

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

In the Matter of the Application of

VINCENT FERRESE, ENCORE ARCHITECTS

for a contract rezone for property located
at 203 W Republican Street

CF 314331

Department Reference:
3020961

Introduction

Vincent Ferrese, Encore Architects, applied for a rezone of property located at 203 W Republican Street from Neighborhood Commercial 3-65 to Neighborhood Commercial 3-85. 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 December 6, 2016. The Applicant was represented by Jessica Clawson, attorney-at-law, and the Director was represented by Carly Guillory, Land Use Planner. Following the Hearing Examiner's site visit the record closed on December 20, 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 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 on the southwest corner of the intersection of W Republican Street and 2nd Avenue W. The property is occupied by a four-story twenty unit brick apartment building built in 1947, and a surface parking lot with parking for 28 vehicles.
2. The subject property is located in the Uptown Urban Center and Uptown Park Character Area, as defined by the Uptown Design Guidelines. The area contains a mix of multi-family residential structures, primarily 1920s and 1930s era brick apartments, and contemporary office buildings, with some new residential and office buildings.
3. Uptown's development pattern is comprised of a varied mix of forms, scales, and uses. The area to the north of W Mercer Street (and the subject site) is characterized by low-rise structures, with heights mostly ranging from 40 feet to 65 feet. To the east of the subject site, near Seattle Center, there is a greater diversity of architectural styles than found in the rest of the area, and building

heights are generally taller at approximately 85 feet. Seattle Center contains several marquee structures, including the Space Needle.

4. The Uptown neighborhood is located immediately north of downtown Seattle. Uptown lies adjacent to the Queen Anne neighborhood to the north, Belltown to the south, South Lake Union to the east, and Ballard-Interbay-Northend (Elliott Avenue W) to the west. This places Uptown on the northern edge of Seattle's city center neighborhoods. It serves as a transitional zone between the more intensive development pattern to the south and the less intense, more residential, development pattern to the north in Upper Queen Anne.
5. The existing zoning transition pattern in this area generally reinforces the natural topography of the area. Zoning to allow taller buildings is generally at the center of the Uptown Urban Center, with lower height zoning for properties lower in elevation, and nearer Elliott Bay. Zoning in the immediate area of the subject site is NC3-40 to the north, NC3-65 to the south, NC3-65 to the east, and NC3-65 to the west.
6. The Uptown Urban Center is relatively flat with its northern boundary generally following the toe of Queen Anne Hill's slope. Along its western boundary, the topography is marked by steep slopes which increase in scale moving northwesterly from Denny Way and toward Kinnear Park. The southern boundary follows Denny Way which slopes gently upward from west to east. The Queen Anne neighborhood immediately north of Uptown is characterized by a broad, steep southward facing slope, while the majority of the surrounding neighborhoods of South Lake Union, Denny Triangle, and Belltown are generally characterized by a flat topography. The subject property slopes from north-northeast down to the south-southwest with the high point at the NE corner near the W Republican Street and 2nd Avenue W intersection. The property includes a drop in topography of approximately 20 feet from north down to the south.
7. Due to existing development and vegetation, there are no views of Elliott Bay or the Space Needle that are visible to pedestrians standing across from the site along 2nd Avenue W or W Republican Street. There are no nearby public parks with views to Elliott Bay, or the Space Needle, across the subject property.

Zoning History and Potential Zoning Changes

8. The subject site was designated Commercial District in 1923, when Seattle's first zoning code was adopted. In 1958, the zoning designation was Commercial General. In 1985, the property was zoned Neighborhood Commercial 3 with a 65-foot height limit ("NC3-65"), and this remains its current designation.
9. The Uptown Urban Center has been the subject of an ongoing study for potential zoning changes including the publication of the Uptown Urban Design Framework. Legislation currently before Council proposes to change the zoning of the subject site, and the surrounding NC3-65 zone, to Seattle Mixed ("SM") with one of three possible height limits: 65 feet (or no zoning height change); 85 feet; or 160 feet.

Neighborhood Plan

10. The subject property is covered by the adopted Queen Anne Neighborhood Plan, which does not include any provisions that address rezones within the Neighborhood Commercial designation. Other sections of the Queen Anne Neighborhood Plan include policies for future development related to design and zoning regulations. Policy QA-P1 seeks to “create and maintain attractive pedestrian-oriented streetscapes and enhance Queen Anne’s community character with open space, street trees, and other vegetation.” Policy QA-P2 is to “preserve the character of Queen Anne’s single-family and mixed-use neighborhoods.” Policy QA-P3 seeks to “maintain and establish quality design in the Queen Anne area. Through neighborhood design guidelines and design review, consider unique or particular local design characteristics, and include consideration of signage, adjacent public ROW’s, and historic boulevards.” Policy QA-P5 encourages “an attractive range of housing types and housing strategies to retain Queen Anne’s eclectic residential character and to assure that housing is available to a diverse population.” Policy QA-P40 seeks to “provide urban character enhancing improvements to Queen Anne’s streets such as sidewalk improvements, transit facilities, landscaping, and appropriate lighting.”

Proposal

11. The Applicant seeks to have the property rezoned from NC3-65 to NC3-85 with a property use and development agreement ("PUDA"). The proposal is for a structure with a height of 70 feet, and does not utilize the full height allowed by the zoning designation sought. The Applicant proposes to construct a seven-story structure that includes 128 residential units, and will include street level retail and commercial uses. The project will create a mix of housing units by providing 38 live work units, and 90 residential units. Under the proposal the existing structure will be demolished, and the existing private surface parking lot would be eliminated.
12. The PUDA will ensure that the affordable housing provisions of Chapters 23.58B SMC and 23.58C SMC will apply to the project proposal. Participation by the Applicant in the program under Chapter 23.58C SMC will yield affordable housing within the project or an equivalent in lieu payment. *See* Exhibit 1. The Applicant proposes to provide 8 units (6 percent of the total) as affordable to households at 60 percent of Area Median Income (“AMI”) for a 75-year term. Exhibit 38. In addition, the Applicant proposes to provide 13 units (14 percent of the total) as affordable to households at 65 to 80 percent AMI. *Id.*
13. The proposed rezone would result in a building five feet taller than allowed by current zoning. The proposal includes setbacks of nine feet six inches from the north property line along W Republican Street, and ten feet from the south property line. Some private territorial views could change as a result of increased development and building heights resulting from the proposal.
14. The proposal was reviewed by the West Design Review Board ("DRB"). The DRB focused on a design with specific strategies to reduce the impacts of additional height, bulk, and scale to the adjacent sites. The DRB recommended approval of a design that includes a penthouse at the center of the roof, setback thirty to fifty feet from the edge of the rooftop to improve views and reduce

height, bulk, and scale impacts. The DRB unanimously recommended approval of the proposal, including requested development standard departures, with conditions. Exhibit 1 at 10.

15. A traffic and parking study for the proposal showed that it would generate 455.62 daily vehicle trips, including 32.7 AM peak hour trips, and 42.51 PM peak hour vehicle trips. Exhibit 19.
16. A parking utilization study was also completed for the proposal. The parking analysis estimated that the site could generate a daily parking demand of 79 parking spaces. The site is providing 53 parking spaces. Therefore, on-street overflow is anticipated to require 26 parking spaces. Exhibit 20 at 4. This would cause use of available on-street parking spaces to rise from the current average weekday utilization of 76 percent to approximately 80-81 percent. *Id.* at 3.
17. The Applicant performed a study of the shadow impacts of potential build-out under the existing NC3P-65 zoning, and for the proposed NC3-85 zoning (with a proposed structure height of 70 feet). Exhibit 41. The study shows that shadow impacts are nearly the same for both.

Public Comment

18. Public comments were received during the design review process for the proposal. They are summarized in the Director's Report, Exhibit 1, at 2-4. The Hearing Examiner received one public comment, and letter, at the hearing. Exhibit 42.
19. The issues raised in comments, following the design review process, were concerns that the proposal is premature because it is part of the area within the City's Uptown area-wide rezone consideration, will impact private views, and is unnecessary because the area is achieving its growth development goals.

Director's Review

20. The Director reviewed the West Design Review Board's recommendations and agreed that "the proposed project and conditions imposed result in a design that best meets the intent of the Design Review Guidelines," and accepted the recommendations noted by the Board. The Director approved the design subject to three design review conditions. Exhibit 1 at 11-12, and 34.
21. The Director also analyzed the proposal's potential long term and short term environmental impacts, and recommended conditions to mitigate construction-related impacts. Exhibit 1 at 29-34.
22. The Director's report analyzes the proposed contract rezone, and recommends that it be approved with conditions. Exhibit 1.

Applicable Law

23. 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.

24. 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.
25. 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. SMC 23.34.008 requires that, within an urban center or urban village, the zoned capacity, taken as whole, is to be no less than 125 percent of the applicable adopted growth target, and not less than the density established in the Comprehensive Plan. The established density target for the Uptown Urban Center is 3,500 additional dwelling units between the year 2015 and the year 2035. The density target established for the Uptown Urban Center is a density of 12 dwelling units per acre by the year 2024. The proposed rezone would increase both zoned capacity and zoned density and, thus, meets the requirements of SMC 23.34.008.

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, and the rezone would retain that zoning designation. The site currently

matches the NC3 zone function and locational criteria, found in SMC 23.34.078,¹ and that designation remains appropriate.

Neighborhood Plan/Precedential Effect

6. The development is consistent with the portions of the Queen Anne Neighborhood Plan listed in Finding 11 above. The proposal is consistent with Policy QA-P1, because the proposal seeks to create and maintain pedestrian oriented streetscapes and community character by providing variety in the landscape design, including planting individualized shrub species, adding bicycle parking to the right-of-way, and adding design strategies to enhance the pedestrian areas at both street frontages to the subject property. The proposal is consistent with Policy QA-P2, because it is consistent with the established character of the commercial and mixed-use neighborhood. The proposal is consistent with Policy QA-P3, because the proposal includes design elements that consider the pedestrian oriented streetscape, open space, landscaping, design context and signage. The proposal is consistent with Policy QA-P5, because through the various residential and live work units, an attractive range of housing types and housing strategies is encouraged. The proposal is consistent with Policy QA-P40, because it includes enhanced improvements to the street, including ground level commercial space, overhead weather protection for pedestrians, and landscaping.
7. As indicated above, Council is currently considering area wide up-zone legislation for the Uptown Urban Center. The current base FAR for the subject site under existing NC3-65 zoning is 4.75. The Applicant's proposal would allow less development than would be allowed under the two action proposals within the City's area wide zoning proposal (heights to 85 feet or 160 feet). Although the proposal would limit development when compared with the City's area wide proposal for 85 foot and 160 foot heights, it does not preclude the City's proposed zoning if it is adopted. Thus, the proposal would not have a precedential effect of reducing or restricting zoned heights in the area. To the degree that the proposal if approved, might influence Council's consideration of the area wide up-zone, e.g. as an example of a property with a height approval

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;
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.

above the existing 65-foot height limit, then the proposal could have a precedential effect of increasing zoned heights.

Zoning Principles

8. 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.
9. The rezone proposal does not include any changes to the existing zoning designation. The existing pattern of commercial and midrise zoning will continue to exist. The proposed rezone does propose a change from the existing 65-foot height limit to 85 feet in height.
10. The Uptown neighborhood includes many zoning designations including multifamily and commercial zones of varying intensity and heights. In immediate proximity to the subject property commercial zones are located adjacent to commercial zones, and commercial zones are located adjacent to residential zones. There are multiple examples of a 40-foot height zone located adjacent to a 65-foot height zone, and 40-foot and 65-foot height zones adjacent 85-foot height zones. In some instances, the transition does include buffers, such as a right-of-way street or alley, but in many instances the transition occurs along a shared property line.
11. There is some effective separation between the proposal and adjacent and nearby properties provided by minor topographic changes, adjacent streets to the north and east of the proposal, and an alley to the west the proposal.
12. The proposed rezone would maintain the existing pattern of commercially zoned properties facing commercially zoned properties on W Republican Street and 2nd Avenue W. It will not create a new boundary between commercial and residential areas.

Impact Evaluation

13. The proposed rezone would positively impact the housing supply, as it would add 108 new residential units.
14. 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.
15. The Director has evaluated impacts on public services and service capacities, as well as noise, 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 regulations.

Changed Circumstances

16. “Evidence of changed circumstances shall be taken into consideration in reviewing proposed rezones, but is not required to demonstrate the appropriateness of a proposed rezone.” SMC 23.34.008.G. The adoption of the Comprehensive Plan (1994), the designation of the Uptown Urban Center, adoption of the Queen Anne Neighborhood Plan in 1999, and the adoption of the 2035 growth target for Uptown Urban Center are all circumstances that have changed since the most recent zoning change for this area in 1999.

Overlay Districts

17. The proposed rezone is not located within any of the overlay districts included in Chapters 23.60 A through 23.74 SMC.

Critical Areas

18. The site is not located in or adjacent to a critical area.

Height Limits

19. The proposed rezone would allow an additional 20 feet in zoned height, but with a contract rezone for a 70 foot tall structure, the increase would actually be just five feet. 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 public and private view blockage; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.
20. 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 proposal’s multi-family residential uses would be consistent with the type and scale of development intended for both the existing NC3-65 zoning and the proposed NC3-85 zoning, and would not change the variety and size of commercial uses that are allowed. The proposal infills an existing surface parking lot, which is not a preferred use in the neighborhood. There will be no displacement of preferred uses.
21. 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 proposal would not change the existing zoning transition pattern. There is no likelihood of view blockage of protected public views, because there are no public views of Elliott Bay or the Space Needle in the vicinity of the proposal. The record is insufficient to conclude to what degree private views could be impacted by an increase in height to 85 feet, because no analysis of private views was submitted. However, in this case the proposal is for a structure only five feet above the current 65-foot maximum height zoning. The majority of private property views would likely be blocked by development built to a 65-foot height, thus the proposal will have minimal, if any, impacts on private views.

22. 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, with a 70-foot structure height, would be consistent with the predominant height and scale of nearby newer development, which is representative of the area’s overall development potential. Older one and two story development in the area is not representative of the development potential for zoning in this area.

23. 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. The requested height limit of 85 feet, with the proposal limited to a height of 70 feet, would be compatible with most of the actual and zoned heights in the surrounding area, and would be consistent with the transition of zoned heights and scale of development in the area.
24. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC3-85 with a PUDA limiting the height of the proposal to 70 feet.

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

Prior to Issuance of a Building Permit

2. Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit number 3020961.

The Director has recommended the following SEPA condition:

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 conditions on the proposal:

Prior to Issuance of a Master Use Permit

1. Revise plans to accurately describe the outdoor seating area north of the main multiple-family residential entry on 2nd Avenue W. This seating area should match the proposal contained in the Recommendation packet reviewed at the July 6, 2016 Design Review Board meeting.

Prior to Issuance of Building Permit

2. Provide anti-graffiti coating or similar strategy to mitigate and prevent potential long term damage from graffiti at the ground level. Add a note to all elevations and material references as applicable.

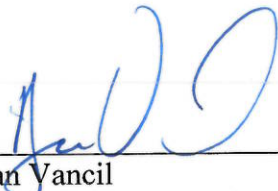
Prior to Certificate of Occupancy

3. 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 (Carly Guillory, carly.guillory@seattle.gov).

For the Life of the Project

4. 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 (Carly Guillory, carly.guillory@seattle.gov).

Entered this 10th day of January, 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 who submitted a written comment to the Director, or provided a written or oral comment to the Hearing Examiner, may submit an appeal of the Hearing Examiner's recommendation to the Council. The appeal must be in writing, clearly identify specific objections to the Hearing Examiner's recommendation, and specify the relief sought. The appeal must be filed with the City Clerk by 5 p.m. of the 14th calendar day following the date the Hearing Examiner's recommendation was issued. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period runs until 5 p.m. on the next day that is not a Saturday, Sunday, or federal or City holiday.

**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 **Vince Ferrese for Encore Architects.** Council File: **CF 314331** in the manner indicated.

Party	Method of Service
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Dated: January 10, 2017

Tiffany Ku
 Legal Assistant

**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 **Vince Ferrese for Encore Architects.** Council File: **CF 314331** in the manner indicated.

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<u>Applicant</u> Vince Ferrese for Encore Architects c/o Jessica Clawson McCullough Hill Leary, P.S. jessica@mhseattle.com Laura Counley lcounley@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
<u>Planner</u> Cheryl Waldman SDCI Cheryl.Waldman@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
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Dated: January 10, 2017



 Tiffany Ku
 Legal Assistant