

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

CONCERNED CITIZENS OF GEORGETOWN

FILE NO. W-79-007

from an Environmental Determination of  
the Department of Community Development

The appeal is DENIED.

#### Introduction

The appellant organization, the Concerned Citizens of Georgetown (Citizens), filed an appeal from a declaration of nonsignificance prepared by the Department of Community Development (DCD) with regard to a proposed action to rezone property from Community Business (BC) to General Commercial (CG).

The appellant exercised its right to an appeal pursuant to Section 20, Ordinance 105735, as amended.

This matter was heard before the Hearing Examiner on April 2, 1979.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The subject property consists of a triangular shaped parcel of property about 56,000 square feet in area located about two blocks to the northwest of Boeing Field. One corner of the triangle points approximately to the south and is formed by the intersection of Ellis Avenue South and South Albro Place.

2. The site is presently developed with five single family residences, a warehouse and a cafe. The single family homes are neat, modestly valued and are located both north and south of the warehouse on the east side of Ellis Avenue South.

3. The warehouse building as it is presently used and occupied is an illegal nonconforming use. The structure is used by a food processing firm, Acme Food Sales, for storage and transfer of various food products some requiring refrigeration units for delivery.

4. In the portion of the BC zone along Ellis and facing but not included within the potential rezone are single family residences along the entire block front. These homes are to the west and are similar to the homes in the proposed rezone in that they are neat, small moderately valued homes.

5. To the east of the proposed rezone is a larger CG zone dominated by the South Albro Place arterial.

6. The general distinguishing characteristic between BC zoning and CG zoning is the level of intensity of use. Larger horse power motors are permitted; 100 h.p. in the CG zone whereas 12 h.p. are permitted in the BC zone. The general intensity of warehouse activity is also higher.

7. The other major difference between the two zone classifications is in reference to residential uses within the zone. In a BC zone new residential uses, within limits, are permitted outright whereas in a CG zone a determination must be made that commercial type uses in the area will not be a nuisance to the residential dwelling units.

8. The proposed action would rezone approximately 56,000 square feet of property from BC to CG. Evaluated in the absence of a specific project, a rezone is a non-project action. The potential impacts of the rezone are indicated in the environmental checklist prepared by the applicant and reevaluated by DCD.

9. The environmental checklist as originally filed by the applicant had each of the questions in the check list answered with a "no". As reevaluated by the Department of Community Development a number of answers were changed to "maybe". No questions were answered with a "yes".

10. The Comprehensive Plan for the City of Seattle indicates that the subject area is to be developed with industrial uses. A new set of policies are being formulated. They have not been formally adopted but they indicate that those areas which are industrial in the Comprehensive Plan but are zoned residential should be preserved as residential. The Office of Policy Planning (OPP) also indicated they had been unaware of the large number of residential properties outside of residential zones. OPP through its representative indicated that the City's goal has been to maintain a stock of affordable housing and that Georgetown homes both residentially zoned and otherwise exemplify that goal.

11. More residential uses exist in this BC zone than other more intense uses.

12. The appellant alleged that the checklist was improperly filled out by the applicant and was not correctly assessed by Department of Community Development. They maintain that noise and air pollution would be greater if the area were rezoned. They also claim congestion and through traffic will also increase. They believe the rezone to CG would significantly change the land use of the area.

13. The appellants in their arguments and testimony indicated they are speaking of the entire area surrounding the proposed rezone area as well as the subject property. The appellants also base much of their testimony on the presence in the subject area of the illegal nonconforming use, Acme Food. This use would be legalized if the rezone were enacted.

14. Testimony indicated the area is already subject to frequent passage by large garbage trucks on the way to the dump. Frequently refrigeration units parked on the street run all night creating a steady noise level. These compression units also create odors while they run.

15. Most of the loading/unloading takes place in front of the warehouse and directly across from residences which are not the subject of this rezone petition. Testimony indicates that Ellis Avenue is blocked at frequent intervals by warehouse traffic and pedestrian passage is all but impossible outside the warehouse itself. The elderly residents have indicated that on more than one occasion emergencies have occurred and access has been difficult.

16. The Department of Community Development, through its representative, indicated on the checklist that the area is already noisy and congested.

17. Evidence indicates that neither the BC nor CG zones is meant to protect and preserve residential use. The BC zone would permit the establishment of supermarkets and with them the possibility again of large, diesel type trucks.

18. The Office of Policy Planning testified about traditional buffering concepts which separate the different intensity levels of land use. Also, evidence was presented that the Comprehensive Plan designation of this area for industrial growth has led to a loss of single family residences, even along traditional buffer areas.

### Conclusions

1. Under the doctrine enunciated by the Washington Supreme Court an environmental impact statement is only required when there is a major action which would have a significant adverse impact on the quality of the environment. That adverse impact occurs "whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill Preservation & Protection Association v. King County Council, 87 Wn. 2d 267, 522 P.2d 674 (1976).

2. The appellants as the party challenging the Department of Community Development's determination must prove that the Department was incorrect. The determination, in this case, a declaration of nonsignificance, by the Department of Community Development, is to be accorded "substantial weight" under terms of RCW 43.21C.090. (The appellants therefore have the burden of showing by evidence that the Department of Community Development did not correctly review all available data in light of the actual versus the probable result of this rezone.)

3. A rezone petition is generally a non-project action and in the absence of a concrete project results in difficult to assess intangible changes rather than physical changes to the subject area. That is not actually the case in this challenged petition. The petition would result in legalizing an existing nonconforming illegal use. If the petition were denied Acme Food Sales would have to stop its present operation.

4. In light of the above, the environmental assessment becomes tangled in assessing the present quality of the environment, subjected to an existing illegal use, and the future probable result legalizing the nonconforming use. The assessment should be based on the subject area as it would be in the absence of the illegal use. According to credible evidence this illegal use does impact the area.

5. The appellants presented evidence that noise, traffic, odor and general congestion in the area impacts the area, not only the area to be rezoned but adjacent areas. However, in light of uses which may be permitted in a BC zone these existing conditions do not necessarily create a greater impact. The warehouse facility could be converted to a supermarket (permitted in a BC zone) as an example, and similar truck impacts would result.

6. An environmental impact statement (EIS) is required to give the decision-maker all the facts necessary for making a reasoned determination on the merits of the proposed action. The impacts exist and may be judged in light of the actual proposal and project when the rezone petition is before the decision-maker. Therefore, an environmental impact statement is unnecessary. This is not to say that in all future cases an environmental impact statement is unnecessary once the impact of a use already exists. WAC 197-10-365 requires that the applicant answer the checklist questions in light of "...the total proposal, not just the license for which (the applicant is) currently applying." Under the right combination of facts an EIS may be required.

7. The appellants are reminded that this decision in no way affects their rights to present the same or additional evidence on the question of the actual rezone. The petition for a rezone is a separate action and a separate public hearing will be scheduled some time in the future.

Decision

The appeal is DENIED.

Entered this 17<sup>th</sup> day of April 1979.

Fred J. Kaufman  
Fred J. Kaufman  
Hearing Examiner  
Pro Tempore

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).