropriate zone and height designation.[10] Zone function statements are used "to assess the likelihood that the area proposed to be rezoned would function as intended."[11] "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...."[12] The most appropriate zone designation is the one "for which

[4] Exhibit 25.
[5] SMC 23.76.004(C); SMC 23.76.004, Table A.
[6] SMC 23.34.004.
[7] *See e.g*., Ch. 23.58B and .58C SMC.
[8] SMC 23.34.006.
[9] Director's Rule 14-2016.
[10] SMC 23.34.007.
[11] SMC 23.34.007(A).
[12] SMC 23.34.007(B).

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."[13]

6. Match Between Zone Criteria and Area Characteristics, SMC 23.34.008(A) and (B). The proposal follows Comprehensive Plan growth targets and is a good fit within the area. The project is within the Northgate Urban Center, which has a 3,000 housing unit growth target to achieve between 2015 and 2035 with a 11 housing unit per acre overall density. A 2021 evaluation found the Northgate Urban Center had only achieved 7.9% of this residential growth target. The rezone will increase zoned capacity and will help with achieving housing objectives for the area.

The NC3 designation meets functional and locational criteria. The project supports a pedestrian-oriented shopping district that services the surrounding neighborhood and larger community and incorporates businesses and residences compatible with the area's retail character. The project promotes pedestrian activity with transit to access. The site is separated from lower density residential areas by physical edges and less-intense commercial areas.

7. Neighborhood Plan/Precedential Effect, SMC 23.34.008(C) and (D). The site is within the Northgate Neighborhood Plan, which provides for concentrated development supported by transit, which is surrounded by health single-family neighborhoods.

- NG-G2: A thriving, vital, mixed-use center of concentrated development surrounded by healthy neighborhood residential areas transformed from an underutilized, auto oriented office/retail area.

- NG-P.8.5 (Support future potential rezones to higher-intensity designations in the North Core Subarea. In considering such rezones, pay particular attention to the development of an environment that creates a network of pedestrian connections and that encourages pedestrian activity, among other considerations associated with a rezone review) [14]

The rezone furthers mixed use vitality by providing affordable high-density housing supported by transit, including the Northgate transit center which is a 10-15 minute walk away. The rezone would not adversely affect the nearby Neighborhood Residential or Lowrise zones. The less intensive residential zones are physically separated from the NC3 zoning by natural physical buffers and right-of-way. Also, the zoning itself is not changing, only the height limit, and that is by ten feet.[15]

8. Zoning Principles, SMC 23.34.008(E). The site is separated from the NR zone to the east by the existing bioretention pond, Victory Creek Park and Thornton Creek, and 12th Ave NE which runs in a north-south direction. The site is separated from the LR2 zone to the south by NE Northgate Way, a major arterial with sidewalks, planting strips, and a 73-76 foot right-of-way width.

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[13] SMC 23.34.008(B).
[14] *See also* NG-G3, NG-G4, NG-P6, NG-P7, NG-G7.
[15] *See also* Conclusion 10.

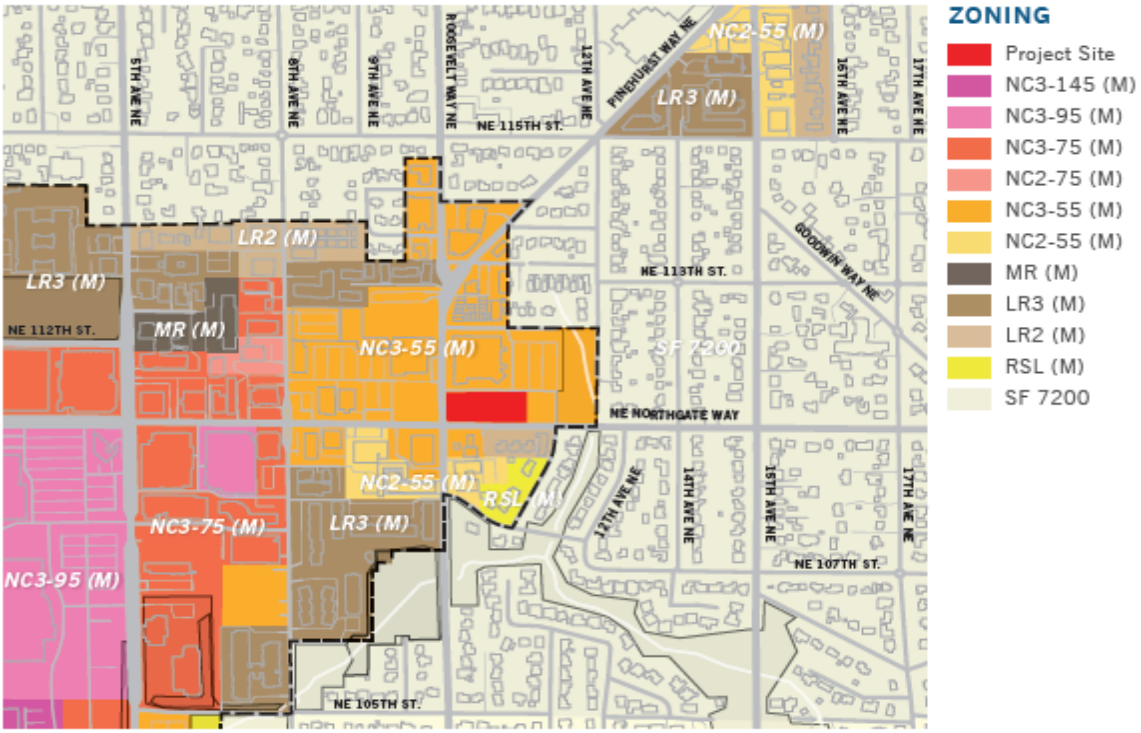
9. Impact Evaluation, SMC 23.34.008(F). The rezone meets the compatibility standards for the surrounding neighborhood and scale. Housing capacity is increased and the project will be adequately supported by public services and infrastructure, including pedestrian amenities and sidewalks. There is adequate street access, street capacity, transit, utility, and sewer capacity. Some comments raised concerns about parking adequacy while other comments appreciated the spaces provided. The project improves area aesthetics and environmental conditions. It positively contributes to the need for housing and low-income housing. 31 of the 184 new affordable transit-oriented housing units are possible due to the increased building height. No market-rate housing is provided. The project does remove Jiffy Lube's 3,488 square feet and Patty's Egg Nest's 3,609 square feet of commercial space. To help offset the lost employment, the project is providing 6,770 square feet of commercial space.

10. Changed Circumstances, SMC 23.34.008(G). Changed circumstances are considered though they need not be demonstrated. The area has seen increasing density and heights. For example, a 2022 rezone on two parcels immediately south upzoned a development site from LR3(M) to MR(M1), with an 80-foot height limit. With the 2019 city-wide rezone, the site's height limit went from 40 to 55. Also in 2019, Northgate Mall redevelopment was approved. A network of new street and pedestrian corridors breaks up the site's superblock scale, while providing access to new and existing buildings. A half mile to the west is the Northgate Link Light Rail, with the station and its alignment approved by Council in 2013. And, to address affordable housing challenges, the City adopted mandatory housing affordability legislation in 2015 and 2016. The rezone's allowance for increased pedestrian friendly housing is in keeping with these changes.

11. Overlay Districts and Critical Areas, SMC 23.34.008(H) and (I). The site is within the Comprehensive Plan's Northgate Urban Center and Northgate Overlay District. These designations aim to create a pedestrian friendly area supportive of commercial development, protect the residential neighborhood character, and support Northgate as a regional transportation hub. The project, with its added affordable housing, improved pedestrian environment, and supporting commercial development is consistent. A portion of the site's far east side was potentially identified as including wetland buffering for an off-site QFC bioretention pond. It is not a critical area and not connected with the proposal, as peer reviewed analysis confirmed.

12. Heights, SMC 23.34.009. The proposal is for a ten-foot increase. The height is consistent with NC3 zone function, which supports a pedestrian oriented shopping district and residences compatible with the area's retail character. The limited increase follows area topography and will have limited view impacts. The rezone and project include buffers coupled with height and scale transitions. The increase is compatible with the surrounding area and with Northgate Area Comprehensive Plan, and Northgate Urban Center and Overlay District. The below diagram depicts area heights.[16]

[16] Exhibit 28 (Power Point), p. 4; Exhibit 25 (Staff Report), p. 523 of PDF and 519 of paper (different diagram, similar information).



13. NC3 Designations, SMC 23.34.078. The site and project are well suited to the NC3 zoning criteria; it is already zoned NC3, as are most of the immediately surrounding properties. The zoning, with the added ten-feet in height, better supports housing affordability and pedestrian-oriented housing and commercial uses. With the improved pedestrian access, increase in affordable housing, and the area's supporting services and infrastructure, including transit service, the requested NC3-65 zoning fits within the neighborhood context.[17]

14. Conclusion. Weighing and balancing Ch. 23.34 SMC criteria together, the most appropriate zone designation for the site is NC3-65(M1) (Neighborhood Commercial-3), with a PUDA. With the proposal's pedestrian and commercial focus, additional housing, and design considerations, this zoning would better fulfill Comprehensive Plan objectives for the area.

RECOMMENDATION

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone subject to a PUDA, with the Department's recommended conditions, Attachment 1.

Entered August 24, 2023.

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Susan Drummond, Deputy Hearing Examiner

[17] *See* Conclusion 6.

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.

Under SMC 23.76.054, a person who submitted comment to the Department or 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, c/o Seattle City Clerk
Physical Address: 600 Fourth Avenue, Floor 3, Seattle, WA 98104
Mailing Address: P.O. Box 94728, Seattle, WA 98124-4728

The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought. Review code language for exact language and requirements, which are only summarily described above. Consult the City Council committee named above for further information on the Council review process.

Attachment 1
Conditions

DEPARTMENT IMPOSED CONDITIONS – DESIGN REVIEW

Prior to MUP Permit Issuance

1. Add greater transparency to the west facing lobby wall located just to the north of the vestibule.

2. Create seating nodes along NE Northgate Way by forming a more 'L' shape seating configuration with some seating facing the front entry interspersed with other site features such as bollards, planters, or trash containers to break up the long expanse of bench seating into smaller seating nodes.

3. Modify the large building sign on the west building façade to be of a scale that is consistent with the scale and character of the area.

Prior to Certificate of Occupancy

4. 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.

*For the Life of the Projec*t

5. 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.

RECOMMENDED CONDITIONS – REZONE, FOR PUDA INCLUSION

Prior to Issuance of a Master Use Permit

6. The rezone includes a Mandatory Housing Affordability designation of M1.

7. Development of the rezoned property shall be subject to the requirements of SMC 23.58B and/or 23.58C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying Chapter 23.58B and/or 23.58C.

Prior to Issuance of a Building Permit

8. Plans shall be in substantial conformance with the approved plans for Master Use Permit number 3039050-LU.

RECOMMENDED CONDITIONS – SEPA

Prior to Issuance of Demolition, Excavation/Shoring, or Construction Permit

9. 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.

10. The plans shall show the tree preservation plan, consistent with the arborist report on file with SDCI, prepared by Tree Solutions, dated February 25, 2022.