

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Gonzaga University to allow the) AND DECISION
construction of a Jesuit Residence on)
the northwest corner of Boone) FILE NO. Z16-003CUP3
Avenue and Astor Street)

SUMMARY OF PROPOSAL AND DECISION

Proposal: Gonzaga seeks a conditional use permit in order to permit the construction of a new, 36,921 square foot Jesuit Residence, in a Residential Two-Family zone.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ Corporation of Gonzaga University
Agent: Attn: Kenneth Sammons
502 E. Boone Avenue
Spokane, WA 99258

Owner: Same as Applicant.

Property Location: The properties to be used for this development are located at the northwest corner of Boone Avenue and Astor Street. Parcel numbers include 35172.1807 (1207 N. Astor St.); 35172.1808 (323 E. Boone Ave.); 35172.1809 (315 E. Boone Ave.); and 35172.1810 (311 E. Boone Ave.).

Zoning: The property is zoned RTF (Residential Two-Family).

Comprehensive Plan Map Designation: The property is designated as Institutional.

Site Description: The site is located on the Gonzaga University campus and consists of 4 parcels located in the 300 block of Boone Avenue. It contains two houses that were formerly used as offices, a dormitory for student housing, and a private parking lot.

Surrounding Conditions and Uses: The uses surrounding the site are a mixture of institutional and residential uses. The property to the north and east is zoned Residential Two-Family (RTF). The property to the west is zoned Residential Multifamily (RMF). The property to the south is zoned Office Retail (OR). All areas are within the Gonzaga University campus.

Project Description: The project proposal includes the demolition of the current structures on the site, including two homes and a dormitory. The proposal is to construct a

new, 36,921 square foot Jesuit Residence for the Jesuit Fathers living on campus. This facility will house 20 Fathers and will include one or two guest rooms, a chapel, dining facility, and administrative space for their use.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (“SMC”) 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Criteria, and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: November 4, 2015
Posted: November 5, 2015

Notice of Application/Public Hearing: Mailed: February 4, 2016
Posted: February 4, 2016
Sign Removed: February 23, 2016
Re-posted: March 3, 2016

Community Meeting: November 19, 2015

Public Hearing Date: March 10, 2016

Site Visit: March 2 & 9, 2016

SEPA: A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane Planning Department on February 22, 2016. The deadline to appeal the DNS expired on March 8, 2016. The DNS was not appealed.

Testimony:

Donna deBit, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Kenneth Sammons
Corporation of Gonzaga University
502 E. Boone Avenue
Spokane, WA 99258

Exhibits:

1. Planning Services Staff Reports
 - 1A received on 03-02-16
 - 1B revised on 03-08-16
 - 1C revised on 03-09-16
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application
 - 2C Notification Map Application
 - 2D Overhead photo view of site
 - 2E Site Plan
 - 2F Building Elevations, east and west elevations

- 2F Building Elevations, north and south elevations
- 3. Engineering Services comments
- 4. Developer Services comments
- 5. Spokane Tribe of Indians comments
 - 5A letter dated 02-10-16
 - 5B letter dated 03-01-16
- 6. Notice map
- 7. Parcel listing
- 8. Notice of Community Meeting
- 9. Notice of Application and Public Hearing
- 10. Affidavit of mailings:
 - 10A dated 11-04-15
 - 10B dated 02-04-16
- 11. Affidavit of posting:
 - 11A dated 11-05-15
 - 11B dated 02-03 & 04-16
 - 11C dated 03-03-16
- 12. Affidavit of sign removal:
 - 12A dated 11-20-15
 - 12B dated 02-23-16
- 13. SEPA Determination of Nonsignificance dated 02-22-16
- 14. Environmental Checklist dated 12-15-15
- 15. Community Meeting notes dated 11-19-15
- 16. Community Meeting Sign in sheet dated 11-19-15
- 17. Community Meeting layout presentation
- 18. Letter dated 09-30-15 to Ken Sammons from Donna deBit
 - re: community meeting instructions
- 19. Letter dated 01-05-16 to Planning Department from Julie Ullrich
 - re: conveying documents
- 20. Letter dated 01-15-16 to Interested Parties from Donna DeBit
 - re: requesting comments
- 21. Letter dated 02-02-16 to Ken Sammons from Donna deBit
 - re: notice of application/public hearing instructions
- 22. Emails dated 03-03 & 3-04-16 to/from Donna deBit, Tami Palmquist and Hearing Examiner
 - re: notice of application/public hearing sign removal
 - 22A to Donna deBit and Tami Palmquist from Hearing Examiner dated 03-03-16
 - 22B response from Tami Palmquist to Hearing Examiner dated 03-03-16
 - 22C response from Donna deBit to Hearing Examiner dated 03-04-16
 - 22D response from Hearing Examiner to Donna deBit & Tami Palmquist dated 03-04-16
 - 22E submittal of affidavit of reposting of public notice signage.
- 23. Letter dated 03-08-16 to Tami Palmquist from Gretchen Kaehler
 - re: architectural survey for Robinson House located at 1204 N Astor Street.
- A Exhibits received at hearing
 - A-1 Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170 and 17C.320.080(F). The Hearing Examiner has reviewed the proposed conditional use permit and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The project site is zoned Residential Two-Family ("RTF"), a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17.110.110. In accordance with the table, "Group Living" and "Colleges" are allowed as conditional uses. See Table 17C.110-1.

"Group Living" is characterized by residential occupancy of a structure by a group of people. See SMC 17C.190.100(A). Examples of "Group Living" include dormitories, monasteries and convents, congregate residences, and others. See SMC 17C.190.100(C). The term "Colleges" refers to colleges and other institutions of higher learning, such as universities and liberal arts colleges, among others. See SMC 17C.190.140(A) & (C). The Hearing Examiner agrees with the Planning Department's interpretation that the proposed Jesuit Residence fits the definition of Group Living, as well as qualifying as a facility which is part of a college.

The Hearing Examiner finds that the proposed Jesuit Residence is allowed in the RTF zone, provided a conditional use permit is obtained and the other development standards are met. Therefore, this criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

In various ways, the Comprehensive Plan ("CP") generally recognizes the important role played by colleges and universities. The Hearing Examiner agrees with the Staff that the proposal is specifically supported by Goal LU 5, which promotes development "...in a manner that is attractive, complementary, and compatible with other land uses." See CP, Goal LU 5, Chapter 3, p. 23. Similarly, Policy LU 5.5 seeks to ensure that "...infill and redevelopment projects are well-designed and compatible with surrounding uses and building types." See CP, Policy LU 5.5, Chapter 3, p. 24. The Jesuit Residence is replacing an old dormitory and two houses used for institutional purposes. The new building will be used in a similar fashion as the former buildings, including for residential purposes and as administrative space. The proposal is a natural improvement to an existing university campus, and thus is clearly compatible with the surrounding uses. As such, the proposal is consistent with the goals and policies of the comprehensive plan. Therefore, this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010 SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions (such as a conditional use permit) mandate that all proposals must satisfy the concurrency requirements under SMC

17D.010. See SMC 17G.060.170(C)(3). Accordingly, on January 15, 2016, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 20.

The city received minimal response¹ to its request for comments. See e.g. Exhibits 3, 4, & 5. City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 3. To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. See SMC 17D.010.020(B)(1). In addition, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the conditional use permit is met.

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. See SMC 17G.060.170(C)(4).*

The Hearing Examiner finds that the property is suitable for the proposed use given its physical characteristics. The site is already developed with a dormitory, two houses, and a parking lot. The project will result in the demolition of the existing structures and the construction of a new residential building and parking lot. Thus, the project will re-purpose an already developed property. The Hearing Examiner agrees with the Staff that the "...current suitability of the parcel(s) in terms of size, shape, topography, soils, slope, drainage, surface/groundwater and natural/historic/cultural features is not changed by the proposed improvements." See Exhibit 1, p.3.

There is no evidence in this record suggesting that the physical characteristics of the property make it unsuitable for the proposed improvements. The site is flat, rectangular in shape, and contains no problematic conditions. The project has been well-designed to fit the property. See Exhibit 2E. Ultimately, the total footprint of structures on the site will actually be reduced. See Exhibit 1, p.3. Finally, there are no known cultural or historic resources on this site. See id. The applicant met with the Spokane Tribe of Indians on the site and no concerns were raised about the project. See id.; see also Exhibit 5B.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

¹ The Department of Archaeology and Historic Preservation (DAHP) requested an architectural survey be completed prior to the demolition of the "Robinson House." However, the Robinson House is not on the subject property. The confusion apparently arose because of the address of the project was initially misstated.

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. See SMC 17G.060.170(C)(5).*

The environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

On or about December 15, 2015, Gonzaga University prepared an environmental checklist, pursuant to the State Environmental Policy Act, for the proposed Jesuit Residence. See Exhibit 14 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example, there are no wetlands or streams on the site. See Exhibit 14 (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 14 (Environmental Checklist ¶ B(3)(a)(4)). No waste materials will be discharged into the ground or into surface waters, barring a construction accident. See Exhibit 14 (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No environmental hazards (e.g. exposure to toxic chemicals, risk of fire or explosion, hazardous wastes, etc.) are anticipated to arise due to this project. See Exhibit 14 (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 14 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). The project is not anticipated to create any significant noise. See Exhibit 14 (Environmental Checklist ¶ B(7)(b)).

On February 22, 2016, the Planning Department of the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 13. Any appeal of the DNS was due on March 8, 2016. See *id.* No appeal of the DNS was filed.

There was no substantive evidence that environmental impacts make the project unfeasible or materially problematic. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment, which cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. *The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F).*

The residential appearance and function of the area will not be negatively impacted by this project. The project will merely replace a dormitory, and two houses, with a newer residential building. Thus, the project is consistent with the property's historic use and will not be out-of-proportion with the residential household uses in the vicinity. The general appearance of this part of the campus will not be materially affected. In reality, the new building will be an upgrade in the appearance of this area. There were no complaints prior to or at the hearing about the potential impact on nearby residential uses. No homeowners submitted comments in opposition to the project. No homeowners testified at the hearing. Only one couple attended the community meeting, and they were in favor of the project. *Testimony of K. Sammons*. Further, any impacts on the residential aesthetics of the neighborhood will be mitigated by proper design. For example, the applicant is required to meet the standards set out in SMC 17C.110.500-575, which apply to institutional uses in residential areas. See Exhibit 1, p. 4. The Hearing Examiner concludes that this criterion for approval is satisfied.

7. *The proposal will be compatible with the adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks and landscaping. The proposal will mitigate the differences in appearance or scale through such means as setbacks, screening, landscaping and other design features. See SMC 17C.320.080(F)(2).*

As noted above, the project is well designed for this site. See Exhibit 2E. The project includes landscaping and other features that will ensure that the improvements blend well with the neighborhood, and fit with the campus. See Exhibits 2E, 2F, and 2G. There was no testimony of other evidence suggesting that this project will be incompatible with the adjacent residential developments. Further, the project will be required to satisfy the design standards for institutional uses in a residential area. See SMC 17C.110.500-575. The Hearing Examiner agrees with the Staff that this criterion for approval is satisfied.

8. *The proposal will not have significant adverse impacts on the livability of nearby residential lands due to noise, glare, late-night operations, odors and litter, or privacy and safety issues. See SMC 17C.320.080(F)(3).*

The proposal will not affect the livability of the surrounding residences, as has already been discussed. More specifically, none of the adverse impacts identified in the criterion are expected to occur. No additional noise is anticipated from this project. See Exhibit 1, p. 5. Overhead lighting at the site must be contained on site, in accordance with SMC 17C.110.520. See *id.* No late-night operations are planned at the facility. See *id.* No odor or litter is anticipated from this project. See *id.* No concerns were raised about privacy or safety, and the Hearing Examiner cannot conceive of any such impacts, given the nature of the proposal. In summary, the project does not include elements that may cause unanticipated or undue light, glare, odor, or litter, or give rise to diminished privacy or safety. See *id.* The Hearing Examiner concludes that this criterion for approval is met.

9. *The proposed use is in conformance with the street designations of the transportation element of the comprehensive plan. The transportation system is capable of supporting the proposed use in addition to existing uses in the area, upon consideration of the evaluation factors provided in the municipal code. See SMC 17C.320.080(F)(4).*

This project does not create any new or unique burdens on the transportation system or on other public facilities. This project merely results in the replacement of existing institutional buildings with one, new institutional building. There is no reason to expect any increased burden on neighboring streets or public services once the project is completed. According to the Staff, the "...proposal does not decrease the level of service on any adjacent street." See Exhibit 1, p. 6. Given the minimal impact, no traffic study was required or undertaken for this project. See *id.* In addition, the site already has access to public services, and public improvements are not required in order to accommodate the development. See *id.* Under the circumstances, the Hearing Examiner concludes that this criterion is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed conditional use permit subject to the following conditions:

1. Approval is for a conditional use permit to allow Gonzaga University to construct a Jesuit Residence on the northwest corner of Boone Avenue and Astor Street (the specific property being identified above and in the record). The Jesuit Residence will be constructed substantially as set forth in the plans and application on file in the Planning Department. If changes are sought to the plans or application, they shall be submitted to the Planning Department for review and approval. If the Planning Department finds that the changes are substantial, than they shall be forwarded to the Hearing Examiner for review and approval.
2. The project will be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
3. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.
4. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code, including the International Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
5. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.

6. The applicant shall comply with the requirements of the Spokane Regional Clean Air Agency prior to the construction, installation or establishment of an air pollution source. A Notice of Intent must be submitted to the Spokane Regional Clean Air Agency prior to any demolition project or asbestos project.

7. Spokane Municipal Code section 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.

8. 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.

9. 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 24th day of March 2016.



Brian T. McGinn
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 and 17G.050.

Decisions by the Hearing Examiner regarding conditional use permits and variances are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is the date the decision is entered into the public record. This decision was entered into the public record on March 24, 2016. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 14th DAY OF APRIL 2016 AT 5:00 P.M.**

In addition to paying any Court costs 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 Court.

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