

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

In the Matter of the Petition of

NIKOM MUSIKACHERT

FILE NO. 8707279
C.F. NO. 296542

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

Introduction

Petitioner requests that property addressed as 942 North 101st Street be rezoned from the Single Family 5000 designation to the multifamily designation of Lowrise 3 or alternatively to Lowrise 2, with conditions.

For purposes of this recommendation, all section numbers refer to Title 23 of the Seattle Municipal Code, 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 March 21, 1989.

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

Findings of Fact

1. Petitioner requests that property addressed as 942 North 101st Street be rezoned from Single Family 5000 (SF 5000) to the Lowrise 3 (L-3) designation, with conditions. DCLU recommended that the rezone be denied.

2. The subject property is a 7200 sq. ft. area parcel located on the north side of 101st approximately 112 ft. west of Aurora Avenue North. The site is legally described as "lots 18 and 19, Block 13, North Park Addition to the City of Seattle."

3. The proposal site consists of two lots. The more westerly lot is developed with what DCLU describes as a "deteriorated single family residence." The property is flat and heavily vegetated with evergreen trees and shrubs. The west adjacent lot and others are developed with single family residences. Consistent with the vicinity, the site topography offers no special views or vistas.

4. The subject site is located within the eastern edge of a large Single Family 5000 zone that extends from Greenwood Avenue North to the subject site. SF 5000 also extends north of the site, across a 12 ft. right-of-way, rugged dirt alley, past North 102nd Street. There, at mid-block, the zoning is Lowrise 2 (L-2).

5. Directly east of the proposal site is a 12 ft. wide concrete alley. This alley, used by vicinity commercial businesses, separates the proposal site from property zoned Neighborhood Commercial 3, 40 ft. height limit (NC3/40'). Petitioner presented survey information showing the frequent use

of the alley. Between 8:00 a.m. - 9:00 a.m. on Tuesday, March 14, 1989, three cars and two trucks entered from the north, parked and exited south. Three trucks drove through the alley.

6. On March 13, 1989, between 11:30 a.m. and 12:30 p.m., seven cars and seven trucks entered the alley from the north, parked, and exited south. Nine cars and seven trucks entered from the south, parked and later exited the alley north. Sixteen truck and car drive throughs occurred. Between 4:00 p.m. - 5:00 p.m. on March 10, 1989, four cars and three trucks drove through; three cars and four trucks entered south and exited north after parking; three trucks and six cars entered the alley from the north and exited south after parking. Exhibit 9.

7. A former resident of the subject site's dwelling recounted the "24 hour urban impact" of the alley use and other environmental aspects on the site. Late moviegoers' return to the area for their vehicles also contributed to the undesirability of the residence.

8. The NC3/40' zone extends south along Aurora Avenue North to North 100th Street. There the zoning on the west side of Aurora becomes commercial 2, with a 65 ft. height limit (C2-65').

9. Generally, this Aurora strip is developed with such uses as appliance sales and repair, auto body, offices and other small retail uses housed in one - two story commercial buildings.

10. Directly south of the lot is North 101st, a residential access street improved to accommodate two driving lanes. Across 101st from the site is an L-3 zoned parcel that is developed with a modern 14-unit, three-story apartment building. South of North 101st is a strip of L-3 zoned properties that separate the commercially zoned properties along Aurora from the SF 5000 zoned properties to the west.

11. The SF 5000 zoned properties located south, west and north of the site are generally developed with smaller, single-story dwellings. One exception to the use pattern is the lot across the alley to the north. Although zoned SF 5000, this lot is used for surface parking by local businesses "without," per the DCLU report, "benefit of permit." In fact, the lot is used for parking by patrons of a restaurant nearby and has been recognized by County Assessor's records as an accessory parking lot. Applicant asserts that the lot is a legal nonconforming use.

12. Across Aurora Avenue from the proposal site is the Oak Tree Shopping Center and cinema. This business occupies the area bounded by North 103rd, North 100th, Aurora Avenue North and its east parallel Stone Avenue North. A pedestrian overpass extends from the northwest sector of the shopping center west to an area near North 102nd Street.

13. It is undisputed that movie patrons and other shopping center patrons heavily impact parking near the subject property on evenings and particularly on weekends.

14. The Oak Tree Shopping Center site was formerly used as an alternative elementary school site. The shopping center was completed after 1982, the year that the present SF 5000 zoning was adopted for the proposal site.

15. The proposal site and vicinity were annexed to the City in 1954. From 1954 to present, the site has maintained a single family development classification. Multifamily zoning of the area was first established south of the site in 1957. In 1966, that multifamily zoning was expanded to its present area.

16. Because of its unique location, adjacent to a commercially-used alleyway and directly north of an L-3 zoned, 14-unit apartment building, it is improbable that approval of this rezone could be used as precedent to rezone the single family properties west of the site.

17. It is undisputed and the Hearing Examiner finds that under one configuration, the relevant "block," Seattle Municipal Code Section 23.84.004"B," is 79 percent single family. Four of the 15 structures in this "block" are non single family. This "block" includes land bounded by Aurora Avenue to the east; Linden Avenue to the west; the adjacent alley to applicant's north; and on the south by an alley that is south adjacent to the 14-unit apartment building. DCLU Option 1.

18. It is undisputed and the Hearing Examiner finds that under a second configuration, DCLU Option 2, the single family percentage is 88 percent. Option 2 excludes the Aurora - fronting properties and has the north-south alley as the eastern boundary. Because the north-south alley "forms a break in the platting pattern from the residential lots facing on the side streets and the commercial lots" facing Aurora, the DCLU Director considers this second option as the more appropriate one.

19. No increasing trend towards single family development is present and the vicinity is included within the boundary of no adopted neighborhood plan. The proposal site is overlooked by no scenic route or public open space and is covered by no overlay district or greenbelt provision.

20. Principal access to the site is by abutting North 101st. Aurora Avenue North, some 112 ft. west, is a "regional arterial" and is well served by transit routes 6 and 360.

21. Applicant proposes to rezone the site from SF 5000 to L-3. Per the original submittal, the present single family structure would be demolished and a 10-unit apartment structure established. Water service is available to the subject site. The Seattle Engineering Department (SED) has commented that 15 ft. of pavement and a 16 ft. right-of-way is the standard for the north adjacent dirt alley. Property from the site would be needed to improve the present 12 ft. wide north alley since the land north of the alley is zoned single family where a 12 ft. width is considered adequate. Since eight or more units were proposed, SEPA review would be required.

22. In addition to short term dust, parking, noise and other temporary, construction-related impacts, a new apartment would add height, bulk, increased parking demand, traffic and noise as permanent elements to the vicinity. If designed "close to" full, pre moratorium L-3 development standards, the proposed building could be approximately 42 ft. tall (inclusive of 5 ft. for a pitched roof), and approximately 66 ft. deep.

23. However, applicant is willing to accept L-2 zoning of the site with conditions designed to enhance the commercial to single family transition and to mitigate the adverse impact of any proposal for the site. Specific conditions proposed by petitioner are as follows:

1. A screened and landscaped setback area, a minimum of 14 feet in width, shall be maintained along the western property line along the length of the building, as per Exhibit 11.
2. The overall height of the building shall be limited to 30 feet, plus an additional 5 feet for a pitched roof.
3. The western facade of the building shall be limited to a height of 20 feet, and additional structural height above 20 feet shall be set back from the western facade 1 foot for each 1 foot of additional height.
4. A landscaping plan for the project must be submitted by the applicant and approved by DCLU prior to issuance of a

reduced from ten to eight. Two, instead of four, units would be on the top floor. Nine parking stalls would be offered. See revised plans, Exhibit 11.

25. Regarding the feasibility of redeveloping the site with a new single family residence, applicant's consultant, an appraiser with Brewster & Associates wrote:

...It is my professional opinion that to redevelop the subject property to a single family use would not be a prudent decision at this time. There would be external obsolescence even before construction due to the influence of the surrounding properties... Due to the present condition of the subject property it is my opinion that the house has deteriorated to a point where it is no longer economically feasible to repair the structure...

26. One witness was concerned that the rezone would have a negative effect on periodic payments to her for her interest in the subject site. In the main, however, the Hearing Examiner received no community testimony or correspondence opposing the rezone. Applicant presented letters of support from the south adjacent (apartment) property holder and from the west adjacent property owner.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Title 23, Seattle Municipal Code.

2. According to Section 23.34.010A, this subject parcel 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, Seattle Municipal Code Section 23.34.012, are met by the subject parcel.

3. First, it is undisputed that the subject "block," Seattle Municipal Code Section 23.84.004"B", is at least 70 percent single family. In fact, one block configuration, inclusive of Aurora - fronting properties across the 12 ft. wide alley, is 79 percent single family. The second, more rational configuration shows 88 percent single family use. Seattle Municipal Code Section 23.34.010A.1.

4. The "70% rule" is one criterion. A second, disjunctive criterion is whether the area is "designated by an adopted neighborhood plan as appropriate for single family use." Seattle Municipal Code Section 23.34.012A.2. The proposal site is covered by no such neighborhood plan.

5. Neither is the third criterion met by the site. Areas which consist of blocks with less than 70 percent of the existing structures in single-family use may be considered for single family zoning if an increasing trend toward single family use can be demonstrated. Seattle Municipal Code Section 23.34.012A.3.

6. The rezone abuts an existing single family zone. The size criterion for single family zoning is therefore met. Seattle Municipal Code Section 23.34.012B.

7. Application of the boundary criterion suggests that the subject parcel's eastern (platted) lot line or the alley would appropriately remain as a Single Family zone terminus. It is noted, however, that the alley is not properly included within the expression of "freeways, expressways and other major traffic arterials" which are elements to be considered (emphasis added). It is further noted that the platted lot line could be moved to

the expression of "freeways, expressways and other major traffic arterials" which are elements to be considered (emphasis added). It is further noted that the platted lot line could be moved to the west of the subject site and there provide a single family boundary. Seattle Municipal Code Section 23.34.012C. The alley would present as the stronger, more effective boundary.

8. Although the single family criteria are met for the site, and rezoning is therefore inappropriate, general rezone criteria are discussed for the record. Those rezone criteria, Seattle Municipal Code Section 23.34.008, include several factors. The first is the match between the existing area characteristics and the proposed (L-3 or L-2) land use category.

9. Concerning L-3 locational criteria, the subject area does not offer the "prevailing pattern of medium bulk...and moderate height (...30...to...40...feet)." The prevailing pattern is of single story residences. Across the east alley are one and two-story business uses. Section 23.34.018A. Nor is the subject area one where topography or other features create a break "for smaller scale development" of "greater bulk." Section 23.34.018B.

10. The area is generally flat. No 37 ft. height limit is required "to retain views." Seattle Municipal Code Section 23.34.018C. And the area is overlooked from neither public open spaces nor scenic routes. Section 23.34.018D.

11. Addressing the L-3 criteria met by the project site, the area is close to the Aurora North regional arterial which offers "excellent" transit service. Section 23.34.018E. And, the L-3 zoning would offer a transition between commercial structures and smaller sized housing. Section 23.34.018F.

12. It should be noted that the L-3 height is restricted by moratorium to single family height.

13. Addressing the Lowrise 2 criteria, the prevailing height is not the two to three stories envisioned in the L-2 criteria. Section 23.34.016A. An alley separates dissimilarly zoned land from the subject site and its single family zone. North 101st separates the site from the duplex and 14-unit apartment to the south. These factors deemphasize the "need for a gradual transition between areas." Section 23.34.016B.

14. The subject area is one of a small prevailing scale but no 30 ft. height limit is required to retain views. Section 23.34.016D. Neither is the area overlooked from public open spaces and scenic routes, such that a 30 ft. height limit would be needed to preserve the views. Section 23.34.016E.

15. Some L-2 criteria are met, however. Although the prevailing area scale is small, the site offers proximity to Aurora Avenue transit and business areas. Section 23.34.016C. A substantial portion of the traffic generated by the new development would traverse lower intensity areas. Section 23.34.016F.

16. The second "general rezone" criterion concerns "zoning history and precedential effect." Section 23.34.008B. The posture of the subject lot is unique. To its north is land used as a parking lot. To its south are a duplex (within the single family zone) and a 14-unit apartment within the L-3 zone. East is a 12 ft. wide alley that is heavily used for parking and as a through-fare by the commercial businesses to its east. It is improbable that these combined factors will provide precedential value or support for rezoning of other single-family zoned lots, particularly those to the west of the site. Regarding history, the site has been consistently zoned for single family use since the 1954 annexation.

17. The rezone would comport with several zoning principles. Section 23.34.008C. L-3 zoning would face L-3 zoning across North 101st. The L-3 zoning would provide a less abrupt transition from the Aurora Avenue NC3 zone to the single family

zone of low scale uses and would be consistent with the buffering pattern dominant from Aurora west to the single family zone. On the other hand, enhanced buffering of the site, as presently zoned, could also add to the protection of the site from the eastern environmental factors.

18. The negative impact on the subject area environment and development would be minimal. Section 23.34.008D. The impacts associated with construction would be temporary. There would be increases in vicinity bulk, parking demand, noise, air quality and other factors typically associated with an increase in the human population. However, conditions can be imposed within rezone approval that would reduce the impact of bulk. For example, a minimum landscaped setback could be required as could a stepped back profile from the west adjacent single family residence. Currently, eight units are proposed and nine on-site spaces. Metro passes and other instruments could be used to reduce vehicular use and the demand for parking.

19. No adopted neighborhood plan, overlay district or greenbelt plan is applicable to this rezone site. Section 23.34.008E.F.G.

20. Applicant asserts that operation of the Oak Tree shopping center and plaza, with its spillover traffic and parking, should be considered as a changed circumstance that supports the rezone. Section 23.34.008F. The Hearing Examiner would agree that the overflow is not a desirable situation. However, this "changed circumstance" is also borne by other single family-zoned properties in the vicinity (although the site's proximity to the alley tends to exacerbate the traffic effect). Further, the shopping center is across the regional arterial from the site. Third, the tenor of Chapter 23.34, Seattle Municipal Code is to discourage rezoning of single family zoned areas. In this circumstance, therefore, the onset of the shopping mall should not be given undue weight.

21. In sum, consideration of some zoning principles, precedential value and the minor impacts of the anticipated development tend in some way to support a rezone, particularly if specific conditions to protect the west adjacent single family property are imposed. However, Seattle Municipal Code Section 23.34.010 states that a single family lot may be rezoned only if the single family criteria are not met. The single family criteria are met. Secondly, many of the locational and general rezone criteria are not met. The Hearing Examiner therefore recommends that the City Council deny the rezone petition.

22. If the rezone is approved, the Hearing Examiner recommends that the following conditions attach to the approval via an agreement approved as to form by the office of the City Attorney:

1. A screened and landscaped setback area, a minimum of 14 feet in width, shall be maintained along the western property line along the length of the building, as per Exhibit 11.
2. The overall height of the building shall be limited to 30 feet, plus an additional 5 feet for a pitched roof.
3. The western facade of the building shall be limited to a height of 20 feet, and additional structural height above 20 feet be set back from the western facade 1 foot for each 1 foot of additional height.
4. A landscaping plan for the project must be submitted by the applicant and approved by DCLU prior to issuance of a Construction Permit.

5. The owner/occupant shall maintain the landscaping.

Recommendation

The Hearing Examiner recommends that the City Council deny the rezone petition.

Entered this 5th day of April, 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.