

## FINDINGS AND RECOMMENDATION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

BRUCE MCRORY ET AL.

FILE NO. CC-8605024

for an amendment to the Official  
Zoning Map pursuant to Title 23,  
Seattle Municipal Code (Ordinance  
86300, as amended)

#### Introduction

The petitioners request reclassification of Lowrise 1 (L-1) zoned property to Neighborhood Commercial 1, 30 ft. height limit. The proposal's street address is 665 - 23rd Avenue.

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 June 29, 1987.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, as amended (Ordinance 86300, as amended) unless otherwise indicated.

After due consideration of the evidence presented by the petitioners, the information provided by the Director's report and file, and all evidence elicited during the public hearing, and subsequent to a visit to the site and environs by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this petition.

#### Findings of Fact

1. The present petition is to rezone corner property located at 23rd and East Cherry Street from Lowrise 1 to Neighborhood Commercial 1, 30 ft. height limit. The property is legally described as "Lots 1 through 5, Block 18, Walla Walla Addition" and is commonly known as 665 - 23rd Avenue.

2. The initial petition by ARCO was to rezone only

The east one-half of lots 1-4 and all of 18 of  
Walla Walla addition as recorded in Volume 5,  
page 81 of the records of King County,  
Washington.

The initial petition was amended so that a 43 ft. deep parcel with 120 ft. of frontage to 22nd Avenue was included. This smaller parcel, owned by petitioner Barnett, was in former use as an auto repair shop/yard. DCLU gave public notice of the amended petition.

3. The total site is located on the south side of East Cherry Street and extends some 86 ft. east of 22nd Avenue. East adjacent to the site is land currently zoned NC1 - 30'. This parcel has frontage on 23rd Avenue and is developed with an older Texaco Service Station use. There is an approximate 14 ft. rise in topography from 23rd to 22nd Avenue (west).

4. Petitioners propose to rezone the site from L-1 to NC1-30'. For petitioner ARCO, this would allow construction of an expanded gasoline and mini-mart that would feature a more complete line of foodstuffs and some prepared foods. Specifically, ARCO would construct a single-story wood frame building that would extend to the Cherry Street right-of-way for immediate pedestrian access. More to the southeast, to 23rd Avenue, would be two pump islands.

Three underground tanks would be sited immediately west of the pump island.

5. ARCO proposes extensive perimeter landscaping, to include street trees. DCLU issued a determination of non-significance for the proposal but attached certain conditions to the Master Use Permit. The conditions require submission and maintenance of approved landscaping plans "to reduce the impact of height, bulk and scale."

6. An existing wall separates the present "Texaco Site" from ARCO's more westerly property. ARCO proposes to relocate this wall 43 ft. westerly to "retain the elevation buffer."

7. Based on Institute of Traffic Engineers (ITE) studies for the proposed use and square footage ARCO anticipates 1500 average vehicle trips per day, with 50% of the peak hour trips digression or "converter" trips. This will constitute an approximate 50% increase in the present volume. However, there is no testimony or evidence of record that 23rd or Cherry would be adversely impacted by the traffic. The noise, auto light and other anticipated vehicle impacts will be similar to those of the present service station use.

8. The Hearing Examiner finds that there is substantial support of record for the ARCO proposal. DCLU noted that a petition with approximately 240 signatures stated opposition. Another petition of some 250 favored the petition. Testimony of Ron Flynn.

9. Included among the supporting witnesses were Charlene Williams, Central Area Chamber of Commerce President. According to Williams, the ARCO (and the Barnett) proposals would facilitate community economic development, offset redlining impact, provide employment and serve as conveniences for local senior citizens who may wish to purchase foodstuffs.

10. Also, of record is a letter from the counsel for the Seattle School District which states no objection to the beer and wine license for the mini-mart. ARCO representatives testified credibly that this School District letter followed meetings with the principal of nearby Garfield High School, the school PTA and others.

11. ARCO promises to employ central community youth. In addition, one ARCO spokesman volunteered that they would enforce their strict policy against loitering and would maintain their \$25,000 reward offer to discourage robberies. Further, the store would carry no video games and sell no adult magazines.

12. Barnett's proposal, for the most westerly 43 ft. of the rezone site, is less definite. Barnett envisions a small retail building for his site, perhaps with video store, that would directly access to Cherry Street. This would diminish the impact on the 22nd Avenue residential neighborhood.

13. As suggested above, the eastern portion of the subject site is relatively flat, and is separated by a retaining wall from the more elevated western portion of the site. Applicant ARCO proposes to relocate the retaining wall to the Barnett property line "to retain the natural topographical break." Barnett offered that the private properties' retaining walls on the west side of 22nd Avenue are adequate to mentally buffer his proposed commercial zone from the existing L-1 zone.

14. West and southwest of the site is an L-1 zone that is developed with a mix of single-family homes, small apartment buildings and churches. To the northwest is a SF 5000 zone that continues mid block east from 22nd Avenue. The northwest and northeast corner parcels at 23rd and East Cherry are zoned NC1-30.

The southeast corner is used as a park area and is adjacent to the Garfield playfield and High School.

15. The Hearing Examiner finds that the immediate neighborhood, particularly along 22nd Avenue, has several vacant lots and deteriorated houses. As reported by DCLU, however, there is a slow reinvestment trend as evidenced by a two year old apartment building constructed across the street from the subject site.

16. The requested 30 ft. height limit conforms with the existing 30 ft. height limit of the adjacent L-1 zone.

17. The zoning history is as noted in the DCLU report. The site was zoned Business from 1923 to 1959 when it was downzoned for RD 5000 (duplex) use. In 1967 the site was zoned multi-family (RM) and in 1982 to L-1. In DCLU's opinion rezoning the site would negate the natural topographical barrier between the zones and would also contravene the zoning history by returning the site to a pre - 1959 use.

18. DCLU's further opinion is that rezoning the ARCO site alone would render the Barnett property less functional and attractive for L-1 development because of the size and 43 ft. (shallow) depth of the Barnett site. These views were contradicted by Barnett and by ARCO. The record contains no expert real estate testimony on this particular question.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to the procedures of Chapter 23.76, Seattle Municipal Code.

2. The substantive rezone criteria are found in Chapter 23.34, Seattle Municipal Code. Specific criteria are at Seattle Municipal Code Section 23.34.008.

3. Seattle Municipal Code Section 23.34.008(A) requires an evaluation of the match between the characteristics of the area to be rezoned and the adopted locational criteria for the proposed (NC1) zone. The NC1 locational criteria are at Seattle Municipal Code Section 23.34.074. Rezoning either or both sites would comport with the function criteria of Section 23.34.074(A). The proposed rezoning and development of the properties would provide convenience retail sales and service to the nearby residential neighborhoods. The proposed commercial zone would be a "small commercial area surrounded by low-density residential areas," Section 23.34.074(B)(1). Further, ARCO proposes a continuous, "pedestrian friendly" storefront to the Cherry Street property lines; and based on the size and configuration of the Barnett property it is reasonable to expect a similar footing for any construction on the Barnett site, Section 23.34.074(B)(2).

4. With respect to the physical conditions favoring NC1 designation, Section 23.34.074(C), the site is "surrounded by low-density residential areas" through which some of the traffic will be drawn. Section 23.34.074(C)(1)(4). There is, however, no indication of limited transit service, street capacity, or off-street parking capacity. As the three NC1-zoned corner properties of the East Cherry and 23rd Street intersection are developed with a variety of small commercial uses, a church and some vacant sites, it is not clear that there is a shortage of appropriate land for commercial development. Other than the retaining wall, there is no physical edge between the east and west sides of 22nd Avenue. The absence of a physical edge - buffer from residential areas favors NC1 designation. (By contrast NC3 criteria call for a separation from low - density residential areas "by physical edges, less - intense commercial areas or more - intense residential areas." 23.34.078(C)(2).)

5. Other criteria for commercial area designations are at Section 23.34.072. Rezoning the ARCO property would not cause commercial encroachment into a residential area. Rezoning the Barnett property would allow commercial land use to encroach the L-1 residential area. 23.34.072(B)(2)(1). It would also appear with respect to the Barnett rezone that the proposed commercial zone would conflict with the theme of protecting the edges of residential zones, Section 23.34.072(B)(2)(2), and that the commercial use would face residential zoning and use across the street in contravention of 23.34.072(B)(3). The Hearing Examiner is not persuaded that the front retaining walls on the west side of this 22nd Avenue, a neighborhood street, provide an adequate, effective physical buffer. It would appear more effective to simply have commercial uses face away from residential uses. 23.34.074(B)(3). The ARCO development would face away from the Barnett and other 22nd Avenue fronting properties and would be separated by a demarcated topographical break.

6. Rezoning of the ARCO parcel in particular appears as a mere extension or improvement of the 23rd Avenue - fronting commercial area. Seattle Municipal Code Section 23.34.074(B)(4)(5).

7. On balance, the ARCO rezone would comport with the first (close match) criterion of Section 23.34.008 in that the characteristic of subject site "closely fits the adopted locational criteria" for the NCl zone. In that rezoning the Barnett property would cause a commercial zone to encroach a residential area, would conflict with residential edge protection, and would leave an inadequate buffer between zones, the Hearing Examiner cannot conclude that the Barnett property characteristics, including its siting on a residential street, "closely fit" the NCl zone locational criteria.

8. In terms of zoning history and precedential effect Seattle Municipal Code Section 23.34.008(B), there is yet another distinction between the Barnett and ARCO parcels. The site was downzoned from business in 1959 and has since retained multi-family classification. It would appear to violate Council intent to return the more upland portion of the site, oriented to residentially-developed 22nd Avenue, to a business classification. Thus, that portion of the ARCO site that fronts on 22nd Avenue and the Barnett property should not, per zoning history, be rezoned to commercial. The interior portion of the ARCO site does not suffer the same historical impediment.

9. Inasmuch as the interior ARCO parcel development would extend the historical business use of the more easterly (23rd Avenue facing) property, faces no residential uses and is part of a larger corner property, no negative precedent would be established. Since the Barnett site and a southwest portion of the ARCO site face uncertain mixed quality residential development that is residentially zoned, the encroachment and erosion of a residential edge would send a negative message for other residential properties, and hence the housing stock, in the City of Seattle.

10. In terms of compatibility and other zoning principles, the interior ARCO parcel would be developed to improve upon existing use facing 23rd Avenue and E. Cherry. Rezoning the 22nd Avenue - facing property would merely leave a neighborhood street as a buffer.

11. Other than the land use impacts noted above, rezoning the 22nd Avenue - facing parcels to commercial would expose the residences to increased vehicular noise and other activity associated with commercial uses. There is also the serious question of whether the commercial zoning would destabilize the neighborhood's development efforts. On the other hand, rezoning the ARCO and Barnett parcels would facilitate improved neighborhood aesthetics and employment opportunities.

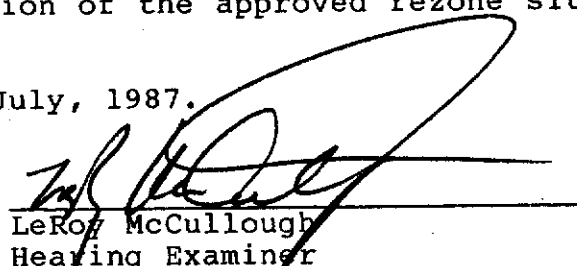
With specific regard to the ARCO proposal, traffic generated would access the site by Cherry or 23rd Avenue. Section 23.34.008(D).

12. The record reflects no neighborhood plan, applicable greenbelt or overlay district or changed circumstance offered as justification for the requested rezone. Seattle Municipal Code Section 23.34.08(E)(F)(G)(H).

13. In summary, the Hearing Examiner recommends that the rezone for the ARCO interior property be granted. The rezone petition should be denied for the Barnett property and for the 43 ft. by 30 ft. parcel of ARCO site that fronts on 22nd Avenue.

14. The ARCO rezone proposal should be reserved by contract and conditioned to require DCLU approved landscaping and Seattle Engineering Department approved ingress and egress so that vehicular disruption of the 22nd Avenue block fronts will be minimized. DCLU should give special attention to the south and west perimeter landscaping. Finally, ARCO should be required to provide an amended legal description of the approved rezone site for law department review.

Entered this 13th day of July, 1987.

  
Leroy McCullough  
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.