

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

In the Matter of the Petition of

STEPHEN FERGUSON

FILE NO. CC-8503533

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

Introduction

The petitioner seeks contract reclassification of Single Family 5000 zoned property to Commercial 1, with a 40 ft. height limit. The proposal's street address is 943 North 83rd.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be denied. In hearing, the petitioner stated his intent to relocate the business. He nevertheless wished his application to be considered through the usual customary process.

This matter was heard before the Hearing Examiner on April 29, 1987.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, as amended (Ordinance 86300, as amended) unless otherwise indicated.

After due consideration of the evidence presented by the petitioner, the information provided by the Director's report and file, 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. The facts are undisputed. The subject property is located within the eastern edge of a Single Family 5000 (SF 5000) zone. The street address is 943 North 83rd Street. The site is described legally as

The E. 10' of Lt. 35 & all of Lt. 36, Blk 5,  
Osner's 3rd Addn. to the City of Seattle,  
according to plat recorded in Volume 12 of  
plats, page 71.

2. The subject lot measures 40 ft. by 102 ft. and is developed with a rented single family residence and a 19 ft. by 30 ft. detached rear yard garage. Although he intends to relocate the business, the property owner currently uses the garage for "major" automobile repair per the DCLU report.

3. With this petition, applicant-property owner proposes to rezone the site from SF 5000 to Commercial 1, 40 ft. height limit (C1/40'). This would be a "contract" rezone which would allow the auto repair business to remain on site.

4. Petitioner did not dispute the DCLU general assertion that

Neighbors presently experience loud noise from the auto repair, exhaust fumes, oil spillage on the lawns and in the street, parking congestion from automobiles awaiting repair, and the deterioration of the house and yard from lack of maintenance...

5. Of record is a comment letter which reports that petitioner has been "working on cars in his driveway, as well as on the sidewalk and street in the immediate vicinity." The letter continues that

Cars awaiting repair are parked up and down both sides of the street, causing a shortage of available parking for residential dwellings, as well as being unsightly, as many of the cars awaiting repair are derelicts!

6. Robert W. and Mildred Evans appeared at the hearing to reiterate their concerns of record, e.g. the negative effect on property values, on the residential nature of the street, and on parking availability. Also of record are other letters of opposition and petitions noting objections to the rezone.

7. One support letter described applicant as a "reliable workman providing a valuable service" and therefore urged favorable consideration of the rezone proposal.

8. The Environmental Checklist as annotated by DCLU indicated that on-site storage of flammable materials (gasoline) and oil was an environmental health hazard of the proposed rezone.

9. East adjacent to the subject site is an auto repair shop and radiator shop. According to the Environmental Checklist, applicant's garage is attached to this east adjacent building. South of that operation is an auto sales lot. These properties front on the Aurora Avenue North major arterial and are included within an expansive strip of Aurora Avenue C1/40' zoning and development.

10. The subject site's development fronts north to North 83rd Street, the direct access-way. The development and zoning on both sides of North 83rd is single-family. This segment of North 83rd is residential with sidewalks and individual property curb cuts. The site is generally level. The subject site is part of a large SF 5000 zone that with minor exceptions extends from North 84th to at least North 65th. The SF 5000 zone also generally extends some 4 "blocks" west to 8th Avenue N.W.

11. The single family area is characterized by single family lots measuring roughly 38 ft. by 102 ft. The Aurora fronting (commercial) lots are generally larger, approximately 100 ft. by 100 ft.

12. The subject lot was zoned single family in 1923 with the City's first zoning code. It retained single family zoning through the 1982 Land Use Code adoption and through the 1986 commercial zoning.

13. There have been no significant changes in circumstances since the 1982 (or 1986 commercial) zoning. The number of single family homes has remained stable. Per the DCLU Report, p.4, these homes "show an increasing number of improvements and rehabilitation efforts."

14. There is no adopted neighborhood plan for the subject area, and the site is within no overlay or designated greenbelt district.

#### Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to the procedures of Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.34.010(A) specifies

that single family zoned areas may be rezoned to another classification "only if the applicant can demonstrate that the area does not meet the criteria for single family designation." The criteria for single family designation are at Seattle Municipal Code Section 23.34.012, which section provides as follows:

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

A. The locational criteria for single family zones include the following:

1. Areas which consist of blocks with at least...70%...of the existing structures in single family residential use...

3. The subject site is part of an area with at least 70% of the existing structures in single family use. The specific "block" is composed of the north and south block faces that front to North 83rd Street. The DCLU report does not so specify, but it appears that the block faces extend east to Aurora Avenue. Seattle Municipal Code Section 23.84.004. If they do not, the "block" extends to Aurora and 24 of the 26 structures (92%) would be in single family use.

4. The second single family locational criterion is not applicable since no adopted neighborhood plan specifies the site as appropriate for single family. Seattle Municipal Code Section 23.34.012(A)(2). The third criterion, Section 23.34.012(A)(3) would be applicable only if the percentage of single family structures was less than 70%.

5. "An area which meets at least" one of the locational criteria should also meet certain size criteria. Seattle Municipal Code Section 23.34.012(B). In this case the site is less than 15 acres; however it abuts to the west, north and south a large single family zone. Section 23.34.012(B)(1).

6. The existing platted lot lines separate the single family zone from the east adjacent commercial zoning and development that is oriented to the east. Section 23.34.012(C)(3).

7. Based on Conclusions 2-6, above, the site proposed for rezone to C1/40' meets the locational criteria for single family zoning. Since a rezone from single family may be permitted "only if" applicant demonstrates the site's failure to meet the single family locational criteria, the rezone should be denied. Seattle Municipal Code Section 23.34.010(A).

8. Notwithstanding the dispositive language of Section 23.34.010(A), Seattle Municipal Code Section 23.34.008 provides that

In evaluating a request for a zoning change, the following factors shall be considered... (emphasis supplied).

The enumerated factors include (a) the match between established locational criteria and area characteristics (b) zoning history and precedential effect (c) land use, size and other zoning principles (d) transportation, parking and other similar impacts (e) neighborhood (g) overlay district and (h) greenbelt plans and (f) consideration of changed circumstances.

9. The area to be rezoned does not "closely fit the adopted locational criteria" for C1 zoning. Seattle Municipal Code Section 23.34.008. The subject property is oriented to the single family development and zoning of North 83rd Street although west adjacent to commercial zoning and development. The

North 83rd Street site is not an "auto-oriented commercial area" and fails to provide a "wide range of commercial services." Section 23.34.080(A). The North 83rd area is without shopping centers or shopping areas. Section 23.34.080(B). The rezone site is "readily accessible" from Aurora, a principal arterial, Section 23.34.080(C)(1); however, the direct access is via North 83rd. There is a predominance of small (38 ft. by 102 ft.) lots, cf. 23.34.080(C)(3), and the block face has no "large...offstreet parking lots..." Section 23.34.080(C)(5). There is a distinct absence of a functional edge, such as "more-intense residential areas," which would buffer the site from the low-density single-family area within which the site is located. Section 23.34.080(C)(2). The rezone site was not shown to have auto movement, parking lots or limited pedestrian access which make the rezone area "unfriendly to pedestrian activity." Section 23.34.080(C)(4).

10. Further, the Section 23.34.072 criteria for designation of commercial areas are not met by the proposal. For example, the rezone would effectively allow encroachment of commercial development into a residential area in contravention of Seattle Municipal Code Section 23.34.072(B)(1), and would frustrate the edge protection of the single family zone in violation of Section 23.34.072(B)(2). The rezone would create a new business district, cf. Section 23.34.072(B)(5) and would provide inadequate buffering and separation from the single family uses. In sum, there is no "close match" between the C1 locational criteria and the existing area characteristics. The fact that a contract rezone is proposed fails to detract from this conclusion to any significant degree.

11. Neither would the second rezone criterion of Section 23.34.008, zoning history and precedential effect, be met by the proposal. Notwithstanding its proximity to Aurora, the site has been zoned for single family use since 1923. Approval of this rezone would suggest an incremental erosion of the solid single family zoned and developed area. Section 23.34.008(B).

12. The proposed rezone site would face SF 5000 zoning north, across North 83rd; south and west. Only to the east would the zoning be compatible. Those properties to the east front on a commercial strip and away from the site. The C1 site would constitute a rezone peninsula, adversely affecting the zoning and development pattern extant. Therefore, consideration of key zoning principles militates against the rezone. Section 23.34.008(C).

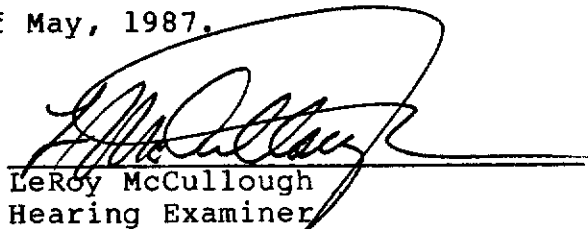
13. The proposed rezone would aggravate problems with repair activity and other noise; fumes; usage of the street by inoperable and other vehicles awaiting repair; and would herald a general deterioration of the character of the residential vicinity. The impacts strongly suggest that the rezone be denied. Section 23.34.008(D).

14. The site is part of no greenbelt or other overlay district and is covered by no neighborhood planning effort. Section 23.34.008(E)(G)(H). Applicant has alleged no change in circumstances for support of the rezone, Section 23.34.008(F), and there has been no significant change since the 1982 adoption of the SF 5000 zone designation in vicinity demography, uses or structure height and scale.

Recommendation

For the foregoing reasons, the Hearing Examiner recommends that the City Council deny the rezone petition.

Entered this 14th day of May, 1987.

  
Leroy McCullough  
Hearing ExaminerNOTICE OF RIGHT TO PETITION  
FOR FURTHER RECONSIDERATION

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 consideration 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.