

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Petition of

MABEL NELSON

FILE NO. 8601894
C.F. NO. 294944

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

Introduction

Mabel Nelson petitions for the reclassification of her property at 2944 Alki Avenue S.W. from SF 5000 to Lowrise 2 with development restricted to five units by contract.

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

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

This matter was heard before the Hearing Examiner on October 8, 1987.

After due consideration of the evidence presented by the Petitioner, the information provided by the Director's report, letters of comment from the public 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. Mabel Nelson, by her agent, filed a petition to have the lot at 2944 Alki Avenue S.W. rezoned from SF 5000 to L-2. The petition was later amended to propose a contract rezone limiting future development to a five-unit apartment building with six parking spaces.

2. The subject lot is located at the southeast corner of the intersection of Alki Avenue S.W. with 64th Place S.W. The site and the 64th Place S.W. street grade rise above Alki Avenue S.W. some 2-3 ft. A two-story single family house with basement and two-car garage now occupy the subject site.

3. The subject property has been in petitioner's family since the 1930's.

4. The subject lot and the next one to the east are the only single family zoned lots with frontage on Alki Avenue S.W. between Duwamish Head and Alki Point. The SF 5000 zone extends south of the two lots and south of the Alki frontage properties in the half block to the east of the block containing the subject site and south of S.W. Stevens Street to the west.

5. The SF 5000-zoned block between 64th Place S.W. and 64th Avenue S.W. and south to S.W. Admiral Way, has, in addition to the single family residence on the subject site, a single family residence on the abutting Alki frontage lot, eight more single family residences, three duplexes, one triplex and one eight-unit building. On the west side of 64th Place S.W. and of the alley which continues south from 64th Place S.W., all properties, including two L-2 zoned, are in single family development. On the east side of 64th Avenue S.W., south of the L-3 zoned apartment building, all lots are zoned SF 5000 and there are eight single family residences, a triplex, a 6-unit apartment building and five townhouses under construction. On S.W. Stevens and 65th Avenue S.W. are single family residences. Several on the north side of Stevens are small second residences on lots where the main residences fronts on Alki.

6. Property to the west of the subject site between Alki Avenue and S.W. Stevens is zoned Lowrise 2 and developed in single family residences.
7. Property with Alki Avenue frontage to the east, between 64th and 63rd Avenues S.W. is zoned Lowrise 3. That zoning continues east south of the Alki frontage which is zoned NC1 30'. In the L-3 zone are two apartment developments, one on the east side of 64th Avenue S.W. a single story, eleven unit building in existence since the 1920's. To the east of that is another older apartment building with 12 units. The NC1 zone has small businesses (cafes, food stores, etc.) and a mixture of single family, duplex, triplex and larger apartment development.
8. A portion of the subject lot is within 200 ft. of the line of mean higher high tide so is within the Shoreline District and is classified as Urban Residential environment where residential development is allowed.
9. Directly across Alki Avenue S.W. from the subject site along the water is the Alki Beach Park. The zoning is currently RD 5000 and is proposed for the Public Park and Recreational designation.
10. Until the 1982 city-wide rezone, the subject site, along with Alki frontage to the west, the full block between 64th Place and 64th Avenue S.W. and property to the east, south of the Alki frontage, had been zoned RD 5000 since 1957. Between 1923 and 1957, the site had a multifamily designation.
11. No one was able to locate any actual record of the City Council's reasons for applying the SF designation to the subject site and the lot adjacent to the east. The reports show that at the time of the staff analysis for the city-wide rezone, at least 70 percent of the "block" was in single family use.
12. Prior to the 1982 rezone, the entire block from Admiral Way to Alki and from 64th Place to 64th Avenue was zoned RD 5000. The Alki ends of other blocks nearby had a more intensive designation. That dichotomy was continued for those blocks in the 1982 rezoning but the subject block retained its single designation.
13. The Director's staff representative determined that there are at least two "blocks" which could be used for the analysis of use of existing structures in the area. One includes properties fronting on 64th Place S.W., north of Stevens Street and north of where Stevens Street intersects with 64th Place W. which is 100 percent single family use. The other is to consider Alki frontage between 64th Place S.W. and 64th Avenue S.W. which is also 100 percent in single family use. If the "block" extends along 64th Place S.W. to S.W. Admiral Way, 75 percent of the structures would be in single family use.
14. There are many one and two story structures in the area. There are a few three story structures including a triplex on the east side of 64th Avenue and an apartment building on the north side of Alki, west of the beach park. The design for the five townhouses under construction on the east side of 64th Avenue is reported to be two stories. The prevailing height in the area is one to two stories.
15. Lot coverage is generally less than 30 percent for single family residences in the area. For those duplex to multifamily structures for which opponents to the rezone provided figures, lot coverage ranges from 20 to 90 percent.
16. The proposed structure would be three stories high. The design calls for pitched roofs, flue chases, shingle siding, balconies and required modulation. Three of the six parking spaces would be partly under the building and butt up against the east property line. The other three spaces would be in the rear yard butting up against the south property line. The proposed setbacks are 16 ft. rear, where parking is to be located, 6.89 ft. average east side yard with 5 ft. minimum and 10 ft. average west

side yard. The depth of the building would be 69 ft. Lot coverage would be about 40 percent.

17. On the west side where the setback is 5 ft. the facing wall rises 35 ft. from grade.

18. Each unit in the proposed building would have a fireplace.

19. Some of the cars leaving the site would have to back into 64th Place S.W.

20. There is adequate street right of way to add a sidewalk along the site.

21. Petitioner's architect, Dale Norsen, testified that as many as nine units could be developed on the subject site with underground parking. He could not say whether underground parking would be economically feasible. At the time of the initial filing of the petition for rezone, development of four units was proposed. A letter from petitioner's then agent states that the maximum density possible would be 8 units.

22. There are applications pending for new development nearby. A proposal has been filed to develop 30 units, four stories high, on the site at the corner of Alki and 64th Avenue where the 11-unit apartment building stands. There is also the 5-unit building under construction on the east side of 64th Avenue S.W.

23. Alki Avenue S.W. is classified as an arterial until it reaches 63rd Avenue S.W. where the arterial turns south so it is not an arterial in front of the subject site.

24. Alki Avenue S.W. is a scenic route and it and the beach park are heavily used during warm, sunny weather.

25. "Cruisers" fill Alki Avenue S.W. on sunny days. To get in and out of the neighborhood, residents must use residential streets. The cruisers also use residential streets such as 64th Place S.W. and S.W. Stevens.

26. The proposal is projected to generate 33 vehicle trip ends per day.

27. The right of way for 64th Place S.W. is 30 ft. wide. The street ends at S.W. Stevens. S.W. Stevens is two short blocks long (64th Place to 66th Avenue S.W.). 66th Avenue S.W. is not open for travel in this location and also has a 30 ft. wide right of way. The hard-surfaced portion of 64th Place S.W. is only 14 ft. wide near its mouth. S.W. Stevens is 11 ft. at its narrowest and 14 ft. wide at its entrance from 64th Place. Neither street has curbs or sidewalks. The shoulders are in grass and are sloping in places. Outlet from S.W. Stevens to Admiral Way is provided by 65th S.W. which has a 15 ft. wide hard-surfaced lane.

28. The sidewalk on the south side of Alki Avenue continues uninterrupted across the mouth of 64th Place S.W. adding to the street's alley-like appearance. There is no stop sign or other traffic control device on 64th Place S.W.

29. When it rains there is standing water on both sides of S.W. Stevens narrowing it further. If there are cars parked directly across from each other on 64th Place, 65th Avenue or Stevens, a car cannot get through. Corners are difficult to navigate when there are parked cars and letter writers report having to back up and seek alternate routes at times. Emergency vehicles would have difficulty reaching houses on these blocks at times.

30. Petitioner's consultants conducted a parking survey in the area at the request of the Department of Construction and Land Use. The area studied was that bounded by Alki Avenue S.W., 63rd S.W., Admiral Way and just beyond 66th S.W. The survey was made on two June evenings after 9:00 p.m. The average utiliza-

tion rate for those two evenings, according to the traffic consultant, was 36 percent.

31. The parking survey's reliability was questioned because, included in the area's parking supply was the 64th Place S.W., S.W. Stevens and 65th Avenue S.W. right of ways. Due to the narrowness of the traffic lane and planted condition of shoulders parking on those streets may not be legal. Also, more driveways exist than were recognized in the report. According to John Hendrickson, petitioner's representative, if 64th Place and S.W. Stevens Street are removed from consideration, the average utilization would be 46 percent.

32. A further question was raised about the survey's validity because its design assumed a typical residential area for parking and this area has a major recreational component and, therefore, is not typical. The late evening surveys would not reflect recreational use so it should be assumed that weekend daytime utilization may be much higher than reflected in the survey.

33. The projected parking utilization with the completion of the 5-unit building and the expansion at 64th and Alki, eliminating 64th Place, 65th Avenue and S.W. Stevens, is 51.9 percent.

34. Parking utilization projections assume ownership of 1.5 cars per unit. Guest parking is not considered. At 1.5 cars per unit the overflow from the proposed development would be two resident cars plus those of guests. The studies show that this can be accommodated on surrounding streets without reaching full capacity.

35. An artificial reef in Puget Sound at the end of 64th Place S.W. attracts skin divers from the region for classes and recreation. Classes are conducted on Saturdays and Sundays from early Spring to late Fall with 40-50 student cars. Divers use the 64th Place S.W. and Stevens for parking when it is unavailable on Alki Avenue.

36. The single family development in the area, both SF-zoned and L-2 zoned to the west, has been well maintained with considerable renovation and remodeling activity. Several houses were constructed as recently as 1979.

37. The Director and the Office of Hearing Examiner received some 50 letters opposing the rezone and one in support. Petitions opposing the rezone contained some 190 signatures.

38. The Director issued a determination of non-significance with conditions pursuant to SEPA for this proposal. The conditions address lighting, noise and landscaping. This determination was appealed but the appeal was withdrawn at the beginning of the rezone hearing.

Conclusions

1. The Council's intent as to the application of the rezone criteria is at issue in this one lot rezone. Section 23.34.010 provides:

A. Except as provided in subsection B of this section, 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.

Subsection B is inapplicable.

2. The record shows that the criteria for single-family designation are met in that the block has at least 70 percent of its structures in single-family residential usage, under either configuration proposed by the Director's staff, and it is a part of a single-family zoned area at least 15 acres in size and abuts

other single-family zoning. There is also evidence that the number of single-family residences has been quite stable in the last five years and improvements to single-family residences and rehabilitation efforts have continued.

3. If the Council intended the 70 percent test to be conclusive, the rezone petition must be denied. The Director's approach relies upon the language in Section 23.34.012, "in reviewing a proposal to rezone an area to a single-family zone, the following criteria shall also be considered...." (emphasis added). That language, her staff urges, allows equal consideration of 23.34.012 C, Boundaries, which states:

Half-blocks at the edges of single-family zones which have more than fifty percent (50%) single-family structures, or portions of blocks on an arterial which have a majority of single-family structures, shall generally be included. This shall be decided on a case-by-case basis but the policy will be to favor including them.

The Director finds this is based on Implementation Guideline 4 of the Single Family Residential Areas Policies (SFRAP) but that the criterion acknowledges that even though inclusion in the SF zone is favored, in some cases a block end may be found unsuitable for single-family. The Director then determines that the site is unsuitable for single-family zoning because opposing block faces should be zoned the same and the site faces L-2 to its west and a public park, now zoned RD 5000.

4. The language of Section 23.34.010 does not lend itself to any reading but that areas which are already single-family zoned may not be rezoned unless they fail to meet the criteria for single-family designation. The language "shall also be considered", of Section 23.34.012, is used in each of the sections listing the locational criteria for specific zones and indicates that, in addition to the general rezone criteria, those specific zone criteria are to be considered. The suggestion that those words somehow modify the limitation on rezones of current single family-zoned property when the words are found in a section relating to rezoning to single-family cannot be accepted.

5. Based on the test set forth in Section 23.34.010, regarded as conclusive, since the petitioner cannot demonstrate that the property does not meet the criteria for single-family designation, the petition should be denied.

6. Petitioner urges that the 70 percent criterion is too simplistic, and would not have been intended to be an imperative, especially where the determination of what block to consider to apply the test to is not absolutely clear. The SFRAP are based on preservation of single family character. Establishing a high, and simply applied, threshold for changes to areas zoned single-family is one way to assure that those areas are preserved.

7. If the test of Section 23.34.010 is not intended to be an imperative, then the general rezone criteria of Section 23.34.008 may be used to evaluate the request for a contract rezone. First, the locational criteria for the proposed L-2 zone are to be examined to see if they match the characteristics of the area. Section 23.34.008A. The first criterion, Section 23.34.016A, is a mix of single-family, duplex and small to medium apartment structures with a prevailing height of two or three stories. This is not true of the area within a block or so of the subject lot. While there are occasional two to three story structures, the prevailing height is one to two stories.

8. The second L-2 criterion, Section 23.34.016B, is a location between areas of single family and medium scale multi-family structures. The subject lot, or even the lot and its similarly-situated neighbor, does not match that criterion. It faces the park and open space across Alki and has single family to the south. It separates single family in an L-2 zone to the west and, considering the two lots together for this purpose,

small scale apartments to the east, though they may become medium scale if the pending application is approved. No need for transition is apparent from these characteristics.

9. The character of the site does match the third criterion, Section 23.34.016C, since the prevailing scale is small, a transit route is nearby, the park is across the street, and the NC zone offers some neighborhood business.

10. The fourth criterion, Section 23.34.016D, considers the need for height limits to protect views or extra height to enjoy views. Since the height limit for single family and L-2 development is the same, this is not relevant to the analysis of the petition.

11. Section 23.34.016E, the fifth criterion, considers protection of public views. Development of the lot would not affect public views.

12. The final locational criterion for L-2, Section 23.34.016F, is areas not served directly by an arterial causing traffic to go through lower intensity areas. The characteristics of the area match this criterion, not chiefly because Alki is not an arterial at this point since it is the continuation of an arterial which ends but a short distance away, but because the heavy use of Alki during sunny weather would cause residents of new development to utilize alternate routes through the neighborhood.

13. The second general criterion to be considered in evaluating the request is the zoning history of the area and potential precedential effect. Petitioner urges that the 1982 down-zoning of the subject lot and its neighbor was mistake or adherence to a numerical factor without regard to relevant facts. Unlike other blocks, using the term "blocks" in the non-technical sense, which had Alki frontage properties in one zone designation and properties to the south in another, the subject block was totally RD 5000, including the end properties on Alki. It is possible that, besides following its policy to zone SF where a block has 70 percent or more single family structures, the Council followed its policy favoring inclusion of block ends in the single family zone.

14. Precedent for other rezones was one subject of opposition testimony. The rezoning of the adjacent lot with Alki frontage would likely occur and would be appropriate if the subject lot is rezoned. If redevelopment under the L-2 zoning occurred to the west, and "block" is interpreted the same as here, the property immediately south of the subject site could be in a "block" with less than 70 percent single family residences and qualify for consideration. It, however, is a through lot, and while it would face L-2 zoned property on one side it would also face an SF zone on the east and abut SF property on the south, making it an unlikely candidate for rezoning. Likewise, the lot south of the subject lot's neighboring lot would face and abut SF zoned property. The only lot similarly situated to the subject lot is its neighbor so fears of a domino effect appear to be unfounded.

15. The third general rezone criterion is zoning principles relating to patterns, size, configuration and boundaries. Petitioner stresses the pattern aspect pointing out that there is a continuous strip of commercial and multifamily zoning from the Duwamish Head to Alki Point, except for the subject lot and its neighbor. She sees it as unfair to treat these two lots different from the rest. The two lots do seem to be more related to this strip than to the area to the south. It is common to regard like-zoned properties facing each other as an appropriate pattern. These SF zoned lots now face L-2 and L-3 zoned property. If only the subject lot is considered it faces only the L-2 property and a park.

16. The impacts of the rezone, or here with specified development, the development that would occur, are to be considered under the next general criterion, Section 23.34.008D. The envi-

ronmental impacts of the proposed building would be greater bulk, potential demand for on-street parking of residents' cars plus those of guests, additional vehicular traffic on the area's streets and the emissions from five fireplaces. The bulk of the building would be larger than existing structures in the immediate area, however the five unit townhouse structure under construction at two stories may be similar in size. Redevelopment in the L-2 zone could also occur with greater bulk than at present.

17. The parking utilization survey showed adequate available on-street space for potential overflow even excluding the narrow streets and considering potential demand from the projects under construction and application at night on weekdays. The condition during heavy recreational use of the beach has not been quantified. The effect of additional parking on the narrow streets, which is likely to occur, is considered a negative impact since it may create hazards at corners, block passage, and, since there are no sidewalks, force pedestrians and wheel chair users into traffic.

18. The additional vehicle traffic from five units will not tax the capacity of the streets but since they will all enter on 64th Place S.W. with some backing, they may add to the hazards mentioned above. The traffic may also increase the hazard at the entrance to Alki which has no stop sign and the existence of the street, rather than an alley, may be unclear to pedestrians on Alki. One measure which could reduce the hazard to some extent would be to add a sidewalk in the street right of way next to the subject lot so the petitioner should be encouraged to add a sidewalk to her proposed plans for the contract.

19. The criteria in Sections 23.34.008 E, Neighborhood Planning Efforts, and H, Greenbelt Plans, are inapplicable. Further, the petitioner is not relying on changed circumstances, Section 23.34.008 F, as justification for the rezone. Under Section 23.34.008G, it must be recognized that a part of the subject lot is located in the Shoreline District so the purpose of that district must be considered. As the UR environment would permit residential development the rezone would be generally consistent with the purpose.

20. Since the hearing examiner regards the test of Section 23.34.010 as determinative of whether a rezone from a single family designation is appropriate, and the petitioner has failed to demonstrate that the site does not meet the criteria for single-family designation, the recommendation must be to deny the petition. If that test can be, and should be, disregarded, an analysis of the locational criteria for L-2 shows that the area, looking at the two lots together though one is the subject of this petition, is not inappropriate for L-2 designation. An evaluation of the general rezone criteria results in mixed conclusions. The two lots fit in with the Alki frontage strip and are distinguishable chiefly by historical pattern. Since they face more intensive zoning on each side, usual zoning principles would dictate rezoning. However, besides the presence of an element of fairness to the property's owner, fairness to purchasers of property after 1982 who relied on the recent zoning must be considered.

21. Analysis of the impacts of a 5-unit development also results in mixed conclusions. Impacts of scale, traffic and parking would be less than from an 8 or 9 unit building, if such development were financially feasible. On the other hand, the proposed structure, at present, would be markedly larger than its immediate surroundings and, of greater concern, any new traffic on the substandard streets would add to the hazards and problems now present.

22. A rezone to L-2 with contract restrictions to a triplex would recognize both the property's relationship to the higher intensity Alki frontage strip and to the single family area. If the SF 5000 designation is not to be continued, petitioner's agreement to a reduced proposal should be sought.

Recommendation

The petition should be denied.

Entered this 23rd day of October, 1987.

M. Margaret Klockars
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.