

**CITY OF SPOKANE HEARING EXAMINER**

Re: Zone Change Application by West ) FINDINGS, CONCLUSIONS,  
Central Development, LLC for ) AND DECISION ON  
property located on the block ) REMAND  
bounded by Mallon Avenue, )  
Broadway Avenue, Adams Street )  
and Cedar Street )  
) FILE NO. Z2007-27-ZC

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The applicant, West Central Development, LLC, seeks to change the zone of certain property from O-35 (Office Zoning with a 35 foot height limit) to OR-150 (Office Retail with a 150 foot height limit).

**Decision:** The zone change application is approved subject to conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant:** West Central Development, LLC  
901 North Monroe Street, Suite 250  
Spokane, WA 99201

**Property Address:** 1301, 1309, 1315, 1321 and 1325 West Mallon Avenue; 817 North Adams Street; and 1324 and 1328 West Broadway Avenue in the City of Spokane, Washington

**Property Location:** The property consists of most of the block bounded by Mallon Avenue, Broadway Avenue, Adams Street and Cedar Street.

**Legal Description:** A full legal description is in the record as Exhibit "A" attached to Exhibit 2A.

**Zoning:** The property is currently zoned O-35 (Office Zoning with a 35 foot height limit).

**Comprehensive Plan Map Designation:** The site is designated "Office" in the City's 2001 Comprehensive Plan.

**Site Description:** The site is "L" shaped and contains approximately 48,000 square feet in area. It consists of eight city lots on a block bounded by Mallon Avenue, Broadway Avenue, Adams Street and Cedar Street. The site is currently vacant of structures. The structures formerly on site have either been moved to other sites or torn down. The site is reasonably flat but has retaining walls along the southern and eastern boundaries.

**Surrounding Conditions:** Across Adams Street to the east, is the County Courthouse Complex, which includes the courthouse, the jail and other buildings. The Courthouse Complex is zoned CB-150 (Community Business with a height limit of 150 feet). It is designated "Institutional" in the Comprehensive Plan. To the south, west and north the properties are zoned O-35 and are developed with small scale offices, many of which are in former residences. There are also some residential uses of varying densities. The historic "Gables" Apartments are located on the same block at the northwest corner of Broadway and Adams. A half block to the west is the nearest neighborhood center at Maple and Walnut.

**Project Description:** The applicant seeks approval to rezone this property from Office with a 35 foot height limitation to Office Retail with a 150 foot height limitation. The proposal includes a tower structure in the northeast corner of the property and a parking garage to the west of that structure. The upper levels of the tower structure would include office and residential uses and the lower levels would include a grocery store and a daycare center as well as other retail and service uses. At the hearing on this matter, the applicant, Dr. DeWood, testified that he was intending to put a 20,000 square foot supermarket in the building. The Planning Department responded, however, that the code restricts the size of retail uses within office buildings in this zone and a supermarket of that size was too large. See SMC 17C.120.110.

### **PROCEDURAL INFORMATION**

**Procedural Background:** On November 15, 2007, the Hearing Examiner held a public hearing on this proposed zone change. By decision dated November, 30, 2007, the Hearing Examiner denied the rezone request. The applicant filed a timely appeal to the Spokane City Council and the City Council held a hearing on the appeal on April 7, 2008. By decision dated May 5, 2008, the City Council reversed the Hearing Examiner and remanded the matter back to the Hearing Examiner for further proceedings. That remand hearing was held on Tuesday, September 30, 2008, at 3:00 p.m. in conference room 2-B, Second Floor, Spokane City Hall, 808 West Spokane Falls Boulevard. At that hearing public testimony was taken.

**Authorizing Ordinances:** Spokane Municipal Code Sections 17C.120, 17C.120.030, 17C.120.110, Table 17C.120-1 and 17G.060.

**Hearing Date:** November 15, 2007. The hearing date on remand was September 30, 2008.

**Notices:** Mailed: April 2<sup>nd</sup>, August 4<sup>th</sup>, September 26<sup>th</sup> and October 19, 2007  
Posted: April 2<sup>nd</sup>, August 4<sup>th</sup>, September 26<sup>th</sup> and October 19, 2007  
A notice of the hearing on remand was sent to all parties of record.

**Site Visit:** November 14, 2007

**SEPA:** A Mitigated Determination of Nonsignificance (MDNS) was issued by the City on October 16, 2007.

**Testimony:**

Dave Compton  
City of Spokane Planning Services  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Dr. Marcus DeWood  
901 North Monroe Street, Suite 250  
Spokane, WA 99201

George Craig  
1005 North Hollis Street  
Spokane, WA 99201

Gary Lauerman  
334 East 10<sup>th</sup> Avenue  
Spokane, WA 99202

Frank Hoover  
1402 West Broadway Avenue  
Spokane, WA 99201

Len Urgeleit  
114 West Pacific Avenue  
Spokane, WA 99201

Chris Batton  
114 West Pacific Avenue  
Spokane, WA 99201

**Testimony at Hearing on Remand:**

Dave Compton  
City of Spokane Planning Services  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Stacy Bjordahl, Attorney at Law  
Parsons/ Burnett/ Bjordahl, LLP  
505 West Riverside, Ste 500  
Spokane, WA 99201

Lisa Dickinson, Attorney at Law  
1320 North Atlantic Street  
Spokane, WA 99201

**Exhibits:**

1. Planning Services Staff Report
2. Application, including:
  - 2A. General application
  - 2B. Rezone change application
  - 2C. Application for notification map
  - 2D. Site plan
3. Engineering Services comments
4. Traffic Engineering comments
  - 4A. Sunburst Engineering Trip Distribution
5. Urban Design/Planning comments
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- 35. Letter dated 10-17-07 to Luann Padgham from Dave Compton  
re: notice of public hearing instructions
- 36. Undated article from the Spokesman Review regarding project
- 37. Exhibits presented at the hearing.
  - 37A. Letter in support of project from West Central Neighborhood Council dated 12-27-06
  - 37B. Letter in support of project from West Central Neighborhood Council Dated 03-20-07

**Exhibits for Remand Hearing:**

- 1. Decision from City Council
- 2. Notice of Remand Hearing

**FINDINGS AND CONCLUSIONS**

To be approved, the proposed zone change must comply with all of the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing Examiner has reviewed the proposed zone change application and the evidence of record with regard to this Section and makes the following Findings and Conclusions:

- 1. The proposed is allowed under the provisions of the Land Use Codes.

The office and office retail zones are considered commercial zones and governed by SMC 17C.120. The applicant seeks a zone change from office to office retail. SMC 17C.120.220 relates to height and states in subsection B of that section that changes to height limits require a rezone. The height limits are listed and one listed is 150 feet, which is what the applicant is seeking in this instance. The applicant is seeking office retail rather than just office in order to allow the inclusion of retail uses within the building. Under SMC 17C.120.110 retail sales and services are allowed in office buildings but are subject to certain size restrictions. They may be larger than 3,000 square feet but may not exceed 10 percent of the total floor area of the building exclusive of parking areas located within the structure.

There was testimony given that the building is out of scale with surrounding uses. The height standards of the municipal code, however, relate primarily to commercial zones in close proximity to residential zones and require a step-back height from those zones. The surrounding area is all zoned office with the exception of the Courthouse complex across the street which is zoned CB-150. Therefore, the stair-step provisions of SMC 17C.120.220 B don't apply. Therefore the proposal is allowed under the land use codes.

2. The proposal is consistent with the Comprehensive Plan designation and goals, objectives, and policies for the property.

The Hearing Examiner originally denied this zone change application based on a conclusion that the proposal did not comply with the City's Comprehensive Plan, specifically Land Use Policy 1.5 which applies to office uses. The matter was appealed to the Spokane City Council and the City Council disagreed with the Hearing Examiner's interpretation of the plan. The City Council determined that Land Use Policy 1.5 should not be interpreted to deny the zone change. While other land use policies have been highlighted in testimony in order to attempt to demonstrate that the proposal is not consistent, with the plan, the Hearing Examiner finds that the City Council decision on the land use plan is controlling therefore this proposal is consistent with the plan.

3. The proposal meets the Concurrency Requirements Chapter of 17D.010.

All applicable City Departments and agencies with jurisdiction over land development reviewed this proposal and its concurrency requirements. The only comments came from the Transportation Department and the recommended conditions from transportation are included in the Mitigated Determination of Nonsignificance (MDNS) and will become conditions of this approval.

4. If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water, and the existence of natural, historic, or cultural features.

There was no testimony demonstrating that the site was unsuitable for the proposed use because of its physical characteristics. It is large enough and the shape and the topography are such that development can occur as proposed. There was no testimony of the existence of ground or surface water or the existence of natural, historic or cultural features on site which would preclude development.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties and, necessary conditions can be placed on the proposal to avoid significant effects or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use.

The primary impacts identified in public testimony were shading and the blocking of views from the 150 foot building. The City has no regulations, however, against the building of a structure like this in the office zone unless it is within 150 feet of a single family or two family residential zone. See SMC 17C.120.220. Although there are offices nearby which are in residential structures, there is no residential zoning within 1,275 feet of this proposal according to staff. A Mitigated Determination of Nonsignificance was issued for the proposal and those mitigating measures, recommended by the Transportation Department, are designed to mitigate adverse impacts. They will become conditions of this approval. Therefore there should not be significant adverse impacts on surrounding properties.

### **DECISION**

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed zone change and application subject to the following conditions:

1. Approval is for a change in the zoning for this site from O-35 (Office Zoning with a 35 foot height limit) to OR-150 (Office Retail with a 150 foot height limit). This zone change applies to the property described in the legal description which is in the record as Exhibit "A" attached to Exhibit 2A. The site is to be developed substantially as set forth in the application and as presented at the public hearing. Any changes to the proposal are to be submitted to Planning Services for review and approval. If Planning Services deems those changes to be substantial then they shall be submitted to the Hearing Examiner for review and approval.

2. The applicant must comply with the mitigating measures set forth in the Mitigated Determination of Nonsignificance which is in the record as Exhibit #13. This includes the payment of a transportation impact fee based on new P.M. peak hour trips using the Monroe Street/Broadway Avenue intersection.

3. The height of the building on site shall be no higher than the adjacent Spokane County Courthouse and jail.
4. The applicant must comply with the retail sales and service use size limitations set forth in SMC 17C.120.110 and also the tall building standards set forth in SMC 17C.250.
5. The applicant shall bring this proposal before the Design Review Committee for comments and recommendations. The Design Review Committee's recommendations shall be forwarded to the Hearing Examiner for final approval.
6. All parking areas must be hard surfaced. All broke, heaved, or sunken sidewalks adjacent to the site shall be replaced to City standards whether existing or caused during construction.
7. A boundary line adjustment must be completed to aggregate all parcels within this proposal prior to the issuance of a building permit.
8. All surface drainage must be disposed of on site in accordance with City standards as set forth in SMC 17D.060.
9. This approval does not waive the applicant's obligation to comply with all other requirements of the Spokane Municipal Code as well as requirements of City Departments and outside agencies with jurisdiction over land development.
10. Spokane Municipal Code 17G.060.240 regulates the expiration of this approval, and Table 17G.060.3 sets forth the time frame for the expiration of all approvals.
11. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office:

### COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

12. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply



with them. The filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 6th day of October 2008.

  
\_\_\_\_\_  
Greg Smith  
City of Spokane Hearing Examiner

#### **NOTICE OF RIGHT TO APPEAL**

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210.

Decisions of the Hearing Examiner regarding zone changes are final. They may be appealed to the City Council. All appeals must be filed with the Planning Department within fourteen (14) calendar days of the date of the decision. The date of the decision is the 6th day of October 2008. **THE DATE OF THE LAST DAY TO APPEAL THE ZONE CHANGE DECISION IS THE 20th DAY OF OCTOBER 2008 AT 4:30 P.M.**

In addition to paying the appeal fee to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the City Council.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

**CITY OF SPOKANE HEARING EXAMINER**

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Central Development, LLC for ) AND DECISION  
property located on the block )  
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**Proposal:** The applicant, West Central Development, LLC, seeks to change the zone of certain property from O-35 (Office Zoning with a 35 foot height limit) to OR-150 (Office Retail with a 150 foot height limit).

**Decision:** The zone change application is denied.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

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**Property Location:** The property consists of most of the block bounded by Mallon Avenue, Broadway Avenue, Adams Street and Cedar Street.

**Legal Description:** A full legal description is in the record as Exhibit "A" attached to Exhibit 2A.

**Zoning:** The property is currently zoned O-35 (Office Zoning with a 35 foot height limit).

**Comprehensive Plan Map Designation:** The site is designated "Office" in the City's 2001 Comprehensive Plan.

**Site Description:** The site is "L" shaped and contains approximately 48,000 square feet in area. It consists of eight city lots on a block bounded by Mallon Avenue, Broadway Avenue, Adams Street and Cedar Street. The site is currently vacant of structures. The structures formerly on site have either been moved to other sites or torn down. The site is reasonably flat but has retaining walls along the southern and eastern boundaries.

**Surrounding Conditions:** Across Adams Street to the east, is the County Courthouse Complex, which includes the courthouse, the jail and other buildings. The Courthouse Complex is zoned CB-150 (Community Business with a height limit of 150 feet). It is designated "Institutional" in the Comprehensive Plan. To the south, west and north the properties are zoned O-35 and are developed with small scale offices, many of which are in former residences. There are also some residential uses of varying densities. The historic "Gables" Apartments are located on the same block at the northwest corner of Broadway and Adams. A half block to the west is the nearest neighborhood center at Maple and Walnut.

**Project Description:** The applicant seeks approval to rezone this property from Office with a 35 foot height limitation to Office Retail with a 150 foot height limitation. The proposal includes a tower structure in the northeast corner of the property and a parking garage to the west of that structure. The upper levels of the tower structure would include office and residential uses and the lower levels would include a grocery store and a daycare center as well as other retail and service uses. At the hearing on this matter, the applicant, Dr. DeWood, testified that he was intending to put a 20,000 square foot supermarket in the building. The Planning Department responded, however, that the code restricts the size of retail uses within office buildings in this zone and a supermarket of that size was too large. See SMC 17C.120.110.

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- 37B. Letter in support of project from West Central Neighborhood Council Dated 03-20-07

### FINDINGS AND CONCLUSIONS

The Hearing Examiner cannot approve this application for a rezone because the Examiner cannot find that the application is consistent with the City's Comprehensive Plan which is one of the criteria in determining whether or not a zone change application should be approved. See SMC 17G.060.170. The Courts have held that a rezone is not presumed to be valid and that the proponent of a rezone must show either a change of circumstances which would allow the zone change or that proposed rezone implements the policies of the Comprehensive Plan. *Woods v Kittitas County*, 130 Wn. App 573 (2005). While only general conformance with the Comprehensive Plan is required, in this case the Hearing Examiner finds that there is not general compliance with the plan.

Land Use Policy 1.5 specifically addresses office uses and states: "Direct new offices uses to centers and corridors designated on the Land Use Plan map." The discussion following that policy states in part:

*Office use in centers may be in multistory structures in the core area of the center and transition to low rise structures at the edge.*

*To insure that the market for office use is directed to centers, future office use is generally limited in other areas. The office designations located outside centers are confined to the boundaries of existing office designations. Office use within these boundaries is allowed outside of a center.*

While this site and most of the surrounding sites are currently zoned Office even though they are outside the nearest center, this use is much more dense and intense than the O-35 Zone and it should be considered a new office use rather than an existing office designation that is simply allowed to continue. There is a considerable difference between office uses that are limited to 35 feet in height versus office towers that can be constructed up to 150 feet in height. The Hearing Examiner concludes that the intent of the plan is to have those more intense uses located at the core of centers rather than outside those centers, even if they are located on a site with an existing office designation.

In addition, the discussion under Land Use Policy 1.5 addresses retail uses constructed in conjunction with office uses. It states:

*Uses such as freestanding sit-down restaurants or retail are appropriate only in the office designation located in higher intensity office areas around Downtown Spokane in the North Bank and Medical Districts shown in the Downtown Plan.*

This site is not within the areas shown in the Downtown Plan. The Downtown Plan does not include the County Courthouse to the east except as an influence area. It does not include this particular site at all. While the site is close to downtown and half a block away from a neighborhood center, it is not within a neighborhood center or within the Downtown Planning Area as the Comprehensive Plan envisions.

The closest center is a neighborhood center. Neighborhood centers are described in more detail under Land Use Goal 3, specifically under Land Use Policy 3.2. The discussion under that Policy states in part:

*To promote social interaction and provide a focal point for the center, a central gathering place, such as a civic green, square, or park should be provided. To identify the center as the major activity area of the neighborhood, it is important to encourage buildings in the core area of the neighborhood center to be taller. Buildings up to three stories are encouraged in this area.*

Based on this language and the three story limitation, even if the center were expanded to include this site it would be difficult to approve a 150 foot building without some other change in the regulations.

The West Central Neighborhood Council has argued for approval of this application based on the promise by the applicant to provide a much needed grocery store and daycare services as well as other neighborhood amenities such as a public square to be located on Broadway Avenue. Opponents argued that the applicant, upon receiving the rezone, could sell the property to someone who would not include a grocery store or daycare or, the applicant could simply decide that such a use is not economically feasible. At the hearing, the applicant expressed his commitment to including both a grocery store and daycare. While the Hearing Examiner does not doubt the sincerity of the applicant, events could transpire which would result in a change of plans. The reason why this is important is that the neighborhood may not receive the amenities that it desires, but also this zone change clearly sets a precedent for other zone changes in the area to O-150 or OR-150. If this zone change is granted outside of a center and outside of the downtown planning area and the core area, despite the language in the Comprehensive Plan then there are many more areas of the City where the same rezone request would have to be approved. The Hearing Examiner concludes that zone changes which allow properties with 35 foot tall office structures to be developed with 150 foot tall office structures outside of downtown and outside of a center or corridor should be

reviewed by the City Planning Commission and City Council when those bodies review the Comprehensive Plan or possibly as part of the Downtown or West Central Neighborhood planning process. They are not consistent with the current Comprehensive Plan and the granting of this application will surely result in more such requests.

### DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to deny the rezone request.

DATED this 30th day of November 2007.

  
\_\_\_\_\_  
Greg Smith  
City of Spokane Hearing Examiner

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