

FINDINGS AND RECOMMENDATION

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OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

JAN 23 1989

In the Matter of the Petition of

OFFICE OF HEARING EXAMINER

JOHN C. PATTOK

FILE NO. 8801659

C.F. NO. 296400

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

Introduction

Applicant petitions to rezone approximately 5000 sq. ft. of land from Lowrise 3 to Neighborhood Commercial 3, 40 ft. height limit, principally to accommodate expanded accessory parking at 6416 15th N.W.

As indicated herein, DCLU received correspondence which stated some opposition to the rezone.

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 approved, with conditions.

This matter was heard before the Hearing Examiner on January 4, 1989.

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

Findings of Fact

1. Petitioner is owner-operator of Zesto's Burger and Fish House. The property address is 6416 15th N.W.

2. The general site is legally described as Lots 1-3, Block 6, Gilman Park Addition. The western two-thirds of the site (Lots 1 and 2) is developed with the existing, single-story restaurant building and parking spaces for some 15 automotive vehicles. A two-way curb cut from 15th N.W. is south of the restaurant. A 65th Street curb cut for ingress is east of the restaurant building.

3. Lots 2 and 3 are zoned Neighborhood Commercial 3 and have a 40 ft. height limit (NC3-40').

4. The eastern third of the Zesto site, Lot 3, is zoned Lowrise 3. It has 50 ft. of frontage to north abutting 65th Street and extends south for 100 ft. of depth. This Lot 3, hereinafter the subject site, is proposed for reclassification to NC3-40' zoning.

5. Accessory commercial parking would have been permissible under previous (RM 800) zoning of the subject site. No parking lots are permitted under present (L-3) zoning, however. Petitioner therefore requests that the subject site be rezoned to NC3-40' to allow expansion desired for the existing Zesto parking lot. According to petitioner's credible testimony, his business is presently suffering from the lack of more parking which is "drastically" needed. The subject site's previous RM 800 zoning was changed to the present L-3 zoning in 1983.

6. The subject 5000 sq. ft. lot contains a picnic area with

tables, grass and other vegetation. Perimeter landscaping provides some screening of the site from the east adjacent multi-family uses. The site also contains parking for 12 cars. Petitioner proposes to retain a minimum 5 ft. wide landscape buffer to the east and to retain an existing tree in the southeast corner of the lot.

7. Petitioner is willing to accept a contract limit on the rezone to restrict the use of the lot to parking use. Petitioner is concerned, however, with the impact of such a contract limitation in the event he decides to sell the property.

8. The proposal site lies approximately 100 ft. east of 15th N.W., a heavily traveled, 4-lane arterial that is well served by Metro transit. Across 65th, north, is the Ballard High School campus. An apartment building is east adjacent in the L-3 zone, representative of the surrounding medium density residential area. Single family zoning begins east adjacent to the L-3 zone. A dry cleaners is directly south. The prevailing pattern is one of medium bulk and mixed scale developments.

9. Fifteenth N.W. is marked by properties that are zoned and utilized for commercial uses. Several of those properties that line the east side of 15th N.W. extend for 150 ft. east to the adjacent residential zoning. There is a jog in the zoning pattern. Primarily, the easternmost segments of those parcels are in accessory parking lot use. Also, many of the businesses are auto-oriented.

10. Petitioner's use of the subject for accessory parking would likely result in minor increases in automobile-related impacts. There would be increases in auto and pedestrian traffic, air emissions, and in the amount of impervious surfacing on-site.

11. Use of the subject site for accessory parking will reduce customer spillover parking to the surrounding neighborhood. As noted in the Environmental Checklist, p. 11, the "increased parking with improved circulation will improve auto and pedestrian safety and take some of the cars off local streets." An application supplement projects that benefits will include "better auto circulation" as well as "separation of access and egress on 65th" which will assist in a substantial improvement of "visual acuity of pedestrians crossing 65th..." Students are included in the pedestrians. Seattle Engineering Department modifications to the intersection completed in 1987 include the addition of a traffic island within 15th N.W. This has some limiting effect on (west) exits from the restaurant site.

12. Because of the limited nature of the project proposed and because of the relatively flat topography, no issue of view retention is here presented.

13. One correspondent to DCLU noted her objection, i.e. if the subject lot, "within the Ballard Pilot Study Area,"

is to be rezoned NC3...in the future, development which is not consistent with our plan for the area will be allowable per the NC3 standards. The Ballard Pilot Study and the recommendations of all three groups from the Advisory Committee do not recommend a change in the zoning...and none...felt that an increase in density allowed was advisable at this time... Let's allow the parking change, not the zoning change...

14. A second correspondent echoed the sentiment:

To rezone is to ensure that this lot would be used for apartment development in the very near future... I would suggest a permit for a variance be issued rather than a rezone...

15. DCLU opined in response that variance approval was highly improbable, and further that limiting the use to accessory parking would address the objections.

16. DCLU determined that the proposal would have no significant adverse impact upon the environment. No environmental impact statement was therefore required by DCLU. No appeal was filed from this threshold decision.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapter 23.76, Seattle Municipal Code. The specifics of the Hearing Examiner procedure are found at Seattle Municipal Code Section 23.76.052. The rezone criteria to be applied in the process are specified at Chapter 23.34, Seattle Municipal Code.

2. The several factors required for consideration in rezone requests are delineated at Seattle Municipal Code Section 23.34.008 as general rezone criteria. The first of the criteria requires an evaluation of the match between the characteristics of the rezone area and the locational criteria for the proposed land use category which, in this case, is NC3.

3. The NC3 locational criteria, Seattle Municipal Code Section 23.34.078, are generally met by existing characteristics. For example, the general site is part of a

Commercial, retail-oriented strip along a major arterial with significant amounts of retail frontage...generally surrounded by medium-density residential areas.

Seattle Municipal Code Section 23.34.078(B)(1)(b).

4. There is some variety in the nature of street level businesses along the commercial strip; however, many are auto-oriented businesses. Seattle Municipal Code Section 23.34.078(B)(2)(a). Shoppers can easily drive to the area via the arterial, Seattle Municipal Code Section 23.34.078(B)(2)(d); and transit is available as a means of access. Seattle Municipal Code Section 23.34.078(B)(2)(e).

5. Considering "Physical Conditions Favoring Designation as NC3," Seattle Municipal Code Section 23.34.078(C), the site is served by 15th N.W., a principal arterial, and is "highly accessible" by private vehicles and "excellent" transit "for large numbers of people." Commercial node activity could be accommodated. Section 23.34.078(C)(3)(5).

6. The traffic circulation system can and does accommodate commercial traffic along the arterial. Traffic through the residential areas to the east of the site is not required. Seattle Municipal Code Section 23.34.078(C)(4).

7. The final condition favoring NC3 designation concerns land in use or available for off-street parking. Several accessory lots are present and extend some 150 ft. east from 15th N.W. In addition, the subject site is proposed as "land available for additional parking, or other means to accommodate parking demand." Seattle Municipal Code Section 23.34.078(C)(6).

8. Regarding the NC3 "function," Seattle Municipal Code Section 23.34.078(A), the subject area does not offer a "wide range of retail goods and services" or the attendant support services. Nevertheless, the area, inclusive of appellant's restaurant, does offer service to "the surrounding neighborhood and a larger community or citywide clientele." High School and other pedestrians are included in that clientele.

9. In sum, the NC3 locational criteria are generally met by the subject area.

10. Parenthetically, many of the L-3 locational criteria

also apply. There is, for example, a variety of scale patterns but a prevailing pattern of medium bulk and moderate height. Seattle Municipal Code Section 23.34.018(A). The subject area is "well served by public transit" and is in "close proximity" to the 15th N.W. arterial. Section 23.34.018(E). Also, the subject area is adjacent to a commercial or business area with comparable or greater heights than the subject site's (existing or proposed) development.

11. Other L-3 criteria are specifically not met. The subject area is not one where topography and prevailing building heights require a 37 ft. height limit for view retention. The area is generally flat without scenic route, public open space or other view protection issues. Seattle Municipal Code Sections 23.34.018(C) and (D).

12. The general criteria for all commercial area designations should also be reviewed. Seattle Municipal Code Section 23.34.072. In the main, those criteria are met. As recommended herein, there would be little active "encroachment of commercial development into residential areas..." (emphasis supplied). Seattle Municipal Code Section 23.34.072(B)(1). In fact, part of the rezone site already contains restaurant parking. The site also has picnic tables and other features which complement the existing business use. A landscaping buffer is proposed. Section 23.34.072(B)(3). The rezone would facilitate improvement of an existing commercial area, Section (B)(5). The cumulative effect of the new traffic on site will not exceed infrastructure capacity, Section (B)(6), notwithstanding changes in the traffic pattern occasioned by SED modifications to the intersection.

13. The proposal is generally consistent with goals of the Neighborhood Commercial area land use policies. There would be a minor difference in the size of the "business district." The integrity of the neighborhood would be maintained; an "expansion" of the existing business would be facilitated; there is direct vehicular access to "adequate transportation corridors;" and a transition in scale and use would remain. Seattle Municipal Code Sections 23.16.020(I)(A)(B). The Single Family Policies edge protection policies would not be violated. Seattle Municipal Code Sections 23.16.002; 23.34.072(B)(2).

14. In sum, the specific NC3 and the general commercial area designations criteria are adequately and sufficiently met. The remaining issues addressing rezone criteria are discussed below.

15. The second general rezone criteria concerns zoning history and precedential effect. Seattle Municipal Code Section 23.34.008(B). Under previous zoning for the subject site, RM 800, the accessory business parking was permitted in the zone. The zoning to L-3 was adopted in 1983. Thus, approval of the (restricted) rezone would be consistent with the history. As to precedent, other commercial parcels extend 150 ft. east from 15th N.W. The proposed rezone would offer a zoning pattern consistent with the pattern extant. In addition, the zoning history, the relationship between the rezone site, its west adjacent business site and the relationship to the transportation-parking pattern combine to present a rather unique circumstance which will offer limited precedential value for further reclassification of L-3 zoned land.

16. Regarding compatible land use patterns, configuration and boundaries, the proposed rezone would continue the decline in intensity, west to east, from 15th N.W. The most westerly use, commercial, would remain adjacent to the multifamily use. There would be a vegetative buffer between those two zones. The single family zone would remain farther east from the NC3 zone. Also, the pattern along 15th N.W. would be insignificantly altered. Seattle Municipal Code Section 23.34.008(C).

17. Regarding impacts, the rezone would remove a 5000 sq. ft. area parcel from multifamily zoning. It would also bring more accessory parking closer to the adjacent multifamily zone. On the other hand, the rezone proposal would facilitate improved

vehicle access and improved pedestrian safety for the vicinity. It would also decrease the spillover parking into the surrounding residential neighborhood. The infrastructure would in no way be strained by the proposal.


18. No overlay district, greenbelt plan, or neighborhood planning issues are presented herein. Section 23.34.008(E)(G)-(H). The 1987 SED modification to the 65th - 15th N.W. intersection could be considered a "changed circumstance." The rezone will improve internal circulation and exiting capacity (to 65th) such that the adverse impacts of the intersection changes may be countered. Seattle Municipal Code Section 23.34.008(F).

19. Based on the foregoing, the Hearing Examiner recommends that the rezone be granted on the condition of a permanent property use and development agreement which will limit the development to that of a parking lot accessory to the existing or successor business, and which will require landscaping and screening in strict accord with a DCLU-approved landscaping plan.

Recommendation

The Hearing Examiner recommends that the City Council Conditionally Approve the rezone in accord with Conclusion 19 above.

Entered this 12th day of January, 1989.


LeRoy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially 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, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further reconsideration shall clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.