

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Rezone and Shoreline Conditional ) FINDINGS, CONCLUSIONS,  
Use Permit Application by Gonzaga ) AND DECISION  
University to allow the construction of )  
the Myrtle Woldson Performing Arts )  
Center on the Gonzaga University )  
Campus ) FILE NO. Z16-678REZN

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** Gonzaga seeks a rezone and shoreline conditional use permit in order to permit the construction of a new, 57,550 square-foot performing arts center in an Office Retail-55 zone. The rezone would change the zoning from Office Retail-55 to Office Retail-70, to accommodate the height of the proposed structure. A shoreline conditional use permit is required because the proposed development is partially within the Shoreline Jurisdiction.

**Decision:** Approved, with conditions.

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

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

**Owner:** Same as Applicant.

**Property Location:** The property to be used for this development consists of two parcels located east of the intersection of Pearl Street and DeSmet Avenue. The parcels are commonly described as 1120 N. Van Gorp Place and 1025 N. Astor Street and are designated under tax parcel numbers 35172.2606 and 35172.2710.

**Zoning:** Office Retail-55 (OR-55).

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

**Site Description:** The site is a part of the Gonzaga University Campus. The northern portion of the site is improved with a parking lot and access. The Jepson Center is located in the southeast part of the property. The remainder is mainly open grass area. Lake Arthur is to the south of the site.

**Surrounding Conditions and Uses:** The uses surrounding the site are a mixture of institutional and residential uses, with commercial uses farther to the west. The property

to the south and east is zoned Residential High Density (RHD-55). The property to the west is zoned General Commercial (GC-150). The property to the north is zoned Office Retail-55 (OR-55).

**Project Description:** The proposal is to construct a new, 57,550 square-foot performing arts center. The “fly tower” portion of the proposed structure, however, exceeds the allowable height in the current zone. Therefore, the Applicant has proposed to rezone the property from OR-55 to OR-70. The proposed development also encroaches 35 feet into the shoreline buffer, requiring the Applicant to obtain a shoreline conditional use permit. The project does not involve the demolition of any existing buildings.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code (“SMC”) 17C.120, Commercial Zones, and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: July 20, 2016  
Posted: July 20, 2016

**Notice of Application/Public Hearing:** Mailed: September 16, 2016  
Posted: September 16, 2016

**Community Meeting:** August 3, 2016

**Public Hearing Date:** October 20, 2016

**Site Visit:** October 20, 2016

**SEPA:** A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane Planning Department on September 30, 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 Report
2. Application, including:
  - 2A General application
  - 2B Shoreline permit application
  - 2C Shoreline/Critical Areas Checklist
  - 2D Rezone application
  - 2E Site Plan

- 2F Aerial view of parcels and shoreline jurisdiction
- 2G Notification map application
- 3. Spokane Tribe of Indians comments
- 4. Notice map
- 5. Parcel listing
- 6. Notice of Community Meeting
- 7. Notice of Application and Public Hearing
- 8. Affidavit of mailings
  - 8A Community Meeting 07-20-16
  - 8B Combined Application and Hearing dated 09-16-16
- 9. Affidavit of posting
  - 9A Community Meeting dated 07-20-16
  - 9B Combined Application and Hearing dated 09-16-16
- 10. Removal of Public Sign dated 08-22-16
- 11. Determination of Nonsignificance (DNS) issued on 09-30-16
- 12. Environmental Checklist dated 07-07-16
- 13. Community Meeting sign in sheet
- 14. Community Meeting minutes and handouts
- 15. Letter dated 07-19-16 to Ken Sammons from Donna deBit  
re: community meeting instructions
- 16. Letter dated 08-23-16 to Interested Parties from Donna deBit  
re: requesting comments
- 17. Letter dated 09-14-16 to Ken Sammons from Donna deBit  
re: Notice of Application and Public Hearing Instructions.
- 18. Public Comments
  - 18A Stephen Kraft, supporting project
- A Exhibits received at the hearing:
  - A-1 Hardcopy of Planning's PowerPoint presentation

### **FINDINGS AND CONCLUSIONS**

To be approved, the proposed rezone and shoreline conditional use permit must comply with the criteria set forth in Section 17G.060.170 of the Spokane Municipal Code. The Hearing Examiner has reviewed the application for a rezone and shoreline 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 Office Retail-55 ("OR-55"), a commercial category. The uses allowed in the commercial zones are shown on Table 17C.120-1. See SMC 17.120.100. In accordance with the table, "Colleges" and "Religious Institutions," for example, are permitted outright in the OR zone. See Table 17C.120-1. The Hearing Examiner agrees with Staff that "colleges and associated uses are allowed outright" under the current zoning. See Exhibit 1, p. 3.

However, the Applicant proposes to construct a building that exceeds the height limit in the OR-55 zone. This request can only be accomplished through a rezone. See Exhibit 1, p. 3. In addition, there are design, setback, and dimensional standards, found in SMC 17C.250, that apply to buildings over fifty feet in height. See *id.* The Applicant has applied for a rezone and the project approval is conditioned upon satisfying the applicable development standards. Subject to the ultimate approval of the rezone, and so long as the development standards are adhered to, the proposal is allowed under the provisions of the land use codes. As a result, the Hearing Examiner concludes that 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 Woldson Performing Arts Center will not result in the demolition of any buildings, and instead will be constructed in the location of a parking lot and some open space. The building will be constructed within the Gonzaga University Campus. The structure is well designed to fit the site and to be compatible with the surrounding area, as well as being a complementary element of the campus itself. 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 rezone or a shoreline 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 August 23, 2016, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 16.

The city received minimal response to its request for comments. See *e.g.* Exhibit 3. City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 4. 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 area to be developed consists of a parking lot and open space. The parking area is basically flat, with the open space to the south gently sloping down toward Lake Arthur and the Spokane River. The topography is not challenging. The size and shape of the property do not create any obstacles to the proposed development. The project is well designed to fit the site, the campus, and the surrounding area. There is no evidence in the record that soil or drainage conditions are problematic. There is also no evidence that ground or surface waters are present or will be impacted by the project. It is true that a small portion of the development will encroach approximately 35 feet into the shoreline buffer. However, that portion of the development will be a plaza, a use with very little, if any, anticipated impacts. If anything, the plaza will be an enhancement to the shoreline, providing additional opportunities to experience the views to the south.

There are no known natural, historic or cultural features on the development site itself. See Exhibit 12 (Environmental Checklist ¶ B(13)). Nonetheless, the Spokane Tribe requested that ground-disturbing activities be monitored for cultural or historic resources. See Exhibit 3. The Hearing Examiner concludes that project conditions will address the concerns raised by the Spokane Tribe. The Hearing Examiner will include a condition stating that should anything be discovered during the construction process, the work must cease and the protocols required by state law must be followed.

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.

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 July 7, 2016, Gonzaga University prepared an environmental checklist, pursuant to the State Environmental Policy Act, for the proposed performing arts center. See Exhibit 12 (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 12 (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 12 (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 12 (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 12 (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 12 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). The project is not anticipated to create any significant noise or light. See Exhibit 12 (Environmental Checklist ¶ B(7)(b) & B(11)).

On September 30, 2016, the Planning Department of the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 11. Any appeal of the DNS was due on or about October 14, 2016. See *id.* No appeal of the DNS was filed.

There is no substantive evidence in this record 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. *For shoreline conditional use permits the following additional criteria apply:*

a. *The proposed use is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;*

The site is designated as Limited Urban Environment (“LUE”) under the Shoreline Master Program. See Exhibit 1, p. 5. The LUE designation applies to shorelines that are “...intended to accommodate further urban grown and infill development and that are appropriate for a mix of water-oriented residential, institutional, and limited commercial uses.” See CP, Chapter 14, p. 17. Thus, the LUE designation specifically supports an institutional use like Gonzaga’s plan for a performing arts center. Further, the site is designated as a Campus/U-District, which acknowledges that this site is to be used for college campus purposes. See Exhibit 1, p. 5.

The university proposes to construct a performing arts center, with a public plaza, at the edge of the shoreline. The plaza’s encroachment into the shoreline buffer is only 35 feet, which will cause little to no negative impact on the shoreline. The plaza will, however, create a public space near the shoreline. There will also be a balcony and a lobby, both with a view facing the lake and the river. *Testimony of K. Sammons.* The creation of a public gathering place in this location will create opportunities to enjoy the physical and aesthetic qualities of the natural shorelines, consistent with the policies of RCW 90.58.020.

The project is consistent with the policies of the Shoreline Management Act and the Shoreline Master Program. As a result, this criterion is satisfied.

*b. The proposed use will not unreasonably interfere with the normal public use of public shorelines;*

This project does not affect "normal public use" of the shorelines. The project only encroaches into the shoreline buffer a short distance, as noted above. The existing trail system will not be affected by the proposal. See Exhibit 1, p. 5. As a result, public access to the shoreline will remain the same after the project is completed. See *id.* Moreover, there is no evidence in the record suggesting that the project would interfere with the normal public use of the shorelines. The Hearing Examiner concludes that this criterion is met.

*c. The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program;*

There is no evidence, in this record, of multiple conditional use permits affecting the shoreline in this vicinity. Therefore, there is no basis upon which to perform a cumulative impacts analysis. In addition, the properties surrounding this site are already developed parts of the campus. See Exhibit 1, p. 5. Any future conditional use applications would be in the form of redevelopment projects. See *id.* No such projects are on the horizon, to knowledge of the Hearing Examiner or based upon this record. The Hearing Examiner concludes that there are no cumulative impacts that could undermine the goals of the Shoreline Master Program. As a result, this criterion is satisfied.

*d. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with the uses planned for the area under the comprehensive plan and the Shoreline Master Program;*

The development site is designated as Institutional property and is a part of the Gonzaga campus. The property is surrounded by other institutional uses. As has been discussed above, the proposal is well designed to fit the site, the campus, and the surrounding neighborhood. The foregoing discussion, in particular in Paragraphs 2, 4 and 5 above, applies here as well. The Hearing Examiner concludes that this criterion is satisfied.

*e. The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located, and the public interest in enjoying the physical and visual access suffers no substantial detrimental effect.*

See the discussion above in paragraphs 5 and 6b above. As the Staff concluded, the project will not impede the public's physical or visual access to the shoreline. See Exhibit 1, p. 6. On the contrary, the balcony on the center and the new plaza are likely to increase opportunities for public enjoyment of the shoreline. 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 rezone and shoreline conditional use permit subject to the following conditions:

1. Approval is for a rezone and shoreline conditional use permit to allow Gonzaga University to construct a performing arts center on the Gonzaga University Campus (the specific property being identified above and in the record). The performing arts center will be constructed substantially as set forth in the plans and application on file in the Planning Department.
2. The project will be developed in substantial conformance with SMC 17C.120.500, Design Standards Implementation for Commercial Zones, to maintain compatibility with and limit the negative impacts on surrounding areas.
3. The project shall comply with Shoreline Master Program, SMC 17E.060 and SMC 17E.020, which provide that a project shall not result in a net loss of shoreline ecological functions.
4. 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.
5. 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.
6. 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.
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 3<sup>rd</sup> day of November 2016.



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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 November 3, 2016. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 28<sup>th</sup> DAY OF NOVEMBER 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.