

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

GENE WIDMER AND JOHN SAYLOR

FILE NO. CC-83-004
C.F. 292479

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

Introduction

Gene Widmer and John Saylor petition for the reclassification of property at 1569 Ferry Avenue S.W. from SF 7200 to SF 5000.

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.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be conditionally granted.

This matter was heard before the Hearing Examiner on September 1, 1983, and September 26, 1983.

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 findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. Petitioners, Gene Widmer and John Saylor, request a rezoning of property at 1569 Ferry Avenue S.W. from SF 7200 to SF 5000.

2. The subject site is Lot 25, Block 10, First Plat of West Seattle by the West Seattle Land and Improvement Company and vacated portions of Terry Avenue adjacent to it. The petition states that the total approximate area of the lot is 10,250 sq. ft. The lot slopes steeply down about 50 ft. toward Ferry. It fronts on the east and southeast on a curve of Ferry Avenue S.W. A residence is on the site which has been used as a duplex. It is shown on the site plan as single family but its current use is not clear from the record.

3. The lot had been zoned RS 7200, presumably since 1957, until the City-wide rezoning when it became SF 7200. The property to its north, Lot 24 and the Hamilton View Park, were also RS 7200 and then SF 7200. A band of that zone classification extends from the subject site on the south north around the Duwamish Head between more intensive zoning along the water and SF 5000 on the other side. SF 5000 zoning begins at the lot adjoining the subject property on its southwesterly side and across Ferry Avenue to the south.

4. The North Admiral and Duwamish Head Greenbelts generally coincide with the band of SF 7200 zoning described above and then continue to the south in a band which includes SF 5000 zoning to the south and southeast of the subject site. The subject lot and Lot 24 to its north are not a part of the designated greenbelt and interrupt the otherwise continuous band.

5. The steep easterly slope of the park to the north continues through Lot 24 and onto the subject lot. The slope at a higher elevation appears to continue from the park through Lots 24 and 25 and onto Lots 26 and 27.

6. The petitioners' purpose in requesting the rezone is to have the required lot size reduced to allow the redivision of two lots owned by petitioners, Lots 25 and 26, into three.

7. Lots in the area vary in size and shape. Many were platted in 25 ft. widths and have been combined for development. The developed lots in the blocks immediately surrounding are generally well over 5000 sq. ft. with a few less than 4000 sq. ft. and a few at 15,000 sq. ft.

8. The precise size of Lots 25 and 26 to cannot be stated at this time as the boundaries are the subject of two lawsuits and the subject of a third dispute. One case has been decided and is on appeal, one has been tried and awaits entry of judgement. Petitioners' representative testified that even if all disputes were resolved against petitioners' position, there would be 15,000 sq. ft. or greater left in the two lot parcel.

9. The division of the parcel into three lots would not create lots dissimilar in size or shape to many other in the area nor would it allow incompatible scale or density.

10. Edgewood Avenue S.W. is an unimproved street right-of-way above the parcel. Use of that right-of-way access was denied the owners Lot 24 by the Engineering Department and may not be available for use by the subject site.

11. Ferry Avenue S.W. at this location is narrow and steep. Cars parked on the street could create hazard.

12. The subject site is classified as environmentally sensitive due to soils instability. No test borings have been done on site but those done by petitioners' consultant along with his other observation on property owned by petitioners across Ferry Avenue to the southwest show the slope to be unstable. In fact, the area has experienced slide activity.

13. Petitioners' soils consultant stated in Exhibit 7 that the piles to be used in the foundation system of houses constructed would act against lateral soil movement and contribute to retarding any downward soil movement.

14. A declaration of non-significance was issued pursuant to SEPA by the Director, Department of Construction and Land Use, recognizing probable impacts including earth disruption, altered drainage and additional traffic.

15. The topography of the site would impose additional siting and access considerations, if not problems.

16. The Director recommended that conditions be imposed in any rezoning action to prevent any injury from development on the unstable slope. Those conditions are that a report by a licensed soils engineer regarding soils stability and recommendations be submitted at the time of application for the first of either a short plat or construction permit and that the soils engineers be present to monitor excavation and foundation construction. Petitioners agree to these conditions. Neighboring property owners urge that the conditions need to be more specific because of the site characteristics and petitioners' record of compliance with regulations.

Conclusions

1. A rezoning action will be upheld by the Court only if there is substantial evidence that the rezone furthers the public welfare and that changed circumstances warranted its passage. Cathcart v. Snohomish County, 96 Wn.2d 201, 634 P.2d 853 (1981). Petitioners bear the burden of producing sufficient evidence to support a rezone.

2. Assessment of the relationship of the requested rezone to the public welfare is to be done by consideration of "criteria" provisions of Chapter 23.34. Section 23.34.28, which outlines the factors to be considered in evaluating reclassification requests, and Section 23.34.32, the criteria for single family zones, do not appear to be designed for a request for a rezone from one single family classification to another. Subsection B, Zoning history and procedural effect, D. Impact evaluation and F. Changed circumstances provide some guidance, however, in assessing whether the proposed rezone is in the public interest.

3. As to the zoning history, it appears from the record that the current zoning pattern has been continued over the years. Petitioners urge that a mistake was made when the zone boundary was drawn and offer a rationale for a different boundary. An equally plausible rationale was offered by proponents to support the boundary as drawn. The law does not presume a mistake. Substantial evidence would be necessary to support a finding that a mistake has been made and that evidence is not present in the record.

4. The requested rezone, if granted, would likely be precedent for only the one lot between the subject site and the park land as streets provide separation from other similarly zoned property.

5. There is potential for several negative impacts on the area if rezoned for increased density and developed with three houses, chiefly as to slope stability and traffic hazard from parked cars and access onto the narrow, steep street at a curve. To the contrary, the development may, as suggested by petitioners' representative, provide increased stability for the slope.

6. Subsection F refers to changed circumstances if relied upon by the petitioners as justification for the rezone. While petitioners rely upon a mistake in the prior zoning, case law seems to require a showing of changed circumstances, at least in the absence of mistake or implementation of a comprehensive plan. In this case, no proof of changed circumstances was produced since either the most recent change from RS 7200 to SF 7200 or the 1957 adoption of RS 5000 zoning.

7. Without evidence of changed circumstances or proof of a mistake and with no clear demonstration that the rezone bears a substantial relation to the public welfare, the record does not support a rezoning action. Therefore, the petition should be denied.

Recommendation

The petition should be denied.

Entered this 7th day of October, 1983.


M. Margaret Klockars
Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to Section 23.80.10.E, Seattle Municipal Code, any person substantially affected by or interested in this recommendation may submit a petition in writing to the City Council requesting further consideration. The petition must be filed with the Council within fourteen days of the date of this recommendation and should be addressed to the City Council, Land Use Committee, Municipal Building, Seattle, Washington, 98104.

The petition should clearly identify specific objections to this recommendation and the relief sought; however, the petitioner should not include any additional evidence or exhibits as the Council's consideration will be based upon the record of the Hearing Examiner's hearing. If the Council determines that a factual error exists in the record or that important information is missing, the Council may have the record supplemented pursuant to Section 23.80.10.E.3 or 23.80.10.E.4. At its public meeting the Council may allow oral or written arguments based on the record.