

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

In the Matter of the Petition of

BRAY-WESTLUND & CO. BY KURTIS R.
BRAY

PROJECT NO. 8801885
C.F. NO. 296583

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

RECOMMENDATION: THE APPLICATION SHOULD BE CONDITIONALLY GRANTED
AS NC2/40.

Introduction

Bray-Westlund petitions to rezone property from General Commercial to Commercial 1, 40 feet height limit zoning.

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

The Director of DCLU has recommended that the property be conditionally approved for NC2/40.

This matter was heard before the Hearing Examiner on July 5, 1989, and the record was held open until July 14, 1989 for additional submittals by the petitioner and Department of Construction and Land Use. Petitioner was provided additional time for submittals due to his contention that he was not adequately prepared due to misrepresentations made to him in regards to matters before the Hearing Examiner. Upon petitioner's request, the Hearing Examiner on July 24, 1989 remanded the matter to DCLU. On remand DCLU renoted the matter for a new appeal period of its decision. The second appeal period closed on August 25, 1989 and no appeal was taken or submitted by any party.

The petitioner was represented by Kurtis R. Bray, pro se, and the DCLU was represented by Jay Laughlin, land use specialist.

After due consideration of the presentations by the petitioner and the Director's representative, information provided by the Director, and the correspondence of record, the following shall constitute the findings of fact, conclusions of law, and recommendation of the Hearing Examiner.

Findings of Fact

1. Petitioner proposes to rezone property located at 2301 N.E. Blakely Street to C1/40. The property is located in the Ravenna area several blocks north of the University Village Shopping Center. The property was inadvertently left out of the recent zoning in 1986 that designated the block containing the site as C1/40. The property therefore remains zoned CG in a block zoned C1/40 that can be described as a quarter section of a curved block.

2. DCLU concedes that the failure to rezone the property when other properties in the block were rezoned was a mistake. The petitioner has chosen to rezone to the block's present designation in order to obtain approval of his application. The Hearing Examiner finds that absent the failure to rezone the subject property, the property would be presently zoned C1/40.

3. The site contains 12,040 sq. ft. with 120 ft. of frontage on the N.E. Blakely Street right-of-way and is 106 ft. deep. The proposal is to construct a 4-story mixed use building with 27 apartment units, 2,970 sq. ft. of retail space, 1,952 sq. ft. of retail storage space, and 37 parking spaces for tenants. The

existing fuel yard facilities and structures would be removed or demolished.

4. The Hearing Examiner finds that petitioner's revised proposal has reduced the commercial use from 8,850 sq. ft., would provide a minimum of 17 tandem and 3 regular parking spaces below grade beneath the proposed structure, provide part of the parking and the commercial/retail space on the 1st floor, and provide on the 2nd, 3rd and 4th floors, 18 1-bedroom and 9 2-bedroom apartment units. Prospective tenants are to be UW students.

5. Public comment on the proposal has been in opposition. Twenty-nine letters and a petition of 256 signatories in opposition to the application are of record. The primary concern was that the property's access crosses the Burke Gilman Trail. The Hearing Examiner finds that no public comment was received after the entry of the Director's decision which designated the property NC2/40 with conditions.

6. Petitioner's presentation outlined the process of his application to this date, the numerous meetings with concerned residents regarding the application and the failure of opponents to appear at the instant hearing. Petitioner at the public hearing did not introduce new evidence into the record nor did petitioner update his previously submitted documents that are of record. Petitioner did not submit an appeal from designated SEPA conditions during the renoted appeal period.

7. The Hearing Examiner finds that among other results, the Director's decision will condition the access/crossing of the Burke-Gilman Trail and, will, in conjunction with the access limitations, decrease the number of apartment units permitted on the site.

8. The Hearing Examiner finds that petitioner's parking survey revealed 210 parking spaces available in the area and that the 27 apartment units would generate 240 daily vehicle trips at the site. The Hearing Examiner finds that at this level of use, the area streets can absorb the increase in traffic and parking demand. The impact at the intersection of N.E. Blakely Street and 51st is, likewise, not greatly affected by this level of auto trips or parking demand.

9. The Hearing Examiner does find, however, that commercial and residential tenants will encounter a significant number of bicyclists and pedestrians on the Burke-Gilman Trail as the tenants and trail users cross paths at the site's access. The Hearing Examiner finds that sight along the portion of the trail at the access is poor due to the curve of the trail as it partially circumscribes the site and because of the bulk of the proposed building. At an estimated 5 to 6 bicyclists per minute utilizing the trail, with many of them moving rapidly, the Hearing Examiner finds a great potential for accidents.

10. A witness for the Director indicated that petitioner's earlier designs for site access were dangerous as trail users would be subjected to long exposure times in the access area and, thus, at a high risk of being hit by tenants' autos. The recommendation by the Seattle Engineering Department is for a single point access with one ramp in and one ramp out for the tenants. The Hearing Examiner finds that the recommendation would limit exposure time in the access area for trail users and decrease a potential danger at the site.

11. The Hearing Examiner found unpersuasive petitioner's contention that problems and matters related to access and crossings of the Burke-Gilman Trail have been addressed and provided for by the reduction of commercial usage at the site; and that the commercial use of the site would be given overriding consideration over the trail because of the prior history of commercial use of the property. The Hearing Examiner finds that petitioner's arguments did not address, in an adequate or satisfactory manner, an identified potential danger at the site's access. Petitioner neither presented nor suggested warning or precautionary procedures or devices for the safety of trail

users.

12. The Burke-Gilman Trail encircles the site on the west and north as N.E. Blakely Street curves to the south from the intersection of N.E. Blakely Street and N.E. 25th. The Hearing Examiner finds the access to the site is across the Burke-Gilman Trail at the site's northeast corner.

13. Except for the Blakely Building which is commercially developed and is found directly west across N.E. Blakely Street, the surrounding properties to the west and north are designated L-3 and are developed with 2 and 3 story apartments. The numerous apartments in the area characterize the N.E. Blakely Street frontage as residential.

14. As Ravenna Place N.E. intersects N.E. Blakely near N.E. Blakely Street's intersection with N.E. 25th, the Hearing Examiner finds that properties north across N.E. Blakely Street along N.E. 25th are designated NC2/40 and that those properties are part of an intensely developed business corridor.

15. Abutting the subject property to the east is the Blakely Manor which is a large 4-story congregate care/nursing home complex operated by the Seattle Housing Authority which the Hearing Examiner finds was approved as a conditional use at the time that that property was also zoned CG. Other properties in the block containing the site either generally front N.E. 25th or have their access to N.E. 25th. The Hearing Examiner finds that possible easements for access to N.E. 25th from the site do not exist.

16. South of the site are properties designated C1/40 that are developed with a mix of commercial and residential uses that would tend to support a mixed use designation for the subject site.

17. The Hearing Examiner finds the site is more correctly characterized as residential due to its access on N.E. Blakely Street. N.E. Blakely Street is the edge of the residential development in the area. The abutting Blakely Manor also fronts N.E. Blakely Street and its sheer bulk is a buffer from the commercial development on N.E. 25th.

18. The Hearing Examiner finds that new, intensive commercial use of the site would not be compatible with the surrounding development. The Hearing Examiner finds, as the Director's representative has indicated, that the rezoning from CG to NC2/40 is to permit residential development of the site in spite of its commercial zoning designation.

19. The Hearing Examiner finds that the zoning history of the site shows that it has always been commercial and that the commercial designation with residential opportunities is a compatible designation for the site given the situation and the history of the area. Although petitioner faces an intense examination of his proposal at this present time, the Hearing Examiner finds that all of petitioner's development proposals would impact the Burke-Gilman Trail and the impacts would require mitigation.

20. The Hearing Examiner finds the mistake of failing to rezone the subject property understandable given the history of the former Burlington Northern right-of-way which is now the Burke-Gilman Trail that now exists in the N.E. Blakely Street right-of-way.

21. Petitioner had stated misrepresentation and confusion caused by DCLU as the reason for his initial inability to timely appeal the Director's decision. Petitioner also indicated misrepresentation and procedural and administrative errors for his predicament.

22. The Hearing Examiner finds that petitioner had been previously informed of probable mitigation measures required of the application by DCLU staff earlier this year. The Hearing

Examiner finds that the Director's report outlined for petitioner the permitted number of apartment units according to a variety of zoning designations for the site.

23. Petitioner argued because staff decisions can be reversed by supervisors, DCLU's process is flawed and that he has been harmed by the process. The Hearing Examiner does not find procedural or administrative errors on the basis of the departmental decision-making processes.

24. The Hearing Examiner, after due consideration of Petitioner's presentation, did not find misrepresentations by DCLU staff, did not find errors in the record, nor that petitioner has been intentionally deceived, misled or prejudiced by DCLU.

Conclusions

1. Zoning changes from Title 24 designations to Title 23 commercial zoning require compliance with the General Rezone Criteria per Seattle Municipal Code Section 23.34.008.

2. Seattle Municipal Code Section 23.34.008 requires evaluation of the: (A) match between locational criteria and the area's characteristics, (B) zoning history and precedential effect, (C) zoning principles relating to compatible land use patterns, size, configuration and boundaries, (C) impact evaluation, (E) neighborhood planning efforts, (F) changed circumstances, (G) overlay districts and (H) greenbelt plans.

3. C1/40 locational criteria are found at Seattle Municipal Code Section 23.34.080. Due to the site's access off N.E. Blakely Street and the immediate area's lack of commercial uses except the Blakely Building and the convenience store at N.E. 25th, the Hearing Examiner concludes that the area and site character is residential and not commercial as is required of C1/40 zoning.

4. Criterion A of the Seattle Municipal Code Section 23.34.080 requires that the site to be rezoned to C1/40 be auto-oriented in nature with the primary activity in the area as retail/service. The Hearing Examiner concludes that no match exists in this regard in that the site's character is residential and pedestrians and bicyclists who utilize the Burke-Gilman Trail predominate in the area.

5. Criterion B of Seattle Municipal Code Section 23.34.080B requires that the existing character in the area be either a shopping center or be linked by an arterial to shopping areas. The Hearing Examiner concludes that no match exists in this regard because the shopping center is south at the University Village. The Hearing Examiner concludes that other attributes of C1 commercial zoning are not found in the surrounding area. The area's existing character is concluded not to be that of a shopping center.

6. Seattle Municipal Code Section 23.34.080C requires that the physical conditions favor C1/40 designation but as the Hearing Examiner concludes that the physical conditions do not favor commercial designation, no match exists in this regard. There do not exist large lots which could accommodate a wide range of commercial activity nor is the environment unfriendly to pedestrians.

7. The Hearing Examiner does conclude, on the other hand, that the zoning history and principles support the change to a Title 23 commercial designation due to the site's history of commercial designation and use. As no other property in the area has the unique situation as the subject property, no precedential effect will be established by permitting the property to retain its designation as commercial. Petitioner's commercial proposal will be limited by parking availability, and the building itself will be limited by impacts related to the access/crossing of the Burke-Gilman Trail.

8. The Hearing Examiner concludes that designation of the site as commercial with residential opportunities with appropriate conditioning is appropriate. Granting a lower designation than C1/40 for the site in consideration of impacts, neighborhood planning efforts and changed circumstance is appropriate.

9. Commercial zoning pursuant to 23.34.072 requires that additional factors be considered in the zoning change from Title 24 to Title 23 commercial zoning. Due to the site's prior designation as commercial, the Hearing Examiner sees no encroachment of commercial development into the residential area. Further, the Hearing Examiner concludes that limited commercial development, safety of pedestrians and a 40' height limitation for the site are in conformance to commercial zoning principles regarding the site.

10. NC2/40 locational criteria can be found at Seattle Municipal Code Section 23.34.076. NC2/40 zoning is concluded to be a more favorable designation for the site due to the following: the site is more accurately considered as residential and pedestrian-oriented, e.g., bicyclists and pedestrian; the site is a buffer to the surrounding medium density residential development that surrounds the site; and the general area could support a core of small businesses.

11. The Hearing Examiner concludes the revised proposal would generate an average of 240 weekday trips from the site and would require mitigation, such as: a vehicle activated warning system, stopping platform, setback of structure, and the single point access. All design and compliance should be through the Seattle Engineering Department.

12. The application should be approved as conditioned:

A. Prior to MUP Issuance

1. The owner(s) and/or responsible party(s) shall submit for Department approval revised drawings showing one two-way point of access to the parking garage with one lane in and one lane out.
2. The owner(s) and/or responsible party(s) shall submit for Department approval revised drawings showing one two-way point of access to the parking garage with one lane in and one lane out.

B. Permanent for the Life of the Project

3. Access to the parking garage shall be limited to one two-way point of entry with one lane in one lane out. This access shall not exceed Land Use Code standards for maximum and minimum width, turning path radius, etc. This condition shall be made part of a PUDA (contract) as part of the rezone.

C. Permanent for the Life of the Project and Commercial Use of the Property as under Title 23 Zoning

4. The owner(s) and/or responsible party(s), in addition to the restrictions on uses established in Section 23.47 of the Land Use Code as of the date of issuance of this decision, shall be prohibited from having the following uses within the ground floor commercial space:
 - multi-purpose convenience store
 - fast food restaurant
 - mini-warehouse, warehouse
 - automotive retail sales and service
 - restaurants with cocktail lounges
 - taverns and brewpubs
 - motion picture theater
 - indoor participant sport facility and
 - other forms of public assembly

This restriction shall be included as part of a property use and development agreement developed as part of a contract rezone.

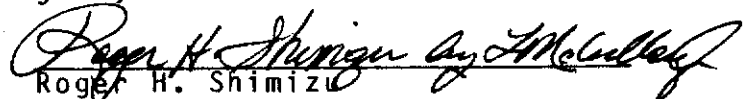
D. Prior to Construction Permit Issuance

5. The owner(s) and/or responsible party(s) shall develop to the satisfaction of the Seattle Engineering Department an access management program to mitigate project impacts on bicycle and pedestrian circulation along the Burke Gilman Trail. Elements of this plan shall at a minimum include: 1) a vehicle warning system for entering and exiting vehicles; 2) stopping platforms at driveway ends; 3) setback of the structure to increase sight visibility of the trail by entering and exiting vehicles.

E. During Construction

7. To reduce the traffic impacts of construction, the owner(s) and/or responsible party(s) shall provide construction workers with parking on-site when feasible, as determined by the Department of Construction and Land Use Construction Inspector.
8. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby properties, the owner(s) and/or responsible party(s) shall limit exterior construction between 7:30 a.m. and 6:00 p.m. on non-holiday weekdays.

Entered this 31st day of August, 1989.


Roger H. Shimizu
Hearing Examiner, Pro Tempore

**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 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.