

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

In the Matter of the Appeal of

ALAN WALGAMOTT AND
A AND M WRECKING

MUP-84-011(V)
APPLICATION NO. 83-533

from a decision of the Director
of the Department of Construction
and Land Use on a master use
permit application

Introduction

A and M Wrecking proposes to alter and change the use of property at 610 North 34th Street from an auto impound lot to an auto wrecking yard. The Department of Construction and Land Use (DCLU) Director issued a project declaration of non-significance (DNS) and denied the variance required. A and M Wrecking appealed the denial of the variance to the Office of Hearing Examiner. The DNS was not appealed.

The appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on March 8, 1984.

Parties to the proceedings were: appellants by Michelle Pailthorp, attorney-at-law; and the Director of the Department of Construction and Land Use (DCLU) by Amy Luersen.

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

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject site is located in Seattle's Fremont area at 610 North 34th Street. The location is roughly 370 ft. from a Lowrise 3 residential zone. The site is separated from the L-3 zone by raised topography and by Fremont Avenue, a major arterial. It is zoned General Industrial (IG).

2. The essentially rectangular site measures roughly 150 ft. wide and between 106 and 120 ft. deep. It is currently used as an auto impound lot. The proprietors' business practice is to purchase cars, use the company two-ton flatbed truck to transport the cars to the site, remove the tires and gasoline tanks and sell the automobile remains, the hulks, to any iron dealer.

3. There is some noise involved in the current operation. The company also owns and uses in its operation a smaller tow truck, a 10 ton forklift and various tools stored in a structure located near the southwest quadrant of the lot. An owner of an

adjacent property testified that the cars are either smashed, dragged, moved or "crowbarred to death."

4. The project applicants propose to establish an auto wrecking yard on site. Since the property is located less than 500 ft. from a residentially zoned lot, variance relief from the provisions of Seattle Municipal Code Section 24.54.080 is required. DCLU denied the request for the variance and applicants submitted this appeal.

5. According to applicant, the change from auto impound to auto wrecking would allow the company to engage in retail sales of automobile parts removed on site. The storage area would be approximately 11,000 sq. ft. in the northeast section of the lot. The major removal operations would occur in an area of approximately 3200 sq. ft. in the southwest corner of the lot.

6. To screen the views of the operations, applicants propose that 17-19 maple trees, approximately 18 ft. high, be placed along the north and east lot lines. The entire lot would be surrounded by a minimum 8 ft. high view obscuring fence.

7. North 34th Street and diagonal on-street parking abut the subject property to the south. Roughly 30 ft. east of the A and M site are buildings oriented to the Fremont Avenue arterial. Topographically, the east adjacent properties set above the A and M site.

8. Directly north of the A and M site is an unimproved alley. Beyond the alley is the restored and renovated Fremont building. With an estimated height of 45 ft., the building houses more than 40 business tenants. Windows of some rented quarters open (down) to the subject site. The owner of the Fremont building opposes the present and proposed use because of noise, (gasoline) drainage, aesthetic and business considerations. Other business operators and building residents oppose the idea of a wrecking yard as atavistic, destructive of the Fremont community's progress.

9. From the northwest corner of the A and M site, one can view a mound of auto bumpers, stored by the Bumper Shop business, which is located at the southeast corner of North 35th Street and Evanston Avenue.

10. The Fremont Neighborhood Improvement Plan, approved by the City Council in 1981, calls for a change in the Comprehensive Plan designation for property inclusive of the subject site from industrial to commercial in order to "... more accurately reflect present and desired development." The document continues that:

Corresponding to the Plan change, (the ideal is) to encourage upgrading in this part of the under-developed lower Fremont business area by rezoning from General Industrial (IG) to General Commercial (CG).

11. The DCLU Director determined that the proposal would have no significant adverse impact upon the environment and a final declaration of non-significance (DNS) was issued. The environmental checklist annotated and utilized in the negative threshold determination noted among other items, that the proposal "may" result in "seepage of oil or gas into ground water." As to noise, the annotation indicated that yes, existing noise levels would be increased from the "dismantling" of cars and loading and unloading of cars from tow trucks.

12. Notations to the checklist also stated that the proposal would result in the "alteration of the present or planned use" of the area since "the comprehensive plan designated the site as commercial..."

Conclusions

1. Because the A and M site is located less than 500 ft. from a residentially zoned lot variance relief was requested. The zoning is industrial. A bumper storage is directly northwest of the subject site. The site is separated from the residential L-3 zone by a topographical rise and by an arterial. It would therefore appear that these unusual conditions would deprive A and M of comparable development privileges absent some variance relief. Section 23.40.20.C.1.

2. Similarly, no grant of special privilege would accrue to applicant by the granting of the variance. Section 23.40.20.C.2.

3. The record sufficiently shows that an increase in noise levels is expected if the proposal is approved. Currently, applicant removes only gas tanks and tires. The proposal calls for applicant to (be able to) remove steering columns, doors or any other part of an automobile, and to sell the part directly to a retail customer. Thus, increased auto wrecking activity and other proposal consequences projected, such as impacts on ground water, are reasonable expectations. Those factors are properly considered of material detriment to the vicinity business property and improvements. Some of the negative impacts will be met by fencing or planting. Offices from floors 2-4 of the north adjacent building would still have a bird's eye view of the site, notwithstanding fencing and landscaping.

4. On the other hand, the site already offers limited aesthetic appeal. And the expected noise and similar activity should not adversely affect the residentially zoned properties beyond the arterial. Section 23.40.20.C.3.

5. An automobile wrecking yard is defined as:

an area outside of an enclosed building where motor vehicles are disassembled, dismantled or junked or where vehicles not in operable condition or used parts of motor vehicles are stored.

Section 24.08.020. Auto wrecking yards are first permitted in the Manufacturing zone, and then only if a minimum distance of 500 ft. from any residentially zoned lot and "completely enclosed by a view-obscuring fence at least eight feet in height." Section 24.54.080.

6. A "towing business" is first permitted in the less intensive General Commercial (CG) zone when a minimum of fifty ft. from a residentially zoned lot. Section 24.52.050. The Seattle Municipal Code defines a towing business as principally providing tow truck service and as including auto impounds, "but not including disassembly, dismantling or junking of vehicles." (emphasis supplied) Section 24.08.210. The scheme of the code thus embodies a distinction between a tow truck - impound and an auto wrecking yard. That distinction relates to intensity and distance from residentially zoned property.

7. The fifth variance criteria requires that the variance be:

... consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable (emphasis supplied). Section 23.40.20.C.5.

8. The stated Land Use Code purpose is to "protect and promote public health, safety and general welfare" via land use regulations and procedure. Section 23.02.20. Due to the proposed and potential intensification of the use at issue it is questionable whether the general welfare would be promoted by the approval requested. Further, as observed by DCLU, the Comprehensive Plan component is at odds with the variance request since the Plan now designates the area as commercial, for "desired development." Variance relief would here permit a non-commercial (zoned) activity at this site to be located closer to the residentially zone properties. In light of same, the recognized hardship to applicant is "neither undue nor unnecessary." Section 23.40.20.C.4.

9. The Hearing Examiner is aware of applicants' well articulated position that Comprehensive Plans are merely blueprints. The Examiner is nevertheless constrained by the specific variance criteria to consider the proposal's relationship to the Comprehensive Plan. Since that criterion is not met here, and the variance criteria are in the conjunctive, the variance relief is properly denied.

Decision

The Director's decision is Affirmed.

Entered this 22nd day of March, 1984.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Seattle Municipal Code Section 23.76.36.B.11. Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.