

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

In the Matter of the Petition of

RAY TERRY

FILE NO. CC-8607300

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

Introduction

The petitioner requests reclassification of Lowrise 3 and Single Family 5000 to Commercial 1 40' and to establish the use and construct a 1-story retail and auto service building of approximately 9900 sq. ft. The proposal's street address is 8401 Aurora Avenue N.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be conditionally granted for the Lowrise 3 portion of the site and be denied for the single family portion of the site.

This matter was heard before the Hearing Examiner on August 19, 1987.

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

After due consideration of the evidence presented by the petitioner, the information provided by the Director's report and file, 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. The property is located on the southwest corner of Aurora Avenue N. and N.W. 85th Street. The lot measures 140.27 ft. by 205.02 ft. The 105 ft. deep portion of the lot, fronting on Aurora Avenue N., is zoned Commercial 1 with a 40 ft. height limit (C-1 40'). The back portion of the lot extends into two residential zones; 30 ft. into the Lowrise 3 (L-3) zone and 20 ft. into the Single Family 5000 (SF 5000) zone. The front of the lot is relatively flat but slopes up sharply along the west property line. The site is developed with a vacant, former restaurant structure.

2. Development in the vicinity consists of a mixture of commercial uses fronting along Aurora Avenue N. There are multi-family structures in the Lowrise 3 zone along North 85th Street. There is a large single family zone to the south and west of the site. There is a convenience store with gas pumps in the northwest corner of 85th and Aurora, a fast food restaurant on the northeast corner, and a service station on the southeast corner. Aurora Avenue North is a primary north/south traffic corridor through the city and North 85th Street is a primary east/west corridor. Both arterials carry heavy volumes of traffic and the intersection of 85th and Aurora is being studied by the Seattle Engineering Department to ease the congestion there.

3. The Seattle Engineering Department has indicated that the intersection of Linden Avenue N. and North 85th Street has one of the highest accident rates in the City.

4. The neighborhood expressed concern about an increase in traffic along North 84th Street because the entrance to the site is to be located on North 84th Street.

5. The petitioner proposes to construct a one-story retail and auto service building of approximately 9900 sq. ft. with

surface parking for 21 automobiles. Required parking and access aisles are shown in the residentially-zoned portion of the lot on the west side of the site. The petitioner is therefore requesting a rezone of those portions of the lot to Commercial 1 40'. Required parking and access for commercial uses is allowed in the C1 zone but not on or from residentially-zoned lots.

6. It is unlikely that the 20 ft. wide strip of single family zoned property at the rear of the site will be used for a new single family residence or combined with the single family-zoned lot next door. This is because it is quite narrow, it adjoins the commercial zoned property proposed for an auto service and retail use, and faces a Chec Medical Center across the street.

7. The single family portion of this proposed site abuts a single family zone where at least 70 percent of the existing structures are in residential use, there has been stability of single family structures in the last five years, and improvements and rehabilitation efforts to single family structures have occurred in the area.

8. Of the 21 structures fronting on North 84th Street, 20 are single family residences and one is a duplex. Therefore, the single family portion of the lot fronts on a block face where more than seventy percent of the structures are in single family use.

9. There are no adopted neighborhood plans including this area.

10. Strong and stable single family residential use trends and potentials have been demonstrated such as the number of existing single family structures which have been very stable in the last five years. The existing houses are the same structures that have been there for many years. The area's location is topographically and environmentally suitable for single family structures. There have been an increasing number of improvements or rehabilitation efforts to the single family structures in this area. There is a topographical break between the site and the single family residences to the west. The lot is relatively flat but slopes up steeply at the rear. Aurora Avenue N. is a major traffic arterial. There is a consistent strip of commercial uses all along both sides of Aurora oriented toward the arterial and away from the single family developments to the rear.

11. Although the new zone boundary would not follow the platted lot line in the single family zone portion of the lot, the proposed boundary change would follow an existing ownership pattern established by the restaurant many years ago, and would align with the zone boundary between residential and commercial zones for the convenience store to the north.

12. Aurora is an auto-oriented commercial area, primarily retail/service in nature, which serves surrounding neighborhoods and the larger community and city-wide clientel. The commercial strip provides a wide range of commercial services, including retail, offices and business support services. The rezone area has long been in common ownership with the C1 zoned portion of the lot and is oriented toward Aurora.

13. The site is consistent with the existing character being a shopping area along the arterial where customers drive from one individual business to another.

14. The rezone area is readily accessible from a principal arterial. An edge is present which buffers the low density single family and Lowrise 3 areas; i.e., the sharp slope at the rear of the lot. There is a predominance of large lots which can accommodate a wide range of commercial activity along Aurora.

There is limited pedestrian access on Aurora and curb cuts, auto movement and parking lots create an environment which is unfriendly to pedestrian activity. There is a presence of large off street parking lots along Aurora, readily accessible from a major transportation corridor from Interstate 5 along North 85th Street, as well as from Aurora. The lot is more oriented toward Aurora Avenue than North 84th Street.

15. In 1923 when the first Zoning Code was adopted, the area proposed for rezone was designated as a Business District. However, in the 1957 Zoning Code, the zone boundary line was moved to its present location. That line was not changed when the Land Use Code was adopted in 1982 regardless of the ownership and topography of the lots. The convenience store site across the street to the north was rezoned to extend the commercial zoning an additional 100 ft. westward in 1972.

16. The land use pattern in the vicinity is characterized by strip commercial zoning along the heavy traffic corridor, Aurora, and large single family zones on both sides of Aurora. There is a multi-family development along North 85th Street. The commercial uses are oriented toward Aurora and away from the residential uses to either side. The size of the lot would be consistent with the size of other commercial lots along Aurora. The lot is at the base of a slope between the single and multi-family development to the west and the commercial development along Aurora. The auto retail and service building would be only one story in height at the base of the slope. The applicant proposes screening and landscaping on the slope along the zone boundary between residential and commercial uses.

17. Several environmental impacts can be expected: there would be earth disruption from excavation for the foundation of the new building and there will be short-term increase in noise and particulate levels due to construction.

18. The auto retail and service center will generate less traffic than the former restaurant use on the site. The Seattle Engineering Department recommended that the rezone be a contract rezone for the proposed use only. This is because of the existing traffic congestion near the intersection of 85th and Aurora, and access to the site is severely restricted from prohibition against left turns to the site from Aurora. The intersection of North 85th Street and Linden Avenue N. has one of the highest accidents rates in the city due to west bound cars attempting to turn left and south bound onto Linden across the east bound lanes. Therefore, the Director recommended that no access to the site should be allowed at North 85th Street. The Seattle Engineering Department has also asked for a dedication of fifteen feet of street right-of-way along North 85th Street to create a left turn lane from 85th to Aurora. The service station across the street has already located its new building in preparation for the left turn lane dedication. The left turn lane is expected to relieve some of the congestion at this intersection.

19. The auto retail and service use would be a day time use and would be topographically separated from the residential lots atop the slope. A six foot high view obscuring wood fence and landscaping would be provided along the west property line to mitigate the impacts to the residential uses. Aurora Avenue North is brightly lit by street lights at night and existing noise levels from automobiles are high.

20. The only street near the site for overflow parking is North 84th Street, a residential street. All customer and employee parking, and any overnight storage of vehicles awaiting repair should be on-site, according to the Director, due to the overflow parking on North 84th Street. The project architect provided data indicating that only limited overnight parking of vehicles will be needed. As long as overnight (24 hours or more)

storage of vehicles is kept to a minimum, the site has adequate parking. However, if there is long-term storage of vehicles, some parking impacts to North 84th Street may occur. Therefore, the Director recommended that overnight parking of vehicles in the outside parking lot should be restricted to no more than five vehicles. The Director recommends that the five spaces for overnight storage of vehicles should be in designated and signed spaces. Early customer drop-off of vehicles (pre-opening) would not be considered overnight storage if the vehicles are picked up the same day.

21. The former restaurant on the site has been closed since the adoption of the Official Land Use Map in 1982 reaffirmed the location of the SF 5000 and L-3 boundary lines. The zone boundary remained the same when the site was rezoned C1 40' with the adoption of the Neighborhood Commercial zoning in 1986. The zone boundaries did not follow the ownership pattern although the residentially zoned lots were under common ownership with the restaurant before the land use map was adopted. The former restaurant did not use the residentially zoned portion of the lot, but the auto retail and service center needs the residentially zoned portion of the existing lot for required parking. The convenience store to the north across North 85th Street was constructed and the commercial zoned boundaries expanded westward.

22. The site is not located in an overlay district and is not in a greenbelt.

23. To allow for parking at the rear of the lot, it would be necessary to cut into the slope at the rear of the lot with a rockery. Approximately 350 cubic yards would be graded at the rear of the lot. To prevent any soil slippage or impacts to foundations on the adjoining residential lots, engineering of the slope cut would be necessary.

24. The Director determined that the proposal would not have a significant adverse impact upon the environment.

25. The present owner indicated that the prior owner failed to apply for a rezone when the opportunity existed in 1982 for reasons that are unknown to the present owner.

26. Petitioner proposes to use the twenty foot wide strip that is currently zoned SF 5000 as a driveway from North 84th Street for delivery trucks to have rear access to the building.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to the provisions of Chapter 23.76.

2. The substantive rezone criteria are found in Chapter 23.34.

3. Section 23.34.010(A) requires that single-family zoned areas may be rezoned to another classification only if the applicant can demonstrate that the area does not meet the criteria for single-family designation. Therefore, the burden is on the petitioner to prove that none of the criteria for single-family designation has been met on the SF 5000 zone portion of the lot before it can be rezoned.

4. Section 23.34.012 defines the locational criteria for single-family zones. The locational criteria for single-family zones include the following:

1. Areas which consist of blocks with at least seventy percent (70%) of the existing structures in single-family residential use; or

2. Areas which are now designated by an adopted neighborhood plan as appropriate for single-family residential use; or

3. Areas which consist of blocks with less than seventy percent (70%) of the existing structure in single-family residential use but in which an increasing trend towards singlefamily residential use can be demonstrated....

B. An area which meets at least one (1) of the locational criteria should also satisfy the following size criteria in order to be designated as a single-family zone:

1. The area proposed for rezone should comprise fifteen (15) contiguous acres, or more, which should abut an existing single-family zone.

2. If the area proposed for rezone contains less than fifteen (15) contiguous acres, and does not abut an existing single-family zone, then it should demonstrate strong or stable single family residential use trends or potentials such as:

a. That the construction of single-family structures in the last five (5) years has been increasing proportionately to the total number of constructions for new uses in the area, or

b. That the number of existing single-family structures has been very stable in the last five (5) years, or

c. That the area's location is topographically and environmentally suitable for single-family structures, or

d. That the area shows an increasing number of improvements or rehabilitation efforts to single family structures.

C. In establishing boundaries for single family zones, the following elements shall be considered:

1. Natural features such as lakes, streams, ravines and shorelines;

2. Freeways, expressways and other major traffic arterials; platted lot lines;

3. Half-blocks at the edges of single-family zones which ave more than fifty percent (50%) single-family structures....

5. Section 23.34.008 generally lists the general rezone criteria as follows: the characteristics of the area to be rezoned should closely fit the adopted locational criteria for the proposed land use category; examination of previous and potential zoning changes both in and around the proposed area; consideration of zoning principals related to compatible land use patterns, size, configuration and boundaries; consideration of the possible negative impacts on the area proposed for rezone and its surroundings; whether there are adopted neighborhood plans; consideration of changed conditions since the adoption of the Official Land Use Map; whether the area is located in an overlay district; whether any portion of the area is within the Greenbelt Overlay District.

6. Section 23.34.080 provides the locational criteria when reviewing a proposal to rezone an area to Commercial 1 as follows: whether an auto-oriented commercial area, primarily retail/service in nature, serves the surrounding neighborhoods and the larger community and city wide clientele; whether the existing character consists of shopping centers or shopping areas along arterials where customers drive from one individual business to another; whether there exist physical conditions favoring this designated rezone such as being readily accessible from a principal arterial, or whether a buffer from low-density

residential areas exists, or predominance of large lots which can accommodate a wide range of commercial activity, or whether there exist limited pedestrian access, or the presence of large off-street parking lots.

7. Seattle Municipal Code Section 23.34.084 provides for height restrictions in a Neighborhood Commercial area as being compatible with existing development. Section 23.34.018 provides for the locational criteria for Lowrise 3 rezoning considering the following criteria: there being a prevailing pattern of medium bulk and moderate height (30-40 ft.); areas where topography breaks or separation by arterials create a break for smaller scale development which allows for greater bulk and permits a variety of structure widths; areas with topography and prevailing structure heights require a 37 ft. height limit to retain views; or areas which are well served by public transit and are in close proximity to arterials, or areas which are adjacent to business and commercial areas.

8. The single family portion of the lot fronts on a block face where more than seventy percent of the structures are in single family use. Section 23.34.012(A)(1). There are no adopted neighborhood plans which include this proposed area. Seattle Municipal Code Section 23.34.012(A)(2). Since the proposed location has met at least one of the locational criteria cited above, size or adjacency criteria would need to be satisfied to designate the site as a single-family zone. Section 23.34.012(B).: Strong and stable single family residential use trends and potentials have been demonstrated such as the number of existing single family structures having being very stable in the last five years; the existing houses are the same structures that have been there for many years; the areas location is topographically and environmentally suitable for single family structures; the area also shows an increasing number of improvements or rehabilitation efforts to single family structures. Section 23.34.012(B)(2)(a)(b)(c)(d).

9. In establishing boundaries for single family zones, natural features, major traffic arterials, and platted lot lines shall be considered. Section 23.34.012(C). Since there is a topographical break between the site and single family residences to the west, and there is a consistent strip of commercial uses all along both sides of Aurora oriented toward the arterial and away from single family development to the rear, and the proposed boundary change will follow an existing ownership pattern established by the restaurant many years ago, the boundary requirements are met here. Section 23.34.012(C).


10. Section 23.34.074 provides the locational criteria for rezoning an area to Commercial 1 zone. The first locational criteria is function. Since Aurora is an auto-oriented commercial area, primarily retail/service in nature, which serves the surrounding neighborhoods and larger community, this rezone meets the function criterion of C-1 zone. Section 23.34.074(A). The proposed site is consistent with the existing character criterion, i.e., it is a shopping area along an arterial where customers drive from one individual business to another, thereby meeting the second locational criterion for the C-1 zone. Section 23.34.074(B). Since the rezone area is readily accessible from a principal arterial, a buffer (sharp slope) exists between the low density single family and Lowrise 3 area, there was a predominance of large lots which can accommodate a wide range of commercial activity along Aurora, there is limited pedestrian access on Aurora and there is a presence of large off-street parking lots along Aurora readily accessible from a major transportation corridor (from Interstate 5 along North 85th Street), the locational criterion involving the physical conditions favors designation of the proposed site as a Commercial 1 zone. Section 23.34.074(C).

11. Since the proposed site meets the adopted locational criteria for C-1 zoning, a determination must be made whether the site should be rezoned by examining the effect of the previous and potential zoning changes. Since the convenience store site across the street to the north was rezoned to extend of commercial zoning an additional one hundred feet westward in 1972, the proposed boundary extension would be consistent with the boundary expansion allowed for the convenience store. Section 23.34.008(B). The rezone would be consistent with zoning principals relating to compatible land use patterns, size, configuration and boundaries. Section 23.34.008(C). The only negative environmental impacts to be expected from this proposal are short-term increases in noise and inconvenience due to construction. Section 23.34.008(D). Effects on transportation, parking, public services, and environmental factors such as noise, air and water quality and energy conservation would be minimal. Section 23.34.008(D). There are no neighborhood planning efforts in this area at this time. Section 23.34.008(E). Since the convenience store to the north across North 85th Street was constructed and the commercial zone boundaries expanded westward, the changed circumstances warrant an expansion to the C-1 40' zone. Section 23.34.008(F). The site is not located on an overlay district and is not in a greenbelt. Section 23.34.008(G)(H). Height restrictions from Seattle Municipal Code Section 23.34.084 are not applicable pertaining to this proposal. Lowrise 3 locational criteria as found in Seattle Municipal Code Section 23.34.018 do not apply in preventing a rezone to a C-1 zone in this case.

Recommendation

The Hearing Examiner recommends that the rezone proposal should be conditionally granted for the Lowrise 3 portion of the site as described in the analysis and recommendation of the Director pertaining to this proposal. The Hearing Examiner further recommends that the contract rezone proposal should be denied for the single family portion of the site since the petitioner has failed to demonstrate that the area does not meet the criteria for single-family designation.

Entered this 8th day of September 1987.


Al Velarde
Hearing Examiner Pro Tempore

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.