

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

CHARLES BERGMANN, ET. AL.

FILE NO. CC-84-006
C.F. NO. 293056

for an amendment to the official
Zoning Map pursuant to Title 23,
Seattle Municipal Code
(Ordinance 86300, as amended)

Recommendation: The petition should be granted
with conditions.

Introduction

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code as amended unless otherwise indicated.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be granted.

This matter was heard before the Hearing Examiner on May 29, 1984.

After due consideration of the evidence presented by the Petitioner, the information provided by the Director's report, all evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. With regard to the action proposed in this application, a declaration of non-significance has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, and is incorporated herein by reference as part of the record.

2. Applicants seek to change the zoning of properties on both sides of East Madison between 27th East and Martin Luther King Way (28th East as the street crosses East Madison headed north westerly). The south parcel on East Madison is bounded by East Arthur Place as the southern boundary and contains lots 10 through 16. The north parcel on East Madison is bounded by East Mercer as the "block's" northern boundary and contains lots 17 through 26.

The lots 10 through 24 are zoned RM 800 and are petitioned to be zoned BN. Lots 25 and 26 are zoned SF 5000 and are also petitioned to be zoned BN.

The legal description appears in the official record and is incorporated herein by reference.

3. Approximately 60,000 sq. ft. of land is involved in this petition. The RM 800 properties presently have a mix of vacant lots, old residential structures, two nonconforming businesses, i.e., fish store and beauty parlor, and a recently constructed two story office building. The SF 5000 properties both contain an older residential structure, one of which had been converted to a duplex.

4. The Hearing Examiner finds as stated by the Director's representative and the applicant, that the requested rezone would promote office and retail use in the existing structures as well as in newly constructed buildings in the subject area. Beginning immediately east of the subject area, along East Madison, the properties are zoned BN and significant, small-scale, neighborhood businesses can be found.

5. The zoning history and development trend in the area is unique. Applicant states that the area greatly deteriorated in the 1960's because of the negative impacts of the then proposed R.H. Thomson Expressway, poor economic climate, and difficult race relations. Properties east of the subject area are zoned BN and properties near 32nd East, by testimony by the Director's representative, have been expanded two times to allow additional commercial uses, C.F. No. 237106 in 1959 and C.F. No. 276216 in 1974. The residential lots directly across the street from the SF 5000 properties on 28th East had been granted a contract rezone from SF 5000 to BN in 1979, C.F. No. 287857 and this property is now being developed as a restaurant. The applicant states and the Hearing Examiner finds that several years ago, rehabilitation and renovation began in the residential areas off East Madison and simultaneously, small-scale, neighborhood business activity began on East Madison.

6. In regards to the RM 800 properties, the Hearing Examiner finds in the south parcel: lots 10 and 11 are vacant, lot 12 contains a small dilapidated building, lot 13 contains a one story home, lots 14 and 15 contain a one story building, lot 16 contains a building housing a fish store and beauty parlor; across East Madison in the north parcel: lot 17 contains a recently constructed two story office building, lot 18 contains a older residential structure, lots 19, 20, 21 and partially lots 22, 23, 24 are vacant; along 28th East: lots 25 and 26 each containing an older residential structure.

In regards to the SF 5000 properties, the Director's representative states that these properties are within a "block" pursuant to recent definition. The block includes properties on both sides of 28th East, between East Madison and East Mercer Street, lots 22 to 30 of block 19 and lots 5 to 10 of block 20 of Madison Park Addition. The structures in the block are: one duplex, one mixed commercial/institutional use, one recently established restaurant, and six single family residences. The structures on the SF 5000 properties are stated to be "oriented" toward the proposed commercial usage on East Madison because of the platting configuration of 28th East. No new residential development has been established in this block but the Hearing Examiner finds no geographic break between the structures and the abutting residential use.

7. The RM 800 properties are proposed to be rezoned NC2 (Neighborhood Commercial 2) by the City Council but neither the Director's representative nor the applicant could indicate or project a date for a final decision on this proposal. The NC2 zone designation provides mainly for retail sales and services at street level, ranging from convenience to special goods. The size of business is intended to range from small to medium scale. The Hearing Examiner does not find this presentation persuasive in that the NC2 designation has not yet been adopted by the City Council.

8. A spokesperson for the Concerned Citizens Committee gave testimony in support of applicant and the proposed rezone. However, no petition was presented and no other committee members gave testimony, therefore, the Hearing Examiner gives little weight to this presentation.

The Hearing Examiner is in receipt of a petition signed by residents opposed to the rezone petition and several residents gave testimony in opposition to the rezone petition. The Hearing Examiner believes and, therefore finds that the petition and speakers in opposition more closely reflect the opinion of the neighborhood.

9. Disputed by the residents opposed to the rezone are the Director's representative's and applicants' testimony that the rezone will not result in any significant detrimental impact upon the neighborhood. The residents contend that if a more intensive commercial use is allowed, the resulting increased traffic flow and parking demand will cause a significant and dangerous impact in the area, especially at the intersection of East Madison and 28th East and on into the residential area. Presently, a traffic triangle at the intersection is utilized as a Metro bus stop and vehicular parking.

10. By testimony found credible by the Hearing Examiner residents contend that traffic has already tripled in recent years and that the present system of traffic control is inadequate and dangerous to pedestrians especially, children. Further credible testimony by residents contend that parking is presently inadequate now and that if more commercial use is permitted, this problem will be greatly aggravated.

11. The residents expressed concerns over commercial usage abutting single family residential usage and whether buffering techniques could truly protect the residential usage in the area.

Conclusions

1. Relevant rezone criteria are found at Section 23.34.28:

- A. Match between established locational criteria and area characteristics.
- B. Zoning history and precedential effect.
- C. Zoning principles relating to compatible land use pattern, size, configuration and boundaries shall be considered.
- D. Impact evaluation.
- E. Neighborhood planning efforts.
- F. Changed circumstances.
- G. Overlay district.
- H. Greenbelt plan.

2. Locational criteria for BN and NC2 zones do not as yet exist but uses permitted per Section 24.40.020 are: retail and business services serving primarily the residents of the neighborhood, such as a grocery, delicatessen, meat market, drugstore, hardware store, gift shop, confectionary, bakery, shoe repair shop, barber shop, beauty shop, hand or coin-operated laundry, dry cleaning shop, upholstery shop, business and professional offices, florist shop, variety or notions store, millinery store, or restaurant without live entertainment, dancing or alcoholic beverage. The Hearing Examiner concludes a match between the locational criteria and BN zone permitted uses area characteristics for the presently zoned RM 800 properties. The Hearing Examiner also concludes the SF 5000 properties, per Section 23.34.32A, in particular not having at least 70% of existing structures in single family residential use, and not being appropriate for single family designation per Section 23.34.24, are appropriate for a rezone.

3. The zoning history for the area shows a change from a less intensive to a more intensive use in the RM 800 properties. The SF 5000 properties are already within a "block" not single family; therefore the Hearing Examiner concludes the subject area shows a trend to commercial development and small-scale, neighborhood business uses.

4. The proposed BN designation would not be incompatible with the existing land use pattern. The boundaries and size of the proposed area appear appropriate. Section 23.34.28.C.

5. In respect to impact evaluation, the Hearing Examiner concludes a negative impact will result from the increased traffic flow, present lack of adequate traffic control and increased demand for parking. The applicants' contention that the parking requirements of the Land Use Code for each commercial use in the rezoned area would limit the size and scale of business and, would therefore control the traffic increase and flow and demand for parking, is not persuasive. The Hearing Examiner concludes that the Department of Engineering and other related agencies must be consulted for their input and advice regarding traffic and traffic control so that the residential usage is adequately protected. In particular, said parties and agencies should address and correct the present situation at the intersection of East Madison and 28th East to provide an intersection safe for pedestrians; and to prevent a negative impact to the residential uses along 28th East, as a condition of the rezone.

6. The record does not disclose any adopted neighborhood plan or recommendation which applies to the area. Neither does the record disclose if the subject area is within an Overlay District or Greenbelt Plan.

Recommendation

The recommendation of the Hearing Examiner to the City Council is as follows:

The petition should be conditionally granted.

Entered this 17th day of June, 1984.

Roger Shimizu
Roger Shimizu
Hearing Examiner Pro Tempore

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

Pursuant to Section 23.80.10.E, Seattle Municipal Code, any person substantially affected by or interested in this recommendation may submit a petition in writing to the City Council requesting further consideration. The petition must be filed with the Council within fourteen days of the date of this recommendation and should be addressed to the City Council, Land Use Committee, Municipal Building, Seattle, Washington, 98104.

The petition should clearly identify specific objections to this recommendation and the relief sought; however, the petitioner should not include any additional evidence or exhibits as the Council's consideration will be based upon the record of the Hearing Examiner's hearing. If the Council determines that a factual error exists in the record or that important information is missing, the Council may have the record supplemented pursuant to Section 23.80.10.E.3 or 23.80.10.E.4. At its public meeting the Council may allow oral or written arguments based on the record.