

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

In the Matter of the Petition of

SEATTLE EDUCATION AUXILIARY

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

FILE NO. CC-8605068
C.F. No. 295179

RECEIVED

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and

In the Matter of the Appeal

JON A. IVERSON

FILE NO. W-87-001

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

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Introduction

1. Seattle Education Auxiliary petitions to rezone by contract land addressed as 2315 N.E. 65th from Lowrise 2 to Neighborhood Commercial 2/40 ft. height limit.
2. DCLU recommended approval of the rezone and issued a determination of non-significance, both with conditions. Appellant Jon Iverson appealed the determination of non significance (DNS).
3. For purposes of this Recommendation and Decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.
4. This matter came on for hearing before the Hearing Examiner on June 4, 1987. Applicant was represented by John M. Baker II, law offices of Hanson, Zwink, Baker and Ludlow, P.S.; appellant Jon A. Iverson, appeared pro se; and the DCLU Director was represented by Cheryl Waldman. Upon request and agreement of the parties and others present the record remained opened to June 18, 1987 for discussion of modifications to the plans.
5. After due consideration of the evidence presented by the DCLU Director's report and other information of record, including appellant's, petitioner's and other's evidence; and subsequent to a visit to the site and vicinity, the following shall constitute the findings of fact, conclusions and recommendation on the rezone and the decision on the appeal of the DNS.

Findings of Fact

1. The Seattle Education Auxiliary, applicant, proposes to rezone approximately 24,780 sq. ft. of land from Lowrise 2 (L-2) to Neighborhood Commercial 2/40 ft. height limit. This would allow applicant to construct a 4-story structure with first floor retail. The remaining three stories would serve as a residential group home for retired educators and others. The petition is for a "contract rezone." This would restrict the development to the specific proposal approved.
2. The subject site is addressed as 2315 N.E. 65th Street. It is located on the south side of N.E. 65th between 23rd and 25th Avenues N.E. The legal description appears in the application and Comptroller's File of record and is incorporated herein by reference.
3. The site is roughly 282 ft. wide, fronts on N.E. 65th, and is generally 80 - 90 ft. deep.

4. The present site is developed with landscaping and parking accessory to the Ida Culver House group retirement home. The Ida Culver House is a 44-unit group retirement facility that is south adjacent to the site. The existing Ida Culver House is within an extensive Single Family (SF) 5000 zone that continues south to N.E. 60th Street and beyond.
5. Generally no topographical breaks or other natural features are present to separate the residential and commercial areas. West adjacent to the subject site is an NC2/40' zone that extends to its west abutting 23rd Avenue N.E. This zone/site is developed with a three-story 20-unit condominium (the Ravenna Glen). Farther west, across 23rd N.E., are more NC2/40' zoned properties. In fact, properties at all four corners of N.E. 65th and 23rd N.E. are zoned NC2/40'. NC2/40 zoning is also present across N.E. 65th from the site on both sides of intervening 24th Avenue N.E.
6. East adjacent to the subject site is an L-2 zoned parcel that is developed with a single family residence. East of this residence is a single family residence oriented east to 25th Avenue N.E. This dwelling is a part of the more southerly SF 5000 zone that was described above. The Hearing Examiner finds in accord with the testimony that the purchaser of these single family dwellings bought the properties "with the belief" that properties facing 65th were zoned for business and that the sites would "logically be developed commercially."
7. There is a marked difference of opinion as to the viability and feasibility of the existing vicinity businesses fronting on N.E. 65th. Nevertheless, it is essentially undisputed that there is presently a mixture of restaurant, retail, insurance, other business office, service and other such uses between 20th N.E. and 25th N.E. along N.E. 65th. (see generally Exhibit 4). In addition to these commercial uses, there are single and multi-family dwellings interspersed throughout this immediate vicinity. Notwithstanding pointed inquiries as to local businesses' viability, the record reflects no vacant properties along N.E. 65th.
8. N.E. 65th is an east - west principal arterial that provides direct vehicular access to and beyond the site from major shopping districts and from residential (e.g. L-2) communities. The 25th Avenue N.E. residential arterial is used for access to the University Village Shopping Center and to the University of Washington campus, roughly .5 mile farther south. One Metro transit route directly serves the vicinity between the Wedgewood district and downtown. The other three Metro routes operate only during peak weekday hours.
9. After 6:00 p.m. there is no on-street restriction for N.E. 65th Street parking. From 7:00 a.m. - 4:00 p.m., however, Monday - Saturday parking is limited to one hour on the south side of N.E. 65th. From 4:00 - 6:00 p.m. on weekdays, no parking is allowed on the south side of N.E. 65th. No parking is allowed between 7:00 - 9:00 a.m. on the north side of N.E. 65th.
10. According to several neighbors to the proposal site the existing traffic level and parking availability are undesirable. At least two neighbors opined that 65th N.E. traffic has increased and that there is a vicinity parking shortage. The parking problems are said to originate from customer access to existing shops and businesses including the Sante Fe Cafe.
11. The Hearing Examiner finds that while there are periodic parking shortages along 65th close to the businesses, on-street parking is available within the more extended, general vicinity.

12. As noted above, applicant proposes to develop the subject site with a 4-story mixed use structure that would offer first floor retail space. On the second, third and fourth floors would be group home units for retired educators and others. A 15 ft. front setback is proposed that would be landscaped and which would also offer some outdoor retail potential.

13. Applicant initially proposed that access to the site would be from a segment of 24th Avenue N.E., as well as by N.E. 65th. This segment of 24th dead-ends immediately south of the existing Ida Culver House development and is fronted by single family zoning and development. The initial proposal was to access 4 parking spaces that would be located south of the Ida Culver House. Subsequent to issuance of the DCLU Director's report and consultation with community residents applicant revised the proposal to delete access and parking from 24th N.E. and to relocate the 4 parking spaces to the east side of the proposed building. The reflecting covenant and agreement prohibit vehicular access via 24th N.E. except for emergency vehicles; provide that the covenant is to "run with the land;" and that the City

include as a condition of the contract rezone that no grading or building permit is issued until the Covenant has been recorded by Escrow (sic) and Ida Culver Owners (sic) will not secure a grading or building permit for the project until the Covenant has been recorded.

DCLU recommends the foregoing as a condition to the rezone, and therefore deletes from its decision the first SEPA condition. That condition would have required reservation of the 4 spaces for administrative staff.

14. Applicant expects proposed retail use to assist the financing of the project and to benefit the residents. It is yet undetermined whether tenant concessions or which other specific services would lease the retail space. The neighbors are nevertheless concerned that the quantity and nature of the retail use not unduly attract "even more" vehicular traffic, and have specific recommendations on the subject.

15. Applicant, upon agreement of the attendees, made further revisions to the proposal after the hearing before the Hearing Examiner. The applicant hoped by these revisions to gain the further acceptance of the project. One principal revision was to reduce the commercial space to 5000 sq. ft., "the minimum feasible for the site." The revised plan also retained two of the five retirement units in the old building; and increased the number of parking stalls from 38 to 43.

16. Several community residents and DCLU responded to the revised plan. Specifically, the residents requested that the amount of retail space not exceed 3000 sq. ft.; that the residential units be limited to retired persons per a group home concept; and that the building bulk, scale and height be modified to yield landscaped east and west setbacks of at least 10 ft. and a height in accord with L-2 standards, i.e. not more than 30/35 ft.

17. DCLU responded with a specific recommendation that parking be screened at the street lot line. DCLU also commented that the modified proposal did not seem favorable to active, commercial street-front facade and that therefore applicant was willing to modify the proposal to increase the north half of the east side retail space by 1000 ft. DCLU's original conditions to the rezone included restrictions on residency, commercial usage, landscaping and bulk and scale impacts.

18. Other than applicant's representation, there is no specific evidence that a particular square footage of commercial space would yield specific financial, environmental or other impacts. It is recognized that certain uses tend to sponsor greater vehicular and other activity than other uses.

19. The Hearing Examiner finds in accord with the undisputed testimony of the Ida Culver House administrator that the present and anticipated residents will range in age from 68 - 99 years; that the average resident's age is 83; that residents all are mobile; and that their monthly average income ranges from \$800 - 1000.

20. The further statistical breakdown is that 50% of the residents are from the general public; that 25% are retired Seattle educators; and 25% out-of-area educators. Seven of the 40 present residents drive.

21. The current 44-unit Ida Culver House offers rooms approximating 180 sq. ft. in area. The new structure would offer units of roughly 500 sq. ft. The \$520 monthly fee would include tenant rent, food and maid/linen service.

22. Under the present (L-2) zoning, applicant could erect 4 separate buildings, for a total of 75 units, that would be connected by a walkway. Separate buildings, per the architect, would mean separate elevators, exits etc. for the senior clientele. After studying the proposal, prior zoning and following consultation with DCLU, applicant proposed a group home concept that is the subject of this proceeding. This would allow centralized dining and other amenities.

23. The new group home would consist of 58 units. Residents would be served meals in the dining room of the existing building. The maximum building height would be 40 ft. The proposed design includes a 15 ft. front setback, with trellis; a pitched roof with gables on all facades, dormers, elevated planters, landscaping and other features. According to the architect the building would appear as a 3.5 story building from N.E. 65th. Also proposed is a southerly, relocated sidewalk that would serve as an indented loading zone. This would eliminate some eight on-street parking spaces and require Seattle Engineering Department approval.

24. While the NC2 zone has no maximum building width and depth standard, L-2 maximum building depth is 75 ft. and width 60 ft. No setback would be required between the proposal site and the west adjoining NC2 property.

25. The proposed building would be wider than any other vicinity building, one story taller than the west adjacent building, and two-three stories taller than other vicinity development. It is noted, however, that the height limit proposed is not inconsistent with the redevelopment potential of the nearby NC2 zones.

26. Per the amended proposal the parking will be as follows:

Required

retail	7
staff	5
existing residential	7
<u>new residential</u>	<u>12</u>
Total	31

Provided

on site	43	spaces
on street	8	spaces
Total	51	spaces

27. At least one neighbor specifically decried the amount of parking initially proposed. The sentiment was and is that an increased more mobile population - coupled with retail customers - should demand more available parking. However, it is undisputed that the proposed parking exceeds the minimum required by the Code.

Conclusions

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

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

3. 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).

4. 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.

5. Appellant Iverson has, 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. Appellant has not proved in this case that an EIS is required.

6. Principal objections to the proposal concern the impacts of traffic, and height, bulk and scale.

7. The record reflects only generalized statements about the parking and traffic problems that would be generated or exacerbated by the retail or residential components of the proposal. The evidence shows that only 7 of the present 40 retirees tenants drive; that the average age for tenants is 83; and that the parking proposed exceeds the zoning code. Further, the Hearing Examiner has found and concludes that there is adequate on-street parking in the vicinity, other than directly along 65th, to reasonably absorb anticipated parking demand.

8. With respect to bulk and scale, the building would be larger and taller than other vicinity buildings. In the context of this NC2-L2 built environment, however, appellant failed to show that this impact of the building, particularly as conditioned herein, would be significant. Therefore, no EIS is required.

9. The remaining question is whether the rezone should be recommended and if so under what conditions. Seattle Municipal Code Section 23.34.008(A) requires that "the characteristics of the area to be rezoned...closely fit the adopted locational criteria for the proposed land use category." The NC/2 Relocational criteria are discussed below.

10. With "contract" or property use and development restrictions/agreement, the proposal would present an inviting pedestrian-oriented shopping area that would offer personal goods and services to residents and others. Section 23.34.076(A). In terms of character, Seattle Municipal Code Section 23.34.076(B), the proposal area adequately satisfies the criteria. The subject area is a "medium-sized node generally surrounded by low-to-medium-density residential areas." The area also meets the "desired characteristics." There is a variety of small-medium food, service and other businesses. Shoppers will be able to drive to the area and then walk from store to store. The 15 ft. front setback does not directly meet the desire of having "continuous storefronts built to the property line." However, within the setback will be commercial potential and landscaping that will be aesthetically inviting to the public. 23.34.076(B)-(1)(2).

11. The site is bordered on the south by the existing Ida Culver House. Continuing south is an SF 5000 zone. L-2, then SF 5000 zoning is east. The site nevertheless principally faces NC2 zoning. There is no strong edge to buffer the commercial from residential zoning. In fact, there generally appears to be no buffer between NC2 and L-2 zoned sites. For example, other than the intervening setbacks, the subject site, presently zoned L-2, is not buffered from the west adjacent site, zoned NC2/40'. It is noted that the south adjacent SF 5000 zone is buffered from any use or zoning of the subject site by the present Ida Culver House development. Section 23.34.076(C)(2).

12. The record shows a lack of vacant land for additional commercial development; that access would be through low-medium density residential areas; that the site is located on a principal arterial (N.E. 65th); and that the site has some limited transit service. There are also specific limitations on off-street parking. Section 23.34.076(C)(3-7).

13. Further criteria are at Seattle Municipal Code 23.34.072. The proposal would foster the encroachment of commercial development into residential areas in contravention of the theme of 23.34.072(B)(1). However, residential use is the predominantly proposed use. Therefore, there is some edge protection for the residential zone. The proposed commercial area would face similarly zoned sites across N.E. 65th and would face away from residential areas. Section 23.34.072(B)(2)(3). And, the proposal serves to concentrate and improve upon the existing vicinity of commercial uses. Section 23.34.072(B)(4)(5).

14. On balance, the site therefore appears to sufficiently meet the NC/2 locational criteria. This is not to say that L-2 or other zoning is inappropriate.

15. The site's recent zoning change from business to multi-family (1986) suggests that this 1987 rezone is inappropriate. Further, the rezone would, as pointed out by DCLU, leave the east adjacent lot zoned as L-2, and could serve as precedential support for further eastward expansion of the NC2 zone. Section 23.34.008(B).

16. In terms of zoning principles, the subject site is east adjacent to NC2 zoning, and faces a wall of NC2 zoning to the north. Also, the site fronts on a principal arterial that is commercially developed. The developed site would be separated from the SF 5000 - zoned house which faces 25th N.E., by the remaining L-2 zoned parcel.

The present Culver House development buffers the south from the upzoned use. Section 23.34.008(C).

17. The proposed rezone would allow one building larger in bulk and taller than present vicinity structures. Particularly with retail, an increase in pedestrian and vehicular traffic is anticipated. The parking environment would be exacerbated. On the other hand, development to existing L-2 standards could mean greater traffic and parking impacts associated with 4 buildings and 75 tenants. It should also be noted that although commercial zoning is proposed, the principal use anticipated is 3 floors of residential use for retired Seattle educators and others. Seattle Municipal Code Section 23.34.008(D).

18. As the site is not within any Greenbelt or other overlay district, is subject to no neighborhood planning effort, Seattle Municipal Code Section 23.34.008(E)(G) and (H) are not applicable. Also, petitioner is not submitting changed circumstances to justify the rezone request. Seattle Municipal Code 23.34.008(F).

Decision

The DNS is AFFIRMED.

Recommendation

Based on applicable findings and conclusions above, the Hearing Examiner recommends that the petition to rezone the site by contract be Granted on the condition that applicant submit and comply with DCLU - approved plans in accord with the following:

1. The building should not exceed 30 ft. in height, excluding an additional 5 ft. for the roof.
2. The east and west setbacks should be no less than 10 ft. and should be landscaped with an evergreen buffer.
3. In accord with the agreement and covenant by applicant there shall be no vehicular access to the site from 24th N.E., except for emergency vehicles, and there shall be no parking, from this proposal, along the south side of the existing Ida Culver House. No grading or building permit should be issued until the covenant has been recorded in a form and manner approved by the City attorney or designee, and applicant will secure no grading or building permit for the project until the covenant has been properly recorded.
4. Any lease for commercial use of the space should include a requirement that owner, developer or other appropriate entity provide long term off-site parking for any lessee staff. The amount of such staff parking shall be determined by DCLU after consideration of the nature and square footage of the initial lessees' business. This requirement for off-site employee parking may be suspended until abstracts of lease agreements are submitted to DCLU for review and until such time that DCLU determines the implementation as appropriate.
5. There is inadequate information of record from which to determine the viability of a commercial space quantity. And,

as the recommendation is to limit the actual building height, the Hearing Examiner recommends that the commercial space not exceed 5000 sq. ft., per applicant "the minimum amount feasible for the site." The configuration of the space shall be approved by DCLU such that marketability and aesthetics are enhanced in a fashion compatible with the thrust of this recommendation.

6. In accord with the DCLU response of June 18, 1987, which reflects the project architect's proposal, on-site parking should be

screened at the street lot line with a lattice facade 3-4 inches thick, with a maximum opening of six inches, planted with screening vegetation.

7. In view of the immediate parking shortage along 65th, the plans should reflect no indented parking or loading zone along the south side of N.E. 65th.

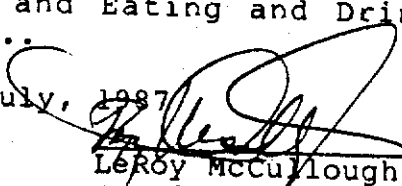
8. Consistent with the above, the DCLU recommendations to the rezone should also be implemented, including the following:

Permanent for the Life of the Project.

1. To minimize traffic and parking impacts, the residential units shall be limited to retired persons, and units shall be maintained as a group home. This provision should be subject to prior review and approval by the City attorney.

2. To maximize compatibility with the neighborhood, commercial tenant space shall be limited to personal and Household Retail Sales and services... Medical Services, and Eating and Drinking Establishments...

Entered this 6th day of July, 1987


Leroy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION
(CC 8605068)

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 REIVEW

(FILE NO. W-87-001)

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.75(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.