

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

In the Matter of the Petition of

PETER EGLICK AND MERILY CHICK

FILE NO. CC-82-020  
C.F. NO. 292054

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

Recommendation:        The petition should be GRANTED.

Introduction

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 denied.

This matter was heard before the Hearing Examiner on March 9, 1983, and March 25, 1983.

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 as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. With regard to the action proposed in this application, a declaration of nonsignificance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, and is part of the record.

2. Petitioners seek to change the zoning of the property comprising approximately one-half block in area from Lowrise 3 (L3) to Single Family (SF) 5000. The property in question is located on the west central portion of Capitol Hill. It consists of about 40,000 sq. ft. It is located north of E. Aloha Street between Boylston Avenue E. and Harvard Avenue E. The northern half of the same block is zoned SF 5000. The subject property is known also as the Merrill property after the family which has owned or had an interest in that property for many years.

3. Until the 1982 City wide zoning changes, the subject property was consistently zoned for single family residences.

4. In 1982, the change in zoning of the property was apparently made at the request of architects retained to assist in development of the property by the owners. See letter of November 24, 1981, from Ibsen Nelson to Councilmember Michael Hildt, part of the DCLU file in this matter.

5. Proposed development was to consist of a number of high valued townhouses. This sort of development was not consistent with single family zoning. After residents of the area learned that the subject property had, in fact, been rezoned, they protested this action to City Council members and this petition resulted from that action.

6. Because the City Council altered the zoning subject property during a City wide rezone, no individual, direct notice of the change was given to residents of the area. Testimony at the hearing was uniformly in favor of the present petition. The common theme of the testimony of the neighborhood witnesses was the assertion that the Council made a drastic change in the land use character of the neighborhood without any comment from the residents of the area. Correspondence received by the Office of Hearing Examiner and by DCLU also reflects this concern.

7. The residents of the area of the subject property generally seem to be people who are concerned about governmental action concerning their residential neighborhood. Had these people been afforded personal notice of the proposed rezone of the subject property they would have lobbied against any change in the zoning from single family.

8. The property along Harvard Avenue E. north of E. Aloha consists of single family homes. The west side of Boylston Avenue E. north of E. Aloha is developed with 10 single family homes and a fourplex unit. The east side of that street is taken up primarily with the Merrill properties and three single family houses. The block in which the subject property is located is developed with single family residences.

9. The block to the east, bounded by Harvard Avenue E., Broadway E., E. Aloha and E. Prospect Streets is, with one small exception, zoned SF 5000. The southern half of the block directly west of the subject property is zoned L3 and the northern half is zoned SF 5000. Generally, the zoning south of E. Aloha allows for more dense residential and commercial development than the zoning north of E. Aloha Street.

10. There is generally considerable pride of home ownership in the neighborhood.

11. The subject property is located within the Harvard-Belmont Historic District. The DCLU report states that the area is very stable in terms of changes in property ownership and the testimony reflects that assertion. The Harvard-Belmont Historic District Ordinance, No. 109388 states, Section 4(a):

"The Harvard-Belmont District, however, has maintained its identity, character, and quality to a degree which permits its continuance as a prestigious, livable and highly desirable neighborhood in which to live."

12. The development which sparked the L3 zoning was the subject of a master use permit appeal brought by individuals in the neighborhood association. The parties to that appeal reached a settlement and the appeals have been dismissed. Certain design changes were made in the proposed development. As a result of this settlement, the developer's agent, Mr. Nelson, stated that he and the owners of the property supported this application for a rezone.

13. Opposition to the application was by way of some letters from residents of the area who expressed the concern that the proposed development of the subject property would be thwarted if the rezone was approved. Because of the vesting doctrine, however, the rights of the developer will not be impaired by approval of this rezone.

14. It was the position of DCLU at the hearing and in its report that the appropriateness of the present L3 zoning of the subject property ought not to be considered; that it was more appropriate only to consider the criteria for change to single family zoning. The DCLU analysis would prevent the legislative body from considering the procedure used in making the previous zone changes in 1982 as well as the effect of that 1982 change in zoning perceived by the residents in the area.

15. The report prepared by DCLU and the comments of the environmental analyst on the environmental checklist in this case, note that certain negative environmental impacts may occur as a result of the proposed rezone to single family. Primarily, it is noted that a change in the zoning could serve to limit the number of housing units available in the City and that construction of up to eight single family homes at different times could be more disruptive than construction of an L3 type development at a single time. However, it must also be observed that the rezone sought here will not cause displacement of any person or family and that a townhouse development will, more likely than not, be constructed on the site as a result on the settlement reached with respect to the master use permit appeals mentioned earlier. General description and discussion of that development is found in materials provided by Mr. Ibsen Nelson, architect, located in the DCLU file accompanying this recommendation.

16. The area within the proposed rezone is bounded by platted lot lines.

17. The residents who testified at the hearing all expressed dismay at the current L3 zone for the property. They expressed the fear that the 1982 change in the zoning established a bad precedent, one which could be cited for further rezones of single family zones leading to encroachment upon single family zones, i.e., to "zoning creep". This phenomenon is an extension of the domino effect of foreign subversions of a stable government. It is the first known application of a foreign policy theory of Presidents Johnson, Nixon and Reagan to urban planning. This perception of an intrusion into a single family area is not exaggerated because of continuing redevelopment of the Broadway commercial district to the south and lowrise zoning to the east, along Broadway.

#### Conclusions

1. The circumstance of the 1982 rezone of the subject property should be considered by the Council in deciding the merits of this application. What must also be heavily considered is the extensive length of time the subject property was zoned single family prior to the 1982 city wide rezone. Further, circumstances have changed in that the initial proponent of the L3 zoning has now withdrawn his opposition to the SF 5000 reclassification.

2. The subject property is small - only one-half block in area, but it is located in an area determined to be an historic district in large part because of the unique style and size of the existing single family residences in the area in general and in the same block in particular.

3. The general rezone criteria of Seattle Municipal Code, 23.34.28 are met. The Examiner was particularly impressed with the application and effect of Seattle Municipal Code 23.34.28G, Overlay Districts and Section B, Zoning history and precedential effect. The zoning history was discussed in the Findings of Fact, above. Concerning precedential effect the so-called "zoning creep" or domino theory is legitimately perceived by the residents to be real and of an adverse nature. The overlay district in question is the Harvard-Belmont Historic District created by Ordinance No. 109388.

4. The petition area here meets the criteria for single family zone, Seattle Municipal Code, 23.34.32. The block in which the subject property is located and the area to the east are wholly single family developed. Seattle Municipal Code 23.34.32.A.1. Further, a trend toward a retention of single family residences can be demonstrated by the stability in the number of such residential units over the past five years. Seattle Municipal Code 23.34.32.A.3.c. And, because the property abuts to the north and east a single family zone, the criterion of Seattle Municipal Code 23.34.32.B. is also met. Finally, the criterion for boundaries is met because the zone would follow platted lot lines. Seattle Municipal Code 23.34.32.C.3.

5. The recommendation of DCLU as to this application is not without merit. The recommendation is premised in large part upon the suitability of the subject property for its present L3 zoning. Viewed in isolation, that sort of analysis would ordinarily carry great weight. But the report does not take into consideration the manner in which the change to that zone was made in 1982. That change was made without individual, actual notice to the residents and also changed an historic zoning district dedicated solely to single family residences. The L3 zone was a substantial departure from that previous history. Because this petition so quickly followed receipt by the residents of actual notice of the change in zoning to L3 the Council should consider the previous lengthy single family zoning history of the area.


6. For the reasons stated in these Conclusions, it is respectfully submitted that the City Council should grant the petition.

#### Recommendation

The recommendation of the Hearing Examiner to the City Council is as follows:

The petition should be Granted.

Entered this 1<sup>st</sup> day of April, 1983.

  
Kelby Fletcher  
Hearing Examiner Pro Tempore

#### 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.