

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

In the Matter of the Petition of

CHEVRON USA, INC.

FILE NO. 8905575
C.F. NO. 297702

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

Introduction

Chevron USA, Inc., has requested an amendment to the official zoning map.

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 denied.

The hearing on this matter was held on July 12, 1990. The record was held open until July 20, 1990 to allow time for a site visit by the Examiner.

The parties to the proceedings were represented as follows: applicant Chevron by Bruce Creager, pro se, and the Department of Construction and Land Use by Cheryl Waldman, land use specialist.

After due consideration of the information presented by the applicant and provided by the DCLU report, and all evidence from the public hearing, and as a result of the personal inspection of the subject property and the surrounding area by the Examiner, the following shall constitute the findings of fact, conclusions and recommendation of the Examiner on this application.

Findings of Fact

1. The property subject to this petition is located at 1416 North 45th Street.

2. The legal description of the Chevron property at 1416 North 45th Street is as follows: the East 9 feet of Lot 9 and all of Lots 10-12, Block 17, Porterfields Addition; except the south 5 feet in width thereof condemned for street purposes...and together with that portion of Woodlawn Avenue North accruing to said Lot 12 by vacation of portion of said street. The site

measures 95 x 164.7 feet.

3. The east 81 feet of the Chevron site is zoned Neighborhood Commercial 2/40 (NC2/40); the west 84 feet is zoned Lowrise 3/Residential Commercial (L3/RC). The split is shown by Exhibit 10. It is the west 84 feet that is the subject of this rezone.

4. The bulk of the service station building is located on the NC2 zoned portion, but a portion of the building as well as part of the pump island and all of the underground tanks are located in the L3/RC portion.

5. The subject property is located along the north side of North 45th Street, in the Wallingford neighborhood. Surrounding development includes a triplex, single family residence, real-estate office, and restaurant to the west, and L-2/RC zoned single family residences to the north. The area to the south across North 45th Street is zoned L-3/RC and is developed with a mix of uses including single family residences, offices, restaurants and a duplex. North 45th Street is a heavily traveled east-west arterial in this area that connects between Aurora Avenue, about 5 blocks to the west, and the I-5 freeway, the University District, and Laurelhurst to the east.

6. The applicants propose to rezone the subject area to NC2/40' to allow future expansion of the pump island canopy over the pump blocks, and may in the future redevelop the gas station. Service stations are not permitted in L-3/RC zones. That portion of the existing service station within the rezone area exists as a nonconforming use and can remain, but cannot be expanded.

7. Two letters were received by DCLU during its consideration of the rezone. One letter from the Wallingford Community Council expressed the Council's opposition to the rezone. The other letter was from a neighbor concerned about employees parking their cars on the street and sometimes "stashing" cars being worked on at the station on the street.

8. Subsequent to the issuance of the DCLU report, the Wallingford Community Council sent a new letter to the Department that supported the rezone, subject to certain conditions on landscaping and signage.

9. Chevron has operated a service station on this site for 22 years.

10. Prior to 1985, the entire Chevron site was zoned Business Commercial (BC), a designation that permitted service stations.

11. According to Gary Williamson of Chevron, Chevron does not believe it was notified of the 1985 rezoning of half its site to L3/RC. Mr. Williamson testified that Chevron was shocked in 1988 to discover that its property was now split-zoned.

12. Mr. Williamson further testified that extension of the canopy and other potential upgrades to the station would not necessarily intensify the use at the station, but would merely keep it competitive. He noted that on a national level, Chevron spends 200 million dollars annually upgrading its stations.

13. The Department report recommends against the rezone. In conjunction with its analysis of the rezone, the Department issued a Declaration of Non-significance (DNS). The DNS was not appealed.

14. While the northeast corner of N. 45th and Interlake Avenue N. is zoned L3/RC, it is developed with a single purpose commercial structure (Olympia Pizza).

15. The parking for the apartment to the west of the Chevron site is located behind the apartment. Access to the parking is over an access easement that crosses the western portion of the Chevron property.

16. As noted earlier, prior to 1985 the entire Chevron site was zoned BC. As part of the city-wide commercial remapping that accompanied the adoption of Chapter 23.46 and 23.47 of the Land Use Code, the Wallingford Community Council requested that N. 45th from mid-block between Interlake and Stone to Densmore be zoned L2/RC. A Council staff report dated June 23, 1985 concurred with the Mayor's recommendation that this stretch of N. 45th should be zoned NC2/40'. The council's ultimate action was to zone the stretch from mid-block between Interlake and Stone to the middle of the Chevron property as L3/RC and the stretch from the middle of the Chevron property to Densmore as NC2/40.

17. General rezone criteria are found at Section 23.34.008. That section reads as follows:

In evaluating a request for a zoning change, the following factors shall be considered:

A. Match Between Established Locational Criteria and Area Characteristics. In order to ensure compatibility of new and existing development, the characteristics of the area to be rezoned should closely fit the adopted locational criteria for the proposed land use category.

B. Zoning History and Precedential Effect. Previous and potential zoning changes both in and around the area proposed for rezone shall be examined.

C. Other Zoning Principles. Zoning principles relating to compatible land use patterns, size, configuration and boundaries shall be considered.

D. Impact Evaluation. The decision on a proposed rezone shall consider the possible

negative impacts on the area proposed for rezone and its surroundings. Factors to be examined include, but are not limited to the effects on transportation, parking, housing, particularly low-income housing, public services, and environmental factors such as noise, air and water quality and energy conservation.

E. Neighborhood Planning Efforts. If there are adopted neighborhood plans or recommendations which apply to the area proposed for rezone, these shall be taken into consideration.

F. Changed Circumstances. If part of the justification for the rezone is changed conditions since the adoption of the Official Land Use Map, evidence of the change shall be taken into consideration. Evidence might include changes in structure height and scale, addition of new uses, traffic patterns and transit routes and demographic changes.

G. Overlay Districts. If the area is located in an overlay district the purpose and boundaries of the overlay district shall be considered.

H. Greenbelt Plan. If the area is included in the Greenbelt Plan as adopted by Resolution 25670, the purpose and boundaries of the Greenbelt Plan shall be considered.

18. The Chevron site is not subject to a greenbelt or other overlay. There is also no adopted neighborhood plan for this area.

19. Analysis: The Locational Criteria for the Lowrise 3 zone reads as follows:

Locational Criteria

A. Areas where a variety of scale patterns exist, but where there is a prevailing pattern of medium bulk and moderate height (30-40 foot heights).

B. Areas where edge conditions, topographic breaks, separation by arterials, and open space create a break from smaller scale development which allows greater bulk and permits a variety of building widths.

C. Areas where topography and prevailing building heights require a 37-ft. height limit to retain views. Topographic and view conditions include:

1. Areas with steep slopes (16% and more) with views parallel or oblique to the slope.
 2. Moderate sloping areas (moderate sloping areas [less than 16%]) with views perpendicular to the slope.
 3. Flat areas downslope from areas with moderate slopes, especially those where the view is oblique to the slope.
 4. Areas on the downside of a slope from areas characterized by 30-ft. to 37-ft. heights.
 - D. Areas which are overlooked from public open spaces and scenic routes where important views would be blocked by bulky buildings over 37 ft. in height.
 - E. Areas which are well served by public transit and in close proximity to arterials.
 - F. Areas which are adjacent to business and commercial areas with comparable or greater height and bulk, or where a transition in scale between areas of smaller and larger sized housing and commercial buildings is desirable.
20. Section 23.34.070 reads as follows:
- In reviewing a proposal to rezone an area to Residential-Commercial, the following criteria shall be considered:
- A. Function. A residential-commercial designation shall be combined only with a multi-family designation and may be appropriate in any of the following circumstances:
 1. As a means to downzone strip commercial areas which have not been extensively developed with commercial uses;
 2. As a means to downzone small commercial areas which have not been extensively developed with commercial uses and where commercial services are available nearby;
 3. To provide opportunities for needed parking in areas where spillover parking is a major problem;
 4. As a means of supporting an existing commercial node.
 - B. Character.
 1. Existing.

a. Areas which are primarily residential in character (which may have either a residential or commercial zone designation), but where a pattern of mixed residential/commercial development is present; or

b. Areas adjacent to commercial areas, where accessory parking is present, where limited commercial activity and accessory parking would help reinforce or improve the functioning of the commercial areas. and/or where accessory parking would help relieve spillover parking in residential areas.

2. Desired Characteristics.

a. Physical appearance resembling the appearance of adjacent residential areas;

b. Mixed use with small commercial uses at street level.

C. Physical Factors Favoring RC Designation.

1. Lack of edges or buffer between residential and commercial uses;

2. Lack of buffer between major arterial and residential uses;

3. Streets with adequate access and circulation;

4. Insufficient parking in adjacent Commercial zone results in parking spillover on residential streets.

21. Section 23.34.072 reads as follows:

A. Decisions to designate an area or specific site commercial as opposed to noncommercial shall be based on the criteria provided 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 adopted by Resolution 27156, as amended, and the criteria contained in subsection B of Section 23.34.072. Commercial areas shall be assigned one (1) or more zone, height and/or overlay designations according to the criteria in Sections 23.34.088.

B. Criteria for Commercial Area Designation.

1. The encroachment of commercial development into residential areas shall be discouraged.

2. Preferred configuration of commercial zones shall not conflict with the preferred configuration and edge protection of residential zones as established in the Single Family Policies.

3. Whenever possible, commercial zones shall be located where the impacts on other zones can be minimized by the use of transition zones or buffers. Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas. An exception may be made when physical buffers can provide a more effective separation between uses. The following elements shall be considered as buffers:

- a. Natural features such as topographic breaks, lakes, streams, ravines and shorelines;
- b. Freeways, expressways and other major traffic arterials;
- c. Street layout and block orientation;
- d. Open spaces and greenbelts.

4. Compact, concentrated commercial areas, or nodes, shall be preferred to diffuse, sprawling commercial areas.

5. The preservation and improvement of existing commercial areas shall be preferred to the creation of new business districts.

6. The cumulative impact of development in the area shall not exceed the capacity of infrastructure such as streets, utilities and sewers.

7. Community objectives contained in neighborhood and business district development plans adopted by Council shall be given careful consideration.

8. Changes in commercial boundary, zone designation, height or special district overlay shall occur in an orderly and predictable fashion.

C. Changed circumstances since the adoption of the land use map need not be shown to justify a proposed rezone, particularly for an area which was not permitted to be considered for commercial designation during the legislative mapping process. Changed circumstance, however, is an important factor to be considered along with the factors listed in subsections A and B. Evidence of changed circumstance may include but need not be limited to changes in or near the area in economic or market conditions, availability of land, technology, population characteristics, intensity and type of development (but not

including changes permitted in adjacent major institutions), transportation patterns and capacities, parking availability, environmental impacts, and previous zoning changes in and around the area proposed for rezone.

22. Section 23.34.076 reads as follows:

In reviewing a proposal to rezone an area to Neighborhood Commercial 2, the following criteria shall also be considered:

A. Function. A pedestrian-oriented shopping area which provides a full range of household and personal goods and services, including convenience and speciality goods, to the surrounding neighborhoods;

1. Existing. The NC2 zone may be appropriate for any of the following types of areas:

a. Medium-density residential areas;

or

b. Small commercial area located at the edge of a larger business area, which provides a transition between intense commercial activity and surrounding areas; or

c. Area in the core of an established commercial district characterized by a concentration of small retail and service uses; or

d. Commercial area along major arterial where lots are generally small and shallow, and are surrounded by low-density residential areas.

2. Desired Characteristics.

a. Variety of small to medium-sized neighborhood-serving businesses;

b. Continuous storefronts with commercial use, built to the front property line;

c. Pedestrian-friendly atmosphere;

d. Shoppers can drive to the area, but walk from store to store.

C. Physical Conditions Favoring Designation as NC2.

1. Surrounded by low- to medium-density residential areas;

2. Lack of strong edges to buffer the residential area;

3. Lack of vacant land or land appropriate for additional commercial development within the commercial area;

4. Access through low- and medium-density residential areas;

5. Located on streets with good capacity

(major traffic streets and minor arterials), but generally not on major transportation corridors;

6. Limited transit service (i.e., a few routes);

7. Limited off-street parking capacity; may include a parking area for supermarket or other larger use.

23. The Chevron site and the immediate surrounding area are essentially flat with no significant topographical breaks.

24. The site is served by public transit on North 45th Street.

Conclusions

1. Rezones from a multifamily to a commercial designation need to be analyzed in terms of general rezone criteria (23.34.008), and for compliance with locational criteria for the existing and proposed zoning.

2. The DCLU report concludes that the subject site meets most of the locational criteria for an L3/RC designation. The Examiner largely agrees, but takes issue with two parts of the DCLU analysis.

3. First, in its review of the RC locational criteria, the Department concludes that RC is appropriate here "as a means to downzone strip commercial areas which have not been extensively developed with commercial uses." While the extent of commercial development along this block is unquestionably less intense than along other portions of North 45th in Wallingford, it remains sufficiently commercial in nature to cast doubt on whether this locational criterion is satisfied.

4. Second, the DCLU summary on this question of satisfaction of the L3/RC criteria states that "while the site is not now developed with residential development, the existing L3/RC zoning would provide future residential and commercial development that would be compatible with adjacent residential uses." Given that the underground tanks for the gas station are located in this portion of the Chevron site, as well as portions of the station building, pump islands, and canopy, it's difficult to envision the property being developed with a structure, residential or commercial, not connected with the service station.

5. While the site meets most of the L3/RC locational criteria, it also meets most of the criteria for NC2 zoning. This is reflected in the Department's report.

6. One concern that is expressed in the DCLU report is the lack of buffer between the site and adjoining properties,

including those to the south. This concern is largely addressed by the landscaping and signage plan agreed to by Chevron and the Wallingford Community Council.

7. A rezone of the property would not contribute to commercial sprawl. The subject site is already in service station use. Thus, while the rezone would allow expansion of commercial use on the site, it would not geographically expand the boundaries of commercial activity. For this same reason, the Examiner does not agree with the Department's conclusion that the rezone would represent an encroachment of commercial development into a residential area. Further, as noted earlier, surrounding development is by no means exclusively residential.

8. In terms of the general rezone criteria of 23.34.008, consideration must be given to the zoning history and precedential effects. The zoning history is described in the findings. The fact that the zoning was only recently changed from commercial to RC is, of course, a significant consideration. Weighing against that consideration are the fact that the subject property was and is already part of the service station site and the fact that the Wallingford Community Council, which in 1985 sought the RC zoning, now concurs with the application to rezone the property.

9. The precedential effect, if any, of allowing the rezone would be minor. The rezone merely restores the entire gas station to the status of conforming use and does not serve as justification for extending the commercial zoning further.

10. In its analysis of the proposed rezone's compatibility with zoning principles, the Department report states the following:

The development steps down from commercial, to mixed multifamily and commercial, and back to commercial in a transition that conforms to zoning principles of creating commercial nodes and avoiding the commercial sprawl that is often formed by strip zones along arterials. The proposal will continue the transition of zoning intensity that now exists. Since an irregular zoning edge now exists between the commercial frontage on the north side of 45th and the residential/commercial area to the south, the proposal would continue the existing land use pattern, but would extend it one lot to the west.

The Examiner adopts this analysis, with the caveats described previously. One, given the small site of the L3/RC zoning along North 45th and the amount of commercial activity even within that area, it is not clear that the existing L3/RC zoning is effective

as a break in the "commercial sprawl." Two, while the zoning edge is moved one lot to the west, there is no change to the land use pattern as the rezone property will remain in service station use.

11. The Examiner adopts the Department analysis of the rezone's compliance with subsections D, E, and G of 23.34.008.

12. Changed circumstances since the 1985 zoning are comparatively slight, but would include development of the single-purpose commercial structure on the northwest corner of Interlake and North 45th. This development has increased the commercial nature of the area.

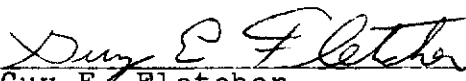
13. In conclusion, the Examiner believes that the rezone should be allowed, but should be subject to the landscaping and signage conditions agreed to between Chevron and the Wallingford Community Council. Compliance with the conditions will aesthetically enhance the site, and provide useful buffering.

Recommendation

The petition to rezone the subject property from L3/RC to NC2/40 should be GRANTED subject to the following two conditions:

- (1) The entire Chevron site will be landscaped in accord with what is shown on Exhibit 7.
- (2) Signage will be limited to the existing signage, not including the readerboard (which has been located at the southwest corner of the site), and new signage on the new canopy.

Entered this 6th day August, 1990.


Guy E. Fletcher
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 reconsidera-

tion 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.