

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

PETER AND JOHN MORSE

FILE NO. CC-8602046
C.F. NO. 295035

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

Introduction

Petitioners seek to have property at 1818 East Madison Street rezoned from NC3 65' and Lowrise 3 to C1 65' with a contract restricting the use of the property to those uses permitted under the NC3 designation plus outdoor storage of delivery trucks.

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

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

This matter was heard before the Hearing Examiner on November 20, 1986. The record remained open until January 2, 1987, for reports on noise levels, the correct zone boundary and comments by interested persons after the correct zoning of the property was determined.

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

Findings of Fact

1. The site of the proposed rezone is a 38,000 sq. ft. parcel located at the northwest corner of East Madison Street and 19th Avenue East. The parcel is zoned Neighborhood Commercial 3 with a 65 ft. height limit (NC3 65') except for the northernmost lot of the parcel which is zoned Lowrise 3 (L-3). The parcel is developed with a warehouse/office building and accessory parking.

2. The proposed use for the site is as a wholesale ice cream distributorship with office space and outdoor storage for delivery trucks. The use by Fratelli's has already commenced. The existing zoning would permit the ice cream distributorship but prohibits outdoor storage of more than two fleet vehicles of more than 10,000 lbs. gross weight, according to the Director's representative.

3. Petitioners request a contract rezone to Commercial 1 (C1 65') limiting the use of the site to NC3 uses plus outdoor vehicle storage.

4. The site is part of the NC3 65' strip of zoning extending east and west along the north side of Madison Street. The uses in the zone include a newer office building and apartments across 19th Avenue to the east and other office, clinic and commercial uses. On the south side of Madison Street is NC3 65' and L-2 zoning. A large church with accessory parking lot occupies property at the southeast corner of the intersection and a drive-in fruit and vegetable stand occupies the southwest corner. Commercial uses lie both west and east.

5. The L-3 zone to the north is developed with a mixture of single family, multi-family and institutional uses. Closest to the subject site are single family and duplex residences on the north side and a Polish community center to the northwest.

6. An embankment occurs near the northern property boundary so the residential uses to the north are elevated above the subject property.

7. The subject site has been zoned for commercial use since 1923. The zoning was Community Business (BC) zoning from 1957 to the recent zoning action.

8. Madison Street is a principal arterial. Its intersection with 19th Avenue East is signalized.

9. The Director issued a determination of non-significance (DNS) for the proposed action. The impacts related to the proposed use identified in the DNS were noise, light, aesthetics and truck trips.

10. Noise would be generated by truck refrigeration compressor units and fixed compressor-condenser machines running all night. A 6 ft. high solid fence or wall at the property line is expected by the Director to "somewhat" mitigate the noise. See analysis and decision of the Director.

11. A resident of a second floor apartment in the four-plex across 19th Avenue East, Ralph Shields, has found the noise from the refrigeration units to disturb his sleep.

12. At the examiner's request, the petitioners engaged the services of Towne, Richards and Chaudiere, Inc., sound consultants. The consultants measured sound levels with the refrigeration equipment both off and on late one night. The consultants found that ambient noise levels, without Fratelli's equipment, on the north and southwest sides of the subject site exceed the noise ordinance limits, measuring 62 dBA on the north and 51 dBA on the southwest, both residential zones. The ambient noise is chiefly from traffic. Fratelli's equipment would cause a 2 dB increase on the north side and 4 dB increase on the southwest. The noise from the equipment would exceed the noise ordinance limits by 2 dB on the east side, a commercial zone, where it would be 58 dBA without the equipment and 62 dBA with.

13. When the ambient noise level already exceeds the limits, an increase of 0 to 5 dB is considered to have a "slight" impact, according to EPA Region X guidelines.

14. The noise consultants recommend three conditions be imposed as mitigating measures: 1) prohibit use or parking of internal combustion engine powered refrigeration equipment on the lot; allow operation of electrically powered equipment only; 2) prohibit prolonged idling of parked truck engines; require engines to be shut off when not in use; 3) if complaints occur, monitor noise levels for a period of 24 hours on north and east properties to determine if noise levels have increased significantly; provide mitigating treatment based on the results of noise monitoring. Petitioners agree to these conditions.

15. An 8 ft. high acoustical barrier would not be effective in controlling noise received by Mr. Shields' apartment because it would have clear line-of-sight over the top of the barrier.

16. The impact from exterior building lighting at night could be mitigated by directing the light away from neighboring residences.

17. The DNS states that aesthetics would be improved by landscaping and screening. This appears to be accurate.

18. The proposed plans include extensive new landscaping along Madison, 19th Avenue East and the north and northwest property lines. An 8 ft. high wall or wood fence is proposed along Madison, 19th Avenue East and the north property line. The wall would be interrupted by a 24 ft. wide driveway from 19th Avenue

East controlled by an electric gate.

19. The Director has recommended a condition requiring landscaping but orally revised that condition at hearing because the plans must be changed to meet code requirements for landscaping as noted in the land use correction sheet. The condition should require development as per plans approved by DCLU.

20. At the current level of operation of the distributorship from 6 to 8 mid-sized trucks are used.

21. The increase in vehicle trips is not expected to be substantial.

22. The Director recommended that the petition for a contract rezone be granted with inclusion of certain conditions as contract provisions. The Director appears to have imposed the conditions she recommends for the contract rezone as SEPA conditions as well. Those conditions include the proposed restriction on use and installation and maintenance of proposed landscaping and screening.

23. There is no neighborhood plan for the area of the subject site.

Conclusions

1. Section 23.34.008 sets out the factors to be considered in evaluating a request for a zoning change. They are the match between established locational criteria and the area characteristics, zoning history and precedential effect, other zoning principles, impact evaluation, neighborhood planning efforts, changed circumstances, overlay districts and greenbelt plan.

2. The first requires that the characteristics of the area closely match the adopted locational criteria for the proposed category, C1. To be appropriate for C1 designation, the area should function as "an auto-oriented commercial area, primarily retail/service in nature, which serves surrounding neighborhoods and the larger community or citywide clientele." Section 23.34.080A. The area of a C1 zone is to provide commercial services including retail, office and business support services and may have residential uses. The strip along Madison can be considered "auto-oriented" and serving a greater area than the immediate neighborhood. It also includes the stated range of uses.

3. The existing character is to be a shopping center or a shopping area along an arterial where customers drive from one business to another. Section 23.34.080B. Madison is an arterial with that character in this area.

4. Physical conditions favoring C1 designation are listed at Section 23.34.080C. The area is to be readily accessible from a principal arterial which the subject site is. There are to be edges buffering low density residential areas or defined boundaries. The adjacent L-3 zone provides the buffer between the C1 and lower density residential farther to the north. The two streets provide separation from the NC zone to the east and south.

5. Large lots to accommodate commercial activity are to predominate. Here, the subject property is a combination of lots making a parcel of adequate size for commercial activity.

6. The area is not one friendly to pedestrians because of auto movement, curb cuts, parking lots, etc. Location of the site, at a busy intersection on an arterial is not "pedestrian friendly".

7. The last physical condition listed which would favor C1

designation is the presence of large parking lots. The record does not show this condition to be present though the proposal includes parking lots on two sides of the building.

8. While the match is not perfect, many of the locational criteria for C1 designation are present in this area.

9. The site has been a part of a commercial area under different zone designations over the years. The allowance of outdoor storage of delivery trucks should not create a precedent that would have much effect on the area given the existing development, newer office building, church, residential uses, fruit and vegetable stand.

10. Applying zoning principles to this site shows that the zoning pattern of commercial and residential would largely be unchanged except for the one L-3 lot. That lot appears to be largely at the same elevation of the subject site with an embankment near the north boundary rising to the next L-3 zoned lot. The lot included in the proposed rezone relates more to the remainder of the commercial zone because of its topography and elevation. The other issue raised by the Director is the aesthetic compatibility of the commercial use with the adjacent residential uses. The proposed landscaping and screening of the outdoor storage and parking should obscure the use from the view from residences in the residential zones.

11. Possible negative environmental impacts were identified in the DNS. The only one of concern is the noise emanating from the outdoor storage of refrigerator trucks. Measures have been proposed and must be taken to reduce that noise to a level not in violation of the City's noise ordinance. The conditions proposed should be included in the contract provisions.

12. Since there is no neighborhood plan for the area, the petition does not rely on changed circumstances, there is no overlay district for the area and the greenbelt plan does not affect the area, those factors are inapplicable.

13. After consideration of the factors of Section 23.34.008, it is concluded that the proposed contract rezone, representing a middle ground between the existing NC3 65' designation and the C1 65' designation, is appropriate.

Recommendation

The proposed rezone be granted subject to a property use and development agreement with provisions:

- 1) Restricting the use to those permitted under the NC3 designation plus outdoor storage of fleet vehicles;
- 2) Requiring that the site be developed according to the plans submitted with the petition for rezone;
- 3) Requiring an approved landscaping and screening plan and that landscaping and screening be installed according to that plan and be permanently maintained;
- 4) Prohibiting the use or parking of internal combustion engine powered refrigeration equipment on the subject property (allowing operation of only electrically powered equipment);
- 5) Prohibiting prolonged idling of parked truck engines and requiring that engines be shut off when not in use; and

5) Requiring that if the City receives complaints about noise from the property, the occupant of the property will engage noise consultants to measure noise levels and if the noise exceeds ambient levels, take immediate measures to reduce equipment noise to ambient levels.

Entered this 21st 16th day of January, 1987.

M. Margaret Klockars
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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 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.