

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

In the Matter of the Application of

CF 314343

DAVID NEIMAN, NEIMAN ARCHITECTS

Department Reference:
3016200

for a contract rezone for property located
at 5911 42nd Avenue Southwest

Introduction

David Neiman, Neiman Architects, applied for a rezone of property located at 5911 42nd Avenue Southwest from Single Family 5000 ("SF5000") to Lowrise 1 ("LR1"). 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 State Environmental Policy Act ("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 August 14, 2017. The Applicant was represented by David Neiman, and the Director was represented by Carly Guillory, Senior Land Use Planner. Following the Hearing Examiner's site visit, the record closed on August 29, 2017.

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 West Seattle Church of the Nazarene is located on the southwest corner of Southwest Juneau Street and 42nd Avenue Southwest. Its campus includes 13 parcels with a mix of uses including the church, four single and multi-family structures, a parking lot and vacant lots. The proposal will be located on the lot abutting the church to the south. The parcel that is the subject of the rezone proposal is 18,681 square feet. That lot currently contains the parish house and three exceptional trees, to be preserved. Access to the site is available from 42nd Avenue Southwest which fronts the property to the east, and an alley that bounds the property to the west. There are no environmentally critical areas on the site. *See Exhibit 9.*
2. The subject site is zoned SF5000. Properties to the south are zoned SF5000, and are developed with single family homes. Properties to the east across 42nd Avenue Southwest, are also zoned SF5000, and are developed with single family homes. Property to the north contains the church,

and is zoned SF5000. Property to the west, across the alley, is zoned Lowrise 3/Residential Commercial ("LR3/RC"), and is developed with three and four story multi-family structures, and one and two story commercial use structures.

3. The topography of the site, and related areas is relatively flat. The site slopes from the northeast corner to the southeast corner dropping approximately four feet.
4. 42nd Avenue Southwest, and Southwest Juneau Street to the north are access streets. California Avenue Southwest, a block west of the proposal, is a minor arterial.

Zoning History and Potential Zoning Changes

5. The site has been historically zoned Single Family. In 2015, the City adopted amendments to the Future Land Use Map ("FLUM"), including the Morgan Junction Neighborhood Plan, which includes the subject property, to support the goals of more development flexibility within Urban Villages, and providing more open space for the community. The FLUM was amended re-designating the property from single-family to multi-family.
6. The City is proposing area-wide zoning map changes, expansions of some urban village boundaries, modifications to development standards and other actions to implement Mandatory Housing Affordability ("MHA") requirements for multifamily and commercial development in certain areas. This proposal includes a change of the zoning of the subject property, and the nearby SF5000 areas, to Residential Small Lot ("RSL"). The proposed RSL zone will allow small infill homes in the scale and character of a single-family area, and will encourage rowhouses and townhouses, and small-scale housing, such as cottages and duplexes.
7. There has been limited new construction in Morgan Junction Urban Village. There have been five multi-family townhouses or apartments over the past five years.

Neighborhood Plan

8. The proposed rezone property is located within the Morgan Junction Residential Urban Village. The growth target listed for this Urban Village in the Comprehensive Plan is for 400 additional dwelling units between 2015 and 2035. The 2015 housing density for this Urban Village was 11.8 housing units/gross acre, and by 2035 the housing density would be 15.2 housing units/gross acre. The Comprehensive Plan does not contain specific growth targets for this and other Residential Urban Villages.
9. As indicated above, the site is within the area of the Morgan Junction Neighborhood Plan. The adopted portions of the Plan include only one policy (MJ-P15) that specifically refers to future rezones. MJ-P15 addresses the rezoning of Lowrise 3 to Lowrise 4 inside urban villages. The proposed rezone does not include Lowrise 3 to Lowrise 4 zoning; therefore, this policy does not apply to the proposal.
10. The adopted portions of the Morgan Junction Neighborhood Plan include goals and policy statements that are applicable to the proposal. Goal MJ-G3 seeks for the community to have an

appealing nature “with attractive landscaping and pleasant parks and gathering places where walking and biking are easy and enjoyable.” Policy MJ-P4 calls for “future open space opportunities and acquisitions to provide additional ‘breathing room’ to the Morgan Junction neighborhood.” Policy MJ-P7 encourages “the creation of open spaces in conjunction with pedestrian and bicycle linkages throughout the neighborhood.” Goal MJ-G5 seeks to provide for community with strong single-family neighborhoods and compatible multi-family buildings “offering a wide range of housing types for all people.” Policy MJ-P13 calls for maintaining “the character and integrity of the existing single-family zoned areas by maintaining current single-family zoning both inside and outside the urban village on properties meeting the locational criteria for single-family zones, except where, as part of a development proposal, a long-standing neighborhood institution is maintained and existing adjacent community gathering places are activated, helping to meet MJ-P6.” Lastly, Policy MJ-P25 seeks “opportunities to develop public gathering spaces.”

Proposal

11. The Applicant seeks to have the property rezoned from SF5000 to LR1 with a property use and development agreement ("PUDA"). The terms of the PUDA are not disclosed in the record before the Hearing Examiner. The Applicant proposes to construct three townhouse structures with a total of six units, and an open space community park area with various amenities. The project will include parking for 12 vehicles within attached garages. *See Exhibit 9.* The PUDA will ensure that the provisions of Chapters 23.58B SMC and 23.58C SMC will apply to the project proposal. The existing parish house will remain. The property owner’s goal is to develop the project as a means of assisting with funds to rehabilitate the church to the north.
12. The proposed development was reviewed through the streamlined design review process consistent with SMC 23.41. The review process recommended a design with specific strategies to reduce the impacts of bulk and scale to the adjacent sites, including setbacks and modulation.

Public Comment

13. Comments were received during the streamlined design review process for the proposal. They are summarized in the Director's Report, Exhibit 12, at 2. Comments received were in support of the project, and/or raised concerns related to shadow impacts, parking, and traffic access.
14. Comments received by the Hearing Examiner supported the proposed rezone. *See Exhibit 21.*
15. At the hearing the Applicant raised arguments concerning the applicability of MHA requirements to the proposal.

Director's Review

16. The Director also analyzed the proposal's potential long-term and short-term environmental impacts.

17. The Director's report, Exhibit 9, analyzes the proposed contract rezone and recommends that it be approved with conditions.

Applicable Law

18. 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.
19. SMC 23.34.007.C provides that compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones, but the Comprehensive Plan may be considered where appropriate.

Conclusions

1. The Hearing Examiner has jurisdiction 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 proposed rezone would slightly 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. The proposed rezone would complement adjacent multi-family zoning to the west. Currently, the site and its relation to

adjacent zoning matches the LR1 zone function and locational criteria, found in SMC 23.34.014,¹ so the designation is appropriate.

Neighborhood Plan/Precedential Effect

6. The development is consistent with the portions of the Morgan Junction Neighborhood Plan listed in Finding 10 above. In particular, the proposed development associated with the rezone request has completed the streamlined design review process, as described earlier. Consistent with SMC 23.41, that process includes consideration of the pedestrian-oriented streetscape, open space, landscaping, design context and signage. That process is intended to meet goals and policies such as MJ-G3, MJ-P4, MF-P7, MJ-G5, and MJ-P25. The proposal is further consistent with these goals and policies, because the proposal includes open space opportunities for the neighborhood and a variety of housing types. The project especially fulfills the aims of policy MJ-P13, as the proposal is to provide for housing development encompassing a public open space for the purpose of maintaining the adjacent church which is a long-standing neighborhood institution.
7. The current SF5000 zoning would allow maximum construction of three single family homes. The City proposed RSL zone would allow construction of up to seven single family homes. The project proposed LR1 zoning would allow approximately up to eleven residential units on the property, though the proposal would not reach this maximum density as it only includes six new units, retention of the existing single-family residence, and a large amount of open space to be preserved for neighborhood use. Therefore, the proposal is consistent with development that might occur under the City's area wide proposal, and LR1. For these reasons, the proposed rezone is not

¹ 23.34.014 – Lowrise 1 (LR1) zone, function and locational criteria.

A. Function. The function of the LR1 zone is to provide opportunities for low-density multifamily housing, primarily rowhouse and townhouse developments, through infill development that is compatible with single-family dwelling units, or through the conversion of existing single-family dwelling units to duplexes or triplexes.

B. Locational Criteria. The LR1 zone is most appropriate in areas generally characterized by the following conditions:

1. The area is similar in character to single-family zones;
2. The area is either:
 - a. located outside of an urban center, urban village, or Station Area Overlay District;
 - b. a limited area within an urban center, urban village, or Station Area Overlay District that would provide opportunities for a diversity of housing types within these denser environments; or
 - c. located on a collector or minor arterial;
3. The area is characterized by a mix of single-family dwelling units, multifamily structures that are similar in scale to single-family dwelling units, such as rowhouse and townhouse developments, and single-family dwelling units that have been converted to multifamily residential use or are well-suited to conversion;
4. The area is characterized by local access and circulation that can accommodate low density multifamily development oriented to the ground level and the street, and/or by narrow roadways, lack of alleys, and/or irregular street patterns that make local access and circulation less suitable for higher density multifamily development;
5. The area would provide a gradual transition between single-family zoned areas and multifamily or neighborhood commercial zoned areas; and
6. The area is supported by existing or projected facilities and services used by residents, including retail sales and services, parks, and community centers.

expected to be precedential. The proposal is part of an ongoing pattern of infill and development in the neighborhood, and is consistent with existing and planned zoning patterns in the area.

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. There is some effective separation between the proposal and adjacent and nearby properties provided by 42nd Avenue Southwest to the east and an alley to the west. Property to the north which contains the church will be incorporated into the proposal's design. The proposed open space and retention of existing exceptional trees will assist buffering and screening the proposal from properties to the south.
10. The proposed rezone would maintain the existing pattern of residentially zoned properties facing residentially zoned properties across 42nd Avenue Southwest. Multi-family and commercial uses would face the proposal from across the alley to the west.

Impact Evaluation

11. The proposed rezone would positively impact the housing supply, as it would add six new residential units. The proposed rezone will add housing capacity to the neighborhood and locate additional housing in the Urban Village.
12. The proposal would create a minimal increase in the demand for public services. There is no evidence in the record that the demand would exceed service capacities. In particular, street access, transit service parking, and utility sewer capacity were shown to be sufficient to serve the additional units that would be allowed by the rezone. The Director has evaluated impacts on public services and service capacities, as well as noise, air, water, 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.
13. The approved design includes design strategies to minimize the appearance of height, bulk, and scale impacts.
14. The site does not lie within a shoreline district, no public access is being impacted or removed with this proposal and no existing recreational areas are being impacted or removed, instead the project will create a new community recreational area.

Changed Circumstances

15. Changed circumstances are to be considered but are not required to demonstrate the appropriateness of a proposed rezone. As noted above the property was changed in 2015 from single family to multi-family. The proposed rezone is part of a pattern of changed circumstances

for this area, including the City's goal of increased development in areas designated as Residential Urban Villages.

Overlay Districts/ Critical Areas

16. The subject property is not within an overlay district or critical area; therefore, these criteria do not apply.
17. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the subject site is LR1 with a PUDA.

Compliance with Mandatory Housing Affordability

In the hearing, the Applicant raised issues challenging the Council's authority to condition the proposal pursuant to MHA. The Council's authority is clearly provided in the Code:

Notwithstanding any contrary provision of subsection 23.34.004.A, the Council may approve a map amendment subject to execution, delivery, and recording of a property use and development agreement (PUDA) executed by the legal or beneficial owner of the property to be rezoned containing self-imposed restrictions applying the provisions of Chapter 23.58B or Chapter 23.58C to the property. The Director shall by rule establish payment and performance amounts for purposes of subsections 23.58C.040.A and 23.58C.050.A that shall apply to a contract rezone until Chapter 23.58C is amended to provide such payment and performance amounts for the zone designation resulting from a contract rezone.

SMC 23.34.004.B. SMC 23.58B.015 states that "This Chapter 23.58B contains provisions that apply where the provisions of the zone refer to this Chapter 23.58B, or through the terms of a contract rezone according to Section 23.34.004." SMC 23.58C.015 provides that "This Chapter 23.58C contains requirements that apply only where provisions of the zone refer to this Chapter 23.58C, or through the terms of a contract rezone according to Section 23.34.004." Additional concerns expressed by the Applicant regarding the applicability of the MHA to the project and its design are outside of the rezone criteria in SMC 23.34.008, and therefore are not within the scope of consideration for the Hearing Examiner's recommendation.

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:

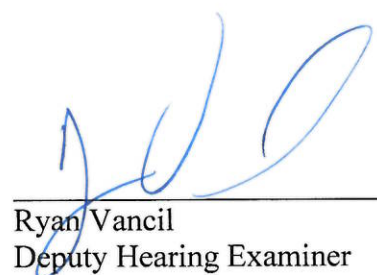
Prior to Issuance of a Master Use Permit

1. Development of the rezoned property shall be subject to the requirements of SMC 23.58C. The PUDA shall specify the payment and performance calculation amounts for purposes of applying SMC 23.58C. (P)

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 3016200. (P)

Entered this 26th day of September, 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 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 **Amended Findings and Recommendation** to each person listed below, or on the attached mailing list, in the matter of the **David Neiman Rezone Application**, Council File: **CF-314343** in the manner indicated.

Party	Method of Service
Applicant David Neiman dn@neimantaber.com	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
Department Carly Guillory SDCI Carly.Guillory@seattle.gov	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
City Contacts Nathan Torgelson Director, SDCI Nathan.Torgelson@seattle.gov Roger Wynne City Attorney's Office Roger.Wynne@seattle.gov Ketil Freeman City Council Ketil.Freeman@seattle.gov Public Resource Center PRC@seattle.gov SCI Routing Coordinator SCI_Routing_Coordinator@seattle.gov	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger

Sue Putnam Sue.Putnam@seattle.gov	
E-mail jennifer.smith@area360.com andrewalexkim@gmail.com Tony.Viola@SSAMarine.com	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
U.S. Mail SUQUAMISH TRIBE PO BOX 498 SUQUAMISH, WA 98392 DUWAMISH TRIBE 4705 W MARGINAL WAY SW SEATTLE, WA 98106 ELLEN MOOS 5924 CALIFORNIA AVE SW APT A SEATTLE, WA 98136 KAREN WALTER WATERSHEDS AND LAND USE TEAM LEADER MUCKLESHOOT INDIAN TRIBE FISHERIES DIVISION HABITAT PROGRAM 39015 172ND AVE SE AUBURN, WA 98092	☒ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☐ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
Inter-office Mail Public Review Documents Quick Information Center Seattle Public Library LB-03-01	☐ U.S. First Class Mail, postage prepaid ☒ Inter-office Mail ☐ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
E-mail/U.S. Mail ENVIRONMENTAL REVIEW SECTION DEPARTMENT OF ECOLOGY PO BOX 47703 OLYMPIA WA 98504-7703 separegister@ecy.wa.gov	☒ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger

Dated: September 26, 2017



Alayna Johnson
Legal Assistant