

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

In the Matter of the Petition of

JOHN M. BACHMAN

FILE NO. 8707785
C.F. No. 296111

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

Introduction

John M. Bachman petitions for the downzone of property on both sides of Francis and Dayton Avenues North between North 42nd and North 43rd Streets from L-3 to SF 5000.

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 denied.

This matter was heard before the Hearing Examiner on June 21, 1988.

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 approximately 3.4 acres comprised of all lots fronting on Francis Avenue North between North 42nd and North 43rd Streets, all lots fronting on the east side of Dayton Avenue North between North 42nd and North 43rd Streets, lots fronting on the west side of Dayton Avenue North in the same block except for Lots 15 and 16 at the north end of the block and 458 and 460 North 42nd Street which lots front on North 42nd Street. Excluded, in addition to 465 North 43rd (Lots 15 and 16), is 463 North 43rd. The legal description of the property included in the rezone area is as follows: Lots 1-15, Block 8, Sunset Heights Addition; Lots 1 and 2, less the east 50 ft. thereof, and all of Lots 3-15, Block 9, Sunset Heights Addition; Lots 1-13 and the south 15 ft. of Lot 14, Block 1, Motor Line Addition; and the west 58 ft. of Lots 1 and 2 and all of Lots 3-12 and the west 1/2 of Lots 13-16, Block 2, Motor Line Addition, all in the City of Seattle.

2. The subject property is currently zoned Lowrise 3 as is property extending to the north, east and west of the subject area. That south of North 42nd is zoned SF 5000.

3. Development in the proposed rezone area is mixture of single-family and multi-family residential. Two parcels on each side of Francis are developed with apartments as are four on the east side of Dayton, out of a total of more than 30 parcels.

4. Extensive improvement and rehabilitation of the single-family residences has taken place in the area and the pictures submitted, Exhibits 1-21, show that as a whole the properties are very well maintained. The permit history does not show the extent of improvements. No new single-family residences have been added in the area but there are no vacant lots. One new multi-family structure has been constructed. Residents have banded together to purchase other single-family homes threatened

with redevelopment.

5. The area slopes up gradually to the north from North 42nd. South of North 42nd the topography drops off more sharply.

6. North 42nd is a residential street with pavement width of about 25 ft. North 43rd Street is designated as a collector arterial and is between 32 and 36 ft. wide. A Metro bus route follows North 43rd to Greenwood where it turns north.

7. From 1923 to 1957, the area north of North 42nd was part of an R2 zone which allowed apartment buildings. From 1957 to 1982, the area was zoned RM 800, a low density apartment zone designation. Then in 1982, the area was rezoned to L-3. The subject rezone area and the surrounding L-3 zone is part of that within the Fremont pilot study area so interim development standards (those standards applicable to L-2 zoned property) apply.

8. The City Council has before it a downzone petition for the block fronts facing Greenwood Avenue North between 42nd and North 43rd Streets which is one full block to the west of the subject area. Between the two is substantial multi-family development.

9. In calculating the percentage of single-family structures for the purpose of Section 23.34.012A, the land use specialist determined that the rezone area includes eight different blocks which are shown in Exhibits C, D and E attached to the Director's report. Those blocks include considerable property not within the rezone area and cause a number of the structures to be counted in more than one block. The result of that approach is four blocks with over 70 percent single-family structures, one at 69 percent and three blocks well under the 70 percent.

10. The petition's supporters argue that the Department of Construction and Land Use approach is illogical in that it includes property across the proposed boundary in the calculation to determine if the rezone area meets the 70 percent test. Depending on the use of the structures, those areas can operate to deny single-family zoning to an otherwise qualified area. They see the blocks designated by DCLU as A, B, F and G as appropriately considered and Blocks C, D, E and H not appropriate as they are comprised of lots outside the rezone area except for the corner lots which are already considered in A, B, F and G. Block A is 73 percent single-family, B is 69 percent, F is 88 percent and G is 100 percent.

11. As the result of the proposed rezone, there would be considerably more SF 5000 zone edge abutting the L-3 zone.

12. Of the 13 single-family homes sold since 1980 in the rezone area, eleven were rentals when sold and, by 1986, all of those were owner occupied.

13. Letters in support of the rezone were received representing at least fourteen of the properties in the proposed rezone including at least one from a condominium owner. Other letters in support were received from the surrounding area. Donn Bodine appealed the determination of non-significance for the proposal and testified in opposition to the rezone.

14. The Office for Long Range Planning (OLP) recommended a rezone to Lowrise 1 to provide transition between the L-3 and SF 5000 zones but eliminating the east side of Dayton Avenue North from the rezone area. The Director recommended that the Council deny the rezone to SF 5000 but consider a rezone to L-1 unless the pilot study results in downzoning the surrounding properties to L-2 or L-1 or changing the development standards in which case she recommends SF 5000 for the area excluding the east side of Dayton Avenue North from the rezone.

15. Rezoning the area proposed to SF 5000 would create eight

nonconforming structures. Rezoning to L-1 would reduce the number to approximately five structures. Three lots with nonconforming structures have frontage on North 43rd Street.

Conclusions

1. The criteria for evaluating a rezone petition are set forth at Section 23.34.008. The first criterion is the match between locational criteria for the desired zoning and the characteristics of the area to insure compatibility of new development with that existing. The criteria for single-family zones require meeting one of a series of alternate locational criteria, satisfying a size criterion and establishing appropriate boundaries. Two of the locational criteria are substantially met by this proposal.

2. The first locational criterion is "areas which consist of blocks with at least seventy percent (70%) of the existing structures in single-family residential use." Section 23.34.-012A.1. Though "block" is defined as two facing block fronts, Section 23.84.004, use of that strict definition would result in the inclusion of property across the street from the proposed rezone which could potentially control whether the area would be rezoned. That would not carry out the intent of the test so where only one block face is within the area to be rezoned, only the structures in that block face should be considered. Effect on the uses and structures adjacent to the area under consideration is taken into account by the other rezone criteria. When that approach is used, the structures in the block comprised of the two block fronts facing North Francis Street are 73 percent single-family and the block front facing on Dayton Avenue North are 69 percent single-family. The block front on the north side of North 42nd Street has mid-block lots which were not considered in either of the two blocks above so its structures should be considered and the total block front (which includes two structures counted in the other blocks) is 100 percent single-family. If the facing block front (outside the rezone area) is also considered, the block is still 100 percent single-family. The other structure not considered in any of the blocks is at 463 North 43rd but is not part of the rezone area. If the block front facing North 43rd between Francis and Dayton is to be calculated separately, though two of three structures have been included in other blocks and two of three are not within the area proposed for rezone, the single-family percentage for that block would be 33 1/3.

3. Even if the Council determines the first locational criterion is not satisfied, the second locational criterion is met by the proposal. That criterion is

areas which consist of blocks with less than seventy percent (70%) of the existing structures in single-family residential use but in which an increasing trend toward single-family residential use can be demonstrated; for example: b. the area shows an increasing number of improvements and rehabilitation efforts to single-family structures.

3. The size criterion is satisfied in that the area abuts an existing single-family zone.

4. The final consideration under the single-family criteria is appropriate boundaries. Elements to be considered are natural features, major traffic arterials and platted lot lines. Section 23.34.012C.1,2,3. Also, half blocks on edges with more than 50 percent single-family structures and portions of blocks on arterials with a majority of single-family structures are generally to be included. Section 23.34.012.C.4. The proposed horizontal boundary would substitute a wider, designated arterial for a residential street at the beginning of a change in topography, an equal trade, except that the proposed boundary is irregular as it jogs around two lots. Neither represents a strong boundary. An alternate boundary treatment would be to follow platted lot lines

for the north boundary leaving all lots with frontage on North 43rd, which are developed with multi-family structures, as presently zoned. The vertical boundaries follow lot lines and are somewhat irregular behind the Dayton North block front.

5. Since the area qualifies for single-family zoning, it must be evaluated in light of the other general rezone criteria. The criterion under Section 23.34.008B is zoning history and precedential effect. If historical zoning is to provide guidance, the area north of 42nd should remain multi-family. Two other potential changes are known. One is the requested downzone along Greenwood Avenue and the second is the Fremont pilot study which is widely expected to result in some reduction in bulk and density. Neither potential change suggests the appropriate resolution of this petition.

6. Zoning principles relating to land use patterns, size, configuration and boundaries are to be considered. Two, not considered elsewhere, are provision of transition zones between single-family zones and those of more intensity and the avoidance of creating nonconforming uses. The effect of the downzone would be to place more single-family zoned properties adjacent to L-3 zoned properties without any transition. Disregarding the fact of the interim standards which reduce the potential incompatibility of bulk, because of conditioning pursuant to SEPA, the "edge" situation created is likely to have more effect on the future development in the L-3 zone at the edge, which must be sensitive to the need for transition, than on the single-family zone. Application of SEPA policies will adequately provide for transition even if the pilot study does not permanently reduce the permitted bulk and density.

7. Generally, creation of nonconformity is to be avoided. The rezone, as proposed, would cause the eight multi-family uses to become nonconforming. If the area were rezoned to L-1, the number of nonconforming structures would be down to about five. Rezoning to SF 5000 but moving the northern boundary to the south lot line of the lots fronting on North 43rd would also reduce the number of nonconforming structures to five.

8. The fourth rezone criterion is impact evaluation. The only anticipated negative impact of the downzone would be from the loss of development potential and the creation of nonconforming structures.

9. There is no adopted neighborhood plan for the area, the consideration under criterion E.

10. The petitioner does not rely on changed circumstances as part of the justification for the downzone, criterion F.

11. The next rezone criterion is overlay districts. Section 23.34.008G. The Fremont pilot study is in the nature of an overlay district but only the interim standards are certain. The City Council's action on the results of the study could affect this area but at this time that action is not known.

12. The final criterion is H, greenbelt plan. None of the rezone area is within a greenbelt overlay district.

13. When the rezone criteria are considered as a whole, the balance is in favor of downzoning the majority of the area to preserve an area predominately in single-family use consistent with the policy of the City to preserve and protect single-family areas. The existing boundary at North 42nd is not a particularly strong one and either North 43rd or the lot lines south of frontage lots would provide an adequate boundary. While the rezone would create more SF 5000-L-3 edges, SEPA and/or the City Council in response to the pilot study can ameliorate any incompatibility of proposed uses.

Recommendation

The downzone to SF 5000 should be granted with consideration

of altering the northern boundary to exclude the lots fronting on North 43rd Street.

Entered this 6th day of July, 1988.

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 Redevelopment Committee should be consulted for further information on the Council review process.