

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

In the Matter of the Petition of

JOHN CRULL, CDS INC.

FILE NO. 8805995
C.F. NO. 296975

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

Introduction

John Crull of CDS Inc., on behalf of James Penhollow, has applied for a Master Use Permit to rezone a parcel of land from Neighborhood Commercial One/30' (NC1/30) to Neighborhood Commercial Two (NC2/30). Approvals are required under Chapter 23.34 of the Seattle Municipal Code (SMC). A review of the project under the Seattle Environmental Protection Act, Chapter 25.05, SMC, is also required.

Following a review of the application, the Department of Construction and Land Use (DCLU) recommended conditional approval of the rezone application and determined that the proposal would have no significant adverse environmental impacts. There were no appeals of the DCLU rezone decision and environmental determination.

The matter was heard on December 4, 1989. John Crull and James Penhollow appeared in support of the application. DCLU was represented by Ms. Susan Kunimatsu.

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

After due consideration of the evidence elicited during the public hearing and during comment periods, the following shall constitute the findings of fact, conclusions of law and recommendation of the Hearing Examiner.

Findings of Fact

A. Rezone:

1. The applicant proposes rezone of a parcel of land located at 3830 34th Avenue West from Neighborhood Commercial One/30 (NC1/30) to Neighborhood Commercial Two/30 (NC2/30), to allow for the future expansion of an existing grocery store. The site of the proposed rezone is a level, 42,000 sq. ft. parcel located at the southeast corner of 34th Avenue West and West Thurman Streets. The site is developed with a one-story building, built in 1960, which houses a 7,570 sq. ft. store called the Red Apple Market (the "Market"). The applicant proposes to: expand the Market by adding approximately 9,105 sq. ft., retain 68 parking spaces and make improvements to access and landscaping.

2. The Market is currently served by surface parking lots located at the north and south ends of the site which accommodate 80 cars. The parking lots are currently accessible from 34th Avenue, West Thurman Street and an alley which abuts the east side of the site.

3. The site is at the north end of a NC1/30 zone which extends over one block south on either side of 34th Avenue West. The site is near Discovery Park in north-central Magnolia, a primarily residential neighborhood. The only other commercial structures in the zone are a television repair shop and two small one-story offices, all on West Emerson Street, which is at the south end of

the zone. Most nearby buildings are residential, including single family, duplex and ten (10) apartment buildings ranging from five (5) to sixteen (16) units and up to three (3) stories in height. The visual character of the block is residential with many properties landscaped and set back from the street.

4. The north parking lot of this site was formerly under separate ownership and occupied by a gas station. That parcel became available and was acquired by James Penhollow in early 1986, which provided the first opportunity to consider expansion of the Market. This acquisition occurred too late to submit a formal request for consideration of alternative zoning as part of the City Council's deliberations on the new zoning code, Title 23.

5. Most of the platted and developed land in Magnolia is residential. In addition to the NC1/30 zone there are five (5) other commercial zones. Four (4) of these are less than one block each in area and are oriented around single intersections of arterials on the north and east edges of Magnolia.

6. The largest commercial zone in Magnolia is the principal commercial district, an NC2/30 zone located at the south end of 34th Avenue West, over one mile from the subject site. There is one full service grocery store, Albertson's, in the principal commercial district. Other than Albertson's and the Market, there is only one other store in Magnolia, a QFC located on West Dravus Street at the east edge of Magnolia. Both Albertson's and QFC are about twice the size of the Market.

7. Immediately adjacent to the NC1/30 zone in which the subject property is located there are fully developed single family residential (SF 5000) neighborhoods. Single family residences adjoin the site to the north across West Thurman Street and across the unimproved alley to the east. In addition, there are low-rise multifamily zones one block north (L3) and south (L1) of the subject site.

8. The subject site and the NC1/30 zone of which it is a part have been commercially zoned since 1924. The current NC1/30 zone was adopted June 1986, as part of the Neighborhood Commercial Areas rezoning. At that time, the NC1 zoning for this area was adopted without discussion of alternatives for this site. Grocery stores have always been a permitted use in the commercial zones.

9. Magnolia is somewhat isolated from the rest of the City by topography, non-residential development to the east, Puget Sound and limited street access. The site is served by a fully improved minor arterial, 34th Avenue West, which carries an average of 5,000 vehicles trips per day, including one bus route and West Thurman Street which is also fully improved. Limited access to and from this site is also available via the unimproved alley to the east.

10. The site is currently landscaped with two large evergreen trees located at the southeast corner of the site and a strip of evergreen and flowering shrubs located between the building and 34th Avenue West. Portions of a 22-foot wide planting strip at 34th Avenue West is improved with lawn, but most of the strip is used for angle parking in front of the curb-cuts to the parking lot.

11. If this petition is approved, the applicant would construct a one-story, 9,105 sq. ft. addition on the north side of the Market and make other improvements, including landscaping (evergreen shrubs and ground cover and closure of curb cuts on West Thurman Street). In addition, maple trees would be planted on West Thurman Street and 34th Avenue West and a row of cypress trees and a fence would be provided along the east property line, eliminating auto access from the alley.

12. With the proposed improvements, total building area would increase to 16,675 sq. ft. and parking areas would be reduced to 68 spaces. In an NC1/30 zone, a business which is already in operation may expand to a maximum of 10,000 sq. ft. (SMC Section 23.47.010.G.1a). The proposed expansion of the Market would exceed this size. Therefore, the rezone is necessary.

13. If the rezone petition is approved and an NC2/30 zone is established, the maximum size to which the business could expand would be 25,000 square feet (SMC Section 23.47.010.G.1b). However, the applicant has also requested a contract rezone pursuant to Seattle Municipal Code Section 23.34.004 in which the maximum site development would be less than 25,000 square feet. If the rezone request is not approved, the applicant will either have to continue to operate the Market in its existing space or relocate the store to a different location.

14. Several demographic changes in the Magnolia neighborhood support the rezone. Apartment construction has increased housing density and population size. These trends increase the need for additional convenient neighborhood commercial services which could be met in part by an expanded Market.

15. No comment letters were received during the comment period in response to this proposal. However, Vann R. Caples testified before the Hearing Examiner on behalf of the Magnolia Community Club in support of the application; and a letter from the Magnolia Community Club and a petition, containing approximately 600 signatures, in support of an NC2/30 zoning designation for this site were received by the City in 1986, after the close of the Neighborhood Commercial rezoning process.

16. There is no adopted neighborhood plan for the Magnolia neighborhood.

B. SEPA Analysis:

17. The following short-term/temporary construction related impacts are expected to occur and therefore require mitigation:

- a. erosion resulting from excavation
- b. damage to adjoining streets and sidewalks
- c. mud spread by the wheels of construction vehicles
- d. dust and construction equipment emissions
- e. increased traffic and parking demand
- f. noise from equipment required during construction

18. If the rezone is approved, long term traffic impacts will result. The number of vehicle trips to and from the site is expected to double. The Market currently generates an average of approximately 950 vehicle trips per day, including approximately 90 trips per hour during a peak shopping period, typically Saturday afternoon (ITE 1987). Existing traffic volume on 34th Avenue West is about 5,000 trips per day. The proposed 9,105 sq. ft. addition would increase traffic volume to more than twice the current level, by an additional 1,142 trips per day, including 109 peak hour trips. According to the Director's Report, even with this increase, overall traffic volume would remain well within the capacity of this minor arterial.

19. The proposed rezone would increase demand for parking at the Market to 57 spaces and the applicant's proposal would decrease to 68 the number of off-street spaces. However, there would still be sufficient off-street parking to meet that demand as remaining parking would exceed projected demand.

20. Other long-term impacts will be the noise, glare and reduced air quality that result from increased traffic. These impacts should be mitigated.

21. If the rezone is approved there should be no impacts in the following areas because the development standards for NC1 and NC2 zones are the same:

- a. building height
- b. building setbacks
- c. landscaping

22. The width of the proposed building's east elevation facing the single family zone would increase from 79 feet to 145 feet. Single family residences to the east are at a grade elevation which is 10 to 15 ft. higher than the Market and are located on and oriented toward the far (east) side of their lots. Moreover, some of the single family homes have garages off the alley which screen the residences from the Market. Although the building in which the Market is located is built to the alley lot line and is much longer and bulkier than a residence, its limited height, lower grade elevation and physical separation from single family structures should sufficiently mitigate potential bulk and scale impacts.

23. Trash storage containers and areas could have aesthetic, noise and public safety impacts on surrounding areas and patrons of the Market. Those impacts should be mitigated.

24. Water service to the site is sufficient to support the additional commercial development. There will be no increase in the total storm water run-off from the building addition and the existing storm drainage system is expected to be able to accommodate all run-off.

25. The north parking lot which serves the Market was developed with a gas station until it was acquired by the applicant. According to records from the Department of Construction and Land Use (DCLU) and the Seattle Fire Department, a permit to demolish the building and to remove five (5) underground tanks was issued by DCLU in April 1986. However, no environmental review was done by DCLU.

26. The Washington State Department of Ecology (DOE) investigates underground tank removals only on the request of the local permitting agency when there is evidence of soil contamination. Neither DOE or DCLU files contain records of such a contact. Therefore, the parties were unable to present evidence of the specific locations of the tanks or their method of removal. The parties were also unable to present evidence that the soils contain no contaminated materials or substances.

27. The responsible official reviewed the environmental checklist prepared by the applicant and other information on file with the responsible agency, and concluded the proposed rezone will not cause significant adverse environmental impacts. The responsible official also concluded that anticipated impacts can be effectively mitigated under existing codes or with appropriate conditions. However, there is no evidence the responsible official considered the short-term risks of exposing possibly contaminated soils during the construction phase and/or the short or long-term risks of possibly expanding the Market onto areas in which soil contamination may still exist.

Conclusions

A. Rezone:

1. A request to change a zoning designation from NC1 to NC2 must satisfy locational criteria for Neighborhood Commercial zoning (SMC 23.076) as well as general rezone criteria (SMC 23.34.008).

2. Seattle Municipal Code Section 23.34.008 provides as follows:

23.34.008 General rezone criteria.

In evaluating a request for a zoning change, the following factors shall be considered:

A. Match Between Established Locational Criteria and Area Characteristics. In order to ensure compatibility of new and existing development, the characteristics of the area to be rezoned should closely fit the adopted locational criteria for the proposed land use category.

B. Zoning History and Precedential Effect. Previous and potential zoning changes both in and around the area proposed for rezone shall be examined.

C. Other Zoning Principles. Zoning principles relating to compatible land use patterns, size, configuration and boundaries shall be considered.

D. Impact Evaluation. The decision on a proposed rezone shall consider the possible negative impacts on the area proposed for rezone and its surroundings. Factors to be examined include, but are not limited to the effects on transportation, parking, housing, public services, and environmental factors such as noise, air and water quality and energy conservation.

E. Neighborhood Planning Efforts. If there are adopted neighborhood plans or recommendations which apply to the area proposed for rezone, these shall be taken into consideration.

F. Changed Circumstances. If part of the justification for the rezone is changed conditions since the adoption of the Official Land Use Map, evidence of the change shall be taken into consideration. Evidence might include changes in structure height and scale, addition of new uses, traffic patterns and transit routes and demographic changes.

G. Overlay Districts. If the area is located in an overlay district the purpose and boundaries of the overlay district shall be considered.

H. Greenbelt Plan. If the area is included in the Greenbelt Plan as adopted by Resolution 25670, the purpose and boundaries of the Greenbelt Plan shall be considered.

3. Seattle Municipal Code Section 23.34.076 provides as follows:

Locational criteria Neighborhood Commercial (NC2) zones.

In reviewing a proposal to rezone an area to Neighborhood Commercial 2, the following criteria shall be considered:

A. Function. A pedestrian-oriented shopping area which provides a full range of household and personal goods and services, including convenience and specialty goods, to the surrounding neighborhoods;

B. Character.

1. Existing. The NC2 zone may be appropriate for any of the following types of areas:

a. Medium-size node generally surrounded by low- to medium-density residential areas; or

b. Small commercial area located at the edge of a larger business area, which provides a transition between intense commercial activity and surrounding areas; or

c. Area in the core of an established commercial district characterized by a concentration of small retail and service uses; or

d. Commercial area along major arterial where lots are generally small and shallow, and are surrounded by low-density residential areas.

2. Desired Characteristics.

a. Variety of small to medium-sized neighborhood-serving businesses;

b. Continuous storefronts with commercial use, built to the front property line;

c. Pedestrian-friendly atmosphere;

d. Shoppers can drive to the area, but walk from store to store.

C. Physical Conditions Favoring Designation as NC2.

1. Surrounded by low- to medium-density residential areas;

2. Lack of strong edges to buffer the residential area;

3. Lack of vacant land or land appropriate for additional commercial development within the commercial area.

4. Access through low- and medium-density residential areas;

5. Located on streets with good capacity (major traffic streets and minor arterials), but generally not on major transportation corridors;

6. Limited transit service (i.e., a few routes);

7. Limited off-street parking capacity; may include a parking area for supermarket or other larger use.

4. There is a match between many of the established locational criteria for NC2 zones and area characteristics:

a. The Market is not situated in a pedestrian oriented shopping area, but the expanded Market will provide a wider range of household and personal goods to residents of surrounding neighborhoods. Seattle Municipal Code Subsection 23.34.076A and 23.34.008A.

b. The existing NC1/30 zone is small, located on an arterial and is surrounded by residential development. However, there currently is not, and even with a rezone would not be, a variety of businesses or commercial uses in the zone. But a properly designed, expanded Market can offer a pedestrian friendly atmosphere and would be more accessible to residents of nearby neighborhoods. Seattle Municipal Code Section 23.34.076B2.

c. The site is surrounded by low to medium density residential development. Streets and alleys provide little buffering at the zone edge. There is no evidence of vacant or available land appropriate for additional commercial development within the area. Access to the site is through residential neighborhoods. The Market is located on a minor arterial with limited transit service and off-street parking, other than the parking which is available at the subject property. Seattle Municipal Code Section 23.34.076C.

5. The proposed rezone is consistent with the zoning history of the site and is not expected to have any precedential effect in the Magnolia neighborhood. Seattle Municipal Code Section

23.34.008B. The site has been zoned for commercial uses, including grocery stores, since 1924. Previous and current zoning has included limits on the size of individual businesses to preserve a neighborhood and pedestrian-oriented scale of development. Rezoning the site to increase the allowable size of the Market will not change the nature of the land uses in the area. Most surrounding land uses are in a single family zone. Single family zone locational criteria would strongly discourage expansion of the commercial area and without existing residential properties, it would be difficult to assemble a parcel large enough to develop another NC2 use. Seattle Municipal Code Section 23.34.008C.

6. The applicant proposes no change to the total amount of commercially zoned land or to the location of boundaries between existing commercial and residential zones. However, approval of the rezone would result in an area of more intensive commercial use surrounded by less intensive NC1 zoning. The surrounding NC1 zone would buffer and serve as a transition to adjacent residential zones, while the expanded Market assures that more goods and services are available to nearby residents. Seattle Municipal Code Section 23.34.008D.

7. The proposed addition to the Market would have no significant impact on street capacities as long as most of the traffic continues to use 34th Avenue West, rather than residential streets, to access the Market. The proposed addition would also have no such impact on parking. Sufficient off-street spaces will be retained to accommodate all projected parking demand. Seattle Municipal Code Section 23.34.008D.

8. The applicant does not request a change to the maximum height allowed in the zone. Other development standards, including setbacks and landscaping, will be met because they are the same in both NC1 and NC2 zones. The rezone would increase the width of the building on this site, but due to other factors and if properly conditioned, the rezone would not change the potential for height, bulk and scale impacts on neighboring single family properties. Seattle Municipal Code Section 23.34.008F.

9. Noise levels would increase and air quality would be reduced as a result of increased vehicle traffic. The larger building would also consume more energy. However, these impacts are believed to be minor and will not require mitigation. Seattle Municipal Code Section 23.34.008D.

10. Increased construction of apartments in the Magnolia neighborhood has resulted in a population increase and a higher proportion of elderly residents living in the area. Magnolia has a low proportion of commercial relative to residential land. The proposed rezone would improve the balance by allowing increased commercial use without loss of residential land. Seattle Municipal Code Section 23.34.009C.

11. The site is not located in a Greenbelt or other overlay district. Seattle Municipal Code Section 23.34.008C, G and H.

12. The rezone should be approved subject to the terms of a property use and development agreement (PUDA) incorporating appropriate conditions of approval. Seattle Municipal Code Section 23.34.004A.

B. SEPA:

13. DCLU has authority, during its initial environmental review, to consider a project's contribution to cumulative effects on existing traffic and parking conditions; and has limited authority to impose reasonable and lawful conditions on approval of the Petition to mitigate adverse impacts. Seattle Municipal Code Section 25.05.

14. It is the City's policy to mitigate adverse impacts of proposed developments on parking and traffic in surrounding areas, by assuring reasonable access and flow. Seattle Municipal Code Section 25.05.

15. The following short-term construction related impacts can be effectively mitigated by satisfying the requirements of existing ordinances:

- a. impacts, including erosion during excavation, will be mitigated by the Grading and Drainage Ordinance.
- b. impacts, including damage to adjoining streets and sidewalks and tracking of mud by construction vehicles, will be mitigated by the Street Use Ordinance.
- c. a street use permit shall be secured before any work in the right-of-way occurs.

16. Impacts to air quality from dust and construction equipment emissions should be mitigated by the use of appropriate non-chemical wetting techniques at the construction site, at least once a day.

17. Impacts related to increased parking demand by construction personnel should be mitigated by setting aside sufficient off-street parking at the site to accommodate the parking needs of construction personnel.

18. Impacts related to increased traffic, including increased traffic volumes on nearby streets and reduced air-quality, are expected to be minimal and therefore, require no further mitigation.

19. Construction activity impacts, including noise from demolition, excavation, framing and the use of loud machines and equipment, should be partially mitigated by Seattle's Noise Ordinance (25.08). However, to further minimize noise impacts on surrounding residential uses and as a conditions of approval, construction activity shall be limited to non-holiday weekdays between 7:30 a.m. and 6:00 p.m., unless otherwise provided in recommended conditions.

20. Impacts from traffic noise and headlight glare should be mitigated by proposed landscaping and fence improvements along the east lot line and the closure of all access to the site from the adjacent alley.

21. Aesthetic, noise and safety impacts from the presence and location of trash storage areas should be mitigated by appropriate screening.

22. Applicant, pursuant to Seattle Municipal Code Section 25.05 shall provide evidence of the specific locations of the gas tanks and their method of removal. In addition the parties shall determine whether there will be short or long term risks of exposure from contaminated soils during the construction phase as well as the long term risks of possible exposure resulting from expansion of the Market into the areas where such soils contamination may still exist.

23. If applicant provides evidence of soils contaminations, DCLU shall request an investigation by the appropriate authority or agency. Applicant shall undertake whatever measures deemed necessary by DCLU following said investigation to mitigate such potential adverse environmental impacts.

Recommendation

A. The rezone application should be approved subject to the following conditions, which should be permanent for the life of the rezone and incorporated into a Property Use and Development Agreement to be executed between the owner and the City upon adoption of the rezone:

1. The owner(s) and/or responsible party(s) shall limit site development to 20,000 gross sq. ft. of enclosed retail use plus accessory parking and incidental outdoor displays and signage.

2. In order to limit traffic impacts on residentially-zoned properties, the owner(s) and/or responsible party(s) shall:

a. provide a solid wood fence six feet in height and cypress trees spaced at least 15 ft. on-center along the east property line, north and south of the building. Different tree species and spacing may be substituted with the approval of the Land Use Specialist and City Arborist. No vehicle access from the alley to the on-site parking shall be permitted.

b. all curb cuts to the site from West Thurman Street shall be closed.

B. SEPA: The SEPA DNS should be affirmed subject to the following conditions:

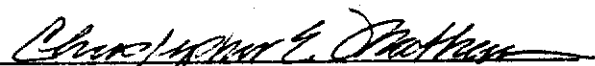
1. Prior to issuance of a Master Use Permit:

a. the owner(s) shall provide to the responsible official: proof that all gas tanks have been removed from the site; and a certified report from a licensed soils engineer or other expert, whose background and qualifications are satisfactory to the responsible official, which confirms that soils at the site are not contaminated and that excavation and construction work as well as the expanded use of the Market at the former gas station site will not result in adverse environmental impacts.

2. During construction.

In addition to the Noise Ordinance requirements, to reduce noise impacts of construction on nearby properties, the owner(s) and/or responsible party(s) shall limit construction to the hours of 7:30 a.m. to 6:00 p.m. on non-holiday weekdays. Once the building shell is fully enclosed, interior construction which does not disturb adjacent single family residents, may be undertaken outside these hours.

Entered this 2nd day of January, 1990.


Christopher E. Mathews
Hearing Examiner Pro Tempore

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.