

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

In the Matter of the Petition of

RICHARD COOK

FILE NO. 8703173  
C.F. NO. 295791

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

Introduction

Richard Cook petitions for the reclassification of property at 1722 N.E. 85th Street from SF 5000 to C1/40'.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, 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 March 10, 1988, and the record remained open for submission of the elevation of the existing building until April 12, 1988.

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

Findings of Fact

1. Richard Cook, by Evvian Willis, his agent, filed a petition for the reclassification of a portion of the property at 1722 N.E. 85th Street from Single Family 5000 to Commercial 1/40'. The portion which is the subject of this petition measures 37 by 132.23 ft., having 5,655 sq. ft. of area, all according to the Director's analysis and recommendation. Dimensions shown on the plot plan prepared by a land surveyor for a lot boundary adjustment and the plot plan for an earlier addition to the building show the dimensions of the SF 5000-zoned area to be 45.87 ft. by 132.23 ft. or 6,065 sq. ft. of area.

2. The subject of the petition is part of a larger parcel which has 80.43 ft. of frontage on Lake City Way N.E. and 76.92 ft. of frontage on N.E. 85th Street. The total site has an area of 19,665.129 sq. ft. It is developed with a one-story structure housing an auto repair business, Cook's Auto Repair.

3. The existing structure on the site extends into the northerly rezone portion. That condition was permitted under Title 24 through a variance and conditional use obtained in 1969.

4. The C1/40' zone extends in both directions along Lake City Way and across Lake City Way to the southwest south of N.E. 85th. Across Lake City Way to the southeast and east, north of N.E. 85th, is a C1/65' zone. A large SF 5000 zone lies to the north and west of a commercial zone along Lake City Way. The uses surrounding the larger site are as follows: to the west is a newly renovated residence, to the north are single family houses fronting on N.E. 86th, to the northeast is a used car lot and to the southeast, across Lake City Way, is a restaurant.

5. Petitioner's purpose in requesting the rezone is to expand the structure in the northerly portion. Besides the additional room, the expansion would allow for better circulation

with vehicles entering the building from N.E. 85th and leaving the building into the parking lot and out into Lake City Way instead of returning to N.E. 85th.

6. The same general zoning patterns have existed since the area was annexed to the City in 1945 with BC zoning along Lake City Way and RS 5000 to the north and west of the BC zone. The site was not specifically considered during the citywide rezoning process.

7. Lake City Way is a heavily traveled state route.

8. The Director recommended that the subject portion be rezoned to C1/40' ft. subject to a series of conditions to be incorporated into a property use and development agreement. Those conditions follow:

1. The height of any future construction on the site may not exceed the elevation of the parapet of the existing building.

2. The footprint of any future construction on the site may not project within more than 10 feet of the northern property line or within 15 feet of the western property line.

3. Any future construction shall maintain existing native and ornamental landscaping to the greatest extent possible. A complete landscaped buffer of new and retained vegetation shall be provided in the restricted area described in point 2. above.

4. The heating/ventilation/air conditioning equipment associated with any construction shall be placed a minimum of 20 feet from the northern and western property lines.

5. No outdoor storage may occur within the area proposed for rezone.

6. Any future construction on the site shall be physically connected with the existing building.

Petitioner agrees to these conditions.

9. The Maple Leaf Community Council presented its concerns regarding the requested rezone and the rezone's potential effect on the integrity and quality of their residential neighborhood.

10. Additional conditions were proposed for inclusion in the property use and development agreement by Jack Remick and Greg Myers. Mr. Remick asks for the following conditions:

1. That the current conditions set by the analyst be placed on the whole property not just the few feet to be rezoned.

2. That a height limit be set and that it would not be merely the height of the structure, but would include the height of any air handling equipment which might be installed on the roof.

3. That the signage must be glare-shielded from the adjacent SF 5000 lots and that it be restricted in placement.

4. That the landscaping be planted and maintained.

5. That the present buffer between the single family zone and the C1 be cleaned and main-

tained.

6. That there be a modulation of the building mass to prevent the blank facade effect.

7. That there be screening in the buffer between the single family and C1 zones.

8. That the setbacks be strictly controlled and maintained.

9. That the number of parking spaces be controlled to prevent overflow parking onto 85th Street.

10. That the street improvements be brought up to code.

11. Greg Myers seeks additional conditions directing exhaust away from the residential neighborhood, restricting parking to the Lake City Way side of the building, eliminating the curb cut on N.E. 85th closest to Lake City Way, blocking the ability of cars to drive on the site from the N.E. 85th side of the building to the parking lot on Lake City Way, controlling light of any signage to keep glare from the neighborhood, limiting the height of the light standards on the site to 30 ft. and setting aside the number of parking spaces required by the code for the use and marking them for customer parking only.

12. The front portion of petitioner's site is fairly level and close to street elevation. The grade rises gradually at the rear and then a steep slope rises to the rear yards of the single family residences to the north. The embankment was estimated by hearing participants to be around 20 ft. high and is covered with vegetation. The property line is near the toe of the slope.

13. The part of the site subject to this petition would be landlocked were it not a part of the total site. The site has no access to N.E. 86th Street and the proposed rezone would not change that condition.

14. The land use specialist determined that seven of the eleven uses on the "blocks", as defined by Section 23.84.004, to be considered are in single family residential use, or 64 percent. Mr. Remick disagrees with the uses to be considered and finds only ten so the ratio would be 70 percent. The examiner finds that the land use specialist properly applied the definition of "block" and that 64 percent is correct.

15. There is no adopted neighborhood or business district plan which applies to the subject site.

16. Though in the area appropriately considered there was shown the renovation of one residence, that is not sufficient to constitute an increasing trend toward single family and residential use.

17. The Director issued a determination of non-significance for the proposal identifying potential adverse aesthetic effects on surrounding properties, increased on-site noise levels and light and glare, increased traffic and parking and increased bulk and scale which may result in view blockage or shadowing.

#### Conclusions

1. Since the area proposed to be rezoned is currently zoned single family, Section 23.34.010 applies. The section permits rezoning only if the area does not meet the criteria for single family designation. The locational criteria, set out at Section 23.34.012, include the following: 1) areas consisting of blocks with at least 70 percent of the existing structures in single family residential use; 2) areas designated as appropriate for single family residential in an adopted neighborhood plan; and 3) areas not meeting, above, but showing an increasing trend toward

single family residential use. There are also size criteria to be considered and appropriate boundaries.

2. The site does not meet the locational criteria for single family designation. The proposed boundary would coincide with a natural feature, the topographical break, and would observe the guideline in the single family policies which directs that the edges of the single family areas are to be protected from encroachment by other uses. In this case the use is present and the proposed line would more clearly follow the edge of the single family zone. The size criteria are not applicable to this proposal. Since the site does not meet the locational criteria and an appropriate boundary could be provided, rezoning to another classification may be considered.

3. Since the site may be considered for rezoning, the criteria for commercial area designation in Section 23.34.072 and the general rezone criteria in Section 23.34.008 must be considered. The code provides eight separate criteria for commercial area designation. The first is that the encroachment of commercial development into residential areas is to be discouraged. While the subject portion of the site has been zoned single family it is not a part of the residential area in that it is topographically separated and is in commercial use. There would be no encroachment into the residential area.

4. The second criterion for commercial area designation is that preferred configuration of commercial zones shall not conflict with preferred configuration and edge protection of residential zones. A clearer edge would be established providing better delineation between the zones so there would be no conflict with this criterion.

5. The next criterion for commercial area designation is that whenever possible commercial zones are to be located where impacts on other zones can be minimized by transition zones or buffers. Here, the difference in elevation between the commercial and the residential areas provides a kind of separation or buffer and the conditions proposed by the Director requiring a setback would maintain that buffer effect.

6. The fourth criterion for commercial area designation is that concentrated commercial areas are to be preferred over sprawling commercial areas. The commercial area is already established as a strip along Lake City Way and the small addition which deepens the zone would not constitute sprawl.

7. The next criterion is that the preservation and improvement of existing commercial areas is to be preferred over the creation of new business districts. This rezone is consistent with that goal.

8. The sixth criterion for commercial area designation is that the cumulative impact of development is not to exceed the capacity of the infrastructure. This small rezone would have a minimal impact on the infrastructure.

9. The seventh criterion for commercial area designation is that neighborhood and business district development plans for the area are to be considered. Since there is none for this area that criterion is inapplicable.

10. Finally, changes in the boundaries are to occur in an orderly and predictable fashion. Since the topographical break provides an edge, it creates a logical boundary and since the site is already in commercial use the rezoning would have been predictable.

11. Application of the criteria for commercial area designation to the site characteristics show that it would be appropriately designated commercial.

12. Section 23.34.072 also requires that the decision be based on the Goals of Land Use Policies for Neighborhood

Commercial Areas, Section 23.16.020. Many of those goals are inapplicable as they are directed toward pedestrian-oriented or neighborhood-serving districts rather than the auto-oriented strip involved here. Those goals which the rezone would forward are:

A.5. Locate intense, traffic-generating businesses where access to adequate transportation corridors is maximized;

6. Encourage entrepreneurship and small business and service activity by individuals; generate jobs and help small firms to expand;

7. Preserve and improve existing commercial areas in preference to creating new business districts.

B.3. Encourage compact, concentrated commercial areas in preference to diffuse commercial sprawl; and

16. Emphasize predictability, clarity, simplicity and practicality.

The proposed rezone would not detract from any of the other goals.

13. The first of the general rezone criteria in Section 23.34.008 is whether the characteristics of the rezone site fit the locational criteria for the specific land use category proposed, in this case, C1. There are three general locational criteria for C1 zones: function, existing character and physical conditions favoring C1 designation. Section 23.34.080. First, the area should function as an auto-oriented commercial area. The types of businesses are auto-oriented and the nature of the arterial assures that the access to these commercial uses is by auto. Second, the character is to be a shopping area along an arterial where customers drive from one business to another. Because it is a strip commercial area customers do drive from one business to another and do not need to drive through the residential neighborhoods to use the commercial strip. Finally, as to physical conditions, the site and area meet most listed. The total site is readily accessible from an arterial, the topographical break provides an edge between the commercial and residential uses, the total parcel is large enough to accommodate commercial activity and frequent curb cuts make the environment unfriendly to pedestrian activity.

5. The second factor to be considered is zoning history and precedential effect of the proposed rezone. The configuration of the zones has been largely unchanged over the years. The split-zoned lot was not specifically considered at the time of the commercial rezoning. Since no other properties in the area appear to be divided by a zone line and this site relates in topography to the C zone instead of the SF 5000 zone, its rezoning should not set a precedent.

6. Zoning principles relating to compatibility of land use, size, configuration and boundaries is the next factor to be considered under general rezone criteria. Since the subject site is separated from the residential zone by the embankment, is about the same elevation as, and is behind, the commercial use and is accessible only through the commercial use, it does not relate well to the single family zone and would not be put to single family use. In terms of land use pattern, configuration, size and boundaries, it should be a part of the commercial zone.

7. Possible negative impacts from use of the property, if rezoned, are to be considered. Possible impacts would be from the mass of the building which could interfere with views and light, increased noise, light and glare, fumes from commercial operations, increased traffic and parking demand. The conditions proposed by the Director and agreed to by petitioner would

control the effects of building bulk, reduce potential noise and limit traffic and parking to the extent that a connected building is more likely to be one enterprise rather than several. The City does not have authority to impose the conditions proposed by community members which would place limits on the development or use of the area already zoned C1. The height and direction of any light standards or signage placed in the rezone area may be controlled, any new parking required should be reserved for customers and employees rather than parking vehicles awaiting auto repair. Other concerns about demolition and development of the entire site can be addressed at such time as application is made for redevelopment.

8. The other factors in Section 23.34.008 to be considered, neighborhood plan, changed circumstance, overlay districts and greenbelt plan, do not apply to this site.

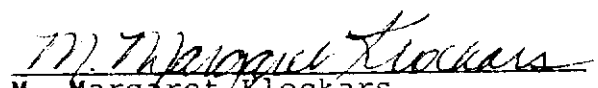
9. Having considered the relevant factors, the examiner concludes that a) the site matches the characteristics of a commercial site, because of its location which is removed from the residential neighborhood by a steep bank and behind a commercial use with access only through that use, so is more appropriate for commercial zoning than its current zoning; b) the topographical break adequately defines the edge of the single family zone; c) that the impacts on the adjoining zone can be controlled through conditions. Therefore, the rezone should be granted.

#### Recommendation

The City Council should rezone the subject site to C1/40' ft. subject to a property use and development agreement which includes the following provisions:

- 1) The height of any future construction on the site may not exceed elevation 341.5 ft., the elevation of the parapet of the existing building.
- 2) The footprint of any future construction on the site may not project closer than 10 ft. to the northern property line or to within 15 ft. of the western property line.
- 3) Any future construction shall maintain existing native and ornamental landscaping to the greatest extent possible. A complete landscape buffer of new and retained vegetation shall be provided and maintained in the restricted area described in 2, above.
- 4) The heating/ventilation/air conditioning equipment associated with any construction shall be placed a minimum of 20 ft. from the northern and western property lines.
- 5) No outdoor storage may occur within the subject site.
- 6) Any future construction on this site shall be physically connected to the existing building.
- 7) Any light standards or signage placed on the subject site shall be no higher than 30 ft. and light shall be directed away from the residential area.
- 8) Any parking spaces required by the code for any new development within the subject site shall be marked as reserved for customers and employees and shall not be used for vehicles awaiting repair.

Entered this 3<sup>rd</sup> day of April, 1988.

  
M. Margaret Klockars  
Deputy Hearing Examiner

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.