

CITY OF SPOKANE HEARING EXAMINER

Re: Rezone Application by Land Use) FINDINGS, CONCLUSIONS,
Solutions and Entitlement on behalf of) AND DECISION
Gary Redding to rezone multiple)
parcels located near the intersection)
of Maple Street and Francis Avenue)
from Office-35 to Office Retail) FILE NO. Z18-423REZN

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks to change the zoning of several parcels of property from Office (O-35) to Office Retail (OR). The Office Retail is a more intense office use as it allows for limited retail uses.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** Land Use Solutions and Entitlement
c/o Dwight Hume
9101 N. Mt. View Lane
Spokane, WA 99218

Owner: Gary Redding
P.O. Box 9815
Spokane, WA 99209

Property Location: The property can be described as consisting of two sites. Site A includes parcels located at 6221 and 6125 N. Maple Street, and 6222 and 6214 N. Ash Street. Site B includes parcels located at 6221 and 6227 N. Walnut Street and 6222 and 6228 N. Maple Street.

Legal Description: The legal description of the property is provided in Exhibit 2B.

Zoning: Office (O-35).

Comprehensive Plan Map Designation: Office

Site Description: The properties are located on the south side of W. Francis Avenue, between N. Ash Street and N. Walnut Street. For ease of reference, the eight tax parcels are divided into two groups of four parcels each, described as Site A and Site B. Sites A and B are separated by N. Maple Street. Site B is adjacent to W. Francis Avenue. Site A, however, has no frontage on Francis Avenue. Site A is separated from W. Francis Avenue by another ownership. Currently on Site A there are four (4) single family homes,

all constructed in 1952. On Site B there are also four single family homes, all constructed between 1953 and 1954.

Surrounding Conditions and Uses: The property to the north and on the opposite side of W. Francis Avenue is zoned Community Business (CB-55) and is being used for a mixture of commercial purposes. The property to the south is zoned Residential Single Family (RSF) and is developed with single family residences. The property to the east is zoned Office (O-35) and is being used for residential purposes. The property to the west is also zoned Office (O-35) and is being used for office and residential purposes.

PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: March 27, 2018
Posted: March 27, 2018

Notice of Application/Public Hearing: Mailed: June 18, 2018
Posted: June 18, 2018

Community Meeting: April 12, 2018

Public Hearing Date: July 12, 2018

Site Visit: July 10, 2018

SEPA: A Determination of Nonsignificance ("DNS") was issued by the City of Spokane Planning Department on June 19, 2018. The DNS was not appealed.

Testimony:

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

Dwight Hume
Land Use Solutions and Entitlement
9101 N. Mt. View Lane
Spokane, WA 99218

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application
 - 2B Zone Change Supplement
 - 2C Notification Map Application
 - 2D Aerial view of parcels
3. Wastewater comments
4. Notice map

5. Parcel listing
 - 5A Title Company and Applicant Certification
6. Notice of Community Meeting
7. Notice of Application and Public Hearing
8. Affidavit of mailings
 - 8A Community Meeting 03-27-18
 - 8B Combined Application and Hearing dated 06-18-18
9. Affidavit of posting
 - 9A Community Meeting dated 03-27-18
 - 9B Combined Application and Hearing dated 06-18-18
10. Removal of Community Meeting Public Sign dated 04-13-18
11. Determination of Nonsignificance (DNS) issued on 06-19-18
12. Environmental Checklist dated 04-19-18
13. Community Meeting sign in sheet
14. Community Meeting minutes
15. Letter dated 03-26-18 to Dwight Hume from Donna deBit
re: community meeting instructions
16. Letter dated 05-01-18 to Interested Parties from Donna deBit
re: requesting comments
17. Letter dated 06-12-18 to Dwight Hume from Donna deBit
re: Notice of Application and Public Hearing Instructions.
18. Public Comments
 - 18A Doug Bierce, traffic concerns dated 05-11-18
 - 18B Charley Owen, traffic, access, property value concerns dated 05-15-18
 - 18C Doug Bierce, hearing time comment with response from D. deBit dated 06-22-18
 - 18D Charley Owen, traffic, neighborhood blight, hearing time dated 07-03-18
- A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed rezone 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 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 applicant seeks to change the zoning of the subject property from Office (O-35) to Office Retail, another commercial category. The question is whether the subject property is an appropriate location for future Office Retail uses. Office Retail uses are typically found in areas around downtown Spokane and Medical Districts shown in the Downtown Plan. See SMC 17C120.030(B). However, Office Retail uses can also be found in "other areas" which are already developed with higher intensity retail and service uses. See *id.* In addition, the code recognizes that the size of retail uses will be limited to

reduce the detrimental impacts on nearby residential uses. See *id.* It is apparent that the legislature has acknowledged that OR uses can be situated near residential uses.

The properties to the east and west of the site are already zoned Office, a commercial category. North of Francis, there is a mixture of commercial uses, of varying intensity. Farther north, there is also an area of OR-zoned property which is currently improved with an office building. *Testimony of D. Hume.* The properties east of Ash and along Francis Avenue contain a variety of office and retail uses. See Exhibit 1, p. 3. Some distance to the east there is an area, along Francis Avenue, that is zoned OR. *Testimony of D. deBit.* There are other pockets of OR-zoned property in the city which are outside the downtown districts. See *id.* Like other similarly situated properties, this site is an appropriate location for an OR zone. See *id.*

The zone code does acknowledge that, in typical cases, the OR zone is found in downtown districts. However, the code does not prohibit the OR zone from being established in other locations, and there are other examples of that, including with respect to properties in the vicinity of the subject site. The Hearing Examiner concludes that the proposed zone change is allowed under the land use codes. 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).*

Under the comprehensive plan, the land use designation for the property is "Office." Both Office and Office Retail are zones which implement this land use designation. *Testimony of D. deBit.* Thus, the proposed rezone is consistent with the comprehensive plan designation for this property. The proposed zone change is also consistent with the relevant goals and policies of the comprehensive plan.

The applicant's representative testified that the market has not demonstrated interest in the property for purely office purposes. *Testimony of D. Hume.* The hope is that having a retail component to support future office uses, as intended under the OR zone, will facilitate the development of the property for commercial purposes. See *id.* This proposal is supported by Goal LU 3, which promotes the efficient use of land through various means, including mixed-use development in proximity to retail businesses and public services. See Comprehensive Plan ("CP"), Goal LU 3, p. 3-17. Policy LU 1.5 also supports the zone change. That policy encourages office uses along the south side of Francis Avenue, including the portion that is next to the subject properties. See CP, Policy LU 1.5, p. 3-8; see *also* Exhibit 1, p. 3.

The proposed rezone is also consistent with comprehensive plan policies that are designed to encourage economic development. Policy ED 3.5 supports opportunities to expand and increase the number of locally-owned businesses. See CP, Policy ED 3.5, p. 7-10. Policy ED 3.5, meanwhile, recognizes the significant contributions of small business to the local economy and therefore seeks to enhance opportunities for small businesses. See CP, Policy ED 3.6, p. 7-10. Creating an area for additional office and retail uses will provide opportunities for small businesses to operate. The current office zone has not resulted in any response from the market. *Testimony of D. Hume.* However, there are three Office Retail zones to the south of Francis Avenue, and all are

currently occupied. See Exhibit 1, p. 4. "Staff agrees with the applicant that rezoning the sites to Office Retail would increase the opportunity of revitalizing these underused parcels, resulting in a positive impact to the City's economy." See Exhibit 1, p. 4.

The Hearing Examiner concludes that the proposed rezone is consistent with the designation, goals, and policies of the comprehensive plan. Therefore, this criterion for approval of the rezone is met.

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) mandate that all proposals must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on May 1, 2018, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 16. The city received only one comment on the proposal. See Exhibit 1, p. 4. The comment came from the Waste Water Department and did not indicate that concurrency could not be satisfied. See Exhibit 3; see also Exhibit 1, p. 4. Thus, no departments or agencies reported that concurrency could not be achieved. 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 rezone is fulfilled.

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 proposal to rezone the property is a non-project action. See Exhibit 1, p. 4. There are no specific development proposals or site plans to consider. See id. Any detailed analysis of the suitability of the property will have to wait until a specific development proposal is made. That said, there are no obvious conditions that make the property unsuitable for a future Office Retail use. The property is already improved with eight single-family residences. The property is essentially flat, having only slight slopes. See id. Sites A and B consist of four contiguous lots each, and both sites are rectangular in shape. The properties have at least 100 linear feet of frontage on each side. See id. The properties are bounded by busy thoroughfares, including Francis, Ash, and Walnut, and there is a mixture of residential, office, and commercial use in the immediate vicinity. Thus, there is nothing about the size, shape, topography, or location that is problematic to a proposed future use for Office Retail.

There is no evidence, at this non-project stage, that the soils are not appropriate for a future commercial development, or that there are problematic groundwater conditions. The property has already been improved with residences, suggesting that the property has development potential. There are no surface waters on the site. See Exhibit 12 (Environmental Checklist ¶ B(3)(a)(1)). And there are no known natural, historic or cultural features on the development site itself. See Exhibit 12 (Environmental

Checklist ¶ B(13)).

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site known at this time. 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 application seeks to rezone the property from Office to Office Retail. No specific development project has been proposed in conjunction with the rezone. In other words, if this application is approved, only the classification of the land will change. The Hearing Examiner does not view the proposed change as radical in nature. The zone will change from one type of office use to another. The same uses are permitted in both the Office and Office Retail zones, with one exception—the Office Retail zone allows retail uses to be developed in conjunction with the primary office use. See Table 17C.120-1. In the Hearing Examiner's view, this change of zoning will not have significant, environmental impacts that would not be equivalent to an office use allowed in the existing zone. Possible exceptions include traffic and parking. Presumably, a retail component could result in materially more traffic or different traffic patterns, and may or may not result in greater parking demands. The extent of the traffic and parking, or the specific impacts of each, however, cannot be specifically determined at the non-project stage.

Although there is no development proposal on the table, the environmental analysis does not end here. If, in the future, the owner proposes a development that exceeds the minimum SEPA thresholds, "then that development will be required to complete SEPA specific to that development." See Exhibit 1, p. 4; see also SMC 17E.050.070 (Flexible Thresholds).

The applicant prepared an environmental checklist for the proposed zone change. See Exhibit 12. The information supplied is somewhat limited, due to the non-project nature of the proposal. Even so, the non-project portions of the checklist were completed. Based upon its review of the available information, the City of Spokane (Planning Department) issued a Determination of Nonsignificance (DNS) for the proposal. See Exhibit 11. The deadline to appeal the DNS was July 3, 2018. No appeals were filed and thus the city's evaluation of the environmental conditions is unchallenged.

The Hearing Examiner concludes that the proposed rezone will not have significant impacts on the environment, which cannot be adequately addressed through mitigation. To the extent a specific project action is proposed in the future, that project will again be evaluated under SEPA as appropriate. Therefore, this criterion for approval is satisfied.

6. *The Hearing Examiner concludes that the rezone should be approved, although some neighboring property owners have voiced objections.*

At least two neighboring property owners raised concerns about the proposed rezone. Those concerns included impacts from increased traffic; endangerment of children due to traffic; wear-and-tear on the roads; decreased property values; incongruity of the new zone with the existing residential use; and a lack of benefit to the neighborhood or community. See Exhibits 18A and 18B. While the neighbors raise understandable concerns, the Hearing Examiner does not believe that these objection warrant denial of the application.

The property is already zoned for commercial use, despite the existing residences. The proposal is not seeking to rezone land from residential to commercial. Sites A and B have been zoned for office use for a decade or more. The concerns raised would likely exist whether the property was converted to offices (which is allowed by the current zoning) or to offices with a retail component (only allowed with upon rezone approval). In addition, evaluation of the specific traffic impacts will have to await a specific development proposal. The neighbors are very concerned about increased traffic and related impacts, but the record contains no specific information about the amount of traffic, the traffic patterns, or any specific safety concerns or measures that might be relevant. Nor can those issues be meaningfully evaluated at the non-project stage. It is known that the proposed rezone would allow more intense use of the property than would be allowed under the current zone. However, there is no evidence that the more intense use would result in significant impacts that could not be adequately addressed through project conditions or mitigation measures. To the extent that a specific project will have material impacts, those matters should be addressed at the project phase.

There was no expert testimony or analysis regarding the potential impacts of the zone change. There is insufficient evidence in this record for the Hearing Examiner to evaluate the alleged impacts to safety, road capacity or circulation, or property values, to list a few examples. The general fears and concerns of the neighbors are understandable, but more specific information is required before the Hearing Examiner would deny the rezone on such rationales.

DECISION

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

1. Approval is for a rezone to change the parcels identified in the application from Office (O-35) to Office Retail (OR).
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. 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. 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.

7. 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 25th day of July, 2018.



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 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 three days after a written decision is mailed by the local jurisdiction. This decision was mailed on July 25, 2018. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 20th DAY OF AUGUST 2018 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.