

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

In the Matter of the Application of

CF 3007538

JOSH STEPHERSON

DPD Reference:

for approval of a rezone for property
located at 3210 California Avenue SW

308944

Introduction

Josh Stepherson applied for a rezone of property located at 3210 California Avenue Southwest from Neighborhood Commercial 1 zoning with a 30-foot height limit to Neighborhood Commercial 2 zoning with a 40-foot height limit. The Director of the Department of Planning and Development (Director or Department) submitted a report recommending that the rezone be approved. The Director's report included a SEPA Determination of Non-significance, which was appealed.

A consolidated hearing on the rezone application and SEPA appeal was held before the Hearing Examiner (Examiner) on August 18, 2010. The Applicant represented himself; the Appellants were represented by Dennis Ross; and the Director was represented by Shelley Bolser, Senior Land Use Planner. The record was held open for the Examiner's site visit and was briefly re-opened for receipt of the remaining documents from the Council file for the rezone application. The record closed on August 23, 2010.

The SEPA appeal is addressed in the Hearing Examiner's decision in MUP-10-014(W). For purposes of this recommendation on the rezone application, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence in the record, the Examiner enters the following findings of fact, conclusions and recommendation on the application.

Findings of Fact

Site and Vicinity

1. The site consists of 30 parcels and is addressed as 3210 California Avenue SW. It is located at the southern end of the Admiral Residential Urban Village (Urban Village) in West Seattle.
2. The site includes three groups of parcels along California Avenue SW (*see map at page 2 of Exhibit 5*):

The east parcels are included within the Urban Village and are bounded by SW Hanford Street to the north, California Avenue SW to the west, SW Hinds Street to the south, and single-family residential lots to the east.

The northwest parcels are also included within the Urban Village and are bounded by SW Hanford Street to the north, California Avenue SW to the east, SW Hinds Street to the south, and an alley to the west. Across the alley are single-family residential lots.

The southwest parcels are not included within the Urban Village and are bounded by SW Hinds Street to the north, California Avenue SW to the east, L3-RC-zoned lots to the south, and an alley to the west. Across the alley are single-family residential lots.

3. The subject property is developed with one- to four-story structures housing residential, mixed use and commercial uses including apartment buildings; medical, dental, real estate law and insurance offices; restaurants; hair and nail salons; a frame shop; a fitness facility; a martial arts facility and others.
4. North of the site along the west side of California Avenue SW is NC2-40 zoning that is developed with one-to four-story structures housing commercial, mixed-use and residential uses, and Lafayette Elementary School, a designated historic landmark. Along the east side of California is a religious institution, West Seattle High School and Hiawatha Playfield, (both designated historic landmarks), and the Admiral Safeway store, which is zoned NC3-40. South of the site along California Avenue SW is NC2-40 zoning on the east side of the street with similar development to that on the north, and L3-RC zoning on the west side that is generally developed with three- and four-story residential and smaller commercial structures. To the east and west of California Avenue SW is single-family residential zoning that is predominantly developed with one- to three-story single-family residential structures. Madison Middle School, a designated historic landmark, is located approximately two blocks to the southwest of the site. Other nearby uses include a public library, theater, health care facility, pharmacy, churches, banks, restaurants, grocery stores, etc.
5. The site is located near the ridge of the West Seattle peninsula and slopes down to the west. There is approximately eight feet of slope across the northwestern and southwestern parcels. The slope across the eastern parcels averages approximately 18 feet, but varies along the block, with some of the adjacent single-family residences that front on 42nd Street SW sitting higher above the subject property than others. The higher properties have views to the west that include the Olympic Mountains and Puget Sound.
6. The site is located within the Seattle Fault Zone, a broad seismic hazard area that encompasses most of West Seattle. It may also contain a steep slope critical area.
7. The site is not located within an overlay district.

8. California Avenue SW is classified as a minor arterial, as well as a mixed use street and a major transit street. It is lined with numerous mature trees. East of California Avenue SW, SW Hanford Street is classified as a local connector, collector arterial, and minor transit street, and has an on-street urban trail bicycle classification. SW Hinds Street, 42nd, 44th and 45th Avenue s SW, and SW Hanford Street west of California Avenue SW, are all classified as non-arterial streets. All streets are fully improved, and most allow parking on both sides. Parking on 42nd Street SW is restricted to one side because the street serves as a fire lane for West Seattle High School. Parking in the area is also available in surface parking lots, and in structured and below-grade garages.

9. The site is served by Metro transit. Five bus routes have stops within three blocks of the site, although some run infrequently and one is effectively unavailable to residents at the end of the school day for the High School.

Zoning History and Potential Zoning Changes

10. The zoning history of the site is as follows:

1923 to 1957 - "Business District" or "Business District C" with a 40-foot height limit;
1957 to 1986 - "Neighborhood Business" with a 35-foot height limit;
1986 to 1990 - "Neighborhood Commercial 1" with a 40-foot height limit
1991 to present - "Neighborhood Commercial 1" with a 30-foot height limit

11. In the mid-1990s, all but the southwestern parcels on the subject site were included within the Urban Village.

12. The Director has proposed text amendments to the City's lowrise multifamily zones that, if approved by the City Council, would consolidate the Lowrise 3 and Lowrise 4 zones and allow building heights up to 40 feet within them.

Neighborhood Plan

13. In evaluating a rezone proposal, consideration is to be given to those parts of a neighborhood plan that have been adopted by the City Council, with particular attention given to any adopted policies that guide future rezones. SMC 23.34.008.D.

14. The rezone policies in the adopted Admiral Neighborhood Plan address only rezones away from single-family zoning outside the Urban Village and rezones to L3 and L4 zoning inside the Urban Village. The adopted Neighborhood Plan does include policies that would apply to development under either NC1-30 or NC2-40 zoning, including a policy that encourages development in conformance with the neighborhood's existing character and scale and promotes a pedestrian-friendly environment (A-P1), and numerous policies that address parking, and traffic and pedestrian safety (A-P5, A-P6A, A-P7, A-P8, A-P9, A-P10 and A-P11).

Proposal

15. The Applicant seeks a rezone of the subject property from Neighborhood Commercial 1 zoning with a 30-foot height limit (NC1-30) to Neighborhood Commercial 2 zoning with a 40-foot height limit (NC2-40). No height limits greater than 40 feet are proposed, and no development project is associated with the rezone.

Public Comment

16. The Director held a public meeting on the proposal on November 8, 2007, and the public comment period was extended to December 5, 2007. During the comment period, the Department received 55 written comments. Thirty-one supported the rezone, and 24 opposed it. Additional comment letters were received after the comment period and were forwarded for the Hearing Examiner's consideration. The Examiner heard testimony from 15 members of the public and received additional written comments, some of which were from those who testified at the hearing. In total, public testimony and comments submitted to the Examiner ran approximately two to one in opposition to the proposed rezone.

17. Comments opposing the rezone raised concerns about height bulk and scale, shadow, privacy and view impacts and potential loss of property value, particularly for properties located east of the site along 42nd Avenue SW; failure to consider differences in elevation along California Street SW and resulting differences in the topographic break between 42nd Avenue SW and California Street SW; the lack of a specific development plan that would allow development impacts for the entire site to be addressed at the rezone stage; potential for subsequent development to escape design review and SEPA review; potential for undesirable businesses; an increase in traffic and resultant congestion and impacts on pedestrian safety; lack of compliance with the unadopted portions of the Admiral Neighborhood Plan; an increase in parking demand and potential loss of on-street parking; lack of adequate transit service; increase in noise resulting from additional people moving to and working in the area as well as additional rooftop mechanical and electronic equipment; an increased number of garbage and delivery trucks in the alley and in the two-way left turn lane of California Street SW; and concerns with the process followed for the rezone.

18. Comments supporting the rezone cited its consistency with surrounding zoning and development and the fact that the area was historically zoned for 40-foot heights; the potential for creation of housing in the Urban Village near schools, libraries and retail services; the potential for reviving this part of the California corridor and encouraging investment in the area, which would bring more density, pedestrian amenities and diverse retail; a preference for these local developers over potential out-of-town developers; parking relief that would result from construction of underground parking when the property is developed; and the idea that NC1-30 zones work for townhouses, but that 40-foot heights are needed for successful mixed use buildings, with the extra floor of housing offsetting the cost of underground parking.

Director's Review

19. The Director reviewed the proposal and public comments, and issued a Determination of Non-significance pursuant to SEPA. In a report dated June 28, 2010, the Director recommended approval of the rezone. (Exhibit 5)

Applicable Law

20. SMC 23.34.008.A requires that the zoned capacity for urban villages be no less than 125% of the growth targets adopted in the Comprehensive Plan for the village. For residential urban villages taken as a whole, the zoned capacity must be within the density ranges established in the Land Use Element of the Comprehensive Plan.

21. SMC 23.34.072 addresses designation of commercial zones. It discourages encroachment of commercial development into residential areas and encourages compact, concentrated commercial areas or nodes over diffuse, sprawling commercial areas.

22. SMC 23.34.074.A provides that the NC1 zone functions to "support or encourage a small shopping area that provides primarily convenience retail sales and services to the adjoining residential neighborhood, where it is possible to achieve "[a] variety of small neighborhood-serving businesses," "[c]ontinuous storefronts built to the front lot lines," "[a]n atmosphere attractive to pedestrians," and "[s]hoppers walk from store to store."

23. SMC 23.34.074.B provides locational criteria for the NC1 zone: "Outside of ... urban villages, or within ... urban villages where isolated or peripheral to the primary business district and adjacent to low-density residential areas," "[l]ocated on streets with good capacity, such as collector arterials," "[n]o physical edges to buffer the residential areas," "[s]mall parcel sizes," and "[l]imited transit service."

24. SMC 23.34.076.A provides that the NC2 zone functions to "support or encourage a pedestrian-oriented shopping area that provides a full range of household and personal goods and services, including convenience and specialty goods, to the surrounding neighborhoods" and "accommodates other uses that are compatible with the retail character of the area such as housing or offices," where it is possible to achieve "[a] variety of small to medium-sized neighborhood-serving businesses," "[c]ontinuous storefronts built to the front lot line," an "atmosphere attractive to pedestrians," and "[s]hoppers can drive to the area, but walk from store to store."

25. SMC 23.34.076.B provides locational criteria for the NC2 zone: "Primary business districts in residential urban villages ... that extend for more than approximately two blocks;" "[l]ocated on streets with good capacity, such as principal and minor arterials, but generally not on major transportation corridors;" "[l]ack of strong edges to buffer the residential areas;" a "mix of small and medium-sized parcels;" and "[l]imited or moderate transit service."

26. SMC 23.34.009 prescribes criteria for a rezone that includes consideration of height limits in commercial zones. Height limits are to be "consistent with the type and scale of development intended for the zone," considering the "demand for permitted goods and services and the potential for displacement of preferred uses." They are also to "reinforce the natural topography of the area and its surroundings," considering the likelihood of view blockage. Height limits established by current zoning are to be considered, and 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." They are to be "compatible with actual and zoned heights in surrounding areas," and are to provide a "gradual transition in height and scale and level of activity between zones" unless major physical buffers are present.

27. Under SMC 23.34.007.C, compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones. Thus, Plan goals and policies are not separately reviewed.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter 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. 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. The general rezone criteria, including "zoning principles," are set forth in SMC 23.34.008.
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.
4. The proposed rezone satisfies SMC 23.34.008.A, as it would increase the zoned capacity of the urban village, and the capacity would be consistent with the density established in the Urban Village Appendix to the Comprehensive Plan.
5. The site is already zoned and used for commercial development, and the rezone would not affect the compact, concentrated configuration of the commercial area or the preferred configuration and edge protection of adjacent residential zones. Nor would it result in any encroachment of commercial development into residential areas. Therefore, it is consistent with the criteria of SMC 23.34.072 for the designation of commercial zones.

6. The site meets some of the functional and locational criteria for the NC1 zone. It includes a variety of small businesses, some of which serve primarily the adjoining residential neighborhood; many storefronts are built to the front lot line; it has an atmosphere attractive to pedestrians; and shoppers can walk from store to store. The site is adjacent to single family residential areas that are without physical edges to serve as buffers. Transit service could be characterized as limited to moderate. However, with the exception of the southwestern parcels, the site is located inside an urban village and is not isolated from the primary business district. Although located outside the Urban Village, the southwestern parcels are zoned NC1-30 and developed with a restaurant and commercial uses. As a minor arterial, California Avenue SW has better than limited capacity. And with parcels that range from 2,700 square feet to 10,000 square feet in area, the site has a mix of small and medium-sized parcels.

7. The site best matches the functional and locational criteria for the NC2 zone. It provides both small and medium-sized businesses that serve the adjacent and surrounding neighborhoods. Many storefronts are built to the front lot line. The site provides an atmosphere attractive to pedestrians, and an area to which shoppers can drive, park and then walk from store to store along California Avenue SW. The area is really part of the pedestrian-oriented shopping area that extends for several blocks and functions as the primary business district within the Urban Village, offering a full range of household and personal goods and services to surrounding neighborhoods. As noted, there is a mix of small and medium-sized parcels, a lack of strong edges to buffer adjacent residential areas, and transit service that is between limited and moderate.

8. A height limit of 40 feet is consistent with the type and scale of development intended for the NC2 zone. Making provision for additional residential units above a retail base allows for an increase in density within the Urban Village that is consistent with the pedestrian character of the neighborhood and would further support the pedestrian-oriented shopping area along California Avenue SW. There is no evidence of a potential for displacement of preferred uses as a result of increased height at this site.

9. Heights throughout the California Avenue SW corridor generally do not reinforce the natural topography of the area, and development does not provide a gradual transition in height, scale and level of activity between zones. Although the slope across the site provides some topographic break between the site and adjacent single-family development to the east, most views from those residences would be blocked if the site were fully built out at NC1-30 zoning, and any remaining views would be blocked by build-out at NC2-40. This would be an issue to be addressed in design review of projects proposed for the site.

10. The predominant height and scale of existing development on the site is not a good measure of the area's overall development potential. A better measure is the height and scale of development to the north and south on California Avenue SW. During the last 20 years, many parcels within surrounding areas that are zoned for 40-foot heights have been redeveloped, which indicates the area's likely development potential.

11. It is unlikely that the proposed rezone would have a precedential effect in the area since the zoning to the north and south on one side of California Avenue SW is already NC2-40, the adjacent L-3 parcels to the south have been recently developed, and there is an established boundary between commercial development along California Avenue SW and adjacent residential development.

12. Although the adopted Neighborhood Plan does not include policies relevant to the proposed rezone, future development under NC2-40 zoning would meet policy A-P1, because it would conform to the existing character and scale of development along much of the nearby California Avenue SW commercial area, which includes a number of four-story structures.

13. The zoning principles listed in SMC 23.34.008.E are generally aimed at buffering less intensive zones from more intensive zones, if possible. However, as noted above, these principles have not been implemented along most of the California Avenue SW commercial corridor in this area. At the site, the only transition or buffer separating the existing NC1-30 zone on the site from the adjacent SF5000 zoning to the east is the topographic break between the zones. On the west side, an alley provides the only buffer between the two zones. The same conditions exist with respect to the NC2-40 and SF5000 zones to the north and south, with the exception of the buffer provided by West Seattle High School and Hiawatha Playfield to the northwest. Only near the junction of SW Admiral Way and California Avenue SW is there an area of lowrise zoning between neighborhood commercial and single-family residential zones.

14. The slope on the east side of California Avenue SW at the site provides a topographic break of varying proportions between the two zones that would reduce the perceived height of development under either the existing NC1-30 zoning or the requested NC2-40 zoning. In addition, zone boundaries will follow platted lot lines, and commercial uses would face each other across California Avenue SW and face away from adjacent residential areas. Additional transitions to respond to the neighboring single-family development would likely be provided through design review of future development on the site.

15. The proposed rezone would have a positive impact on housing, as it would provide the opportunity for an additional floor of new dwelling units over and above the number that could be provided under the existing NC1-30 zoning. The additional floor could offset some of the cost of underground parking and thereby increase the likelihood that development would occur in this underdeveloped block of California Avenue SW

16. Development of the site to either the existing NC1-30 zoning or the proposed NC2-40 zoning would require additional public services. The Director reviewed a detailed sewer capacity analysis from Seattle Public Utilities based on a full build-out scenario for the site at NC2-40 zoning. The analysis determined that there is sufficient sewer capacity for the maximum development under the proposed rezone. The Director also evaluated the probable impacts of future site development on public services and service capacities,

as well as other environmental impacts, pursuant to SEPA. No unmitigated impacts have been identified.

17. Full build-out of the site under either the existing NC1-30 zoning or the proposed NC2-40 zoning would result in shadows to the north, east and west, depending on the season and time of day, and would impact private views from adjacent properties to the east. The Director determined that review of future site development pursuant to SEPA, design review and other City Code requirements would be sufficient to address these future development impacts.

18. The rezone could create additional employment opportunities in the area by revitalizing the block and increasing the variety of allowed commercial uses.

19. There is no indication in the record that future development under the proposed zoning would have a negative impact on pedestrian safety. It is likely that pedestrian safety would be improved by the new sidewalks, lighting and potential reduction in curbcuts that would accompany new development.

20. There is no indication in the record that future development under the proposed zoning would negatively impact nearby historic landmarks.


21. Changed circumstances are not required before a rezone may be approved, and they are to be considered only as they relate to elements or conditions included in the criteria for the relevant zone. Changed circumstances are not cited in support of the proposed rezone.

22. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone and height designation for the site is NC2-40.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone.

Entered this 2nd day of September, 2010.


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
Built Environment 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.