

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

In the Matter of the Petition of

VICTOR RUSCIGNO

FILE NO. 8802579
C.F. NO. 296478

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

Introduction

Victor Rusigno petitions for the reclassification of property at 11332 Lake City Way N.E. from SF 7200 to L-2/RC and requests administrative conditional use approval for parking accessory to a non-residential use in an adjacent commercial zone.

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

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

This matter was heard before the Hearing Examiner on June 28, 1989. The record closed on July 7, 1989, after petitioner submitted additional evidence.

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 subject of the rezone petition is an interior lot containing about 4,800 sq. ft. at 11332 Lake City Way N.E. (See attached map for location). The lot is in common ownership with property to its west and northwest. The larger site is developed with a performing arts theater or nightclub and accessory parking. The part of the site which the smaller subject property joins is zoned Lowrise 2/Residential Commercial (L2/RC) and the portion with frontage on Lake City Way is zoned C1/40'. The subject property is zoned SF 7200.

2. The northerly and easterly boundaries of the subject property join two SF 7200 lots developed with single family residences. The westerly boundary adjoins the L2/RC parking lot under common ownership and the southerly boundary separates it from another commercial property zoned L2/RC. A rezone and administrative conditional use are requested to allow the owners of the property, MMR, Inc., to legally expand the parking lot for the nightclub into the subject site.

3. Mr. Ruscigno, who has sold the property to MMR, Inc., in 1969 petitioned for a rezone of three areas east of the former restaurant building including the subject property to make them available for accessory parking. The rezone approval excluded the subject property. In 1973 he again requested a rezone for the subject site and was again denied the rezone. With the rezoning after the new Land Use Code was adopted, the single family designation of the subject site was maintained.

4. The nightclub use on the westerly property was established prior to the moratorium on adult entertainment uses imposed by the City Council.

5. The subject property was partially paved, probably in 1969, but a large number of trees remained in the middle of the subject site and along the edges which buffered the residences from the activity on the property and adjacent businesses and from that on Lake City Way. Recently, all trees were removed, the area was graded, filled and hard-surfaced and new 8 ft. high cyclone fencing was installed with landscaping on the inside of the fence.

6. Prior to the recent grading, the crown of the hill to the east of the Lake City Way lay along the west boundary of the subject property which then sloped down toward the residences on the east. The grading leveled the site raising the elevation along the east boundary by about 4 ft. and along the north boundary of the subject site by about 1 ft. The new grade is supported by ecology blocks which in turn are supported by the rockery on the neighbor's property. Since the neighbor had plans to remove the rockery to create a planting bed there is concern about the stability of the new grade.

7. The commercial uses on this part of Lake City Way do not create any demand for on-street parking. A gas station, car wash and auto towing business are located to the south of the nightclub. To the north are a used car dealership, service station and other auto-oriented businesses.

8. The subject property is sufficiently large to allow development of L2/RC uses. Under that zoning, the subject property could accommodate up to five apartment units or 12 parking spaces.

9. Petitioner presented no evidence that there would be no economically viable use for this site as it is zoned.

10. The zoning pattern on the east side of Lake City Way is a commercial strip made up of lots with frontage on Lake City Way flanked by L2/RC or L2 zoning with the single family zoning to the east of that.

11. The owners of property adjacent to the subject site have many complaints about the use of the existing parking lot for the nightclub. The behaviors complained of include alcohol consumption (with containers thrown over the fence onto neighbors' yards, roofs, etc.), loud noise including obscene language, gunning engines, door slamming, shouts, etc., continuing until 3:00 a.m., users of the lots urinating, garbage thrown or blown onto neighbors properties, etc. The police respond to complaints but are unable to maintain sufficient presence to control the behavior.

12. The representative of the nightclub indicated that the management cannot and will not guarantee the behavior of its patrons in the parking lot.

13. The determination of nonsignificance made by the Department of Construction and Land Use was not challenged. While not found to be significant, the environmental impacts from the rezone and administrative conditional use for the proposed use would include late night noise and activity, glare from headlights and parking lot lighting and incompatibility of land use with the adjoining single family residences. The Department of Construction and Land use found that a substantial barrier would be required to mitigate those effects. The recommended barrier, if the petition were to be approved, would be a 6 ft. high, solid concrete block wall or solid wood fence without gaps with a landscaped strip along the single family sides at least 5 ft. deep and planted with evergreen trees and shrubs.

14. The Department of Construction and Land Use found that the subject lot is not within a "block" for purpose of rezone evaluation.

15. The evidence showed that there have not been additional commercial structures constructed in this area for some years but

two residences have been added. Further, the testimony was that there has been no loss of single family housing in the immediate area.

16. No neighborhood plan has been adopted for this area.

17. The Department of Construction and Land Use recommended that the rezone be granted subject to a series of conditions. The recommended conditions are:

Prior to final signing of the rezone by the
City Council

1. A 6 ft. high solid wood or concrete block wall without gaps, set back 5 feet from the east property line and extending the full length of the east property line shall be installed to provide an effective barrier between the rezone site and the single family properties to the east. The 5 foot setback on the east side of the wall shall be landscaped with 10 evergreen trees (Douglas fir or western hemlock, or other similar tree to be approved by DCLU spaced approximately 10 ft. apart, and 2 inch caliper and 6 ft. minimum height), and 10 shrubs (such as 2 gallon sized rhododendron, or other shrub to be approved by DCLU and planted between the trees) to make the wall aesthetically compatible with the adjacent residential properties.
2. The rezone area shall not be utilized as a night-club parking lot or any other uses associated with an adult night-club.
3. The asphalt surfacing on the rezone area shall be removed and restored with vegetation including 5 trees (any variety of red maple or other tree to be approved by DCLU, 2 inches in caliper) and grass or other vegetation to be approved by DCLU until such time that the rezone area is redeveloped with uses permitted in the L2/RC zone (not including a parking lot for adjacent businesses, or any use associated with an adult night-club).
4. The rezone area shall be fenced with a wall or solid wood fence 6' in height along the west lot line from the adjacent parking lot to the west to prohibit casual parking or use of the rezone area by night-club patrons or employees.
5. A nurseryman's certification shall be submitted to DCLU that the landscaping required in conditions #1 and 3 above have been installed to their specifications.

18. The Department of Construction and Land Use recommends that the administrative conditional use for the accessory parking be denied as in conflict with public interest and adversely affecting properties in the surrounding area because it is associated with an adult nightclub, involves late night noise, activity and glare and would represent an expansion and entrenchment of an adult theater which the City Council has deemed inappropriate for neighborhoods outside downtown.

19. Petitions opposing the rezone with hundreds of signatures have been submitted.

20. Community members ask that the encroachment of commercial uses into the single family area be resisted and that

definite separation be maintained or created.

21. Adjoining residents ask that the City require that the property be restored, to the extent possible, to its condition prior to the recent grading and removal of trees. One suggests that if the only authority available is connected to a rezone action, that the site be rezoned but the use of the lot be restricted to daytime parking with the conditions recommended by the Department plus conditions requiring removal of the ecology block wall and a 10 ft. setback for the fence.

Conclusions

1. Single family-zoned areas may be rezoned to another classification only if the petitioner demonstrates that the area does not meet the criteria for single family designation. Section 23.34.010A. The three criteria are the locational criteria, size and boundaries. The locational criteria for single family designation are that 70 percent of the structures on the block are in single family use, or the area is designated by an adopted neighborhood plan for single family residential use or if less than 70 percent is in single family use there is an increasing trend toward single family residential use. Section 23.34.012A.

2. Whether 70 percent of the structures on the block are in single family use depends on the definition of "block". The Land Use Code defines "block" as consisting of two facing block fronts bounded on two sides by rear property lines or alleys and on the other two by platted streets. Section 23.84.004. The Department correctly concluded that the subject property is not part of a block, as defined above, so this criterion is not applicable. As to the second locational criterion, there is no neighborhood plan for this area. If the third locational criterion for single family zones, a trend toward single family residential use, exists the site may not be rezoned. The provision lists several examples of evidence of such a trend such as new single family an increasing proportion of the total new construction in the area or the number of single family residences remaining stable in the last five years. The record shows that two new houses have been constructed in the area and no new commercial structures constituting a minor trend. There is no evidence of any loss of residences. With these circumstances the site qualifies for single family designation so if the size and boundary criteria are met, rezoning would be barred.

3. Since the area proposed for rezoning abuts an existing single family zone, the size criterion is satisfied.

4. The westerly platted lot line does technically qualify as a boundary. Due to the regrading of the site, the easterly boundary is now a much stronger dividing line, though it provides no protection from the effects of activity to the adjacent residences.

5. While the boundary is not fully satisfactory, the burden is on petitioner to show absence of qualification. Petitioner has not shown that the area does not qualify for single family designation so the site may not be rezoned to other than a single family classification. Only if the absence of an adequate boundary along the westerly edge of the subject site allows consideration of other classifications, does the analysis need to proceed to the next step which is use of the general rezone criteria to evaluate the requested rezone.

6. The first of the general rezone criteria, at Section 23.34.008, is whether there is a match between the area characteristics and the locational criteria for the proposed classification. The locational criteria for Residential Commercial (RC) zones, Section 23.34.070, require looking at function, character and physical factors favoring that designation. The function which could be applicable here is "to provide opportunities for needed parking in areas where spillover parking is a major problem." Section 23.34.070A3. The record

shows, however, that there is no spillover problem from any of the businesses and no indication that any spillover from the nightclub use could not otherwise be accommodated.

7. "Character" is divided into "existing" and "desired." The existing character of an area to be zoned RC may be primarily residential with a pattern of mixed residential/commercial or be adjacent to a commercial area where accessory parking would help the functioning of the commercial area and/or relieve spillover onto neighborhood streets. Section 23.34.070B. The pattern here is shown to be a commercial strip along Lake City Way, parking behind abutting the rear yards of single family residences and then the single family residences. By the fact that parking is proposed for this site, it can be inferred that it will help the commercial use so the existing character fits one of the Code descriptions. The proposed use under the RC designation would not meet either of the listed desired characteristics which are "physical appearance resembling the appearance of adjacent single family areas", or "mixed use with small commercial uses street level." Other RC uses could resemble single family but not the mixed use since there is no street frontage.

8. One of the physical factors favoring RC designation is present, i.e., lack of edges or buffer between residential and commercial uses. Section 23.34.070.C.1. As to the particular multifamily designation selected for the residential portion, the characteristics of the subject site do not match most of the criteria for Lowrise 2 in Section 23.34.016. The area does not feature a mix of single family and small to medium-sized apartment buildings; the site and remainder of the L2/RC zone is not located between single family structures and medium scale multifamily but between single family and small scale commercial buildings; it is not an area where scale has to be controlled to preserve views or overlooked from public places. The only match is that the prevailing scale is small with proximity to transit on Lake City Way and to business areas.

9. The area's match with the locational criteria for L2 and RC is minimal. The main justification for the selected classification appears to be the owner's desire for more accessory parking and that the site abuts on two sides an area zoned L2/RC.

10. The second of the general rezone criteria is the zoning history of the site and area and the precedential effect of the rezone. The site has been zoned for single family at least since 1957 and that zoning has survived two attempts to upzone and the city-wide redesignations. The changes shown since the last zoning are the new adult entertainment use on the adjacent property and the grading of the subject site. Unfair though it may appear to opponents, those changes support the change in zoning since the site is made less desirable for single family use. Though the Department of Construction and Land Use found little danger that rezoning this site would set a precedent for other similar rezones, community members are concerned, citing the continuing pressure from the commercial strip to expand to the east into the single family area. Properties to the south of the L2/RC zone would appear from the map to be the most vulnerable to such pressure.

11. Applicable zoning principles are to be applied to the proposed rezone. The Department of Construction and Land Use describes a zoning pattern going from the more intense C1 along the arterial to the L2/RC for parking next to that at generally the same elevation and then the SF 7200 at a lower elevation. Since the subject site has been leveled to the same elevation as the commercial strip the pattern of commercial at the higher elevations and residential at the lower would be continued. Another principle favors regular platting and zoning patterns. The pattern is somewhat irregular now and the proposed zoning would add to that irregularity.

12. The general criteria require evaluation of environmental impacts. Most impacts associated with development and use of the site would be minor because of the size of the property. The

proposed land use, however, has been shown to be incompatible with the adjacent single family uses largely because of the time of the activity on the property, though some of the activity would be intolerable at anytime. Given the lack of commitment from management to solve the problems experienced by the adjacent properties, not all of which would be solved by a 6 ft. tall, solid barrier, the land use incompatibility militates against the wisdom of rezoning the site.

13. Criteria E. Neighborhood planning efforts, and G. Overlay districts, are inapplicable.

14. The changed circumstance of the altered elevation of the property does effect its orientation so that it relates more to the commercial strip than to the residential use. This does have an effect on the site's desirability as a housing site but that problem could be eliminated by restoration of the slope.

15. The rezone criteria are provided to assist in assessing the public interest involved. Here, the incompatibility of the proposed land use is in direct conflict with the policy intent for single family areas where the City has taken the responsibility to preserve and protect those areas which are in predominantly single family use and to maintain their edges from intrusion. The proposed rezone would have the effect of eroding that edge and reducing the size of the single family zone. Unless there is a showing of no economically viable use of the site as single family that policy strongly supports a recommendation to deny the rezone.

16. With the denial of the rezone, the City should exert stronger efforts to assure that the site is not used unlawfully for parking.

17. Should the site be zoned is zoned Residential Commercial, administrative conditional use would be required to establish parking accessory to nonresidential uses in adjacent commercial zones. That approval may be authorized if the conditions required by Section 23.46.006C are present. Those conditions are:

- a. The proposed parking is necessary to meet parking requirements, or the proposed parking will be used as a shared parking facility;
- b. The proposed parking is necessary to avoid increased parking congestion in the adjacent commercial area;
- c. The proposed parking is necessary to avoid creation or worsening of excessive spillover parking in adjacent residential areas;
- d. Other parking options such as shared parking have been considered and found to be unavailable in the adjacent commercial zone; and
- e. The proposed parking does not encourage substantial traffic to pass through adjacent residential areas.

Only one of those conditions exists, e., that the parking would not encourage traffic to pass through residential areas since access is from Lake City Way, so approval could not be granted.


18. The conditional use provision requires certain standards to be met if approval is given including 15 percent of the area to be a landscaped, a landscaped 10 ft. setback at the front property line and 5 ft. along street property lines, 6 ft. high screening on lines abutting property in a residential zone with 5 ft. deep landscaped area inside the screening. These provisions would not reduce the incompatibility of the accessory parking

adjacent to the single family properties in this case. Therefore, the other general conditional use requirements that the use be not materially detrimental to the public welfare or injurious to property also would not be satisfied. The record shows that the accessory parking would injure the immediately adjacent properties. The expansion of parking for a use which has been determined by City Council action to be inappropriate for the area would be detrimental to the public welfare. Therefore, the Council should deny the administrative conditional use for parking.

Recommendation

The rezone and administrative conditional use should be denied.

Entered this 21st day of July, 1989.


M. Margaret Klockars
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.