

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Petition of

AVTECH CORPORATION

FILE NO. 8800131

C.F. NO. 296257

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

and

In the Matter of the Appeals of

MARIETTA FOUBERT

FILE NO. W-89-002 and

LAW PROPERTIES

FILE NO. W-89-003

from an environmental determination  
by the DCLU Director

Introduction

Avtech proposes that land addressed as 3400 Wallingford Avenue North be reclassified from Lowrise 2 to Commercial 2 with a 40 ft. height limit.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the petition be conditionally granted. DCLU also issued a determination of nonsignificance. Appellants Foubert and Law Properties appealed the DCLU environmental determination.

The appeals and rezone were heard together before the Hearing Examiner on March 13, 1989. On March 4, 1989, the record was reopened at appellant Foubert's request. Replies to the Foubert submittal were due to the Hearing Examiner on or about April 3, 1989.

For purposes of this decision, all section numbers refer to 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 all evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and action of the Hearing Examiner on this application.

Findings of Fact

1. Petitioner seeks to rezone approximately 13,680 sq. ft. of property addressed as 3400 Wallingford Avenue North from Lowrise 2 (L-2) to Commercial 2 with a 40 ft. height limit (C2/40'). DCLU recommended that the rezone be granted with specific conditions and issued a determination of nonsignificance (DNS), also with conditions. Appellants and others objected to the rezone and the respective appellants here challenge the DNS.

2. The proposal site is legally described as "Lots 3 and 10, Block 68, Lake Union Addition." Two relatively new apartments with a total of 28 units are on the north adjacent parcels.

3. In addition to these multifamily developments, land across Wallingford (west) from the subject property is developed with the 50-unit Egypt apartment building. To the east, across Burke Avenue, is a four-story office building. A mix of single family residences and two and three story apartments dominate this L-2 zone which includes the above-described developments. As of the DCLU report, approval had been secured for an eight

unit apartment on Wallingford Avenue, north of 35th and for a nine-unit apartment at 35th and Burke Avenue.

4. Lot 10 of the proposal site is developed with a duplex. This lot has 60 ft. of frontage to west adjacent Wallingford Avenue North. The more easterly Lot 3 is used as a recreation area for employees of the project applicant. Lot 10 has 60 ft. of frontage to east adjacent Burke Avenue North.

5. Wallingford Avenue and intersecting North 34th are both busy arterials. North 34th is a "minor arterial general" that connects to the University of Washington south campus, some 20 blocks east, and downtown Fremont, roughly 12 blocks west. Wallingford Avenue, a collector arterial, has curbs, gutters and sidewalks. Burke Avenue, classified as a residential access street, only has a sidewalk.

6. The proposal site has a total depth of 228 feet. It slopes down moderately from north to south (in the direction of nearby Lake Union and Gas Works Park).

7. The proposal site is at the southern edge of an L-2 zone that extends east and west along Wallingford Avenue block fronts. This zone's northern terminus is south of North 37th where the combined L-2/ commercial residential zone begins. The L-2 southern terminus is approximately one-half block north of North 34th. Generally, from the subject site, the L-2 zone extends irregularly east between North 35th and an area north of North 34th.

8. East and west of the subject L-2 zone is the Single Family 5000 (SF 5000) zone. South of the SF 5000 - L-2 boundaries extending to Lake Union are properties within the Commercial 2, 40 ft. height limit classification (C2/40').

9. The proposal site is part of a larger, south adjacent site that extends to North 34th that is owned and operated by applicant. This adjacent site is developed with a 46,000 sq. ft., two-story manufacturing building and accessory parking. The building is less than 30 ft. in height. Also southeast is Mariner Square, per its name a specialty shopping center. See Exhibit 7.

10. In general, the nearby commercially zoned sites are used by specialized retail sales and service, office and light manufacturing businesses. Most businesses offer parking, but the district is not auto-oriented.

11. The area north of the proposal site has transit access, a nearby business area, open space and some upslope views that could be affected by buildings taller than 30 ft. No views from public parks would be affected by proposed development. This residential area and the single family areas east and west of the site experience some of the traffic, noise and parking impacts of existing manufacturing uses.

12. The proposal site was zoned L-2 effective June 1982 as part of Title 23 area-wide zoning. The prior zoning was also for multiple residency (RM). The adjacent commercial zoning was implemented in 1986.

13. Vacant, commercially-zoned (C-2) land is present in the vicinity. Some C-2 land is presently developed with residential structures.

14. The site is within no Greenbelt or other overlay district.

15. The Wallingford Neighborhood Plan, a 1976 document, was not officially adopted. It urges the reduction in traffic in heavily used arterials (e.g. North 34th, per witness G. Hill). The Plan also includes language which favors housing as a principal use in the then-zoned manufacturing areas. (Specifically noted for application was the "M zone between 34th Avenue

and 36th Avenue near the north shoreline of Lake Union..." Exhibit 9.)

16. Applicant proposes this rezone of the subject site to C2/40' to accommodate future construction of a two-story manufacturing office building of some 14,402 sq. ft. The on-site duplex would be demolished. The new structure would be built over existing parking and an additional 58 spaces would be added for the northwest corner of the site for a total of 117 on-site parking spaces. Principal access would be from Burke Avenue North and lesser access from Wallingford Avenue. Per applicant the steeper topography precludes access from Wallingford. It is undisputed that there is an approximate 8 ft. drop from the property parking level down to Wallingford Avenue. Truck loading will continue to access via Burke Avenue.

17. Applicant proposes to retain the site's northeast recreational open space and add a 10 ft.-wide landscaped buffer along the north property line to separate the project site from the north adjacent apartment house development. Applicant is willing to further limit development to 46 percent of overall site depth and provide a 43 ft. building setback.

18. The new proposal is expected to account for an additional 15 employees, or approximately 50-60 average daily vehicle trips. Approximately 7 (new)- 15 (total) of these will occur during morning peak period and 7-15 during the evening peak period. For the 7200 sq. ft. of office space, 7.2 parking spaces are required, i.e. 1 per each 1000 sq. ft. For the 7200 sq. ft. of manufacturing space proposed, 4.8 spaces are required, i.e. 1 for each 1500 sq. ft.

19. In recognition of the proximate development and scale, DCLU recommended that the site be rezoned to C2, but with a 30 ft. height limit.

20. Other DCLU recommended rezone conditions appear below:

#### CONDITIONS - REZONE

##### Prior to Issuance of Construction Permit

1. The owner(s) and/or responsible party(s) shall receive concept approval from the Seattle Engineering Department (SED) for street improvements on the North 34th Street street frontage.
2. The owner(s) and/or responsible party(s) shall develop and execute a no-protest agreement for any local improvement district (LID) to be implemented for improvements along North 34th Street.

##### Prior to Occupancy

1. The owner(s) and/or responsible party(s) shall provide a fair share contribution in an amount to be determined by SED for the construction of a traffic control device at the intersection of North 35th Street and Burke Avenue North.
2. The owner(s) and/or responsible party(s) shall develop a Transportation Management Plan (TMP) to mitigate the impacts of employee traffic and parking demand. The TMP shall include, but not be limited to, the following elements:
  - ° provision of a permanent vanpool to pick up and drop off Avtech employees;
  - ° guaranteed provision of 117 parking spaces, with 20 spaces reserved for 2-person carpools;
  - ° a building transportation coordinator;
  - ° provision of a 40% METRO transit pass subsidy offered to all employees up to 30% of the total workforce.

Permanent for the Life of the Project

1. The owner(s) and/or responsible party(s) shall maintain the TMP discussed above.
2. The owner(s) and/or responsible party(s) shall improve the North 34th Street frontage per the SED approved plans.
21. Some neighborhood witnesses wished to have the height of the south adjacent Avtech site also limited to 30 ft. It, however, is not the subject of the petition or the DCLU decision.
22. It is undisputed and the Hearing Examiner finds that during the day, vicinity on-street parking is at capacity. DCLU states that the apparent nature of this phenomenon obviated the need for an official parking study. A Metro bus stop is located at North 35th and Wallingford Avenue.
23. Avtech engages in electronics metal finishing and electroplating. Toxic and other chemicals are used, including methyl isobutyl ketone, acetone, ammonium hydroxide and nitric acid.
24. Per the applicant representative's post-hearing submittal (PHS), Avtech discharges industrial wastewater, monitored by Metro, of "only one metal, chromium." The correspondence further indicates as follows:

Avtech is inspected by the Seattle Fire Department on an annual basis and we have rarely had any problems...I am sure those records are available...
25. The Environmental Checklist for this project includes an inquiry whether environmental hazards were present such as exposure to toxic chemicals, risk of explosion, spill or hazardous waste. Applicant answered in the negative. No annotation thereto was made. The Checklist also indicated that there would be no increased need for fire, health or other public service. For negative impact mitigation, applicant responded that there would be demolition - construction noise, a small increase in traffic and attendant fumes.
26. Applicant's PHS identifies chemical and health hazard properties of certain chemicals and compounds used by the company. For example, the ketone is listed as a flammable liquid. Inhalation causes

...irritation, weakness, headaches, narcosis, nausea, and vomiting. Prolonged exposure to high concentrations may result in kidney and liver damage...

Butyl cellusolve, a combustible liquid used by the company, results in similar physical discomfort if inhaled.
27. In response to appellant Foubert's PHS and Avtech's PHS, DCLU recommended remand of the appeal to DCLU for specific review of fire protection, air pollution and Metro (discharge) issues.

Conclusions

1. The Hearing Examiner has jurisdiction of these appeals and this rezone hearing pursuant to the procedures of Chapter 23.76, Seattle Municipal Code.
2. Seattle Municipal Code Section 23.76.052 addresses the consolidation of this environmental appeal with this (Type IV) rezone hearing. Per Section 23.76.052C.4

...The Hearing Examiner shall entertain only

those issues cited in the written appeal which relate to...the adequacy of the environmental documentation upon which the determination was made.

3. Seattle Municipal Code Section 23.76.052C.5 provides that the DCLU Director's environmental determination shall be given substantial weight.

4. Giving due weight to the Director's initial determination of nonsignificance, this application is properly remanded for further review and analysis.

5. The anticipated use of the proposed site is not clear from the record or files of this proceeding. Consequently, the discharge, air quality, and fire safety issues have not been adequately reviewed. The Environmental Checklist entries on these items are incomplete and inaccurate.

6. Toxic chemicals are in fact used in the applicant's manufacturing business. The rezone would allow a 60 ft. northern projection of the commercial zone and its manufacturing use to the residential zone. Depending on the nature of the impacts, the utility of a 10 ft. wide northern buffer could be de minimis. For this remand, applicant shall comply with the information request per the DCLU PHS. (See memo to the Hearing Examiner dated April 6, 1989.)

7. Further, a traffic study is necessary. Although the on-street parking is at capacity, the record should clearly indicate what traffic flow and distribution impacts are reasonably anticipated, particularly to the L-2 and single family - zoned residential areas north, northwest and northeast. Specific attention should refocus on the viability of principal site access from Wallingford Avenue, and on whether Burke egress and ingress can be limited to restrict Avtech traffic's penetration into the single family area to the north, along Burke Avenue.

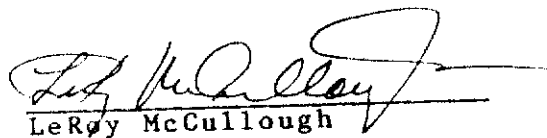
8. The DCLU supplemental report shall also indicate whether scenic route public views of natural features would be impacted by the proposal. Seattle Municipal Code Section 25.05.675P.

9. In accord with Seattle Municipal Code Section 23.76.052H the environmental determination and rezone recommendation are hereby remanded. Seattle Municipal Code Section 25.05.660; .665; .670; .675 A; .675 C; .675 F; 675 O; .675 R; .675 S.

#### Decision

This application is REMANDED for further environmental evaluation in accord with the foregoing. Further evaluation of the rezone application by DCLU shall follow the supplemental environmental analysis.

Entered this 18th day of April, 1989.

  
LeRoy McCullough  
Hearing Examiner