

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

In the Matter of the Application of

CF-314447

HUGH SCHAEFFER, SHW

Department Reference:
3034865-LU

for a contract rezone for property located
at 7012 Roosevelt Way Northeast

Introduction

Hugh Schaeffer, for S and H Works, (“Applicant”) applied for a rezone of property located at 7012 Roosevelt Way NE, from Lowrise 1 (M1) (“LR1 (M1)”), to Neighborhood Commercial 2-55 (M2) (“NC2-55 (M2)”). The Director of the Department of Construction and Inspections (“SDCI” or “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 hearing on the rezone application was held before the Hearing Examiner on July 6, 2022. The Applicant was represented by Brandon Gribben, attorney-at-law, and the Director was represented by Tami Garrett, Senior Land Use Planner. The Hearing Examiner visited the site following the hearing on July 20, 2022, and the record closed on that date.

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 development site is a unification of two properties addressed as 7012 Roosevelt Way NE and 1007 NE 71st St totaling 9,801 square feet.
2. 1007 NE 71st St is a split-zoned property. The east 30 feet of this parcel is zoned LR1(M1) and the west 20 feet of this parcel is zoned NC2-55(M). The Roosevelt Station Area Overlay also follows the existing zone boundary.
3. Properties to the north, east and south are zoned NC2-55(M). Properties to the west are zoned LR1(M1). Neighborhood Commercial (NC2-55) zoning continues north and south along Roosevelt Way NE. One block to the south the height limit increases to 75’. Immediately east of

the project site the zoning designation shifts to multifamily lowrise (LR1) before transitioning to single family zoning the next block to the east.

4. The site is currently developed with a commercial structure built in 1930, and a single-family residence built in 1907.
5. The subject site is located at the southeast corner of NE 71st St and Roosevelt Way NE in the Roosevelt Residential Urban Village. Surrounding uses in proximity to the site are commercial structures to the north and south, a single-family residence to the east, and a mixed-use multifamily residential/commercial structure to the west.
6. Existing vehicular access to the development property is via curb cuts along Roosevelt Way NE and NE 71st St. Roosevelt Way NE is a principal arterial street serving as a primary residential and commercial corridor providing vehicular and pedestrian circulation. The properties east and west of the Roosevelt Way NE corridor abutting NE 71st St are primarily single-family residences within multifamily zoning (LR1(M1)). NE 71st St is a non-arterial street.
7. I-5 is two blocks west of the site and Lake City Way NE is three blocks to the north. Notable features in the area include the Roosevelt P-Patch Community Garden, Roosevelt High School, and the Roosevelt Link Light Rail Station.
8. The natural topography of the area rises from west to east and from south to north, with an approximately 22' grade change upward from Roosevelt Way NE along NE 71st St cresting midblock and gently downwards to 12th Avenue NE.
9. The site includes a steep slope, and was granted relief from prohibition on development in steep slopes and their buffers by the SDCI Geotechnical Engineer.
10. The neighborhood is in transition as older single-family residences and low-scaled commercial structures are being replaced with larger townhouse and mixed-use residential/commercial developments. Newer mixed-use developments on Roosevelt Way NE feature ground-level glazing and pedestrian scaled landscaping while reducing the perceived mass by breaking up the building mass into at least two volumes. By contrast, existing one-to-two-story single-family residences are characterized by stoops or front porches at the entries with material combinations of lap siding and shingle accents on the facades. Structures are generally low-scaled, ranging from one to four stories in height.

Zoning History and Potential Zoning Changes

11. The zoning history for that portion of the property seeking a rezone (east 30 feet of 1007 NE 71st St) is as follows:
 - 1923 – Area District “A”
 - 1958 – RS5000
 - 1994 – Single Family 5000 (SF 5000)
 - 2019 – LR1 (M1)

The zoning history for the remainder portion of the subject parcel not included in the rezone request (west 20 feet of 1007 NE 71st St) is as follows:

- 1923 – Area District “C”
- 1958 – Commercial General (CG)
- 1982 – Neighborhood Commercial 2 (NC2)
- 1994 – Neighborhood Commercial 2 with height limit of 40’ (NC2-40)
- 2019 – Neighborhood Commercial 2 with height limit of 55’ (NC2-55) (M)

12. With the establishment of the 1958 Seattle Zoning Code, Seattle’s first comprehensive zoning code, the eastern sixty percent of parcel (the proposed rezone area), and the area to the east of the site was zoned RS 5000 and the western forty percent of the parcel and the area to the west of the site was zoned CG. The existing home straddled the established zone boundary, and the split-zoning designation of the parcel has continued since.
13. In 1982, the same designation pattern continued with the area of the proposed rezone and adjoining properties to the east zoned RS5000. The remaining western portion of the parcel and properties to the west and south were zoned NC2. At some point, the property directly north was rezoned from RS5000 to NC2.
14. In 1994, the proposed rezone area and adjoining properties to the east were zoned SF 5000. The remaining western portion of the parcel and properties to the west, north and south were zoned NC2-40’.
15. In 2011, the western half of the parcel not subject to the proposed rezone was rezoned to include the Station Area Overlay Designation (SAOD), which followed the established boundary between the neighborhood commercial and residential zoning in the area.
16. The zoning designation most recently changed in 2019 after adoption of the citywide Mandatory Housing Affordability (MHA) requirements. In November of 2015, the City Council passed Ordinance 124895 creating a new Land Use Code Chapter 23.58B, Affordable Housing Impact Mitigation Program Development Program for Commercial Development (MHA-C). The Council followed this, in August of 2016, with Ordinance 125108 creating a new Land Use Code Chapter 23.58C, Mandatory Housing Affordability for Residential Development (MHA-R). The purpose of these Chapters is to implement an affordable housing incentive program authorized by RCW 36.70A.540. Chapters 23.58B and 23.58C specify a framework for providing affordable housing in new development, or an in-lieu payment to support affordable housing, in connection with increases in commercial or residential development capacity.
17. On November 9, 2017, the City issued the MHA SEPA Final Environmental Impact Statement (FEIS). The citywide rezone was adopted, effective April 19, 2019, changing the zoning designation of the eastern portion of the parcel subject to the proposed rezone and area to the east from SF 5000 to its current designation of LR1(M1). The western portion of the parcel and the parcels directly to the west, north and south of the rezone site were rezoned to NC2-55(M) from NC2-40. The MHA zoning changes generally rezoned large areas and did not examine the site specific issue of this split-zoned parcel.

Urban Center Plan and Neighborhood Plan

18. The development site is located within an urban village boundary, Roosevelt Residential Urban Village, established in the Comprehensive Plan.
19. The estimated housing unit growth target for the Residential Urban Village in the Growth Strategy Appendix of the 2035 Comprehensive Plan is a density of 800 housing units at a growth rate of 50% between the years of 2015 to 2035. The established growth accommodation for residential urban villages in the 2035 Comprehensive Plan is zoning that permits at least 12 dwelling units per gross acre. According to SDCI, the Roosevelt Residential Urban Village has currently achieved 98.3% of its residential growth target.
20. Applicable sections of the adopted Roosevelt Neighborhood Plan include goals and policies for future development that are related to zoning regulations. R-LUG2 seeks to “[m]aintain the physical character of historically lower-density areas of the urban village by encouraging housing choices such as cottages, townhouses, and low-rise apartments. Provide appropriate transitions from these areas to more dense uses.” R-LUG2 seeks to “[p]romote the growth of the Roosevelt Urban Village in a manner that concentrates residential and business uses in the commercial core and near the light rail station, with less dense residential, mixed-use, and commercial development along the commercial arterials that extend from the core.” R-LUP1 calls for planning to “[s]upport a zoning strategy that consolidates similar zoning into whole blocks in and near the urban core and light rail station, to result in more compatible development.” R-LUP2 encourages planning to “[s]upport the infill development of commercial-zoned properties that are vacant or underutilized.” R-LUP3 calls for planning to “[p]romote the development of new multifamily dwellings, in properly zoned areas, that will buffer neighborhood residential areas from the commercial core, freeway, and commercial corridors.” R-TP2 encourages sidewalk design to promote pedestrian use and improve pedestrian safety. R-TP6 looks to site planning to reduce conflicts between pedestrians and vehicles. R-HG2 sets a goal to “[c]reate housing types that can provide housing opportunities for a wide range of residents and households with varying incomes and housing needs.” R-HG-3 sets a goal to “Accommodate most of the expected residential growth by encouraging larger development in and around the Roosevelt Urban Village’s light rail station and commercial core.” R-HP2 encourages “an appropriate fit of scale and architectural character in all new developments.” R-UG2 sets a goal to reduce energy use and increase reuse of stormwater and recycling of solid wastes. R-EDG2 sets an economic goal to “[t]ake advantage of the location of the light rail station by promoting mixed-use development that includes both businesses and multifamily housing near the station to serve the diverse population of the Roosevelt neighborhood.”

Proposal

21. 7012 Roosevelt Way NE is currently zoned NC2-55(M). No zoning change is proposed to this parcel.
22. 1007 NE 71st St is a split-zoned property. The proposal is to eliminate the split-zoning condition and rezone the approximately 3,000 square foot eastern portion of the consolidated proposal site to NC2-55(M2), and within the Roosevelt Station Area Overlay.

23. Existing structures are planned for demolition.

Public Comment

24. The public comment period ended on August 31, 2020. Comments received by SDCI within the scope of the rezone review related to tree protection; parking impacts; view impacts; height, bulk and scale impacts; shadow impacts; construction impacts; impacts to steep slope stability; climate and pollution impacts; impacts to public services; and compliance with rezone criteria and Roosevelt Neighborhood Plan recommendations, impacts to property value, unit type/mix, the lack of commercial uses, housing affordability and impacts to neighborhood character.
25. At the July 6, 2022 public hearing on the rezone before the Hearing Examiner, public comment was received from a neighbor of the proposal expressing concern. The speaker was Jessie Oberreuter, a neighbor to the proposal, expressing concern about the size and density of the proposal relative to his single-family home, and similar sized homes in the neighborhood.

Director's Review

26. The Director analyzed the proposal's potential long-term and short-term environmental impacts and found that there would be no need to recommend conditions to mitigate proposal-related impacts, as there were no significant impacts identified or any impacts would be addressed by the requirements of the Code.
27. The Director's report, Exhibit 1, analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

28. 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.
29. 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.
30. 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.
5. The proposed rezone will increase zoned capacity and zoned density by allowing for additional building height and residential units. The proposed rezone site currently contains a portion of one residential dwelling unit. The proposed development will provide a total 91 dwelling units, with approximately 29 dwelling units (or parts thereof) on the proposed rezone site.
6. The proposed rezone is consistent with SMC 23.34.008.A.1 because the increase in zoned capacity does not reduce capacity below 125% of the 2035 Comprehensive Plan growth target.
7. The proposal is also consistent with SMC 23.34.008.A.2 because the proposed change would not result in less density for this zone than the density established in the Growth Strategy Element of the Comprehensive Plan.

Match Between Zone Criteria and Area Characteristics

8. 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.
9. The area surrounding the proposed rezone sites is predominately developed to an intensity greater than LR1.
10. The site and its relation to adjacent zoning match the NC2-55 (M2) zone function and locational criteria, found in SMC 23.34.076, and that designation is the most appropriate zoning designation.

11. The rezone proposal supports the function of the NC2 zoning designation by accommodating residential uses which support the retail character of the area. The proposal reinforces the pedestrian character of the zone by providing a strong street edge and an overall atmosphere which is attractive to pedestrians.
12. As a contract rezone, the rezone site will function as and be part of the development of the western 20' of the parcel and the adjacent property to the west which are already zoned NC2. This area is continuous with and part of the business district along Roosevelt Way NE in the Roosevelt Residential Urban Village. Roosevelt Way NE is designated as a primary arterial with good transportation capacity as described. The proposed development has been designed to provide a buffer from the adjacent residential uses. The surrounding area includes a mix of small and medium sized parcels. The area is well served by transit, with bus lines along Roosevelt Way NE and 12th Ave NE and the Roosevelt Light Rail Station located approximately 1,056 feet away from the rezone site.

Neighborhood Plan/Precedential Effect

13. The development is consistent with the portions of the Roosevelt Neighborhood Plan Policies listed in Finding 20 above. The rezone is overall supportive of intensifying development in the Roosevelt Urban Village, particularly near the light rail station, and providing housing for a wide range of residents. The proposed rezone will allow development of the 30' portion of the parcel, along with the adjoining property to the west, with denser housing.
14. The proposal is unlikely to have a precedential effect. This proposed rezone does not preclude other properties in the area from requesting a contract rezone, and as each proposal is evaluated individually in the context of the existing conditions, this rezone is not expected to be precedential.

Zoning Principles

15. 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.
16. The proposed 55' height limit is consistent with the 55' height limit permitted for the majority of the development site and adjacent/immediate existing properties to the north, west and south that is zoned NC2-55(M).
17. The proposed height is compatible with the actual and zoned heights along the block face and is mitigated with multiple strategies to provide a gradual transition in height and scale to the less intense zone.
18. The proposed rezone shifts the existing height transition from multifamily LR1 zoning to NC2 commercial zoning from the middle of the lot to the eastern boundary of the subject parcel. The maximum permitted height in LR1 zones is 30 feet and the maximum permitted height in the NC2

zone is 55 feet, both including allowances for parapets and penthouses. This change in height already exists under current zoning, but the impact of the rezone has been mitigated through the proposed design to create a gradual transition between zoning categories.

19. The 55' height limit of the proposed structure is calculated based on the average grade across the property with no stepped height calculations being utilized. Due to the slope of the site, the actual building height at the northeast corner of the structure is 45'7". The property slopes up an additional 2' to the property corner, creating a perceived height of 43'3" at the east property line. This proposed height provides a gradual transition to the LR1 zone.
20. The proposed design also provides an increased setback from the adjacent LR1 property to the east which ranges from 12'6" at the ground level to 15'9" at the third level. Under the current LR1 zoning, a 5' minimum setback would be required. This increased setback allows for a densely planted landscape buffer to the east neighbor. The transition is further mitigated by reduced parapet heights along the east façade, and no rooftop amenities face the east property line.
21. The proposed rezone includes a specific proposed development that has gone through the Administrative Design Review process consistent with SMC 23.41. The design that has been recommended for approval includes design strategies to minimize the appearance of height, bulk, and scale. The design review process also considered the transition to adjacent properties to mitigate the impacts of the zone edge facing the neighboring properties.
22. Overall, the proposal provides a gradual transition to the adjacent LR1 properties.
23. Commercially zoned property (NC2-55(M)) is located to the north across NE 71st Street from the subject site. The proposal would align the zoning boundary so that commercially zoned areas face each other across the street, consistent with policy.
24. The proposed height designation is 55 feet, consistent with the existing adjacent NC2 zoning height designation within the Roosevelt Residential Urban Village, thereby satisfying the rezone criteria in SMC 23.34.008.E.4.

Impact Evaluation

25. The proposed rezone would positively impact the housing supply, as it would increase residential unit supply.
26. 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.
27. The Director evaluated impacts on public services and service capacities, as well as noise, air quality, water quality, flora and fauna, glare, odor, shadows, energy, and other environmental impacts, pursuant to SEPA, and indicated that no additional conditions were required to mitigate impacts that are not otherwise adequately addressed through existing regulations. Height, bulk

and scale impacts, including shadow impacts, will be reviewed and addressed through the design review process.

Changed Circumstances

28. Changed circumstances are to be considered, but are not required to demonstrate the appropriateness of a proposed rezone. The City has continued to emphasize growth in urban centers and villages in its Comprehensive Plan as the areas that are most appropriate for accommodating higher density development. The MHA upzone is a changed circumstance in the area effecting area zoning. In addition, since the area-wide rezone in 2019, the Roosevelt Light Rail Station opened in October of 2021.

Overlay Districts and Roosevelt Station Area Overlay

29. The area of the proposed rezone is not currently located within an overlay district defined in the Land Use Code. However, the site is located in the Roosevelt Station Area Overlay. The existing boundary of the Roosevelt Station Area Overlay currently follows the split-zone designation of the site, with the parcel addressed as 7012 Roosevelt Way NE and the western 20' of the parcel not proposed for the rezone located within the Roosevelt Station Area Overlay. The proposal will extend the boundaries of the Roosevelt Station Area Overlay to align with the property boundaries.

Critical Areas

30. The site is mapped as containing a steep slope critical area at the eastern edge of the rezone site. The rezone will not impact the critical area.

Height Limits

31. 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 view blockage; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.
32. 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 proposed mixed-use project is consistent with the type and scale of development intended for the NC2-55 (M2) zone. There will be no displacement of preferred uses.
33. 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. This change in grade provides a natural transition from the 55' height limits along both sides of Roosevelt Way NE, easterly upwards to the mid-block LR1 zoned properties with height limits at 30'. The proposed 55' height limit of the portion of plan requested to be rezoned will reinforce the topography of the area and its surroundings.

The proposed structure will impact some territorial views from adjacent properties, particularly the LR1 zoned properties to the east and north which are currently primarily developed with existing low-scaled single-family residences. Some private territorial views from surrounding commercial and residential properties could change as a result of the increased development and building heights allowed from the entire development site. View blockage will be minimized by the topography in the area. In addition, the Design Review process recommended a design with specific strategies to reduce the impacts of additional height, bulk, and scale to the adjacent sites.

34. Height and scale of the area and compatibility with surrounding 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. Further, height limits are to be compatible with actual and zoned heights in surrounding areas, and a gradual transition in height and scale and level of activity between zones is to be provided unless major physical buffers are present.

The proposed 55’ height limit is consistent with the 55’ height limit of the western NC2 zoned portion of the development site. The proposed development would be compatible with the predominant height and scale of nearby newer development abutting Roosevelt Way NE, which is representative of the area’s overall development potential.

35. Compatibility with Surrounding Area. The proposed 55’ height limit is consistent with the 55’ height limit permitted for the majority of the development site and adjacent/immediate existing properties to the north, west and south that are zoned NC2-55(M). The proposed height is compatible with the actual and zoned heights along the block face, and is mitigated with multiple strategies to provide a gradual transition in height and scale to the less intense zone.
36. Neighborhood Plans. The adopted Roosevelt Neighborhood Plan does not give any recommendations for height limits.
37. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is NC2-55 (M2) with a PUDA.

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:

For the Life of the Project

1. The building and landscape design shall be substantially consistent with the materials represented at the Recommendation phase of review and in the materials submitted after the Recommendation phase of review, before the MUP issuance. Any change to the proposed design, including materials

or colors, shall require prior approval by the Land Use Planner (Tami Garrett, tami.garrett@seattle.gov) or a SDCI assigned Land Use Planner.

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

2. Provide a Construction Management Plan that has been approved by Seattle Department of Transportation (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>.

Prior to Issuance of a Master Use Permit

3. The rezone includes a Mandatory Housing Affordability designation of M2.
4. The rezoned property shall be subject to the provisions of SMC Chapter 23.58C.
5. Development of the rezoned property shall be in substantial conformance with the approved plans for Master Use Permit record number 3034865-LU.

Entered August 3, 2022.

/s/Ryan Vancil

Ryan Vancil
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 Sustainability 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.

**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 matters of **HUGH SCHAEFFER, SHW.**, Hearing Examiner Files: **CF-314447** in the manner indicated.

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Dated: August 4, 2022

/s/ Angela Oberhansly

Angela Oberhansly
Legal Assistant