

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

In the Matter of the Petition of

HOWARD STRASSER

FILE NO. 8604559
C.F. FILE NO. 296477

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

Introduction

Howard Strasser petitions for reclassification of property at 2448 N.E. Northgate Way from SF 7200 to Lowrise 3.

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 denied.

This matter was heard before the Hearing Examiner on January 23 and February 28, 1989. The petitioner was represented by James Driscoll, attorney at law, and the Director, Department of Construction and Land Use, by Ed Somers, land use specialist.

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 findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this petition.

Findings of Fact

1. Howard Strasser filed a petition seeking a rezone of property at 2448 N.E. Northgate Way from Single Family 7200 (SF 7200) to Lowrise 3 (L-3). The subject site is a parcel with 80 ft. of frontage on the north side of N.E. Northgate Way and a depth of 130 ft. Development on the site consists of a single family residence.

2. The subject property is at the edge of a very large, i.e. over 15 acres, SF 7200 zone which extends north, west and southwest from the subject site. It also abuts a C1 30' zone line to the northeast. To the east and southeast is a C1 40' zone.

3. The SF 7200 zone is developed with single family residences except for a seven-unit apartment building to the northeast of the subject site. Several new single family residences have been built in the block to the north of the subject site, probably within the last three years.

4. The small C1 30' zone contains two structures, a ten-unit motel which has been converted to apartments on the lot abutting the subject site and a medical clinic. The medical clinic site has frontage on Lake City Way.

5. The C1 40' zone across N.E. Northgate Way to the east and southeast is part of the commercial strip which extends along Lake City Way in both directions with its auto-oriented businesses. The closest business to the subject site in that zone is an auto repair facility and then to the south of that is a used car dealership with a one-story office structure. A muffler shop is south of that.

6. Eight lots have frontage on the northwesterly side of N.E. Northgate Way between Lake City Way and the intersection

with 24th N.E. There are seven lots with frontage on the other side of the street in the same block. Of those lots at least seven are developed with single family residences and eight if Lot 2, Block 29 is a through lot as represented by DCLU rather than only having frontage on 24th Avenue N.E. It appears that four of the lots with frontage on Northgate Way have structures in other than single family use. This differs from DCLU's finding that there are only three structures in non-single family use on lots with frontage on N.E. Northgate Way. None of the exhibits shows clearly whether the lot on which the muffler shop lies has frontage on Northgate Way. If it fronts on that street there are five structures in non-single family use.

7. The length of the block from Lake City Way to 24th Avenue N.E. is over 600 ft.

8. The DCLU has not used the 600 ft. limitation on blocks, found in the Single Family Residential Areas policies, 23.16.002, p. 23-15, because the code language does not include such limitation.

9. The DCLU counts through lots as being on both of the block faces on which they front for purposes of calculating the number of structures on a block.

10. Most of the single family-zoned residences are one to two stories high or 15 to 25 ft.

11. The topography of the area slopes down, generally from westerly to easterly. The subject property is shown by the exhibits to rise about 15 ft. over its width, from about elevation 180 ft. to 190 ft. The development along Lake City Way in the C1 40' zone is between elevations 170 and 175 ft. The roof of the office structure for the used car dealership on Lake City Way is about level with the grade of N.E. Northgate Way. The apartment/motel site drops 5 to 10 ft. over its width. The grade of the medical clinic site is more level and is also 5 to 10 ft. below the subject site. The topography rises more steeply to the west and southwest of the subject site. Where the house on the next lot to the west is situated is about 5 ft. higher than the center portion of the subject site. The house on the abutting lot to the north is at elevation 210 ft., some 20 ft. above the main portion of the subject site. It appears the drop-off below Northgate Way to the commercial area is quite abrupt, while the rise in elevation from the subject site up to the house on 24th Avenue N.E. is greater but more gradual.

12. The DCLU found that the subject site relates to the development at the higher elevation, above a topographical break, while the commercial properties exist at a lower elevation. Petitioner's position that the site relates to the properties to the east is equally valid since the slope along Northgate Way is fairly gradual and does not have a clear break.

13. The commercial development along Lake City Way is outside of the view of most of the single family residences on the slope above.

14. Development on the subject site to the height permitted under the existing single family designation could interfere with the views from the residences along 24th N.E.

15. The view from the existing house on the subject site includes the roof of the building on the used car lot and a billboard across the street for Lake City Way.

16. N.E. Northgate Way is designated as a principal arterial and carries about 14,000 vehicles per day. Its right-of-way is 60 ft. wide, 20 ft. of which is paved. There currently are no curbs or gutters but there is space on the shoulder for parking. The Engineering Department proposes to improve Northgate Way by widening the paved roadway to 34 ft. with two eastbound lanes, curbs and a sidewalk currently proposed for the north side of the street. The Lake City Way intersection is currently at capacity

during the p.m. peak. The additional eastbound lane would provide some limited relief by allowing most of the traffic to clear the intersection. The project is subject to funds being approved by the legislature.

17. The street system can carry the small amount of additional traffic that could be generated by development under the requested zoning.

18. The intersection of Northgate Way with 24th Avenue N.E. is carried on the Engineering Department's list of high accident intersections with seven reported accidents in 1987 and five as of September, 1988.

19. The transportation planner from the Engineering Department was familiar with the street and subject site and observed that the site is a "sticky" location for entering and leaving the street because of the curvature of the roadway and the sight distance. Testimony of neighbors agreed with this observation.

20. The Engineering Department will insist that development plans for the subject site provide for all vehicle maneuvering to occur on-site, that is, there would be no backing into traffic.

21. The effect of the proposed Northgate Way improvement would be to bring the traffic lanes about 12 ft. closer to the subject site than they currently are.

22. The Victory Heights Community Council and residents of the area submitted letters, petitions and testimony in opposition to the rezone petition. The chief areas of concern are with traffic, citing the existing back-up from Lake City Way to 24th, high speeds, the curve and sloping grade, and the closure of the street during ice and snow; the potential for overflow parking which they experience from a project they opposed at N.E. 113th and 25th N.E.; the loss of views and the natural setting; the likelihood of increased noise from additional residents; and the erosion of the single family edge which they are concerned will lead to deterioration of the single family nature of the area.

Conclusions

1. Property zoned single family may be rezoned to another classification only if the petitioner can prove that it does not meet the criteria for single family designation. Section 23.34.010A. The criteria are found at Section 23.34.012 and address location, size and boundaries. The locational criterion for single family zones is met if one of several alternative sets of facts exist: the area consists of blocks with at least 70 percent of the existing structures in single family residential use; the area is designated by an adopted neighborhood plan as appropriate for single family use; if the block consists of less than 70 percent single family use, an increasing trend toward single family use is demonstrated by either construction of single family structures in the last five years, increasing number of improvements and rehabilitation efforts or number of existing single family structures being stable in the last five years; or the location is topographically and environmentally suitable for single family.

2. Petitioner and the DCLU differ as to the lots to be considered as part of the block. A "block" "... consists of two (2) facing block fronts bounded on two (2) sides by alleys or rear property lines and on two (2) sides by the center line of platted streets, with no other intersecting streets intervening...." Section 23.84.004. A "block front" is the "frontage of property along one (1) side of a street bound on three (3) sides by the center line of platted streets and on the fourth side by an alley or rear property lines". Section 23.84.004.

Petitioner urges that this definition is unconstitutionally vague. While the definition may be difficult to apply in some cases, the instant petition presents a standard block and block front with platted streets at each end and property lines at the

rear. Due to the conflict between exhibits and their lack of clarity, certainty as to the structures on lots fronting on the street is not possible. It does appear however that the Director's calculation is in error and that the percentage of existing structures in the block in single family use is slightly under 70 percent. The applicant has not shown, however, that the number of existing single family structures has not been stable in the last five years or that the construction of single family structures in the last five years has not been increasing proportionately to the total number of construction of new uses in the area, alternative facts for meeting the criterion. The evidence suggests to the contrary so the area satisfies the locational criterion for single family zoning and may not be rezoned to another classification.

3. The site abuts an area comprised of at least 15 contiguous acres in single family zoning meeting the size criterion.

4. A platted lot line provides the existing boundary which is an approved option for single family zoning.

5. Where the petitioner has not shown that the area does not meet the criteria for single family designation the site may not be rezoned and further consideration of rezone criteria is not required. However, conclusions as to the other considerations will be offered to the City Council for use in the event a different conclusion is reached.

6. The locational criteria for the Lowrise 3 classification is to be considered to determine which of the multi-family classifications should be used if a rezone is appropriate. Section 23.34.018. An area appropriate for Lowrise 3 has a variety of scale patterns but the prevailing pattern is for medium bulk and moderate height, 30 to 40 ft. That is not met by the area as the prevailing pattern is for small bulk and low height.

The second criterion is not met because the site is not at a topographic break, separated by an arterial or open space from the smaller scale development. There is a slight difference in elevation between the subject site and the single family lot to its west, however, that difference is not sufficient to provide the zone definition required by this criterion.

For Lowrise 3 the area should have topography and prevailing structure heights requiring a 37 ft. height limit to retain views. The existing height limit is lower so L-3 is not required retain views. Another description of an area appropriate for L-3 is one which is overlooked from public open spaces and scenic routes where views could be blocked by bulky structures over 37 ft. in height. The existing height limitation protects scenic views so L-3 is not required for that purpose.

The site does meet the next criterion which is that the area be well-served by public transit and proximate to arterials. The evidence shows that the site is on an arterial.

The final criterion for L-3 classification is that it be an area adjacent to business and commercial uses with comparable or greater height or bulk or where transition in scale is desirable. The transition in scale currently exists and the effect of reclassifying this site would be to shift the location of the transition farther into the existing single family zone.

7. In addition to matching the characteristics of the area to the locational criteria for the desired zoning, done in conclusion 6, the zoning history and precedential effect must be evaluated. In this case, because there is no significant difference between the subject site and that adjacent to the west, granting the proposed zoning change could be seen as precedent for rezoning the adjacent lot at a later date. The reasons given by petitioner to justify rezoning the subject site, proximity to the traffic lanes and proximity to the adjacent multi-family, use would be true also of the next lot to the west if the subject

site were rezoned.

8. Zoning principles are to be considered and, in this case, the main concern would be with protection from erosion of the single family edge, required by the Single Family Residential Areas Policies. The pattern existing in the area of having commercial and more intensive uses at the lower elevation along Lake City Way and the single family residential above would not be altered significantly by the proposed rezone because it is an area of the slope where the site could be considered either lower or upper elevation.

9. The negative impacts on the area which could be caused by development under the new classification are to be considered. While the street system can handle the traffic there would be no opportunity for overflow parking on Northgate Way which would encourage use of the side streets. Additional density also would add to the noise and potential loss of vegetation and wildlife.

10. None of the other general criteria apply in this case.

11. Because the petitioner has not shown that the area does not meet the criteria for single family designation, the Hearing Examiner is required to recommend that the petition be denied.

Recommendation

The petition should be denied.

Entered this 15th day of March, 1989.

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 reconsideration 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.