

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

SEATTLE SCHOOL DISTRICT # 1
(Val Thomas, Agent)

FILE NO. CC-83-008
C.F. NO. 29254

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

Recommendation: The petition should be Conditionally Granted

Introduction

Petitioner seeks to reclassify land addressed 515 W. Galer Street from single family high density to the multi-family designation of Lowrise 1.

For purposes of this recommendation, all section numbers refer to 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 conditionally granted.

This matter was heard before the Hearing Examiner on September 28, 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, the following shall constitute the findings of fact, conclusions and the recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. The subject property is located in a primarily residential area of the Queen Anne neighborhood. The street address is 515 West Galer Street. The legal description is:

Block 35, Comstock's Supplemental Addition; being that portion of the block fronting on 5th Avenue West near the intersection at Galer Street.

The site is bounded on the north by West Galer Street; on the south by West Lee Street; on the east by 5th Avenue West; and on the west by 6th Avenue West.

2. The 1.73 acre site was zoned from multi-family residence to 1957 code designations of Single Family 5000 and Duplex Residence High Density. Under the 1983 Land Use Code designation the site is currently zoned Single Family (SF) 5000.

3. The site is developed with a 3-story, vacant brick structure that formerly served as the West Queen Anne Elementary School. The structure is an approved Seattle Landmark. A proposal to convert the former school building to 49 apartment/condominium units with underground parking was approved under separate administrative conditional use, Master Use Permit application No. 83-220.

4. There is a mix of single-multi-family structures to the site's north, east and west. The south block face, across West Lee, is developed 80% with single family structures. The block faces along West Galer, north, and 5th Avenue West, east, consist of 50% single family development. On 6th Avenue West, to the west, the block face is in 40% single family use.

5. The site is near local retail businesses, and offers direct access for utilities and public services, including bus service along West Galer Street.

6. Property owner Seattle School District petitioned to reclassify the subject property from SF 5000 to the multi-family designation of Lowrise 1 (L-1). This would permit construction of two desired townhouses, each approximately two stories in height and roughly 1500 sq. ft. in area. Four new residential units would result. The proposed design would replicate the brick exterior, arched window and other features of the school building. Proponent expects the development, to be in conformity with Landmark Preservation provisions, to transform the character of the site from institutional to residential by extensive landscaping, and by use of architectural features designed to complement the existing structure and its neighboring residential dwellings. The bulk of project parking will be in an underground parking garage. The top of the garage will be landscaped.

7. The two new structures, dubbed gatehouses, will flank the main entry from east adjacent 5th Avenue West. The area between the gatehouses and the existing structure would be marked by a central motor court. With the 5th Avenue principal entry, the proponent could offer a more centrally located elevator, for the existing building. The present building entry is at the north (Galer Street) wing.

8. There is some discussion as to whether the presently rounded corner of 5th and West Galer would or should be squared off (which would decrease the size of the street intersection) so as to accomodate either the northern gatehouse's setback and/or pedestrian amenities. There is a petition of record expressing opposition to the possibility of a decreased intersection whether from a street use permit or a vacation.

9. The proposed rezone is designed to accomodate the present and proposed on-site development. Petitioner is favorably disposed to contract limitations on the rezone.

10. The site is not designated as single family by any adopted neighborhood plan.

11. With regard to the action proposed in this application, a declaration of non-significance (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.

12. The environmental checklist on which the DNS was based noted that the land use would be changed from school playground to residential. The Director's annotation stated that the proposal would result in increased vehicular movement; in some increase in traffic hazards to "motor vehicles, bicyclists or pedestrians;" and that a "minor increase in traffic need for parking and use of the surrounding street system" was expected. No obstruction of a scenic vista or view open to the public is anticipated by the development.

Conclusions

1. As recommended by the Director, the petition should be granted on the basis of a contract rezone, limiting development to two duplex structures as proposed.

2. Seattle Municipal Code Chapter 23.34 governs the City's rezone process. Section 23.34.24, Areas Zoned Single Family, provides that for areas of less than five acres proposed for rezone, single family areas "may be rezoned to another classification only if the applicant can demonstrate that the area does not meet the criteria for single family."

3. General rezone criteria are found at Section 23.34.28; single family zone criteria at Section 23.34.32; and the locational criteria for Lowrise 1 at Section 23.34.36.

4. The threshold inquiry is whether the subject 1.73 acre site, already developed with a school building and approved for multi-family use, meets the single family designation criteria. It appears that the single family zone criteria of Section 23.34.32 are more appropriately applied to a larger area. Applying them nevertheless, to the instant application, the subject parcel is not designated by an adopted neighborhood plan as appropriate for single family residential use. Section 23.34.32 A.2. The single family criteria continue with discussions of areas "which consist of blocks" (emphasis added) of less than or more than 70% existing single family structure residential use. The subject site is a self-contained block. The spirit and purpose of Section 23.34.32, however, would indicate that the development should be allowed to proceed as proposed. The one block face with at least 70% single family structures is south of the site, across West Lee, whereas the proposed (gatehouse) development is on the east, 5th Avenue side of the site. The east, north and west block faces are from 40-50% single family developed, with the remaining structures in multi-family use. The subject site would not be appropriate for single family designation.

5. On the other hand, the site would appear to conform to the locational criteria of Lowrise 1, Section 23.34.36. The subject area is one "where structures of consistently low height... and small bulk establish the pattern of development..." Section 23.34.36.A., and is one "which borders on single family residential zones" where a transition to a greater scale is not desirable. Section 23.34.34.B. Generally, the gatehouses will be gentle transitions from the existing institutional, multi-family structure to the smaller scale development across 5th Avenue. Construction should prove to be architecturally consistent with the existing building. Section 23.34.28.A.

6. The proposal is also consistent with the general rezone criteria of Section 23.34.28. The proposed use is compatible in scale and use with existing residential development. Parking, public service and other impacts expected to result will not be significantly adverse. Changed circumstances include the addition of the new multi-family use to the area pursuant to the Master Use Permit application to alter the former school use. The proposal bears the necessary relationship to the public welfare. Parkridge v. Seattle, 89 Wn. 2d 454 (1977). As the proposed use is neither totally incompatible nor inconsistent with surrounding development, the Hearing Examiner would not consider the proposed reclassification as an illegal spot zone. Lutz v. Longview, 83 Wn.2d 566 (1974).

7. The petition has generated some comments negative to altering the abutting street width. Recognized as a potential segment of the overall proposal, the street use issue could bear directly on the question of the public welfare. Thus, some consideration to that issue is not inappropriate.

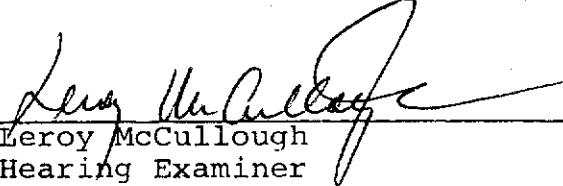
8. However, no adequately specific plans, nor detriment, has been shown to the degree that conditions related to the north-east intersection should be imposed as a part of this petition's approval.

Recommendation

For each of the above reasons, the recommendation of the Hearing Examiner to the City Council is as follows:

That the petition be granted on the condition that development be limited to that proposed, by a property use and development agreement (contract).

Entered this 12th day of October, 1983.


Leroy McCullough
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.

SUPPLEMENTAL

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

SEATTLE SCHOOL DISTRICT #1
(Val Thomas, Agent)

FILE NO. CC-83-008
C.F. NO. 292534

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

Recommendation: The petition should be Conditionally Granted

Introduction

Petitioner seeks to reclassify property addressed 515 West Galer Street from Single Family 5000 to the multi-family designation of Lowrise 1.

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

This matter was initially heard before the Hearing Examiner on September 28, 1983. Pursuant to order of remand, this matter was again heard before the Hearing Examiner on March 20, 1984. There was no change in the Director's recommendation.

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

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

Findings of Fact

1. Findings 1-12 of the Recommendation entered October 12, 1983 are adopted and incorporated herein by reference.
2. The subject site is developed with a large three story brick structure that formerly housed the West Queen Anne Elementary School. The building is listed as a Seattle Landmark and is on the National Register of Historic Places.
3. The two gatehouses, proposed for the 5th Avenue (east) side of the subject site, are proposed to ease the visual transition from the surrounding single family homes to the former school building.
4. The original design was for the gatehouses to have flat roofs although other details and materials would complement those of the school. Pursuant to input from the Seattle Landmarks Preservation Board, which saw pitched roofs as more complementary to the existing building, the present plan is for the sloped roofs for the gatehouses. As currently proposed the central gable will cover approximately one half of the roof area and rise to a maximum height of 28 ft. four inches. The idea of a pitched roof has been approved by the National Park Service, U.S. Department of the Interior. Applicant has not submitted a flat roof proposal to that agency.

5. To the degree that gatehouse development is allowed, opposing witnesses were of the opinion that the gatehouse roofs should be flat as less intrusive on vicinity views.

6. The current SF 5000 zone and the proposed L-1 zone have a 30 ft. height limit.

7. Topographically, the area slopes downward to the south, southwest where a variety of views is possible, such as those of the Space Needle, downtown Seattle, West Seattle, and Elliott Bay.

8. These views from several homes will be partially blocked by the proposed gatehouses. The degree and effect of that blockage constituted the bulk of the remand hearing evidence.

9. Project applicant submitted expert testimony on the subject of view blockage. The qualifications of the expert, John Furtado, were not challenged by any participant.

10. Furtado presented a diagram which included at center the West Queen Anne School "block" which is bounded on the north by West Galer Street; on the south by West Lee Street; on the east by 5th Avenue West; and on the west by 6th Avenue West. The diagram, marked R-2, also depicts the location of the several homes that front on either side of the subject "block." (Exhibits admitted in the remand hearing are denoted by upper case "R".)

11. On the site diagram Furtado denoted by letters A-E the properties he assessed would have some view blockage if the rezone petition were granted and the gatehouses constructed as proposed.

12. Exhibit R-3 is a montage of Furtado's photographs of the various residences correlated by letter to R-2. Immediately below the homes are photographs of existing first and if applicable, second story views. The dash-line superimposition is designed to show the impact on the designated views.

13. Furtado's photographs of second story views were generally taken center lot from a forklift some 25 ft. in from the front of the lot. A 28 ft. 4 inch pole was set in place so that the effect of the gatehouse on views could be extrapolated.

14. Following the construct suggested by Exhibits R-2 and R-3, house A is addressed 421 West Galer. Although addressed to Galer Street, 421 has a side facade along 5th Avenue. The Hearing Examiner finds that the gatehouse construction will have minimal impact on territorial, water or similar views.

15. House B, 408 West Galer, is directly north of house A and has a view south along 5th Avenue. The Hearing Examiner finds the present view to be principally of the school building. Some water view appears directly along the 5th Avenue streetway. However, water and territorial views along the west side of 5th Avenue are presently impaired by street trees, with some intervening glimpses. Following construction of the gatehouses, the principal southwest view blockage will be of the school building, since seasonal tree foliage is reasonably expected to obscure some view.

16. House C is almost directly north of the site of the proposed gatehouses. Addressed as 414 West Galer, it has a good view south of Elliott Bay, some along the 5th Avenue streetway. The street trees west of 5th Avenue also block part of the water view. Opponents' R-4, photo #11. House C's second story territorial and water viewscape (between the street trees and the existing building) would be affected roughly 75% at the home's

first floor level and somewhat less at the second story level. The gatehouse height reduction proposed by opponents would preserve some second story view of Elliott Bay but do little for the first floor view.

17. The next westerly dwelling unit is at 422 West Galer Street, House D per Exhibit R-2. This property also has a near direct sight line to the site of the gatehouses. The second floor view is south over rooftops and through the tree growth to Elliott Bay and beyond. Both story views would, however, be directly to the north side of the more northerly gatehouse. The current view, across the play yard to Elliott Bay, would be seriously impacted by the gatehouse construction. From the first floor, it does not appear that the blockage will be substantially affected by a change in height for the proposal. Views from this home are not substantially affected by distant trees although an evergreen on site extends to the roofline and detracts some from territorial visibility.

18. Single story house E is located at the corner of West Galer Street and the continued portion of 5th Avenue West that jogs to the west. The address is 1503 5th Avenue West. Its view is principally southeast to the Space Needle, downtown Seattle and occasionally Mount Rainier. The seasonal glimpse of Elliott Bay through the trees will essentially be blocked by the gatehouse as will be the lower portions of the Space Needle and downtown buildings. It does not appear that any change in gatehouse height will significantly affect the view subjects.

19. The view from house F, 1507 5th Avenue West, also one story, is more severely restricted by street trees and existing development. Its view of the Space Needle and downtown Seattle would not be impacted by the proposed construction.

20. The views of other residences, such as of 506 and 510 West Galer, would not be substantially affected.

21. The 5th Avenue street trees are between 40-60 ft. in height with a life expectancy of more than fifty years.

22. Views of Elliott Bay also include views of water related activity, such as ferry traffic.

Conclusions of Law

1. The Hearing Examiner has jurisdiction of rezoning proceedings pursuant to Chapter 23.34, Seattle Municipal Code.

2. Except as modified herein, the Hearing Examiner Conclusions entered October 12, 1983, are incorporated herein by reference.

3. The consideration of private views in the zoning process is a delicate matter. Based on its belief that it is without mandated authority to protect private views, DCLU questioned whether view blockage was properly an issue. Some support for the DCLU position is found in Seattle Municipal Code Section 25.04.550, "Environmental Protection and Historic Preservation (View Protection)." That section provides that until specific view protection policies are enacted by the City:

... the city official or authorizing agency shall assess the extent of obstruction of views of mountains, water, skyline, and greenery by a proposed project from public places identified in Appendix B (emphasis added).

Section 25.04.550 (B)(1). Appendix B "public places" include Bhy

Krackee Park, Bigelow North and Comstock Place; Kinnear Park, 7th West and West Olympic Place; and Kerry Park, West Highland and 2nd Avenue West. Among other things, the city official or authorizing agency may mitigate the adverse impacts (of view blockage) from these places by, inter alia,

... a. Requiring a change in the height of the development; ... c. Requiring a redesign of the profile of the development; f. Requiring a reduction or rearrangement of accessory structures...

Chapter 25.04 does not appear to provide authority to impose these mitigating measures where the view blocked is that from a private property.

4. On the other hand the general rezone criteria of Seattle Municipal Code Chapter 23.34 require considerations of "the possible negative impacts on the area proposed for rezone and its surroundings." Section 23.34.28.D. continues:

Factors to be examined include, but are not limited to the effects of transportation...housing... and environmental factors such as noise, air and water quality, and energy conservation (emphasis added).

While views are not specifically stated as an environmental factor, the general language of Section 23.34.28.D can be reasonably understood to mean that views may and indeed should be considered in the rezone process. Left unanswered is the degree to be considered, and the question of the weight to be given in the rezone process. It can also be argued that the question of views, relating directly to property values, is one encompassed in the question of whether the rezone is in furtherance of the general welfare of the "affected community." SANE v. Seattle, 101 Wn. 2d 280, at 286 (1984).

5. An added twist to this case scenario is the recommendation by the Seattle Landmarks Preservation Board that any gatehouse roof be pitched or sloped so as to complement the architecture and flavor of the West Queen Anne landmark school building.

6. The Council's decision on this petition therefore assumes a key, precedential role.

7. A review of the evidence related to views shows that the majority of homes to be most affected by the gatehouses lie north and northwest of the subject site. The proposed gatehouses will insubstantially affect the water and similar views of the properties at 421 and 408 West Galer. Trees, visibility and other considerations already impact views from many of the other properties, including the house at 1503 West Galer. The gatehouses would impair but not necessarily block the view of downtown buildings. The impact is considered even less for the properties at 1507 5th West, 506 West Galer and 510 West Galer.

8. The views from houses at 414 and 422 West Galer would be substantially affected by proposed gatehouse construction, although such views as are east of the gatehouses would remain.

9. Considering the above; the criteria of Chapter 23.34, rezones; and considering applicant's willingness to be bound by restrictions (contract) the Hearing Examiner recommends that the rezone be approved, as a contract rezone, and that gatehouse construction be allowed, to be limited to two dwelling units per structure. In view of the architecture of the existing landmark building and the Landmarks Preservation Board's suggestions regarding gatehouse roof style, the Hearing Examiner cannot recommend

that the Council require a flat roof. In recognition of the unique views in the area, however, the Council may wish to require applicant to limit the maximum height to 22 ft., leaving applicant the option as to specific roof design. Again, this could establish a policy that the Council may wish to implement via a separate legislative mechanism.

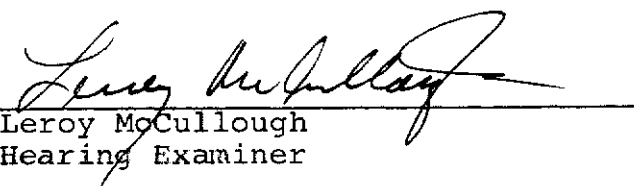
10. As no standards related to private view blockage have been legislated, the Hearing Examiner can only hazard a guess as to whether the blockage of 414 and 422 West Galer views are significant enough that mitigating measures should be imposed regarding building height. Along the same lines, it is not clear how many properties need to be affected and to what percentage in order for the authorizing agency to require building modification. Therefore, while the Hearing Examiner recognizes the proposal's impact on private properties, the Hearing Examiner does not recommend development restrictions as proposed by opponents.

Recommendation

For each of the above reasons, the recommendation of the Hearing Examiner to the City Council is as follows:

That the petition be granted on the condition that development be limited by a property use and development agreement to the duplex structures as proposed.

Entered this 3rd day of April, 1984.


Leroy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION

FOR FURTHER CONSIDERATION

Pursuant to Section 23.34.14, Seattle Municipal Code, any person substantially affected by or interested in the Hearing Examiner's recommendation may submit a petition in writing to the Council requesting further consideration of the recommendation. Petitions shall be filed with the City Council, Land Use Committee, Municipal Building, Seattle, Washington, 98104, by 5:00 p.m. of the fourteenth calendar day following the date of the Hearing Examiner's recommendation.

The Land Use Committee should be consulted regarding more specific procedures.