

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

In the Matter of the Petition of

William L. Schallert, Jr.

FILE NO. CC-84-005  
C.F. NO. 293057

for an amendment to the Official  
Zoning Map pursuant to Title 23,  
Seattle Municipal Code

Introduction

William L. Schallert, Jr., requests a rezone, subject to contract conditions, of land within the I-5 right-of-way east of Franklin Avenue East, south of East Newton Street, west of Lakeview Boulevard East and north of East Galer Street from L-2 and L-3 to M.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, as amended unless otherwise indicated.

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

This matter was heard before the Hearing Examiner on June 11, 14 and 19 and October 11, 1985, with the record open to October 22, 1985 for records research. Representation at the hearing was as follows: the petitioner by attorneys John W. Hempelmann and Terrence I. Danysh, Diamond & Sylvester; DCLU by Patrick Doherty, land use specialist; Eastlake Community Council, an opponent group, by J. Richard Aramburu, attorney at law.

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. The subject of the rezone petition is a parcel comprising approximately 5.836 acres within the I-5 freeway right-of-way, under a raised portion of the freeway, in the Eastlake neighborhood east of Franklin Avenue East, south of East Newton Street, west of Lakeview Boulevard East, and north of East Galer Street.

2. The property is owned by the State Department of Transportation. Petitioner would enter into an air space lease with the State for the subject property.

3. The only development on the subject site is a series of rows of supporting columns for the freeway. Tall evergreens line the western perimeter and lower vegetation covers the area under the freeway. Informal pathways cross the site connecting the area west of the freeway with that to the east of Lakeview Boulevard East.

4. Property in a highway right-of-way takes on the zone designation of the land adjacent to it. The most northerly portion of the site, north of East Howe Street, abuts an L-2 zone on the west. The portion between East Howe and East Blaine Street from the midpoint of the right-of-ways west takes on the L-3 designation of the land to the west. South of East Blaine and to the midpoint of the highway right-of-way the parcel is zoned M, consistent with the zoning to the west. The zone designation of the land lying east of the highway right-of-way is L-2, so that part of the right-of-way east of the midpoint is zoned L-2. Contrary to the petition and DCLU's written analysis, there appears to be no abutting RD-5000 zoned land. The DCLU representative confirmed this fact at hearing.

5. The petitioner requests that the parcel be reclassified to a Manufacturing (M) designation subject to a contract limiting the use to a self-service mini-warehouse as depicted on the site plan, Petitioner's Exhibit No. 3, with landscaping as shown on Petitioner's Exhibit No. 11. Petitioner commits to various other conditions including a minimum height of 20 feet for new trees and that the building's facade will not extend beyond the drip line of the freeway.

6. The proposed structure would be about 380 feet long, from north to south, and some three stories high, approximately 36 feet. As proposed, it would have over 174,000 square feet of gross floor area and over 132,000 square feet of net rentable floor area. One caretaker's unit is proposed, but a second may be desirable to provide 24 hour security. Three parking areas on-site would contain a total of 61 spaces and 3 loading areas. The main entrance would be at the end of East Blaine Street with office, small retail outlet and 24 parking stalls. Another entrance would be at East Howe Street where there would be another 24 stalls. The third entrance would be south of East Garfield with a 13 stall parking area. An additional 26 spaces for parking would be made available in the People's National Bank parking lot adjoining the south side of the site through a parking covenant.

7. The structure would be a combination of sandblasted concrete block with split face bands and would have the appearance of a concrete wall interrupted only by indentations to leave the freeway columns exposed to allow access to the pillars and drains and for the entrance/parking lot at Blaine Street. Actually there would be walls on each side of the series of columns connected by corridors. The top of the structure would be closest to the bottom of the freeway at the two ends, approximately 12 feet, and be farther away in the middle, some 20 feet. The facade of the building would not extend beyond the dripline of the freeway.

8. The structure would be 30 feet away from the rear property line of the abutting lots at the closest point and be set back as far as 60 feet at other points.

9. A high earthen berm extends along the freeway right-of-way to about East Howe Street and is higher than the roof line of the four houses south of East Howe Street, according to petitioner's architect. Evergreen trees were planted on the berm along the right-of-way after the freeway was constructed, financed by block grant monies, and have grown high enough that from the perspective gained from Franklin, they appear to nearly reach the bottom of the freeway. Petitioner proposes to add more trees, both evergreen and deciduous varieties, to soften the appearance of the facade by filling in spaces which are still open, and to plant clinging vines which would climb the concrete block walls.

10. Petitioner requested that the subject site be proposed for C-1 or C-2 designation during the Neighborhood Commercial Areas designation process. The committee deferred action on the request because manufacturing zones were not to be included in that process.

11. This part of the southern end of the Eastlake community, that south of East Howe Street, except for the triangular, five lot portion abutting the site, is zoned M and is largely commercial or manufacturing in use. Across Franklin Avenue East from the site is a refueling facility for bank vehicles, a Sea-First branch with parking, an automobile repair shop, and a large vacant lot. Abutting the site on the south is a bank parking lot and the freeway right-of-way. Other uses in the M zone east of Eastlake Avenue East include offices, restaurant, residences and a new use in the freeway right-of-way south of the parking lot believed to be some sort of auto or boat repair shop. West of Eastlake, to the lake, are more office/commercial/manufacturing uses.

12. The zoning of this southern end of Eastlake has gradually moved from single family residential zoning in 1957 to the current M zoning.

13. There have been few new commercial or manufacturing uses in this area in the past three years though there are undeveloped and underdeveloped properties.

14. Buildings in the area generally form a pattern of low-scale development. A project is proposed, however, at the northwest corner of the intersection of Blaine and Franklin Streets across from the main entrance to the proposed mini-warehouse to be six stories high with five stories of office space over parking.

15. The land north of East Howe is zoned for various types of multi-family use and can be characterized as residential with both single-family and multi-family residential use. The single family houses are being maintained or improved and assessed property values have been increasing.

16. The L-3 wedge south of East Howe Street is a residential extension into an otherwise largely commercial area. The rear of the developed lots abut upon the subject site. The fifth, most southerly lot is vacant, very small and quite triangular. One single-family residence north of Howe Street also abuts upon the site.

17. The Director issued a Determination of Non-Significance pursuant to SEPA for the proposed contract rezone subject to conditions to control dust during excavation, to repair broken freeway drains and remove debris from clogged drains and satisfy provisions of the grading and drainage control code, to store construction vehicles and equipment on the site, to relocate existing utility improvements and bear the cost of relocation and to retain and protect existing evergreen trees and provide and maintain new landscaping as proposed. The analysis shows impacts, in addition to typical construction impacts, from alteration of surface and ground water flows, from change of use to the warehouse facility which is found to be compatible with the mix of uses present in the M zone, an increase in traffic and in demand for parking, and an aesthetic impact. It was concluded that the parking provided would be adequate to handle the demand, the increase in traffic level would not be significant, and that the aesthetic impacts of the proposal would be mitigated by the freeway columns and landscaping. This determination was appealed by the Eastlake Community Council and upheld by the Hearing Examiner on appeal. (See W-85-001)

18. DCLU recommends granting the petition only for the portion of the site lying south of the northern border of the East Blaine Street right-of-way with limitation on the use and with a landscaping requirement.

19. The Eastlake Community Council opposes any rezone allowing any use of the subject property for a mini-warehouse.

20. The subject site slopes deeply down from Lakeview Boulevard in places and ends at the earthen berm along Franklin. The slope ranges in severity from 5 to 50%. The slope creates no problem for development of the site, according to the petitioner's architect.

21. East Howe Street rises moderately from Franklin to the east. Only a 12 to 15 foot width is surfaced with gravel. It is posted for no parking.

22. The proposal includes widening and resurfacing Howe Street east of Franklin for parking lot access.

23. The State Department of Transportation has not maintained the drainage system on the site. The existing drains would be repaired at the time of development of the site.

24. The subject site serves as part of the viewshed when viewed from the west side of Lake Union. It provides both a green background and a sense of openness which neighboring residents find desirable.

25. Vegetation, both existing and proposed, would mitigate the aesthetic impact of the structure.

26. The subject site is not part of an official greenbelt and would have no visual or any direct vehicular impact on any property within the greenbelt plan.

27. The peak period of use for the mini-warehouse is expected to be Saturday afternoon. Evening usage is expected to be higher than daytime. The petitioner's traffic consultant projects that the project would generate 213.5 trips or 427 trip ends on a weekday. On a Saturday he projects generation of 266 trip ends, or 133 trips.

28. The period of peak use of the facility would not coincide with the peak traffic period on Eastlake or other streets in the area.

29. The trip distribution is likely to be 75% on primary routes and 25% on secondary routes. This would mean an increase in volume of 3 to 4% on Eastlake Avenue East. Increase on Franklin, including the additional trips from the main entrance at East Blaine on Franklin to the other two parking lots, is predicted to be not more than 25%.

30. An actual count on Franklin Avenue East showed 450 to 480 average weekday traffic.

31. The increase of traffic at the intersection of Franklin with Howe should be about 15 to 20%.

32. The sight lines at the intersections of Howe, Blaine and Garfield with Eastlake are good, the available sight distance greatly exceeding the standard. The sight lines at the intersection of Howe with Franklin are adequate.

33. Franklin, north of the subject site, is used by drivers as a shortcut or to avoid the traffic on Eastlake to get to and from East Lynn or Boston for access to and from the freeway or Lakeview, according to area residents. The traffic expert does not expect patrons of the mini-warehouse to utilize this route. Patrons of the 24 hour cash machine at the bank also use Franklin. The grade on the street north of the subject site is steep enough to be signed.

34. Petitioner's consultant, CH2M Hill, conducted a survey of on-site parking utilization in the area of the subject site. Counts were made on weekdays, mid morning and evening, and on weekends. Between 8:00 a.m. and 5:00 p.m., the survey showed that utilization of on-street parking was from 68 to 86%. On the weekends the spaces were 20 to 33% occupied. On Saturday afternoon, the expected peak period of use for the warehouse, approximately 73% of the on-street parking spaces was available.

35. The on-site parking to be provided would accommodate all parking demand generated. The parking in the bank lot is not likely to be used or be necessary except to fulfill zoning code requirements.

36. The petitioner anticipates that the facility's hours of operation would be 8:00 a.m. to 8:00 p.m.

37. The area experiences a high ambient noise level from the freeway noise. The noise interferes with out-of-door conversations, as shown by Exhibit No. 9. A resident reports that the noise does not interfere with conversations indoors, or that residents become accustomed to the noise. Noise from the freeway decreases after 9:00 p.m., according to a neighboring resident.

38. Activity in the neighborhood diminishes after normal working hours and on weekends.

#### Conclusions

1. Section 23.34.28 sets forth the general rezone criteria to be considered in evaluating rezone requests. Because locational criteria have not been adopted for the Manufacturing zone and the area is not within an overlay district or the Greenbelt Overlay District, the criteria applicable to this rezone are B. Zoning history, C. Zoning principles, D. Impact evaluation, E. Neighborhood planning, and F. Changed circumstances.

2. The history of zoning shows a trend toward intensification so the requested rezone would be a continuation of that trend. As the facts show, existing M zone development has been commercial or office use and low scale rather than actual manufacturing use and scale. The proposed development for the subject site would be more in keeping with the less intensive uses present but departs significantly from the small scale of the area's current structures except for the one much larger structure proposed. The area adjacent to the northern half of the site has been a part of the zoning trend toward intensification but the trend has continued only to multi-family. Again, development has not kept pace with the zoning as shown by the single family houses in the L-3 zone next to the site.

3. There is no evidence that rezoning the site to M would set a precedent for further rezones to the north, west or east. The residential character of the property to the west of the northern half of the site seems firmly fixed. Land to the east is totally removed topographically and not suitable for M use. The southwestern part of the site and property to the south is already zoned M.

4. Generally, zoning principles address compatibility of the uses that will result from zoning of land. On the east side of the site the busy Lakeview Boulevard East, the topographical change and the freeway lid on the subject site provide a strong boundary at the edge of the proposed M zone and no incompatibility would result. The western portion of the site south of East Blaine Street is already M zoned and presents no problem of compatibility with uses to the west. The only area where compatibility is really an issue is that portion of the site abutting the L-3 and L-2 zones on the west. There the rear property lines would form the zone boundary. Zone boundaries along rear lot lines are common in Seattle and are often appropriate. The high earthen berm behind the houses adds to the appropriateness of that boundary. Because of the contract limitation on use and provisions for separation and aesthetic mitigation, the M zone next to an L-3 zone would not be an unacceptable zoning pattern. In fact, the locational criteria for Lowrise 3 include areas adjacent to commercial areas with comparable or greater height and bulk, Section 16.02.24. The difficulty here is that the L-3 property is in single family use. The proposed use and existing single family uses are incompatible. It must be noted that the Council designated that area as L-3 even though development is entirely single family. One implication of that action is that the area is appropriate for more intensive use.

5. Impact evaluation shows that the proposed rezone could have at least two negative impacts on the area. The record is clear that competition for parking would not be one of these impacts as all

demand would be accommodated on-site. One negative impact would be an increase in traffic with its accompanying noise. While not significant in terms of volume and functioning of the streets, it would be more noticeable and, hence more adverse to the residences on Howe and Franklin, because of its timing. The record shows that peak times for the mini-warehouse would be at the periods of lowest activity in the neighborhood detracting from the relative tranquility of those periods.

6. The other negative impact on the area is aesthetic. Judgments about aesthetics are necessarily subjective. While no one characterized the freeway structure as attractive, witnesses did describe the existing openness and vegetation as desirable. Petitioner has included every possible aesthetic mitigation, short of redesigning the building, to soften its appearance or disguise it including a substantial setback. Behind it all, however, would loom a massive, solid appearing concrete building, described by opponent's attorney as a 38 story building laying on its side. The natural, open character of the site would be gone.

7. Opponents urge that because the land is state-owned it could be put to some public purpose, like parkland. The lack of evidence of the availability of any monies and the interest of the state in producing revenue from these unused lands makes that desire appear unrealistic at this time.

8. The City Council adopted Resolution 26072 in 1979 recognizing the Goals and Policies of the Eastlake Neighborhood. Policy 8, Housing and Zoning, addresses chiefly the provision and maintenance of a variety of housing in Eastlake. The rezone would not "enhance the privacy and appearance of residential properties" in compliance with 8. Housing and Zoning Policies 2.a. Nor would the proposal "(e)ncourage the location of small neighborhood oriented business and labor intensive economic development that will provide jobs for the neighborhood's unemployed." C. Economic Development, Objective S. Exhibit No. 27.

9. Petitioner urges that changed circumstances exist which support his requested rezone in the form of acceleration of the establishment of non-residential uses. There appear to be few new commercial or manufacturing uses in the existing M zone, however. A number of undeveloped or underdeveloped M zoned lots still exist so the demand has not outstripped the availability of M zoned property.

10. Petitioner points to the benefit to the public from putting an undeveloped, publicly-owned area to economically productive use. This benefit must be balanced against the detriment to the seven residences which would be most directly affected because of their proximity to the site -- that of a decidedly less open, residential character and some increase in traffic. The Director's recommendation would avoid the detriment by eliminating the northern half of the proposal. This solution satisfies neither the neighbors nor the proponent but may be viewed as the only way to assure compatibility of uses. If, by designating the five lot area L-3, the Council indicated its intent that the area eventually redevelop to that level of intensity, compatibility with the current use would be less important and the rezone appropriate. Assuming, however, that the proposed zoning and use should be compatible with existing uses adjacent to the site, the approach used in the Director's recommendation should be followed. Rezoning of the portion of the site removed from the existing residences would be in the public interest. Traffic impacts would be concentrated on the more southerly, non-residential streets and the aesthetic considerations are less important, away from the residential area. Moreover, the mass of the structure would no longer be so out of scale with the area. The remaining, northerly portion of the site, should be rezoned as well, however, if it is the Council's intent that the L-3 area eventually be redeveloped to Lowrise 3 intensity.

11. The rezone to M should be granted for all property not zoned M south of the southerly lot line of Lot 7, Block 1, Hilton Addition to the City of Seattle and an extension of that line across the I-5 right-of-way parallel to Blaine Street, subject to a property use and development agreement limiting the use of the property to a self service mini-warehouse facility with caretaker's quarters, not more than three stories high and providing landscaping consistent with the landscaping plan proposed for that portion of the site rezoned.

Recommendation

The rezone should be granted for that portion of the site described in Conclusion No. 11 above subject to a property use and development agreement with provisions as described above.

Entered this 5th day of November, 1985.

*M. Margaret Klockars*  
M. Margaret Klockars  
Deputy Hearing Examiner

Notice of Right to Petition  
For Further Consideration

Pursuant to 23.34.14, Seattle Municipal Code, as amended, any party affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fourteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Land Use Committee, Municipal Building, Seattle, Washington 98104.

The petition should state clearly and concisely the reason(s) why further consideration is necessary, and should refer specifically to any errors alleged to exist in the Hearing Examiner's Findings and Conclusions. The City Council's consideration of the petition will be based upon the record of the Hearing Examiner's hearing, and new exhibits or other evidence in support of the petition should not be submitted. In its discretion, the Council may allow oral or written arguments based on the record when it considers the petition.