

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

In the Matter of the Petition of

KATHLEEN WARD, et al.

FILE NO. CC-83-017
C.F. NO. 292806

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

Recommendation: the petition should be GRANTED.

Introduction

Petitioners seek to reclassify property bounded by North Bowdoin Place, North 39th Street, Phinney Avenue North and Dayton Avenue North (reference address 415 North Bowdoin Place) from Lowrise 3 to Single Family 5000.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, unless otherwise indicated.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be granted.

After due consideration of the evidence presented by the Petitioner, the information provided by the Director's report, and all evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. Kathleen Ward and others submitted a petition to reclassify the subject property from Lowrise 3 (L-3) to Single Family 5000 (SF 5000). The petition was affected in to no small degree by development proposals for the subject property.

2. The subject property consists of an area in the Fremont district that is bounded on the north by 22 ft. wide North Bowdoin Place, not a through street; on the south by North 39th Street; on the east by Dayton Avenue North; and on the west by Phinney Avenue North. The site is legally described as "Block 12 of B.F. Day's First Addition." North 39th Street is a designated arterial with an average weekday total of 8700 vehicles.

3. The site, hereinafter the Block, is at the northern edge of a large L-3 zone. From the Lake Washington Ship Canal north to North 36th Street is zoned General Industrial (IG). A strip of General Commercial (CG) property separates that IG zone from the southern edge of the subject property's L-3 zone. The southern L-3 zone line proceeds in stairstep fashion from west to east.

4. Although the blocks to the immediate east, west and south of the subject site are also zoned L-3, the north adjacent zoning, across North Bowdoin Place, is SF 5000.

5. The subject site, roughly 1.1 acres of land, measures approximately 400 ft. (east-west) by 120 (north-south). The Block was originally divided into ten 40 x 120 ft. lots. In the 1920's-30's eight of the ten lots were divided near mid-block, so that presently the majority of the lots are 40 ft. wide and only 60 ft. deep, or 2400 sq. ft. in area. The lots addressed as 420 and 454 North 39th are not so divided, and in fact extend from North 39th to North Bowdoin Place. Most of the property owners own a single 2400 sq. ft. area lot. This block's planning pattern is unusual. In fact, the lots north of North Bowdoin Place are typically 40 x 120 ft., or 4800 sq. ft. in area. Blocks east and west of the subject block are composed of lots 120 ft. deep, and are less developed with single family housing. East of Dayton, apartments contain eight units. There is a 36 unit apartment south of North 39th and west of Phinney. Also south of North 39th are apartment buildings with 4-13 units, duplexes and single family residences. The Block is also unique in that there is no mid-block alley.

6. As the petition notes, of the 16 Block properties or lots, 14 are developed with single family residences and one with a duplex. The duplex, located at the southeast corner of the block at 460-62 North 39th, was established in 1982. Other multi-family applications are pending, however. Four additional units are proposed for the lot at the northeast corner, at North Bowdoin Place and Dayton Avenue North for which DCLU issued a declaration of non-significance in December, 1983. Also in December, 1983 the owner of 420 North 39th, roughly mid-block, submitted an application for environmental review of a proposal to construct a 12 unit apartment building on site.

7. The Block is currently 87% single family developed. With all proposed construction the block would be 81% single family.

8. The single family structures on the Block are c. 1920-30 structures of single story (facing Bowdoin) or one-story plus basement (along North 39th). Petitioner's Exhibit 1 is a collection of questionnaires and attached photographs of the Block homes. Based on the Exhibit, the testimony and other evidence of record, the Examiner finds that Block residents have a continuing interest in maintaining and improving the single family properties, whether leased or rented. For example, the owner of 408 North 39th proposes a greenhouse; improvements by the owner of 409 North Bowdoin Place include a bedroom dormer, roof, kitchen, finished basement and landscaping.

9. The questionnaire responses and other evidence of record also show that prior to the issue of this rezone petition many of the residents believe that the Block zoning was single family.

10. The Block has been stable in its single family development. However, there has been no recent single family construction on the Block. Based on present applications the construction "trend" tends to multi-family development.

11. The subject Block was zoned Second Residence, allowing single and multi-family development, from 1923 to 1957 when it was zoned RM 800. In 1975, the City Council approved the Fremont Neighborhood Improvement Plan, designating the subject block as mid-density residential. Part of the NIP statement, however, noted that the Fremont area "has too much area zoned for multi-family

use." Other NIP statements were to the effect that because of the amount of multi-family zoned property in Fremont, some blocks zoned for apartments would never (be required to) be developed into apartment use. In 1982, as part of the City wide residential rezoning the RM designation was changed to L-3. Despite its theretofore single family development stability, no special attention was given for or against the L-3 classification. One petitioner witness gave credible testimony, however, that in the spring of 1982 he was advised by a City department that his property, at 409 North Bowdoin Place, would "remain" single family residential.

12. Topographically, the area elevation rises north from the Ship Canal. An elevation difference of 70 ft. exists between North 39th and North 40th. (One witness opined that Bowdoin, at the base of a very steep hill, was a natural zone boundary with large uphill lots to the north and the smaller "Cluster Housing" lots to the south.) From North 39th to North 36th however, the elevation difference is 40 ft.

13. The Hearing Examiner finds that neighborhood parking is often at a premium. Bowdoin has some parking along the north side only, and North 39th along the south side. Comment letters from residents indicate that cars are parked on sidewalks, in front of driveways and/or bumper-to-bumper.

14. Residents apparently consider the availability of services, such as grocery or dry cleaning stores within walking distance, as poor. See letter of December 4, 1983, from Hazel Weyerman to DCLU; testimony of Richard Gordon for Fremont Neighborhood Council. Metro bus service is available on North 36th and North 39th.

15. The bulk of comment letters from residents supported the rezone petition as a means by ensuring a diverse single family housing stock. Supporters also expressed the view that buffering, city services, parking and other factors would be best served by the proposed rezone. The Fremont Neighborhood Council representative specifically testified in support of the rezone.

16. The Fremont Community Council and other rezone opponents view the petition as "spot zoning," and as a mark of zoning instability such that purchasers would be unable to rely on "well-deliberated" zoning classifications. The rezone petition is opposed by the Fremont Chamber of Commerce for similarly stated reasons, i.e. that the established zoning should be disturbed only under extreme circumstances. Certain Block property owners testified that the proposed rezone would hamper their development options. Many opponents also pointed out that the proposed rezone to Single Family would interrupt the zoning line along North 39th Street.

17. With regard to the action proposed in this application, a declaration of non-significance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, and is part of the record.

18. The Environmental Checklist notes that as to land use, the rezone would retain the "present single family nature of the surrounding neighborhood." As to housing, the DCLU analyst remarked that with the proposed rezone, "the existing duplex and proposed expansion at 460 North 39th would become nonconforming as to use." The Checklist noted no impacts relative to recreation, utilities, public services or transportation/circulation. The Engineering Department Environmental Section had no comment on the proposed rezone.

Conclusions

1. The Hearing Examiner has jurisdiction of the rezone petition pursuant to Seattle Municipal Code Chapter 23.34.

2. This case presents a classic conflict between land use planning theory and land use practice. The controversy and the related issues are thoroughly and objectively presented in the DCLU Director's Analysis and Recommendation. The Hearing Examiner accordingly adopts by reference that DCLU analysis with the following underscored observations and additions.

3. Section 23.34.28, General Rezone Criteria, lists eight factors to be considered in any rezone. Factor A, match between locational criteria and area characteristics, is satisfied by the proposed rezone. The single family zone locational criteria, at Section 23.34.32, include a requirement that at least 70% of the block(s) be in single family residential use. The subject Block is 87% single family developed. With proposed construction the Block would be 81%. The subject site is not presently designated as appropriate for single use, Section 23.34.32.A.2.; nor can it be stated there is an increasing "trend" toward single family development, since extensive single family development is already present and since the new construction-development is multi-family in nature. Section 23.34.32.A.3. However, the three locational criteria of Section 23.34.32 are listed in the disjunctive; accordingly only one need be met. That one, the 70% minimum, is clearly satisfied in the instant case.

4. Section 23.34.32.B. also provides that to be designated as a single family zone, the site should be comprised of 15 or more contiguous acres or abut an existing single family zone. The proposed rezone site is 1.1 acres but clearly abuts to the north an extensive single family zone.

5. Section 23.34.32.C., Boundaries, requires consideration of natural features such as lakes; "freeways... and other major traffic arterials"; and platted lot lines. The segment of North Bowdoin Place that is the current northern boundary of the L-3 zone is narrow and unopened. The North 39th arterial appears as a more practical and effective barrier between the L-3 uses to the south and the single family development to the north. In this case, the planning concept that single family zones should not face arterials should yield to the subject Block's historical documentation to the contrary. Also, North 39th appears as a more logical zone line than the topographical break at Bowdoin.

6. Although the technical "trend" of single family development on the Block is not present, pride of ownership is. The record is replete with evidence of efforts designed to improve and maintain the single family dwellings of the Block.

7. The second general rezone criteria relates to zoning history and precedential effect. Section 23.34.28.B. Opponents are correct in suggesting that zoning predictability is a desired objective, and that the City residential rezoning process should not be disturbed for light and transient causes. However, the Block and its stable single family development pattern were not the subject of any particular attention for or against its multi-family classification. Although other L-3 zoned sites could attempt to use this rezone approval for precedent, the Hearing Examiner concludes that sufficient distinguishing factors are present. Nearby L-3 zoned blocks have a deeper platting pattern and are more intensively developed with multi-family structures of 4, 13 and 36 units,

for instance. Other Blocks have larger lots that would be more accommodating for the type of development allowed under the L-3 classification.

8. As to zoning principles, Section 23.34.28.C., a single family designation of this Block would be consistent with the designation and use of the north adjacent area. Consequently, no spot zoning would be presented.

Spot zoning has been consistently defined to be zoning action by which a smaller area is singled out of a larger area or district and specifically zoned for a use classification totally different from and inconsistent with the classification of surrounding land...

SORE v. Snohomish County, 99 Wn.2d 363, 368 (1983). Approval of the rezone would cause the east-west boundary line to jog around the Block; this in and of itself however, is not particularly significant since the zone line would reflect actual use patterns and since the southern L-3 boundary already zig-zags downward from west to east.

9. The impacts of the rezone have been delineated. No effect on public services, utilities or the increased drain on the infrastructure is anticipated. Approval of the rezone would have less of an impact on an already troublesome parking situation. The rezone would facilitate preservation of in-City, modest single family housing. Development on site to the L-3 37 ft. height maximum could shade the topographically more elevated houses to the north from the southern sun exposure. As to negative impacts, the multi-family uses would become nonconforming and the owners' development potential severely restricted. Further, the existing 2400 sq. ft. lot sizes would be legal but nonconforming for single family residences per the exception to minimum lot sizes, Section 23.44.10.B.

10. The subject site is not within an overlay or greenbelt district. Section 23.34.28.G.H. The Fremont Neighborhood Improvement Plan dubs the area as mixed residential. Section 23.34.28.E.

11. Section 23.34.28.F. provides that:

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 (emphasis supplied).

This most elusive issue is whether part of the justification for this rezone is changed circumstances, and whether the circumstances here presented sufficiently comport with the pronouncements of Parkridge v. Seattle, 89 Wn.2d 454 (1978).

12. There is limited reliance by petitioners upon changed circumstances to support this rezone. The record shows the circumstances - stable single family development - to be anything but changed. Increased interest in upkeep of the modest single family homes is, however, very present in the Block. The Block is currently 87% single family developed; with proposed development it would still be 81%. The lots are small and shallow and

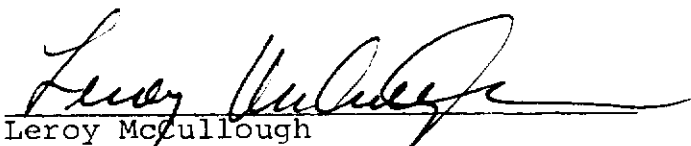
as single units are basically inappropriate for L-3 development. No special attention was given to the standing development of this Block at the time of the City-wide rezoning process. Against this backdrop the legislature is called upon to decide after a recommendation from the Hearing Examiner whether a reclassification is appropriate, i.e. whether presumptions contra have been met and overcome by the fact pattern. Parkridge, supra, acknowledged that "current views of the Community urging rezone to single family use may be given substantial weight in matters of this nature." at 462. But the court also announced the general requirement that rezone proponents have the burden of showing substantial change in conditions since the original zoning and a substantial relationship to the "public health, safety, morals or welfare." at 462. In this case the issues and equities are sufficiently dissimilar from those in Parkridge to support this reclassification. Vested rights are not at issue here. Again, the Hearing Examiner concurs with the DCLU analysis that given the unusual small dimension of the Block and the inadvisability of splitting the Block to compromise zones there is ample support of record for rezoning the entire Block to SF 5000, particularly in light of the fact that the rezone criteria of Section 23.34.28 are overwhelmingly satisfied.

Recommendation

For each of the above reasons, the recommendation of the Hearing Examiner to the City Council is as follows:

That the petition be GRANTED

Entered this 29th day of February, 1984.


Leroy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

Pursuant to 23.34.14, Seattle Municipal Code, any person substantially affected by or interested in the Hearing Examiner's recommendation may submit a petition in writing to the City Council requesting further consideration. The petition should be addressed to: City Council, Land Use Committee, Municipal Building, Seattle, Washington 98104.

The petition must be submitted by 5:00 p.m. of the fourteenth calendar day following the date of the Hearing Examiner's recommendation. If the fourteenth calendar day is a Saturday, Sunday or federal or City holiday, the petition period shall run until 5:00 p.m. on the next business day.

The petition should state clearly and concisely the reason(s) why further consideration is necessary, and should refer specifically to any errors alleged to exist in the Hearing Examiner's Findings and Conclusions. The City Council's consideration of the petition will be based upon the record of the Hearing Examiner's hearing, and new Exhibits or other evidence in support of the petition should not be submitted. In its discretion, the Council may allow oral or written arguments based on the record when it considers the petition.