

FINDINGS AND RECOMMENDATION/DECISION

OFFICE OF HEARING EXAMINER

In the Matter of the Petition of

GEORGE LINDSTROM

APPLICATION NO. 8801740
C.F. #296810

for an amendment to the official
zoning map pursuant to Title 23,
Seattle Municipal Code

and

In the Matter of the Appeal of

KINNEAR PARK OWNERS ASSOCIATION
from a threshold environmental
determination by the DCLU Director

FILE NO. W-89-006

Introduction

The Kinnear Park Owners Association (the "Association"), challenges the recommendation by the Director, Department of Construction and Land Use ("DCLU"), that the City Council conditionally approve the application of George Lindstrom to rezone approximately 3,600 square feet from Lowrise 3 ("L-3") to Midrise ("MR"). The Association also appeals DCLU's Seattle Environmental Protection Act ("SEPA") Determination of Non-Significance ("DNS").

The Association exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code. This matter was heard on August 23, 1989. The appellant Association was represented by Ms. Marianne Kory, pro se. The applicant, Mr. George Lindstrom also represented himself and DCLU was represented by Mr. Arthur Lee, land use specialist.

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 the fact, conclusions of law and decision of the Hearing Examiner on this appeal and his recommendation on the rezone.

Findings of Fact

1. George Lindstrom owns a 40 ft. by 120 ft. split-zoned parcel located at 626 4th Avenue West, on the south slope of Queen Anne Hill (the "Subject Property"). The north 30 ft. of the Subject Property (the "Rezone Site") is zoned Lowrise 3 multifamily residential (L-3) and the south 10 ft. is zoned Midrise multifamily residential (MR). Mr. Lindstrom proposes to eliminate the split zone by rezoning the L-3 portion to MR.

2. The Subject Property is in an area which slopes moderately from northeast to southwest. The Subject Property is currently developed with a one-story single-family residence. The properties north and south of and abutting the Subject Property are also developed with single family residences. Properties east and west of the Subject Property are developed with three and four-story apartments in L-3 and MR zones. The apartments are various heights, ranging from three to five or six-stories, and are 31 ft. to 65 ft. above street level. Taller apartment buildings, ranging from 50 ft. to 65 ft. in height, have been constructed uphill, north of the Subject Property, on West Roy Street.

3. The purpose of the rezone is to allow more flexibility in redeveloping the Subject Property together with property abutting to the south, (the "Associated Property"). The Associated Property is also 40 ft. by 120 ft., is entirely zoned MR and is also developed with a single-family residence. With the exception of the Rezone Site, the Subject Property and the Associated Property could potentially be developed to the full extent permitted under the MR zone, without approval of this application.

4. The following arterials provide convenient access to the vicinity of Subject Property: West Mercer Street, Queen Anne Avenue North and First Avenue West. Several Metro bus routes (1, 2, 13, 15 and 18) provide transit service to the vicinity and local access is primarily via West Roy Street, which dead-ends two blocks west of the Subject Property. Although transit service to the area is good, West Mercer Street is congested during rush hours and during special events at the Seattle Center.

5. Based upon the lack of evidence presented, the Examiner cannot determine whether the traffic likely to be generated by the Rezone Site, alone, will materially affect street and intersection capacities. However, if this rezone application is approved, it is very likely that the Subject Property and the Associated Property will be developed to their respective maximum potentials. The foreseeable development of the subject property, alone, could materially affect traffic capacity on nearby streets and intersections.

6. Parking demand in the vicinity of the subject property already exceeds available supply. This condition exists, in part, because many of the older apartment buildings near the Subject Property, which contribute to the unique character of the Queen Anne community, were developed without off-street parking. This condition is worsened by exaggerated traffic demand generated by nearby commercial development and the Seattle Center. Any additional demand for street parking in the vicinity of the Subject Property will adversely affect existing parking conditions.

7. Existing structures on the Subject Property do not block views from nearby properties. Development of the Rezone Site to its full potential under the MR zone could affect territorial and water views, particularly views from properties located uphill from the Subject Property. Some of those views would be affected in any event if the MR zoned portion of the Subject Property and the Associated Property are developed to their maximum potential. All other MR zoned property in the vicinity of the Subject Property are developed with 3 and 4 story apartment buildings.

8. The Examiner adopts as a Finding the zoning history set forth in section B on pages six and seven of the DCLU Analysis and Recommendation. In brief, in 1923 the subject property was zoned "Second Residence District" which allows apartment buildings. This was unchanged in 1947. In 1957 the Second Residence District zoning changed to "Multiple Residence, High Density," but was later downzoned to "Multiple Residence, Low Density." In 1982, a new zoning code was adopted and created the current split zone, L-3/MR.

9. Under current interim zoning controls, the portion of the Subject Property zoned L-3 can be developed to a maximum height of 30 ft. and the portion zoned MR can be developed to a maximum height of 60 ft.

10. The northwest corner of the block on which the Subject Property is situated is zoned L-3 but, like the Subject Property, is underdeveloped with one-story single-family residences. The precedential effect of the proposed rezone could be detrimental to the L-3 zone. However, unlike the properties on the northwest corner of the block, the split zoning of the Subject Property creates unique circumstances.

11. In order to mitigate potential impacts that could result from approval of the rezone and development of the Rezone Site to its full height potential, DCLU recommended that approval be conditioned on a 37 ft. height restriction for the Rezone Site. A 37 ft. height restriction would permit construction of a four-story structure, comparable to most of the apartments in the immediate vicinity of the Subject Property. Such a height restriction would also facilitate transition between existing development in MR zones and development of the remaining Subject Property and the Associated Property to full height potential.

12. It is consistent with City policies to encourage design and development of properties in residential zones under one set of development standards, for example, under either the MR zone or the L-3 zone.

13. Approval of the rezone application creates an opportunity to impose on-site parking requirements which could not be imposed if the application is denied and the Subject Property is developed under applicable split zone standards. As a condition of approval of the rezone application and under SEPA, DCLU recommended that adverse on-street parking impacts associated with development of the Rezone Site be mitigated by requiring the greater of 1.5 onsite parking spaces or the number of spaces required by the Land Use Code for each apartment unit over five. DCLU further recommends that any parking required under this condition, shall not count toward any required parking for apartment units developed on the Subject Property or on the Associated Property. The Association does not feel that this condition will adequately mitigate potential parking impacts of this rezone and that mitigating measures should address potential impacts associated with development of the Subject Property and the Associated Property.

14. On July 7, 1980 the City Council of the City of Seattle Adopted Resolution 26164 (the "Resolution"). The Resolution recognized the Goals and Policies of the Queen Anne Community. In adopting the Resolution, the City Council recognized goals which include maximum local participation and self-determination in communities, consonant with a concern for the needs of all Seattle citizens; the basic right of neighborhoods to voice their concerns regarding proposed government decisions and actions affecting their interests and to attempt through legitimate means to influence those decisions and actions; and that the Queen Anne Goals and Policies represent a statement by the Queen Anne Community regarding its future development and interests.

15. The City Council resolved that: (1) although the Queen Anne Goals and Policies were not adopted as City policy, they were written and approved by the Community as its objectives for Queen Anne and a suggested guide for official city action; (2) the Queen Anne goals and Policies shall be considered by the City in the preparation of Environmental Impact Statements for public and private projects and evaluating rezone, variance, conditional use permit and shoreline permit applications, which particularly affect the Queen Anne Community; and that, (3) agreement or disparity between the proposed action and the goals and policies shall be documented prior to making those types of decisions. A proviso to this resolution is that any disparity between proposed action and the Goals and Policies shall not be itself be grounds for approval or disapproval of any proposed action.

16. One goal of the Queen Anne Community is to preserve and enhance the family-oriented residential nature of the community. This goal was articulated by many opponents of the proposed rezone. Policy No. 4 adopted pursuant to this goal, states that "Rezone of any Queen Anne residential area to permit higher density development shall be prohibited."

17. Policy No. 8 states, in part, that "The City's Comprehensive Planning Policies, Zoning Ordinance, Building Code and other land use regulations should be modified periodically to incorporate changes in residential land use patterns and to respond to performance expectations of residents in Queen Anne...

giving "primary cognizance to elements of environmental quality such as:

- a. Natural Setting
- b. Existing neighborhood activities and lifestyles
- c. Predominant Views
- d. Access (traffic and parking)
- e. Spatial Form
- f. Open-space and Landscaping
- g. Sense of Privacy"

17. Another goal of the Queen Anne Community is to control development to assure a compatible and balanced cross section of housing types. This goal was also articulated by those who oppose the rezone and its potential precedential effects. Policy No. one, adopted by the Queen Anne Community at a Public Meeting on Land Use Goals held on November 27, 1988, states that

"New residential development, modifications of existing residential development or the conversion of uses for existing residential development should be compatible with the surrounding neighborhood in regard to bulk, siting, height and density."

Policy No. 2, also adopted on November 27, 1989, states that

"Exceptions to density provisions in Policy No. 1 (above) should be permitted only for special care group living facilities (as specified in Goal #1, Policy 4.) and low-income housing development sponsored by the City of Seattle..."

18. There is no disclosed use for the Subject Property as it exists as a L-3/MR split-zone site or as a proposed MR zoned parcel.

19. No more than five units could be developed on the Rezone Site under density limits of the current L-3 zoning. The actual effect of the rezone would be to eliminate density limits and allow more than five units to be developed on the L-3 zoned portion of the Subject Property. If this rezone application is approved, up to 15 additional units could be developed on or partially on the Rezone Site.

20. If the rezone application is denied but the applicant develops this portion of the Subject Property under current zoning standards, the five units are under eight and therefore would be exempt from SEPA review. The proposed rezone would raise the exemption level for the property from eight units, under the L-3 zone, to 20 units under the MR zone.

21. Although any development in the vicinity of the Subject Property will adversely impact parking conditions, additional housing density at the Rezone Site will not cause material impacts to traffic conditions in the area. Development of the Subject Property, with or without approval of this rezone application, is likely to cause material impacts to nearby streets and intersections, the magnitude of which would depend on a number of factors, including the number and type of housing units constructed.

22. A 37 ft. limitation on the height of future development at the Rezone Site is significant if only the Rezone Site is considered. However, this height limitation would do little to mitigate the overall impacts of a 60 ft. structure on the remaining portions of the Subject Property and on the Associated

Property.

23. The responsible official reviewed the environmental checklist prepared by the applicant and after further investigation concluded the proposed rezone will not cause significant adverse environmental impacts, except those resulting from increased density above five units and greater building bulk as previously discussed. Additional environmental review will be necessary for any future development beyond the exempt levels.

24. Several comment letters received and several community residents who testified at the public hearing opposed the requested rezone and supported the Association's request for reversal of the DCLU approval. Their concerns focused on the City's failure to consider the Goals and Policies of the Queen Anne Community; potential adverse impacts on traffic, parking and views, change in the use of the land and the character of the neighborhood; and the potential precedent that may be made if the rezone is approved.

Conclusions

Rezone Evaluation

1. A request to change from Lowrise 3 multifamily zoning must satisfy locational criteria for Midrise zoning (SMC 23.34.020) and general rezone criteria (SMC 23.34.008).

2. SMC 23.34.020 provides as follows:

In reviewing a proposal to rezone an area to Midrise, the following criteria shall also be considered:

A. Areas which are adjacent to business and commercial areas with comparable height and bulk;

B. Areas which are served by major arterials and where transit service is good to excellent and street capacity could absorb the traffic generated by midrise development;

C. Areas which are in close proximity to major employment centers.

D. Areas which are in close proximity to open space and recreational facilities;

E. Areas along arterials where topographic changes either provide an edge or permit a transition in scale with surroundings;

F. Flat areas where the prevailing structure height is greater than thirty-seven feet (37') or where, due to a mix of heights, there is no established height pattern;

G. Areas with moderate slopes and views oblique or parallel to the slope where the height and bulk of existing structures have already limited or blocked views from within the multifamily area and upland areas;

H. Areas with steep slopes and views perpendicular to the slope where upland developments are of sufficient distance or height to retain their views over the area designated for the sixty feet (60') height limit;

I. Areas where topographic conditions allow the bulk of the structure to be obscured. Generally, these are steep slopes, sixteen percent (16%) or more, with views perpendicular to the slope.

3. SMC 23.34.008 provides as follows:

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 impact 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.

4. Most of the locational criteria for Midrise Zoning are satisfied. The Rezone Site is situated in an area consisting of three to five or six-story apartments near a commercial district. There is good access to transit services and traffic impacts caused by increased population density at the Rezone Site will not materially affect street capacity. The Rezone Site is near a large commercial area, the Seattle Center and Kinneer Park. Although development in the vicinity of the Rezone Site is mixed (single-family and multifamily at various heights), the multifamily apartments immediately adjacent are three to four stories in height. Moreover, the single-family homes adjacent to the Rezone Site are in an MR zone and therefore could be removed and developed at a higher density. Views from uphill apartments would be affected by future redevelopment of the Rezone Site under MR standards and for this reason the proposed rezone is not entirely consistent with locational criteria for MR zones.

5. The inconsistency with locational criteria for MR zones can be mitigated by imposing a height limit on development of the Rezone Site.

6. Most of the general rezone criteria are also satisfied. By placing a height limit on development of the Rezone Site locational criteria and area characteristics are more closely matched. If the height limit recommended by DCLU is adopted, development of the Rezone Site would be limited to 37 ft. which would allow a four-story structure, like those which are currently developed in adjacent MR zones. A height limit of 30 ft. would allow a structure more compatible with existing single-

family residential units at the north end of the block. However, those single-family homes are constructed on lots within an L-3 zone and therefore could be and may be redeveloped to a more intense use in the future, even if the rezone application is denied. Conditional approval of the rezone application would not be inconsistent with the zoning history of the site and the vicinity because multifamily use and intense development have always been envisioned there. Approval of the rezone application could potentially establish a precedent for future rezone requests by owners of the L-3 zoned parcels currently developed with single-family homes. However, unlike those parcels, the Subject Property is currently in a split zone and approval of this application would be consistent with City policies which encourage design and development of residential properties under single development standards. The Rezone Site is situated on the edge of L-3 and MR zones that are comparable in size and in which most development is three to four stories in height. Therefore, conditional approval of the rezone request would be consistent with zoning principles relating to compatible land use patterns, size, configuration and boundaries.

7. The Hearing Examiner recommends as a rezone condition that future development on the north 30 ft. of the Subject Property should therefore be limited to 37 ft. in height, subject to the height exceptions allowed in SMC 23.45.036.

8. The Hearing Examiner also recommends that if more than five apartment units are located on the Rezone Site, the greater of 1.5 on-site parking spaces or the number then required by the Engineering Department or the Seattle Land Use Code should be provided for each unit over five units. The additional parking required here should not count toward any required parking for the other apartment units on the Subject Property or on the Subject Property and the Associated Property.

9. The proposed rezone is not inconsistent with the Zoning history in the area and with height limitations, and its potential precedential effect would be limited due to the unique circumstances (split zoning) not evident with other properties believed to be candidates for rezoning.

10. Approval of the rezone is appropriate in order to eliminate the split-zoned character of the Subject Property. Further consideration of this rezone application permits the City to mitigate known potential adverse impacts associated with future development of the Rezone Site, such as by imposing height restrictions and parking requirements as conditions of approval.

11. Much of the parking problem in the vicinity of the Subject Property is attributable to the fact that many of the older buildings were constructed without on-site parking. Therefore, it would be improper to further condition approval of this rezone request on the applicant's ability to mitigate impacts which are not reasonably related to his proposed development.

12. The applicant should comply with all Seattle Engineering Department and Land Use Code parking requirements applicable to the initial five units developed on the Rezone Site.

SEPA

13. The information supplied by the applicant in the environmental checklist was insufficient to properly evaluate most environmental impacts. However, additional information supplied by DCLU during its SEPA investigation provides sufficient information for a SEPA evaluation.

14. 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 application to mitigate adverse impacts.

15. 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. There is no plan or proposal for development of the Rezone Site or the Subject Property, therefore a cumulative impact analysis which includes traffic expected to be generated by the project would be highly speculative and would be related to no clearly identified adverse impact. Seattle Municipal Code Section 25.05.660A.1.

16. As a SEPA condition, the Hearing Examiner agrees with DCLU that the applicant should be required to mitigate the adverse impacts of spillover parking at the Rezone Site. The applicant shall supply sufficient on-site parking to meet all parking demand resulting from development of the Rezone Site over five units. SMC 25.05.675M. Specifically, the applicant shall provide the greater of 1.5 parking spaces or the number required by the Seattle Engineering Department or the Seattle Land Use Code at the time of development, for each unit over five units developed on the Rezone Site. The additional parking required here shall not count toward any required parking for the remainder of the apartments developed on the Subject Property or on the Subject Property and the Associated Property.

17. DCLU should assess future development impacts and impose appropriate mitigation measures during environmental reviews required in connection with the building and other permit process which precedes development of the Subject Property or development of the Subject Property and the Associated Property.

Decision and Recommendation

1. The Determination of NonSignificance, with conditions, is affirmed.

2. The rezone should be conditionally granted, as stated herein.

Entered this 21st day of September, 1989.


Christopher E. Mathews
Hearing Examiner Pro Tempore

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION (APPLICATION NO. 8801740)

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.

CONCERNING FURTHER REVIEW (W-89-006)

The decision of the Hearing Examiner in this case is final

and is not subject to reconsideration except to correct errors on the ground of fraud, mistake or irregularity in vital matters. Any request for judicial review of the decision must be by application for writ of review filed in King County Superior Court within fifteen days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of the decision on the underlying governmental action if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 408 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Seattle Municipal Code Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.