

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

In the Matter of the Petition of

LARRY HEATH

FILE NO. 8606899
C.F. NO. 295541

for an amendment to the Official
Zoning Map pursuant to Title 23,
Seattle Municipal Code, and for
associated variance relief

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 granted in part and denied in part.

This matter was heard before the Hearing Examiner on November 24, 1987.

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. Applicant desires to rezone seven parcels of land which constitute the southern two-thirds of the eastern blockface of Harvard Avenue between East Olive Way and East Denny Way on Capitol Hill. (Hereafter this will be referred to as the "property" or "subject property".)

2. The site is currently developed with five single-family residences, two of which are vacant, and a six-unit apartment facing Harvard Avenue and an 18-unit apartment facing Denny Way.

3. An improved alley bisects the blocks and runs from Denny Way to Olive Way. The western blockface of Harvard Avenue is developed with three large apartment buildings.

4. The applicant seeks to construct a surface level parking lot on the two northernmost parcels. Those parcels of land each contain a vacant single-family structure.

5. The northern third of the blockface is developed with a 14,400 sq. ft. surface parking lot owned by or operated for People's National Bank at the southwest corner of Olive Way and Broadway. That portion of the blockface is zoned NC3 65' P1.

6. East of Harvard Avenue is the Broadway commercial district. To the south is the campus of Seattle Central Community College.

7. On the west side of Broadway in the same block as the subject property are located the People's National Bank, Del-Teet's Furniture, Dick's Drive-in, a parking lot for Dick's Drive-in, a deli/cafe and a United States Postal Service Station. The Broadway commercial district contains a great number of commercial uses, offices, groceries, restaurants and residences. On-street parking is permitted along Broadway. The parking space is metered. The rates for street parking are less than that charged by commercial lot operators.

8. Most of the property on the east side of Harvard Avenue from Roy Street to Denny Way is designated either NC3 or MR/RC with the exception of the subject property and a few parcels immediately to the south across Denny Way.

9. The subject property is now zoned MR. The applicant seeks to rezone the subject property to MR/RC. In addition, applicant desires an administrative conditional use for a parking lot in the MR/RC zone if such a zone is approved. In order to do so it will be necessary to demolish the two single-family residences at the northern portion of the subject property and to construct a 26-space surface parking lot with access off of the alley.

10. The applicant desires to operate the parking lot as a commercial lot available both to persons who desire to pay full parking charges and to persons who obtain parking tokens validated at certain of the businesses in the Broadway commercial area. The applicant is also willing to designate a specified number of spaces for use by residents of nearby apartment buildings for use as off-street parking primarily during evening hours.

11. The Director of the Department of Construction and Land Use (DCLU) found that for purposes of SEPA the project was not significant but recommended certain conditions be met. The Director also approved of the rezone but recommended against a grant of the administrative conditional use. The Hearing Examiner does not attach any weight to the recommendations of the Director with respect to the rezone and the conditional use and has reviewed the evidence in the file as well as the testimony at the hearing and considered the matter de novo. The decision with respect to the SEPA determination is entitled to deference by the Hearing Examiner.

12. With respect to SEPA, the issues concerning the environmental impact of the project were not directly addressed at the hearing except with reference to criteria for an administrative conditional use.

13. Since the time of the original application the applicant has modified the proposal to eliminate a curb cut on Harvard Avenue and to allow ingress and egress to and from the parking only from the alley.

14. The application in this case is not combined with any new or altered commercial development in the Broadway commercial area. Further, it is an isolated development. The applicant claims that development of the parking lot will encourage further pedestrian use in the Broadway area and will tend to alleviate, somewhat, the demand for on-street parking on Broadway and adjacent streets. However, applicant did not set forth what the parking rates would be in the proposed development. There was undisputed testimony that certain of the commercial parking lots in the area are underutilized because the rates charged are higher than metered parking places on Broadway.

15. Additional parking spaces in the Broadway commercial area would tend to reduce the spillover of parking in nearby residential areas both on the east and west side of Broadway. The parking demand is illustrated by the Seattle Engineering Department study, Exhibit 1.

16. There was testimony by the Director's representative that noise, vandalism, crime and loitering has been a problem associated with patrons of Dick's Drive-in and its parking lot on the east half of the block which contains the subject property. No statistics with respect to reports of crime were presented however. The Hearing Examiner can take judicial notice of reports of large crowds congregating in that parking lot in the early morning hours and published in the Capitol Hill Times. Applicant countered such testimony with reports that the merchants in the area, including the manager of the Drive-in, were joining forces to limit the number of minutes which a patron

of the Drive-in can park at its parking lot and to provide private patrol officers.

17. The development of a parking lot on the subject property would, for practical purposes, abut the existing parking lot where People's National Bank which is located on the northern end of the blockface containing the subject property. This combined parking lot would, therefore, take up half of the blockface and would tend to weaken the existing residential character of the western blockface of Harvard Avenue. Coupled with this is the fact that MR/RC zoning would allow ground floor commercial uses which are far greater in size than those allowed simply by MR zoning. For example, an MR/RC zone permits a convenience store of up to 10,000 sq. ft. or other commercial uses of 7,500 sq. ft. at the ground floor although the MR zone would allow only 2,500 sq. ft. of retail or office use at the ground floor. The MR zone, in effect, then would require smaller stores but perhaps the same amount of developed space.

Conclusions

1. With respect to the SEPA determination, there seems to be little dispute. The main concern of the Director was the curb cut on Harvard Avenue. The applicant has eliminated that in a revision to the application. However, the following conditions should be met with respect to the declaration of non-significance:

1. Adequate lighting for the parking lot to be contained to the site with no spillover to adjacent properties shall be provided.
2. Adequate litter control and pick up shall be provided.

2. The rezone should be approved. The criteria for a rezone to Residential-Commercial are contained at Seattle Municipal Code Section 23.34.070. In broad terms, those criteria concern function, character and physical factors favoring RC designation.

3. With respect to function, Seattle Municipal Code Section 23.34.070A indicates that a rezone may be appropriate if any of four stated circumstances are met. One of the circumstances is "to provide opportunities for needed parking in areas where spillover parking is a major problem." SMC Section 23.34.070A.3. This criteria is amply met in this application although the applicant has not indicated her price structure for the parking lot. It is clear that there is a demand for parking which exceeds the number of on-street spaces available for it, at least according to a Seattle Engineering Department study conducted a few years ago, Exhibit 1 to this hearing. The circumstance set forth at Seattle Municipal Code Section 23.34.070A.3. does not require the applicant to show that the proposed development is commercially feasible or that the proposed development would materially alter the existing demand for on-street parking in relation to the size of the development. All that is required that the applicant would "provide opportunities for needed parking". The application clearly does that.

4. The Director, in her analysis, found that the application would amount to "a means of supporting an existing commercial node," and thus met the circumstance set forth at SMC Section 23.34.070A.4. This, too, is true. However, it is unclear to the Hearing Examiner how the development will support the existing commercial area other than by providing parking. The analysis set forth by the Director with respect to support of a commercial area is too speculative.

5. SMC 23.34.070B requires the existing character and desired characteristics of the zone to be considered. The subject property abuts a primarily residential area but is also adjacent to a busy commercial area where accessory parking would improve the commercial area. Further, a pattern of mixed residential and

commercial development is already present. Thus, either of the factors set forth at SMC 23.34.070B.1 are met.

6. With respect to desired characteristics, the current zoning would permit commercial and retail space at the ground floor of a multi-floor, multi-unit residential building which would comport with existing apartment-type development on the west side of Harvard Avenue.

7. Three of the four designated physical factors favoring RC designation currently exist:

1. A lack of buffer between the residential and commercial uses on Broadway;
2. Streets with adequate access and circulation;
3. Insufficient parking in an adjacent commercial zone results in parking spillover on residential streets.

8. The general rezone criteria set forth at SMC 23.34.008 are met. In essence, the Director found and the Hearing Examiner holds that the criteria of Seattle Municipal Code 23.34.008 have been fully considered and comport with the proposed rezone. For example, the zoning history of the area comports with the development allowable in an MR/RC zone and the characteristics of the area, in terms of existing development closely match the locational criteria for the proposed land use envisioned by an MR/RC zone. The mix of commercial ground floor use with multi unit residences above is already clearly permitted in the existing MR zone.

9. Criteria for a conditional use in a RC zone are set forth at Seattle Municipal Code Section 23.46.006. The general criterion is that a proposed use shall not be "materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located." SMC Section 23.46.006B.1. It is this criterion, of all the requirements of that section of Seattle Municipal Code, which is not met. The subject property, whether it is rezoned MR/RC or whether the zoning remains MR, is located in what is essentially a residential block. A large portion of the block face to the immediate north is already taken up with a surface level parking lot. If the subject property is also developed as a surface level parking lot the effect would be to create one large surface level parking lot comprising one half of the block face of Harvard Avenue. This would substantially reduce the residential character and potential of the block and would clearly negate one of the desired characteristics of an RC zone, a "physical appearance resembling the appearance of adjacent residential areas." SMC Section 23.34.070B.2.a. Further, while commercial uses at street level could clearly exist in the southern half of the block not occupied by the proposed parking lot, the proposed development would negate another desired characteristic of an RC zone, that is, "mixed use with small commercial uses at street level." SMC Section 23.34.070B.2.b.

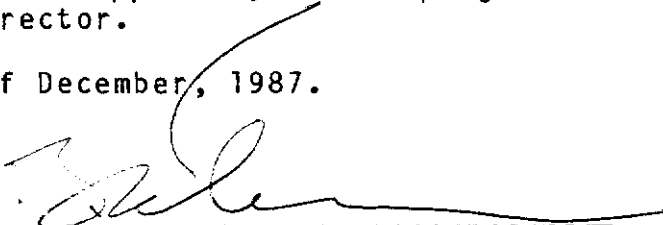
10. The specific criteria set forth at Seattle Municipal Code Section 23.46.006C, Residential-Commercial conditional uses, are met by this application in the event it is determined that the criteria set forth at Section 23.46.006B, are met. In this respect, the Hearing Examiner disagrees with the analysis of the Director in her interpretation of the conditional use criteria related to parking. The analysis by the Director with respect to parking "requirements"; and whether the proposed development is "necessary" to avoid increased parking congestion or worsening of excessive spillover parking is extremely technical and does not mesh with the plain language contained in SMC 23.46.006C.1. The interpretations urged by the Director suggest that parking lots should only be allowed as part of new development. If so intended by the City Council and Mayor, that meaning could have been simply stated in the code. The approach by the Director

with respect to interpretation of SMC Section 23.46.006C, is, therefore, rejected as hypertechnical.

Recommendation

The project is found not to have any significant environmental impact but should be conditioned as set forth by conclusion 1. The application for rezone to MR/RC should be approved but the conditional use to establish a parking lot should be denied. If a conditional use is approved, landscaping should be subject to approval by the Director.

Entered this 7th day of December, 1987.


Kelby Fletcher
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 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.