

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

In the Matter of the Petition of

VIVIAN DARST

FILE NO. CC-8601465
C.F. NO. 294722

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

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In the Matter of the Appeals of

THE ROANOKE PARK ASSOCIATION
THE PORTAGE BAY/ROANOKE PARK
COMMUNITY COUNCIL

FILE NO. W-86-008 and
FILE NO. W-86-009

from a threshold environmental
determination by the Director,
Department of Construction and
Land Use

Procedural Synopsis

1. Vivian Darst petitioned to rezone by contract approximately 5,500 sq. ft. of land addressed as 2600 Harvard Avenue East from S.F. 5000 to Neighborhood Commercial 1, 30 ft. height limit.

2. DCLU recommended approval of the rezone and issued a determination of non-significance, both with conditions.

3. The matter came on for public hearing before the undersigned on January 20, 23, February 3, 4, and 9, March 19 and 20, and April 6 and 15, 1987.

4. Petitioner/applicant was represented by George A. Kresovich, of Hillis, Cairncross, Clark and Martin. The Roanoke Park Association (RPA), represented by Shirley Mesher, pro se, had requested a continuance of the proceeding to accommodate Mesher's unavailability for the first scheduled day of hearing. The Portage Bay/Roanoke Park Community Council (PB/RPCC) was represented by attorney Roger Leed, present at the first day of hearing, and supported the requested continuance. After considering the request, the argument of parties present, the length of prior notice, the nature of the proceeding and other factors the Hearing Examiner denied the requested continuance.

5. The Roanoke Park Association filed appeal W-86-008 against the DNS. The Portage Bay/Roanoke Park Community Council also challenged the DNS, File W-86-009. Both appellants also challenged the DCLU recommended approval of the rezone.

6. Included among the preliminary matters was the PB/RPCC assertion, subsequently underscored by RPA, that DCLU failed to comply with Seattle Municipal Code Section 23.76.052(B)(2) since the DCLU Notice of Public Hearing did not include notice of a comment period. The Hearing Examiner here affirms his conclusion that the DNS was not shown to qualify as a mitigated DNS, issued subsequent to petitioner's effort to avoid a declaration of significance, WAC 197-11-350(2). Nor was the DNS shown to otherwise require a 15-day comment period.

7. The appellants' also requested that the application be remanded for further DCLU consideration and public comment on petitioner's January 13, 1987 letter to DCLU, issued after the DCLU Recommendation and Decision here in issue. The letter made contrary suggestions regarding DCLU recommendations on closing hours and other items. The appellant's request was and is

denied.

Further Introduction

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

After due consideration of the evidence presented by the Director's report and other information of record; the appellants', petitioner's and general public's evidence; and subsequent to a visit to the site and vicinity, the following shall constitute the findings of fact, conclusions, recommendation on the rezone and decision on the appeals to the DNS.

Findings of Fact

1. Petitioner seeks to rezone property known as 2600 Harvard Avenue East from Single Family 5000 (SF 5000) zoning to Neighborhood Commercial One (NCl), with a 30 ft. height limit. The single family zone height limit is also 30 ft. The reclassification would allow a retail flower sales business on petitioner's lot. DCLU recommended that the proposed "contract" rezone be conditionally granted. DCLU also issued a determination of non-significance (DNS). The DNS was appealed by the Portage Bay/Roanoke Park Community Council (W-86-009) and by the Roanoke Park Association (W-86-008).

2. The 5,500 sq. ft. subject site is located on the northeast corner of Harvard Avenue East and East Roanoke Street, and is legally described as "Lot 8, Block 8, Denny Fuhrman Addition."

3. Petitioner's lot has 50 ft. on frontage on the west abutting Harvard Avenue right-of-way. The lot has 110 ft. of frontage along south abutting East Roanoke Street. At the lot's eastern terminus is an alley that extends north through East Edgar Street. Edgar is north parallel to East Roanoke Street.

4. The site is relatively unique in that it is flanked on two sides by established highways, and directly abuts two heavily traveled arterials. North-south oriented Interstate 5 is directly west of Harvard Avenue. An on-ramp is north of the site. To the south, though topographically removed, is the east-west oriented Highway 520. An exit from 520 is located at the south side of the Harvard-Roanoke intersection. The site is also unique in its history of extended commercial use, infra.

5. There is little dispute that Harvard and Roanoke are both busy multi-lane arterials. Harvard has traffic volumes of approximately 15,000 vehicles per day and Roanoke 20,000 vehicles per day. The Harvard-Roanoke intersection is signalized.

6. A channelized (steady-flow) right turn lane from Roanoke to Harvard is under consideration by the Seattle Engineering Department, to be funded by the State Urban Arterial Board (UAB). The channelized right turn would facilitate an increased speed of traffic that is proceeding westbound on Roanoke and turning right (northbound) on Harvard Avenue. UAB considers this right turn project to be the third highest priority project in the City based on the intersection's accident history, traffic delays and traffic volume. DCLU Report p. 2. Pending is a community proposal (1985) to use the site (or remainder from the UAB project) as an entry to the community, i.e. Gateway Park.

7. The subject site is at the southwest edge of the Roanoke Park community. Proceeding north of the site, along Harvard Avenue are three successive single-family structures, accessory

parking for St. Patrick's Church, an additional two single family structures, then the East Edgar Street right-of-way. Directly east of the site and across the intervening alley is the Roanoke house, a c. 1925 converted single family structure. The DCLU report describes Roanoke House for use as "community center/classrooms." In fact, the Roanoke House has three full floors of living area (residency) as well as a meeting room. In X-78-292, the Hearing Examiner approved the conditional use application to convert the residence into a community club. Community-church agreement was noted.

8. North of Roanoke House are three successive single family dwellings, and church accessory parking. St. Patrick's Church building and property extend to East Edgar. These properties and Roanoke House front on a segment of Broadway East.

9. Across Roanoke Street, south of the petitioner's lot, is a state highway office building. Seward Elementary School is southwest of applicant's lot. East of the highway building is Fire Station No. 22. There is no alley or other ordinary terminus to the rear of the Highway building or Fire Station. Farther south, beyond the Roanoke Interchange, is an NC1/40' business district that is near East Miller Street and 10th Avenue East. There is no commercial property available between petitioner's site and this business district.

10. There has been no single family construction along the Harvard or Roanoke Street frontages within the last 5 years. However, the homeowners and residents exude a great deal of pride in the single family properties. The Hearing Examiner finds, for example, that the single family home at 2611 Broadway East has been recently rewired.

11. The subject area is covered by no specific neighborhood or business district plan and is part of no Greenbelt or Overlay district.

12. Petitioner proposes to develop her site with a single family residential structure that would be located along the east margin of the lot. The garage door would open to the alley and to Roanoke. Applicant also proposes a structure for the southwest corner of the site, an attractive gazebo with refrigeration mechanism, shading and fountain. Customer access to the site would be via a single, two-way driveway with a 24 ft. curb cut to East Roanoke Street and a 22 ft. curb cut to Harvard Avenue East. Petitioner also proposes seven-on-site parking spaces for customers. The environmental checklist indicates that 60-70 percent of the site will, post-construction, be covered with impervious surfaces. It is possible that the corner gazebo could block some sight lines to the Harvard egress, and therefore affect free or other right turn safety from Roanoke to Harvard. The extent of such sight line impairment is undetermined.

13. Applicant's proposed development will not exceed infrastructure capacity. More specific impacts on traffic are covered below.

14. The proposed dwelling's ground floor would be used to store vehicles and flowers and would provide a restroom and a workshop area. The second floor would constitute the private residence. Within this residential portion petitioner wishes to create corsages and other floral arrangements. In general, no customers would be using the residence for purchases; however, petitioner would like permission to host a customer so that wedding or other special occasion ideas might be discussed "over tea."

15. As described by petitioner, her business is to sell a variety of flowers and hand-held bouquets. This activity allows her to "tap into" her and her customers' creativity and to share an attitude of joy.

16. Petitioner explained that she began her operation in Seattle's north end in 1975. By the spring of 1976, she was aware of the 2600 Harvard subject lot, which was vacant, and began business there approximately Mother's Day. The site had been used for the sale of Christmas trees and apples, and prior to that as a service station (1937-1976).

17. In 1978, petitioner considered purchase of the lot. By the winter of 1979, Raj Gopal Gounder had purchased the subject lot and the north adjacent lot and begun construction on the 2606 Harvard site. After that single family home was completed and residency established, petitioner continued, Gounder requested that petitioner leave the 2600 Harvard lot.

18. In 1981 petitioner bought the subject lot from Gounder. According to petitioner, SED approved placement of flower buckets on the planting strip behind the sidewalk, and from 1981-84 her customers parked on the subject lot. In 1984, the Superior Court ordered petitioner to block her driveway to prohibit use of the single family zoned lot for sales activity. Petitioner testified credibly that she then began to observe cars blocking the adjacent alley. Although petitioner's staff policy prohibited knowing sales to people who were parked in the street her customers parked in the street and in curb cuts. Another witness, the Rev. D.A. Storm, recalled blockages of the alley as early as 1977-78.

19. Petitioner recalls that before the on-site parking ban there would ordinarily be 2-3 cars, 4-5 (at rush hour) and rarely 6 cars on the 2600 Harvard side. During holidays, there would be 6-7 cars during peak hours. One Valentine's Day up to 16 cars were parked on site, she stated.

20. The Hearing Examiner finds witness Mesher's testimony credible that in the past petitioner's customers have parked in the alley behind Mesher's property and in front of her home. In the business' absence, Mesher has observed no parking on her sidewalk, lawn, or parking strip and has noticed reduced alley traffic. Mesher's residence is two lots north of the subject site on Harvard Avenue.

21. Addressing her general routine for Fridays, petitioner or assistant would arrive on-site between 3-3:30 p.m. with flowers from the wholesaler. To 4:30-5:00 p.m. the workers(s) would remove and trim the flowers in preparation for the 4:30-7,7:30 p.m. rush hour. After 7:00 p.m. or so, they would expect 1 customer every 10-15 minutes. Some Friday closing would occur at 8-8:30 p.m. Customers would vary in purchase time, from one minute to 10-15 minutes.

22. The typical Saturday/Sunday schedule would commence at 10-11:00 a.m. During the midweek, the business would open at 3:00 p.m. and be kept busy until 7 or 7:30 p.m.

23. Holidays would see 2-3 times the usual customer count. On Valentine's and Mother's Day there would be a three or four-fold increase in the customer count (5 or 6-fold increase during rush hour). Petitioner employs from 3-5 assistants (7-8 during peak Valentine periods) to accommodate the customers. There were holiday occasions when the operation did not close until after midnight. The busiest season is January-May. Extra wedding work helps her survive the summer, which is the slowest period for the business.

24. Between petitioner and three of her employees, there have been four trucks/vans and one auto used in the personal transportation or in the transportation of flowers to or from the stand. Although these employee vehicles are used to deliver goods to the site, wholesale trucks have also delivered flowers, ferns etc. to the subject site. In the process they have parked on the sidewalk, in the alley and on the parking strip in front of the Gounder residence.

25. On Monday, Tuesday and Wednesday petitioner usually does not work the stand; the one employee is considered adequate for the business. On Fridays, petitioner is present 80-90 percent of the time, Saturday, 75 percent and Sunday 50 percent of the time.

26. Some further indication of customer activity can be gleaned from Exhibit 16, a tally sheet for part of February, 1987. While no more than 11 customers (cf. autos) were recorded for any half-hour period on Saturday, February 7 or Sunday, February 8, the Friday preceding Valentine's Day was unusually busy. The tally shows the maximum .5 hour count to be 35, between 5:30 and 6:00 p.m. The Valentine's Day tally shows a peak of 82 cars and 91 customers between 5:00-6:00 p.m. In some contrast, the DCLU Recommendation and Analysis reports that

The applicant, in her environmental checklist, projects that there will be between 25 and 50 vehicle trips to her business on a typical weekday and between 125 and 200 on weekend days.

at p. 10.

27. The Hearing Examiner finds in accord with Conley's testimony that some 90 percent of the customers arrive by car. This is not all "new traffic" however. The record suggests and the Hearing Examiner finds that the majority of the customers are regular passersby who utilize either Roanoke or Harvard.

28. In her ten approximate years of operation at Harvard and Roanoke, petitioner never observed an entering or exiting customer involved in an auto accident. Nor has petitioner received any employee report of such an accident.

29. After his review of the accident records for the Harvard-Roanoke intersection area, the traffic expert for appellants "found nothing from which to conclude" that the accidents resulted from operation of the flower stand. Witness Mesher offered general recollections of accidents she felt attributable to the flower stand operation and/or customers. One involved a car pulling out from the lot. The Hearing Examiner finds in accord with the weight of the evidence that some customer vehicles have made erratic attempts to enter and exit the site and have caused creative responses on the part of other traffic. Some egress to the site has been by delicate left turn through a line of waiting vehicles.

30. By memorandum dated April 28, 1986, the Seattle Engineering Department Office of Planning "strongly recommended" denial of the rezone. The memo stated that

...The section of E. Roanoke between Boylston Avenue East and 10th Avenue East recently received a priority rating of #3 out of 371 minor arterials identified by the Urban Arterial Board...as having deficiencies...congestion and accident problems and pavement deficiencies.

31. The memo continued that full development would mean additional trips to the intersection and "increase potential conflicts between vehicles entering and leaving the site and vehicles traveling along East Roanoke and Harvard Avenue East." p.2.

32. The April 28 memorandum was succeeded by a June 11, 1986 correspondence from SED's Office for Planning. The June 11 memo restated problems identified with congestion, accident problems, additional vehicular activity and potential conflicts with customer entry and exit. The June memo did not flatly recommend against the rezone, but requested further information, including

a "worst case" use projection. SED was also concerned that the rezone development not conflict with possible UAB improvements. See Finding 6, above.

33. August 12, 1986, representatives from DCLU and SED met with petitioner and her traffic consultant, D. Markley. Markley summarized the meeting in a letter to DCLU dated October 3, 1986. The Office for Planning sought to clarify the summary in a November 5, 1986 Memorandum to DCLU. In relevant part the memo states:

1. ...if funded, this project would definitely include a free right turn lane...Left turns into or out of the proposed driveways would find it quite difficult to find gaps in the oncoming traffic and, therefore, may present a safety hazard...

34. Applicant's traffic expert made a 4:00-6:00 p.m., 1983 site visit, reviewed the conceptual plan for the channelized right turn and prepared a (1983) report. During the 2 hour, non-holiday Friday afternoon site visit, Markley observed entry of some 40-50 vehicles to the site. The witness concluded that the major prior difficulty with on-site parking was the absence of striping, to be remedied by the subject proposal. He further commented and the Hearing Examiner finds that on the occasion of his visit parking demand did not exceed lot capacity, and no extra erratic vehicular maneuvers were observed related to ingress or egress to the subject site. It was the further opinion of the witness that 200 vehicle trips/day to the site would not be, in the setting of I-5 and the Harvard-Roanoke volumes of traffic, "noticeable." (Petitioner provided Markley the 200 trips/day estimate.) Markley projected that less than 20 percent of the cars entering the Darst site would be new traffic. He agreed with appellant that a potential existed for customers to use local streets, the alley and cause queuing.

35. It is undisputed that the proposed use would generate increased noise, human and vehicular activity, shadows, light and glare. Although no protected public views will be blocked, the Roanoke House view to the west will be impacted.

36. Since 1976 the business has continued to grow in operation hours, activity and revenue.

37. The Hearing Examiner finds in accord with the DCLU report that the subject site has been zoned for single family use for "most, if not all, of its history." at p.8. There have been several unsuccessful efforts to rezone the site, however. Application X-76-228 (1976) proposed construction of a building to accommodate residential and professional office use.

38. Application X-80-293(1980) sought to rezone the subject lot 8 and the north adjacent lot 7 to Neighborhood Business (BN). DCLU and the Hearing Examiner recommended against the rezone, and the City Council denied it. C.F. No. 289844.

39. Petitioner also applied during the Neighborhood Commercial Areas Policies mapping process to have the site classified NCl or Residential Commercial. In May 1985 the City Council subcommittee rejected commercial zoning of the site. After a March 1986 City Council vote against NC zoning, petitioner submitted the present application.

40. As a body the Portage Bay/Roanoke Park Community Council has opposed any effort to rezone the subject site from single family. some individual members, however, support the rezone and the flower operation.

41. One supporter of the rezone proposal commented that the flower operation had positively impacted her property, e.g. it had enhanced the liveability of the area, and complemented the

other small businesses located near 10th Avenue. This witness, who resides one lot south of St. Patrick's Church, also commented that the alley was used by parents to unload to a nearby child care operation; that she observed no "flower stand traffic" and that there present freeway background noise and over vehicular noise.

42. Another supporter described the petitioner's flower stand (proposal) as an oasis and as the most reasonable use of the site. Many letter commenters and petitioners were in favor of the flower stand operation/rezone.

43. Opponents objected that the single family edge would be eroded by the proposed commercial use (e.g. the Seattle Community Council Federation). Another objection was to the potential decline in property values, testimony of L. Corrigan, and to the noise and traffic impacts, e.g. safety and alley access, including the impact on school-age and other pedestrian traffic. One opponent specifically and strenuously objected that the proposed residential structure would be out of scale with the existing development pattern with its two on-site structures and a "a parking lot facing the public." Many letter commenters and petitioners opposed the rezone/flower stand operation.

44. A 30-year veteran in real estate shared his opinion that the proximity of the two arterials made the petitioner's lot unsuitable for a single family home. Another witness added that the presence of exhaust fumes made the site undesirable.

45. The record is replete with pro and con petition signatures. Although the Hearing Examiner does not find them critical to this case, he does find in accord with appellants' Exhibit 28 that the substantial majority of signatories residing between Harvard (west), Boyer (east), Roanoke (south) and Shelby (north) do not support the rezone. The petition support for the rezone appears to be more concentrated north of East Shelby Street and east to Portage Bay, inclusive of the houseboat community.

46. There is no disagreement that the petitioner's and any other privately owned site could be condemned for the UAB improved right-turn or other public proposal.

47. The Seattle Engineering Department project referred to Finding 6 above is yet to be finalized or funded.

48. Some of the DCLU recommended conditions on the rezone include the following:

...2. Business shall be conducted on the site only between the hours of 9:00 a.m. and 7:00 p.m. No commercial deliveries shall be scheduled outside of that period

3. Development on the site shall conform with the proposal submitted by the applicant, except as may be necessary to accommodate the right turn lane from Roanoke onto Harvard under consideration by the Seattle Engineering Department and as necessary to satisfy the standards of NC-1 zoning.

4....any signage will be located in the gazebo portion of the lot...

6. The driveway's (sic) exits onto Harvard and Roanoke shall be marked right turn only...

8. The only commercial activity permitted on the lot shall be the retail sale of flowers.

9. No business activity may occur within the dwelling unit other than bookkeeping activities accessory to the retail flower business.

49. Regarding those recommended conditions petitioner and some supporters specifically request a later closing time to allow the business traffic to subside and for gradual operation closure and storage. As noted above, petitioner also requests specific clarification to allow her to assemble wedding or other arrangements within the single family residence.

50. From East Shelby Street, (north) to East Roanoke Street (south) the development is overwhelmingly single family residential. The St. Patrick's Church building and parking are an exception.

Conclusions

1. The Hearing Examiner has jurisdiction of this application and these appeals pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Hearing Examiner's preliminary in-hearing rulings on motions are hereby ratified and reaffirmed.

3. Regarding the SEPA appeals, the Hearing Examiner must give the DCLU environmental determination "substantial weight." Seattle Municipal Code Section 23.76.022(C)(7). It is therefore appellants' burden to show that the DCLU decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762; 637 P.2d 1005 (1981).

4. In order to deny a proposal under the State Environmental Policy Act (SEPA),

...an agency must find that the proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement...

Seattle Municipal Code Section 25.05.660(A)(6)(a) (emphasis supplied).

5. As there is no EIS of record in which adverse, significant impacts are described, the Hearing Examiner is without authority at this juncture to deny the proposal.

6. Appellants have, however, requested an EIS for the project. If determined that the subject proposal "may have a probable significant adverse environmental impact" a declaration of significance (DS), to be followed by preparation of an EIS, is appropriate. Seattle Municipal Code Section 25.05.360. Appellants have not proved in this case that an EIS is required.

7. Principal objections to the proposal concern traffic and safety impacts, precedent, and to a lesser extent property values. First addressing property values, there is insufficient evidence from which to conclude that a single lot flower stand operation, with a single family structure on-site, would have a probable or significant adverse impact. In terms of precedent, the approved rezone could be read to threaten the sanctity of an established single-family zone, as noted below. However, the evidence fails to adequately establish the requisite probability of such, particularly in light of the factors distinguishing this lot's history and siting from others.

8. Regarding traffic and safety, it is clear that there will be increased pedestrian and vehicular movement, and a decreased measure of safety. In the context of the I-5 and SF-520 traffic and access routes, and in the context of the 20,000 vehicles per day along Roanoke and 15,000 vehicles per day along Harvard side of the site, the increased activity will not constitute more than a moderate impact on the quality of the

environment. As to the UAB right turn proposal, it was not established that the flower stand would in any significant way restrict completion of the channelization as desired by the Seattle Engineering Department. The burden of proving that DCLU's environmental decision was clearly erroneous was not sustained and the DNS is accordingly affirmed.

9. As to the petition to rezone the property from SF 5000 to NC1/30', Seattle Municipal Code Section 23.34.010(A) specifies that single family zoned areas may be rezoned to another classification "only if the applicant can demonstrate that the area does not meet the criteria for single family designation."

10. The criteria for single family designation are at Seattle Municipal Code Section 23.34.012 which provides as follows:

In reviewing a proposal to rezone an area to a single family zone, the following criteria shall also be considered:

A. The locational criteria for single family zones include the following:

1. Areas which consist of blocks with at least...70%...of the existing structures in single family residential use...

11. The Roanoke Park area, inclusive of the subject site, is an area of at least 70 percent single family development. From Harvard to Boyer and from East Roanoke to East Shelby Streets, the area is completely single-family developed with the principal exception of the Roanoke Park and institutional (church-related) uses.

12. The more common analytical method for a rezone, however, is to identify the block or blocks which includes the subject site and assess therefrom whether a 70 percent threshold is met. Seattle Municipal Code Section 23.84.004 defines a "block" as two facing block fronts

bounded on two...sides by alleys or rear property lines and on two...sides by the centerline of platted streets, with no other intersecting streets intervening...

13. A block front is defined as being "bound on three...sides by the centerline of platted streets and on the fourth side by an alley or rear property lines..." Seattle Municipal Code Section 23.84.004. By definition, the west side of Harvard, the I-5 Freeway, cannot be a block front. Nor can the south side of Roanoke. Neither is bound on three sides by street centerlines and neither is bounded by an alley or rear property lines per the illustration of Section 23.84.004(B).

14. DCLU made an objective effort to resolve the issue by looking at the development on the Harvard Avenue and Roanoke Street frontages. DCLU found the single family development to be 100 percent along Harvard and that there was no single family residential use along Roanoke. DCLU then counted the structures on both frontages and determined that 5 of 9 structures 55 percent, were in single family use.

15. Applicant prefers to define the block as including the north and south block faces to East Roanoke Street. Appellant RPA in particular suggests that the subject "block" is 100 percent single family.

16. Substantial legal authority was presented for none of the three positions. No interpretation, Chapter 23.88, Seattle Municipal Code, was requested. And vivid questions for Council interpretation remain, e.g. should the orientation of the proposed structure govern? The Hearing Examiner must therefore underscore that it is the applicant's burden to demonstrate that

the area fails to meet single family designation criteria. The Hearing Examiner also notes that the policy is to favor inclusion of half-blocks at the edges of single family zones which half-blocks have more than 50 percent single family residential uses. Seattle Municipal Code Section 23.16.002, Implementation Guideline 4; Seattle Municipal Code Section 23.34.012(C). See also Conclusion 27, below. The foregoing suggests that the petitioner's lot, as part of the half-block located at the west edge of the subject single family should be included within the single family zone and boundary. The Hearing Examiner therefore concludes that it has not been shown that the subject fails to meet the 70 percent criteria for single family designation.

17. If the DCLU technique is the correct one, or if applicant's configuration is the proper approach, the block would contain less than 70 percent single family development. Seattle Municipal Code Section 23.34.012(A)(3) requires that consideration be given to areas with less than 70 percent single family development if the areas show an increasing trend toward single family construction, improvements or rehabilitation efforts; show stability in the number of single family structures; or if there is topographic and environmental suitability for single family residential developments. These illustrations of Section 23.34.012(A)(3)(a-d) are in the disjunctive. Therefore, all of the illustrations or examples need not be applicable.

18. In the instant case, there is a stable, solid inventory of single family dwellings, some of which have been subjects of improvement and rehabilitation efforts. The site is topographically suitable for single family development. In view of the foregoing, and in view of the applicant's burden of persuasion, the Hearing Examiner concludes that the applicant has not demonstrated the area's inability to meet single family designation criteria. Seattle Municipal Code Section 23.34.010.

19. Although the rezone site comprises less than "15 contiguous acres," it does abut (and is a part of) an existing single family zone. Seattle Municipal Code Section 23.34.012(B)(1). It therefore meets the second criterion for single family designation. As noted in Conclusion 16 above, the policy is to favor including half-blocks that have more than 50 percent single family structures and that are found at edges of single family zones. The subject site qualifies by virtue of its position within the southern tip of a block face that has all structures in single family use. Thus, the third criterion for single family designation is also met.

20. As Section 23.34.010(A) provides that a single family zoned area may be rezoned "only if" applicant demonstrates that single family criteria are not met, applicant has failed the threshold test and no further analysis is required. The Hearing Examiner nevertheless deems it advisable and in the public interest to review the other criteria.

21. The "General rezone criteria" are delineated at Seattle Municipal Code Section 23.34.008. The first of those requires consideration of the match between the characteristics of the area to be developed and the adopted locational criteria for the proposed land use category. Section 23.34.008(A). The locational criteria for the Neighborhood Commercial One (NCl) zone, Section 23.34.074, must therefore be reviewed against the area characteristics. In addition, it appears that the requirements of Section 23.34.072, Designation of Commercial Areas, must be reviewed.

22. Seattle Municipal Code Section 23.34.072 provides that

A. Decisions to designate an area or specific site commercial...shall be based on the criteria...in Section 23.34.010, the general rezone criteria contained in Section

23.34.008, the Goals of Land Use Policies for Neighborhood Commercial Areas...and the criteria contained in Subsection B of Section 23.34.072.

Zone and height designation are to be assigned per the criteria of Sections 23.34.074-23.34.088.

23. The application of Section 23.34.010, "Areas zoned single-family," is discussed beginning at Conclusion 9, above. The more detailed discussion of the general rezone criteria will follow this brief review of the Goals of Land Use Policies and the Section 23.34.072 criteria.

24. The Goals of the Neighborhood Commercial Area Land Use Policies are found at Section 23.16.020, and are not complemented by the subject proposal. By way of illustration, the proposed rezone "maintains" no business district, Section (A)(1); fails to maintain the integrity of the neighborhood, Section (A)(2); creates a new mini-business area as opposed to improving an existing business district, Section (A)(7); fails to promote pedestrian character Section (A)(11); and effectively exacerbates the impact of the automobile, Section (A)(10).

25. In addition, the proposal does not comport with the Single Family Residential Areas Policies goal to "preserve and maintain the physical character of single family residential areas in a way that encourages rehabilitation." Sections 23.16.020(B)(1), Section 23.16.002(A). The proposed commercial use of the site would be in contrast to the physical character of the subject single family area. In contravention of the policy emphasis of Section 23.16.020(B)(8), the proposed use fails to "discourage encroachment of commercial development into residential areas." The Hearing Examiner acknowledges the Roanoke frontage development pattern, and the site's proximity to major arterial and highway traffic.

26. Although the Commercial Area Goals are generally not facilitated by the rezone request, several goals seem to be complemented. For example, the proposal would allow the siting of an "intense, traffic-generating businesses where access to adequate transportation corridors is maximized," Section 23.16.020(I)(A)(5). The proposal would also encourage a diversity of employment and economy, Section 23.16.020(I)(A)(9)(12); 23.16.020(II)(B)(6); and would provide a buffered transition in scale between the proposed business use and the other residential areas. Section 23.16.020(II)(B)(9).

27. Addressing the Section 23.34.072 (Designation of Commercial areas") remaining criteria, the proposal encourages the encroachment of commercial development into a residential area. Section 23.34.072(B). It could be argued that the subject site is not on the "edge" of the single family zone since it abuts I-5 to the west and single family zoning to the south. An edge is defined, however, as the "boundary between two...kinds of areas...identified by the uses within them, degree of activity...or other special characteristics." Section 23.84.010. Therefore, the site can and does qualify for consideration within the edge, and as such should not be subject to encroachment by non-single family uses. Section 23.34.072(B)(2); 23.16.002(A).

28. The proposed NCl zone would be located such that impacts on the adjacent zone would be minimized. Section 23.34.072(B)(3). As the DCLU analysis reports, to the west and south of the site are the I-5 Freeway and the State Transportation building, respectively, and the impact on the north adjacent single family property would be somewhat mitigated by landscaping. An alley separates the east adjacent use, Roanoke House, from the site. Roanoke House is oriented away from the site. Further, the cumulative impact of development will not exceed infrastructure capacity, Section 23.34.072(B)(5), and the proposal is for a compact, as opposed to a diffuse commercial

area. Section 23.34.072(B)(4).

29. Although formerly in service station use and in subsequent use for Christmas tree and other sales, rezoning subject site to commercial use would create a new business district in contravention of Criterion (B)(5), Section 23.34.072. As there is no business district or neighborhood plan, the Section 23.34.072(B)(7) is not applicable.

30. Seattle Municipal Code Section 23.34.072(B)(8) provides that "changes in commercial...zone designation...shall occur in an orderly and predictable fashion." It is the Hearing Examiner's conclusion that the proposed commercial reclassification of this single lot, which is located at the edge of a solid single family zone, is not in accord with the thrust or intent of this provision.

31. In sum, the Hearing Examiner concludes that the Commercial Area Designation criteria of Section 23.34.072(B) are not met.

32. Nor are the specific NCl locational criteria met. The sense of Section 23.34.074(A), "function," is that the NCl zone should be an area of businesses for service to the adjoining residential neighborhood. Petitioner's flower business draws extensively from the arterial, non-neighborhood traffic. The subject location provides no variety of small neighborhood-serving businesses; no continuous storefronts built to the property line; and no pedestrian friendly atmosphere. Section 23.34.074(B). There is some admitted difficulty with applying these criteria to the proposed contract rezone for the one lot. Nevertheless, the criteria suggest an NCl imagery that is clearly not realized by the subject proposal.

33. The provisions of Section 23.34.074(C), "Physical Conditions Favoring Designation as NCl," generally fail to support a rezone of the site to NCl. There is no physical edge to buffer the residential area (C)(2), and there is a lack of vacant land for additional (commercial) development (C)(3). There is also limited off-street parking capacity (C)(7). Nevertheless, the commercial area will not draw its principal traffic through or from the neighborhood, Section (C)(4), and is not "surrounded by low-density residential development." Section (C)(1). Street capacity is generally not limited since the site fronts on two major traffic corridors. Section (C)(5).

34. Based on foregoing Conclusions 22-33, the Hearing Examiner concludes that the proposed site does not meet the first general rezone criterion of Section 23.34.008 in that the site does not "closely fit the adopted locational criteria for the proposed land use category." Section 23.34.008(A). (emphasis supplied).

35. The site's zoning history suggests that the rezone is inappropriate. The site has been zoned single family for "most, if not all, of the history." Its service station and subsequent intermittent business uses notwithstanding, the site was considered and rejected for business reclassification in 1976 (X-76-228) and in 1980 (X-80-293). Petitioner has diligently pursued text amendment and Neighborhood Commercial Areas mapping revisions to allow her proposed business use. The efforts have all been unsuccessful. Seattle Municipal Code 23.34.008(B).

36. In terms of precedence, proposed is a contract rezone. Because of its unique siting on two block fronts, there is a markedly reduced opportunity for other sites within or without the immediate area to use the rezone for precedential support. On the other hand, rezoning of this site would contravene the spirit and intent of the Single Family and Neighborhood Commercial Areas Policies and as such could lead to an erosion of protections established specifically for single family zones.

37. Although the applicant's proposed residence may not attain the structural architecture of other vicinity dwellings, the dwelling would not be significantly incompatible with the development pattern. The height limit would be consistent, for example, the alley would separate the east adjoining use and landscaping would separate the north adjoining use. Siting of the flower stand presents a maximum separation from the adjacent residential uses. However, the commercial venture is not compatible in function or impact with the existing land use development pattern.

38. The DCLU report identifies as changed circumstances the adoption of new rezone criteria, adoption of the Neighborhood Commercial Code, "and the fact that this is a contract rezone as opposed...(to) an outright rezone to a commercial designation." Applicant further indicates in the application attachment that the "current Contract Rezone proposal incorporates severe limitations upon the use and bulk." p.5. The record reflects little or no change in the vicinity's structure height and scale, development, traffic or transit patterns since the adoption of the Official Land Use Map, the criterion per Seattle Municipal Code Section 23.34.008(F).

39. The final rezone criterion requires a consideration of the "possible negative impacts on the area proposed for the rezone and its surroundings." Seattle Municipal Code Section 23.34.008(D). Harvard and Roanoke both carry heavy traffic volumes. The site is flanked by SR 520 and I-5 and the attendant noise and other characteristics. Across Roanoke to the south is a highway department building, then Fire Station No. 22. It is against this backdrop that possible negative impacts must be examined.

40. The Hearing Examiner concludes that the proposal would have no meaningful impact on the volume of traffic. The majority of customers are persons who would use the arterials regardless of the flower stand operation.

41. Regarding parking it is reasonable to infer projected customer activity from prior customer counts. And it is also reasonable to look at peak and special occasion activity. Accepting petitioner's figures, 4-5 customer cars would ordinarily be parked on-site during rush hour 6 cars would rarely be parked on-site. Petitioner's 1987 Valentine's Day tally showed a peak of 82 cars between 5:30-6:00 p.m. The preceding Friday indicated a peak of 35 customers for a half-hour period, the great majority of whom came by car to the site. Applicant's estimate to her traffic consultant was 200 vehicles per day, consistent with the 40-50 per 2 hour count observed by applicant's traffic consultant.

42. From the foregoing abstract, and from the other evidence of record, the Hearing Examiner concludes that the proposal would have an undue negative impact on vicinity parking, safety and character. Assuming that 7 on-site spaces would accommodate the non-rush, non-holiday periods, there is substantial reason to expect a common overflow, and that customers will resume parking in the alley, in the street, on the sidewalk, and on parking strips. This would be particularly pronounced during holidays. The surrounding residential community would also be impacted by parking of delivery vehicles.

43. Petitioner's estimated 200 daily vehicle trips to the site are not significant as against the existing traffic volume. However, the Hearing Examiner is persuaded that the movement of these vehicles in and out of the site would markedly decrease the safety of proceeding to and through the intersection, particularly during rush hours. The testimony of petitioner's expert witness notwithstanding, the evidence from the residents is more than adequate to establish that sporadic maneuvers and possible accidents were directly attributable to drivers' efforts

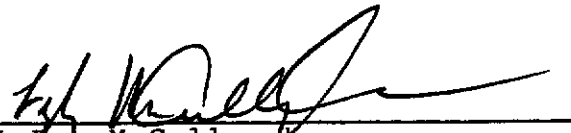
at flower stand access. The "accident-erratic maneuver" factor would be proportionately increased if the UAB proposal for a channelized right turn were to be implemented. There would be less opportunity for cars to safely access the site with a left turn, i.e. there would be fewer gaps in the traffic stream, and it would be more difficult to merge into the Harvard traffic stream from the site. It should be reiterated, however, that the UAB project is proposed, and that there is no item of record which would excuse petitioner from eminent domain prerogatives.

44. The proposal would also increase vicinity light, glare, shadows and noise from an increase in vehicular and human populace activity. On the other hand, the rezone would facilitate residential use of the abandoned site and would permit an artistic, creative presence to be displayed in this area. The Hearing Examiner is not persuaded that property values would be negatively affected.

Recommendation

For the foregoing reasons, the Hearing Examiner recommends that the petition be DENIED.

Entered this 30th day of April, 1987.


LeRoy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

FILE NO. CC-8601465

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.

CONCERNING FURTHER REVIEW

FILE NO. W-86-008/009

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake or irregularity in vital matters. Any request for judicial review of the decision must be by application for writ of review filed in King County Superior Court within fifteen days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days

after the date of the decision on the underlying governmental action if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Yesler Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Seattle Municipal Code Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for

preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, 5th Floor, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.