

CITY OF SPOKANE HEARING EXAMINER

Re: Zone Change Application by West) FINDINGS, CONCLUSIONS,
Central Development, LLC for) AND DECISION
property located on the block)
bounded by Mallon Avenue,)
Broadway Avenue, Adams Street and)
Cedar Street)
FILE NO. Z2009-24-REZN

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 O-150 (Office 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
c/o Luann Padgham
901 North Monroe Street, Suite 250
Spokane, WA 99201

Represented by: Stacy Bjordahl, Attorney at Law
505 West Riverside Avenue, Suite 500
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 as the applicant's proposal 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 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. The building would contain approximately 124,000 square feet of space to be used for office and associated uses. The parking garage will, at the least, meet the City's minimum parking standards for office uses.

PROCEDURAL INFORMATION

Procedural Background: On November 15, 2007, the Hearing Examiner held a public hearing on a proposed zone change for this site from O-35 to OR-150. 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. On October 6, 2008, the Hearing Examiner issued a decision on remand approving the proposal subject to conditions.

Prior to the remand hearing being held, the decision by the City Council on appeal was appealed further to Spokane County Superior Court. By decision dated December 30, 2008, the Superior Court found that the City Council had correctly interpreted the comprehensive plan as to office uses but not as to retail uses. The Court therefore found that the retail component of this proposal was not compliant with the comprehensive plan. That decision was appealed further to the Court of Appeals and a decision is pending out of that court.

In the meantime, the applicant submitted a new application for a rezone proposal which included the office component but deleted the retail component. That proposal is the subject of this application and this decision.

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

Hearing Date: October 27, 2009

Notices: Mailed: May 13, September 5, and October 7, 2009
Posted: May 13, September 5, and October 7, 2009

Site Visit: Site visits were made prior to the previous two hearings.

SEPA: A Mitigated Determination of Nonsignificance (MDNS) was issued by the City on the original project on October 16, 2007. The City adopted that MDNS, as amended, on September 22, 2009. The original MDNS contained conditions requiring impact fees. The amended MDNS changed the amount of those fees.

Testimony:

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

Raymond Wright
City of Spokane Traffic Engineering
808 West Spokane Falls Boulevard
Spokane, WA 99201

Stacy Bjordahl, Attorney at Law
505 West Riverside Avenue, Suite 500
Spokane, WA 99201

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

Lisa Dickinson, Attorney at Law
1320 North Atlantic St., Suite B
Spokane, WA 99201

Brad Chinn
1319 West Dean Avenue
Spokane, WA 99201

Judith Gilmore
2907 West Sharp Avenue
Spokane, WA 99201

Gary Lauerman
334 East 10th Avenue
Spokane, WA 99202

Carolyn Santantonio
1715 North West Point Rd
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Rezone application
 - 2C Notification Map application
 - 2D Site Plan
3. Fire Department comments
4. Engineering Services comments
5. Traffic Engineering comments
6. Spokane Tribe of Indians comments
7. Northwest Pipeline comments

8. Neighborhood Services comments
9. Spokane County Facilities Department comments
10. Notice map with parcel listing
11. Title company certification and address listing
12. Notices
13. Affidavit of mailing May 13, September 5, and October 7, 2009
14. Affidavit of posting May 13, September 5, and October 7, 2009
15. Affidavit of sign removal May 29, 2009
16. SEPA Mitigated Determination of Nonsignificance
17. Environmental Checklist
18. Community Meeting sign in sheet
19. Community Meeting minutes
20. Hearing File Preparation Checklist
21. Letter dated 05-05-09 to Luann Padgham from Dave Compton
re: community meeting instructions
22. Email dated 05-26-09 to Mike Piccolo from Gary Lauerman
re: requesting information
23. Email dated 05-26-09 to Dave Compton from Gary Lauerman
re: requesting information
24. Letter dated 07-13-09 to Interested Parties from Dave Compton
re: requesting comments
25. Letter dated 08-20-09 to Luann Padgham from Dave Compton
re: notice of application instructions
26. Emails dated 09-02 and 09-13-09 to/from Gary Lauerman/Dave Compton
re: notification request
27. Emails dated to/from Gary Lauerman/Dave Compton/Mike Piccolo
re: notification inquiry/request
28. Letter dated 09-22-09 to Luann Padgham from Dave Compton
re: notice of public hearing instructions
29. Public Comment received on project

A – Supporting

Billeter, Donna	Glasgow, Stan
Buri, Mary Ann	Gregg, Dawn
Byer, Ron	Gregg, J.
Crabb, Tim	Lorenzi, G.
Corbett, Brenda	McInnis, Bonnie
Craig III, George	McKee, Samuel
Craig, Judy	Mielke, Todd
Craig, Tina	O'Neil, Patrick
Cruz, Kelly	Owen, Annette
DeBur, Linda	Purdun, Christie
Erickson, Linda	Rhodes, Rhosetta
Garske, Sibyl	Richard, Mark
Sandifur, Helen	Stewart, Ben
Smith, Nicholas	Stewart, JoAnn
Starbey, John	Stewart, Ed
Stamper, Louise	

B. – Concerns

Hoover, Frank

Soeldner, Thomas

C. – Opposing

Chinn, Brad

Linzey, Thomas

Duteau, Julie

Peterson, Mike

Gilmore, Judith

Shockley, Dave

Lauerman, Gary

Wetzel, Phillip

A Exhibits received at hearing

A1 No. 77 419 15750, 1977 Master Plan for Spokane County Courthouse Building Complex

A2 Letter dated 10-21-09 from Spokane Urban Ministries
re: concerned about impact of 100,000 sq ft office space

A3 Letter dated 10-19-09 from Chair West Central Neighborhood Council
re: supporting project

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 the Section and makes the follow Finding and Conclusions:

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

The office zones are considered commercial zones and governed by SMC 17C.120. The applicant seeks a zone change from office with a maximum height limit of 35 feet (O-35) to office with a maximum height of 150 feet (O-150). SMC 17C.120.220 relates to height in the office zones and states in subsection B of that section that changes to height limits require a rezone. The height limits are listed and one which is listed is 150 feet, which is what the applicant is seeking in this instance. Therefore, the proposal is allowed under the provisions of the Land Use Code.

Some who testified at the public hearing on this matter argued that the proposal should not be approved because it was an illegal spot zone. Spot zoning is illegal when a site is rezoned to a use different from and incompatible with the surrounding area and also inconsistent with the comprehensive plan. In this case, as will be discussed under Criteria Number 2 below, the City Council has determined that the proposal is consistent with the comprehensive plan. Further, this site is zoned for office uses as is the surrounding properties. There is more intense zoning to the east in the form of the County Courthouse and jail. While this property is taller than most of the surrounding properties, it is not illegal under the strict definition of an illegal spot zone.

The Hearing Examiner also adopts and incorporates the findings set forth in the Planning Services Staff Report Exhibit #1, page 3.

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 denial 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 has been found to be consistent with the plan. The Superior Court specifically upheld the City Council's interpretation of the comprehensive plan as it related to office uses.

3. The proposal meets the concurrency requirements of Chapter 17D.010SMC.

All applicable City Departments and agencies with jurisdiction over land development reviewed this proposal and its concurrency requirements. The only qualifying 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. The MDNS was amended to reflect the change in the application from office retail to office uses. At the hearing, the traffic engineer testified that having solely office uses in the building will actually reduce daily trips as well as p.m. peak hour trips. Therefore, impact fees will be imposed, but they will be less than the original proposal required. The traffic engineer also stated that all of the intersections in the area were operating at acceptable levels of service.

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.

While there is no historic feature on site, the County Courthouse, which is across the street to the east, is a historic landmark. Some members of the public testified that the building of this tower across the street from the County Courthouse would harm the historic nature of that building. While it is true that if you were directly west of the proposed building you may have your view of the courthouse blocked, it is also true that views of the Courthouse from many other locations will still be available. There are no zoning regulations that protect views of the Courthouse from every possible direction and, in fact, the County's own jail substantially blocks the view from the north. No adverse comments were received regarding the proposal from either Spokane County or from the City / County Historic Preservation office. Therefore the Hearing Examiner finds that this criterion has been met.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect 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, and there are also residential uses in the surrounding neighborhood, 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 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 O-150 (Office Zoning 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 proposed 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 amended Mitigated Determination of Nonsignificance which is in the record as Exhibit #16. 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 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 lighting will be down shielded. All broken, 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. Any proposed signage must comply with the City's Sign Code.
10. The applicant shall submit a detailed landscaping plan signed by a licensed landscape architect, registered in the State of Washington showing compliance with requirements of SMC 17C.200.
11. Screening of all garbage collection areas and recycling bins must be completed in compliance with SMC 17C.230, Landscaping and Screening
12. 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.
13. 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.
14. 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.

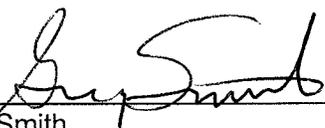
COVENANT

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.

15. 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 9th day of November 2009.



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 9th day of November 2009. **THE DATE OF THE LAST DAY TO APPEAL THE ZONE CHANGE DECISION IS THE 23rd DAY OF NOVEMBER 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.