

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

GEORGE OBSORNE, et al,

FILE NO. 8504747

C.F. NO. 294325

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

Introduction

Petitioners seek the downzoning of property between 3010 and 3057 61st Southwest, 3007 and 3056 62nd Southwest, and 3023 and 3080 63rd Southwest from Lowrise 2 to SF 5000.

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 denied.

This matter was heard before the Hearing Examiner on February 11, 1986, and March 5, 1986.

After due consideration of the evidence presented by the Petitioners, the information provided by the Director's report, and 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 an 8.6 acre area in the Alki community of West Seattle. The subject property lies on both sides of 61st, 62nd and 63rd Avenues S.W. and extends north from S.W. Admiral Way along each street from about 460 to 585 ft. Various documents in the file provide different legal descriptions and different addresses of the subject property. It appears, however, that included in the petition are the following: Lots 4-16, McGinnis Replat of the West 1/2 of Lot 12 of Alki Point; Lots 5-23, Block B, Seashore Addition to Alki Point; Lots 6-21, Block 2, Seashore Addition to Alki Point; Lots 11-38, Block 13, Olson Land Co., 5th Addition; and Lots 1-14 of unrecorded subdivision Tract 15, Alki Point. Lot 5, Block 2, Seashore Addition to Alki Point was included in the initial petition but Petitioners appear to have excluded it in their final submittal.

2. The subject property has been zoned Lowrise 2 (L-2) since the 1982 City-wide rezoning under the Multi-family Land Use Policies. From 1957 until 1982 the property was RD 5000 and prior to 1957, R2-A, both duplex zones.

3. Lowrise 3 zoned property lies to the north and east of the subject area, L-2 is on the south side of Admiral Way with SF 5000 the zoning south of the lots fronting on Admiral, and to the west is SF 5000 zoned property.

4. The uses within the subject area are a mixture of residential uses. There are 78 separate lots. Of those, 58 are devoted to single family use (74 percent), 16 to duplex, one to triplex, two to fourplex and one to an 11 unit apartment building.

5. An evaluation of uses by block shows that on 61st S.W., 24 properties are devoted to single family use (82.8 percent), four to duplex use and one to a fourplex. One property now counted as single family has vested rights to use as a fourplex. On 62nd S.W., 16 properties are in single family use (69.6 percent), and seven in duplex use. On 63rd S.W., 16 are in single family use, (64 percent) five in duplex, one in triplex, one in fourplex and one is an apartment building.

6. Along Alki Avenue, north of the rezone area, is a Neighborhood Business (BN) zone with restaurants, a pharmacy, food markets, a laundromat, beauty salons, etc.

7. Across the southern boundary of the rezone area, Admiral Way, properties zoned L-2 are in predominantly single family use, however, there is an eight unit apartment building at the southwest corner of the intersection of 63rd and Admiral Way and two duplexes.

8. Southwest Admiral Way and Alki Avenue S.W. provide east-west arterial access to the area and 63rd Avenue S.W. is a north-south arterial. Alki Avenue is unusable on sunny days for access because of heavy beach and "cruising" traffic. In addition, 61st S.W., a residential street, serves as an informal arterial through the area.

9. The three streets, 63rd, 62nd and 61st Avenues S.W. have 66 ft. wide rights of way. All have curbs, gutters and planting strips. The roadway on 61st S.W. is 36 ft. wide, on 62nd S.W. 25 ft. wide and on 63rd S.W., 44 ft. wide. Each allows parking on both sides. The two wider streets allow for two lanes of travel. When cars meet on 62nd, one must pull into an opening in the parking lane to allow the other to pass. Parking is readily available on the three streets. Witnesses report that the City is making efforts through signing and installation of traffic circles to control traffic in the area.

10. A determination of non-significance (DNS) pursuant to Chapter 25.05 and SEPA was issued by the Director for the proposed rezone. The DNS disclosed impacts of reduced housing and redevelopment opportunities. The DNS was appealed by Alki Associates, owner of Lot 4, Block 2 McGinnis Replat of the West 1/2 of Lot 12 of Alki Point. The appeal was dismissed at hearing.

11. DCLU reports that since the 1982 zoning change, one fourplex has been added, the right to build one fourplex has been vested, a lot devoted to a single family residence has been converted to a fourplex, one unit has been added to a duplex to make a triplex, and a lot devoted to single family has been converted to duplex within the area of the proposed rezone. These and those duplexes existing prior to 1982 would become nonconforming if the area was downzoned. No single family residences has been constructed.

12. Many single family residences in the rezone area have been improved over the years as shown on Exhibit 7.

13. The three arterials, S.W. Admiral Way, Alki Avenue S.W., and 63rd S.W. are Metro transit routes so the proposed rezone area is well served.

14. Alki Beach Park is a short distance away from the rezone area.

15. Alki Elementary School is approximately two blocks east of the eastern part of the rezone area. Neighborhood children from kindergarten to the 6th grade may attend the school.

16. Fully improved alleys run north-south through the middle of each of the blocks of the rezone area. The plat map shows the alleys rights of way to be 20 ft. wide between 62nd and 63rd and 16 ft. between 61st and 62nd. The alley separating the proposed rezone area from the L-3 zoned property to the east is shown as 16 ft. wide and the one separating the rezone area from the single family zone to the west is shown as 20 ft. wide.

17. The standard minimum width for an arterial is 34 ft., according to the Director's representative. Exhibit 23 shows that the minimum standard pavement width for residential access streets in the L-2 and L-3 zone is 32 feet. The standard for SF and L-1 zones is 25 feet.

18. The Fire Department finds that the area's streets provide adequate fire access.

19. Water pressure and sewers in the area are adequate for L-2 development.

20. The rezone area is flat which the record shows is desirable both for families with children and elderly persons, and for apartment development.

21. A group of investors bought several adjoining lots, including one within the area proposed for downzoning, in December, 1982. A feasibility study had been conducted concluding that from 28 to 36 units could be built on the property utilizing the L-2 zoned lot for parking. If the downzone is effected, the development could not go forward as envisioned.

22. Another owner purchased her lot in 1972 relying on the RD 5000 zoning for the option of conversion of the cottage on the lot to a duplex.

23. Lots on the west side of 60th Avenue S.W., which is in the L-3 zone would be affected by the downzoning of adjacent property to single family because when an alley adjoins single family property use of the alley for access to parking for the L-3 zone would be prohibited. This would reduce the potential for development on those lots since a roadway for access to the rear would consume part of the lot or the lower floor of the structure would have to be devoted to parking.

24. The maximum height of buildings permitted under the SF 5000 and L-2 zoning is the same, however, the width and depth of L-2 structures may be substantially greater.

25. One single family house next to a new L-2 structure is completely shaded at noon on December 22. Exhibit 18.

26. Witnesses reported that four new families with children have moved into the area of the proposed rezone since 1982.

27. Within two blocks of the rezone area in the SF 5000 zone a number of new houses has been built.

28. Community members supporting the petition feel that there was not adequate notice of the 1982 rezoning of the property, though some were aware of the action being taken. At least one person felt he was misled by City staff about the effect of the change from RD to L-2, being told it would allow essentially the same development. Several witnesses opposing the downzone were actively involved in the 1982 process.

29. Letters from persons supporting the downzone show the widespread misapprehension that the rezone area had always been zoned single family until the change in 1982. The record shows 1982 it has never been zoned single family.

30. The requested rezone would leave a finger of L-2 zoning, one lot wide along the south side of Admiral Way, between two areas of SF 5000. Forms indicating the desire of several owners of those properties to be included in the rezone were submitted at hearing.

31. The zone boundary between the L-2 zones at the north end of the east side of 62nd Ave SW. bisects Lots 1, 2, 3 and 4 of Block 2, Seashore Addition to Alki Point. Whether Lot 5 is included in the rezone or not, a fragment of L-2 zoning would be left between the zones if the subject area is downzoned.

32. Various statements about, and analyses of, the value of property under each zone classification were offered. None appeared to be sufficiently reliable to be given any weight.

33. A large number of letters were received by the Director and the Office of Hearing Examiner on this petition. The majority favored single family zoning.

34. A majority of the property owners in the proposed rezone area support the rezone.

Conclusion

1. Section 23.34.08 sets forth the general criteria to be used in evaluating a request for a zoning change, namely, in this case, the match between established locational criteria for the proposed zoning, zoning history and precedential effect, zoning principles, impact evaluation and changed circumstances.

2. The characteristics of the area arguably match one or more of the locational criteria listed for single family zones at Section 23.34.12. First, one block exceeds the 70 percent test for structures in single family use, but that is the block closest to the L-3 zone and separated from the SF 5000 area by two blocks in the rezone area which are below the 70 percent single family. The average of the three blocks, however, is over 70 percent. The other criterion which proponents of the rezone point to that the area matches is the increasing trend toward single family use because of the value of improvements to existing homes. Section 23.34.12.A.3.b. At the same time, however, the record shows a number of conversions from single family to, or additions of, higher density uses. So the trend is not clear enough to conclude that there is a definite match with that criterion. The area, though not 15 acres, does abut the single family zone to the west.

3. A comparison of the area's characteristics to the L-2 locational criteria arguably shows a match as well. There is a mix of residential densities in the area like the criterion, however the prevailing height is one to two stories, not two to three. The area is located between SF 5000 and L-3 zones providing a theoretical transition but the L-3 zone is not developed to the degree that the transition is needed yet. The best match is with criterion C in that the prevailing scale is small but there is proximity to transit, open space and neighborhood areas.

4. As to zoning history, the staff report for the 1982 rezoning was not located so the City Council's bases for the 1982 rezone are not specifically known. The long history of duplex zoning would have made the area a likely candidate for greater density than single family since all existing owners would have purchased their

property with the knowledge that development could be greater than single family. Further, the area has plenty of arterial access. Petitioners argue that the 1982 rezone was not well considered. They provide the alternative view that too much traffic is already present and the use, despite the long term RD zoning, has remained predominantly single family.

5. As to precedent, there is a strong likelihood that downzoning the subject area would lead to a downzone of the remaining L-2 zoned property along the south side of Alki. This likelihood is viewed as neither positive or negative. The downzoning of the area could have a broader effect as a signal to other areas that were zoned for multifamily housing in 1982, that the City Council will consider major revisions in the product of that effort. While errors made at that time should be corrected, the effect of large scale changes could be a disincentive to those considering investment to develop additional housing.

6. An analysis of zoning principles required by the code, does not lead to a definite conclusion that the zoning needs to be changed. The Director found that the existing zoning conforms more to the principle that zoning should be similar in areas where circumstances are similar than the proposed zoning, relating this principle to the code's locational criteria. Under the proposed zoning an alley would separate SF 5000 zoned property from L-3 while at present an alley separates SF 5000 and L-2, a slightly better situation. An arterial boundary, Admiral Way, would provide a slightly better edge for the SF 5000 except this advantage is offset by the irregularity created with the one-lot-wide finger of L-2 separating two SF 5000 areas.

7. As to impacts of the proposed downzone, there would be a reduction in traffic and demand for utilities, services and parking from that which would occur if the area was developed to the maximum allowed under L-2 zoning. Petitioners urge that this is consistent with the City's efforts to control traffic in their area. On the negative side, the downzoning would have the effect of removing the potential for added housing from an eight acre area. A further effect on potential housing supply would result from the loss of space caused by access to parking from the front if the alley could no longer be used for access to L-3 zoned properties.

8. Petitioners assert that circumstances have changed since 1982 in that there have been substantial improvements to houses in the area, new families with children have moved into the area and traffic problems from Alki are getting worse. The Director found changes consisting of new development of the greater density allowed by the L-2 zoning. Neither represents substantial change.

9. From the evaluation of the factors to be considered, the proposed zoning does not emerge as clearly the appropriate zoning for the area. Where such is the result of the analysis, the decision should be to retain the existing zoning. That classification has, at one time, been determined to be appropriate, people have relied on that zoning classification remaining until change has occurred which makes it no longer appropriate and downzoning would make existing uses and structures nonconforming. The Court in Parkridge v. Seattle, 89 Wn.2d 454, 573 P.2d 359 (1978), which case also involved a downzone action, required, while giving substantial weight to the views of the community, that a substantial change in conditions since the original zoning be shown and that the rezone "bear a substantial relationship to the public health, safety, morals or welfare." Parkridge, supra at p. 462. The record shows strong support from the community for the downzone but lacks evidence of a change that warrants the rezone action.

10. Instead of the proposed SF 5000, the Council could consider a rezoning of the area to Lowrise 1 to respond to the concerns of both the petitioners who want to restrict density and scale and owners of property in the rezone area who relied upon the earlier RD zoning and the 1982 L-2 zoning for the option of adding units and owners of L-3 properties whose development would be restricted by the change of abutting property to single family. The area characteristics match the locational criteria of the Lowrise 1 classification to the same degree that they meet the single family and L-2 criteria. Criterion A, Section 23.34.14, "areas where structures of consistently low height (twenty-five to thirty feet) and small bulk establishes the pattern of development..." is met. The L-1 classification would retain some potential for increased housing opportunities while restricting to some extent the bulk and scale of new buildings. Few nonconforming uses would be created and access to L-3 properties via the alley would not be prohibited.

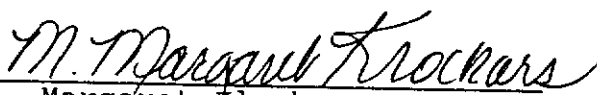
11. While rezoning to L-1 may be the most satisfactory in terms of meeting the concerns of both sides and therefore relate to the public safety and welfare, the better action, under the case law, would be to deny the petition. Where all three possible classifications, existing, proposed and compromise, conform in similar degrees to the policies, and no showing has been made of substantial change in circumstances or conditions since the last zoning in 1982, a change in the zoning is not warranted.

Recommendation

For each of the above reasons, the recommendation of the Hearing Examiner to the City Council is as follows:

The petition should be denied.

Entered this 20th day of March, 1986.


M. Margaret Klockars
Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

Pursuant to 23.76.54, Seattle Municipal Code, 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 fifteen 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 clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought. 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.