

CITY OF SPOKANE HEARING EXAMINER

Re: Application by Storhaug Engineering for)
a zone change from Centers and) FINDINGS, CONCLUSIONS,
Corridors Transition Area of Context) AND DECISION
Area 4 (CA-4) to Mixed-Use Transition)
(CC4)) FILE NO. Z24-017REZN

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Storhaug Engineering, is requesting a zone change from Context Area 4 (CA-4) to Type 4 Mixed-Use Transition (CC4). This rezone would allow the project proponent to construct multi-family residential housing to the development standards of the Centers and Corridors Zones. This application is being processed as Type III application.

Decision: The rezone application is APPROVED, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Storhaug Engineering
c/o Clifton Trimble
510 E. Third Avenue
Spokane WA 99202

Owner: Aaron Farr
915 W. Second Avenue
Spokane WA 99201

Property Location: The subject property is located at 803 E. Sharp Avenue (Parcel No. 35171.0407).

Zoning: The parcel is zoned Context Area 4 (CA-4).

Comprehensive Plan (CP) Map Designation: Centers and Corridors Transition.

Site Description: The subject property is located on the northeast corner of East Sharp Ave. and North Cincinnati Street. Currently on the site is one building originally constructed for residential uses (constructed in 1896). The current use of the building is for multi-tenant housing.

Surrounding Conditions and Uses: Surrounding zoning includes Residential 1 (R1) to the north and west, Context Area 4 (CA-4) to the east with Context Area 2 (CA-2) further to the east, and Residential High Density 55 (RHD-55) to the south. Land use designations to the north and west is Residential Low; to the south is institutional; to the east is Center and Corridor Transition Area with Center and Corridor Core Area further to the east.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17G.061.010-1, Land Use Application Tables; SMC 17G.061.310, Decision Criteria for Type III applications

Notice of Community Meeting: Mailed: November 21, 2023
Posted: November 21, 2023

Notice of Application/Public Hearing: Mailed: February 7, 2024
Posted: February 7, 2024

Community Meeting: December 11, 2023

Public Hearing Date: February 28, 2024

State Environmental Policy Act (SEPA): A Determination of Nonsignificance (DNS) was issued by the City of Spokane on January 10, 2024. See Exhibit 4. Any appeal of the DNS was due on January 24, 2024. No appeal was filed.

Testimony:

Tavis Schmidt, Assistant Planner II
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Clifton Trimble
Storhaug Engineering
510 E. Third Avenue
Spokane, WA 99202
Clifton.Trimble@storhaug.com

Exhibits:

Staff Report, dated 2/21/24, including the following exhibits:

1. Application Materials, including:
 - General Application, pp.1-2
 - Rezone Application, p. 3
 - Rezone Narrative, p. 4
 - Site Plan, p. 5
2. Notice of Application & Public Hearing Materials, including:
 - Notice of Application & Public Hearing Instructions, pp. 1-2
 - Notice of Application and Public Hearing, pp. 3-4
 - Notification Map Application, pp. 5-6
 - Notification Map and Address List, p. 7-8
 - Noticing Affidavits, pp. 9-15
3. Request for Agency Comments, including comments from:
 - Spokane Tribe of Indians, followed by Inadvertent Discovery Plan
 - City of Spokane Traffic Engineering
 - Spokane Regional Health District
 - City of Spokane Engineering
 - Washington State Department of Ecology
4. January 10, 2023, DNS for Z24-017RZN and SEPA Checklist
5. Signed SEPA Checklist
6. Community Meeting materials, including:
 - Community Meeting Instructions, pp. 1-2

- Notice of Community Meeting for December 11, 2023, pp. 3-4
- Notification Map and Addresses, pp. 5-11
- Noticing Affidavits, pp. 12-14
- Meeting materials, pp. 15-26
- 7. Public comments
- 8. Staff Presentation
- 9. Applicant Presentation

DISCUSSION

This Hearing Examiner's chief concern is that this proposal frustrates the careful and deliberate process that has occurred over the years to designate centers and corridors and then implements strict controls on the form of development within this key area. To the knowledge of this Hearing Examiner, the Centers and Corridors Standards (SMC 17C.122) went into effect at the beginning of 2006. These zoning designations and associated code requirements are still in effect and are in place for various, specifically designated areas of the City. Therefore, in principle, the requested zoning designation from this proposal is still a valid zoning designation. The Form Based Code (FBC) Standards (SMC 17C.123) with Context Area (CA) zoning designations went into effect in early 2015. As stated in the purpose of the FBC, it is "a pilot program and is configured as a plug-in set of regulations, replacing existing zoning and design guidelines within the FBC Limits." *SMC 17C.123.010*. To this Hearing Examiner's knowledge, there is no other area of the City that uses the FBC and CA designations besides this South Logan area, and these standards were specifically crafted and designed to be implemented in this area only. To get straight to the key question: Can a property owner within this FBC and CA zoning scheme opt out and return to the more general Centers and Corridors zoning designation?

The short answer is likely yes. There is no specific indication in SMC 17C.123 (or elsewhere) that these parcels **must** remain within the FBC schema. While this chapter does state that it is "replacing existing zoning and design guidelines within [this area]," it does not specifically address the possibility of a rezone to remove an affected parcel from the FBC framework. In principle, this request is an effort by the applicant to increase the allowable building height on their property. This property is also located on the furthest edge of the Centers and Corridors land use designation on the future land use map of the City's CP. This could frustrate the deliberate attempt by the City to shape future development in this specific and limited area to the scheme outlined in the FBC. Yet, frustration of purpose and intent is not inherently a prohibition. This Hearing Examiner can find no specific authority within the code to prohibit this requested change, nor in any other way prevent a property owner from opting out of the FBC, so long as the other zone change approval criteria are met (critically, the CP designation). This conclusion is further bolstered by the fact that City Planning Staff recommends approval, despite this Hearing Examiner's aforementioned concerns regarding the propriety of allowing a rezone under these specific circumstances. Therefore, this Hearing Examiner is not firmly convinced that this request is prohibited, nor even specifically discouraged, by the code.

Much of this may eventually be moot, as the City continues to move forward and implement their newest iteration of the South Logan Transit Oriented Development (TOD) plan, which currently intends to change the zoning on this property to CA-1 (Mixed-Use 75'), which would allow the property to be developed taller and more intensely than currently proposed. See Final South Logan TOD Plan, January 2024. As such, the proposed development is likely to fall within the standards of the forthcoming reclassification and not create an inherent nonconformity.

FINDINGS AND CONCLUSIONS

Rezoning applications are Type III applications that must satisfy the criteria set forth in SMC Section 17G.061.310. See SMC 17G.061.310(C)(1)-(5); see also Table 17G.061.010-1 (stating that zone reclassifications are Type III decisions). The Hearing Examiner has reviewed the proposed rezoning 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. SMC 17G.061.310(C)(1).*

A request for a zone reclassification is allowed and is processed as a Type III decision. See SMC Table 17G.061.010-1. The Applicant seeks to change the zoning of its property from CA-4 to CC4. The land proposed for reclassification is designated as Centers and Corridors Transition in the CP. See Staff Report, p. 1. Additionally, SMC 17G.020.020A states "A proposal for a site-specific rezoning that would implement the comprehensive plan and land use plan map (and therefore does not require [comprehensive] plan modification) is quasi-judicial and may be considered at any time." See *id.* As the subject property is currently designated Centers and Corridors Transition on the Land Use Map, no CP amendment is required.

SMC 17C.122.020D describes the CC4 zone intent is "to provide a transition of mixed uses between the core of the center or corridor and existing or designated residential areas. Residential uses are allowed outright." See *id.* SMC 17C.122.10 states "the type 4 mixed use transition zone is designated within the center and corridor transition land use category on the land use plan map of the comprehensive plan." See *id.*

The Hearing Examiner concludes that the proposal is allowed under the provisions of the land use code and is consistent with the Centers and Corridors Transition designation of the site, negating any need for a CP amendment. As a result, this proposal to rezone the site from CA-4 to CC4 is allowed under the land use codes. This criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. SMC 17G.061.310(C)(2).*

Of critical importance to this request, is the fact that this parcel is designated Center and Corridor Transitional in the CP. See Staff Report, p. 1. Beyond the appropriate land use designation, Staff have identified several CP Goals and Policies that support this application. See Staff Report, p. 3. For example, Goal LU 3, Efficient Land Use, promotes the efficient use of land through concentrating residential density in proximity to retail businesses, public services, places of work, and transportation systems. See CP, p. 3-18. Policy LU 1.4 states that higher density residential uses are encouraged closer to Centers and Corridors. See CP, p. 3-9. Policy LU 3.1 encourages efficient development by focusing growth in areas where adequate services and facilities exist. See CP, p. 3-18 and 3-19.

The proposed development is multi-family housing. Increasing the intensity of development and, thus, increasing the number of residential units at this site would allow development that is compatible with similar buildings and land uses in the area. The land use designation of Centers and Corridors Transition is compatible with the proposed development. The area is built out with infrastructure and public facilities in place. The site is within one block of the center and corridor of Hamilton Street where retail, places of work, and transportation systems are plentiful.

The Hearing Examiner concludes that the proposed rezone is consistent with the designation, goals, objectives, and policies of the CP. Therefore, this criterion for approval of the rezone is satisfied.

3. *The proposal meets the concurrency requirements of chapter 17D.010 SMC. SMC 17G.061.310(C)(3).*

The application was circulated on January 10, 2024, among all City departments and outside agencies with jurisdiction. See Staff Report p 4. Staff received five comments, two from City of Spokane Departments and three from outside agencies. The comments did not indicate that concurrency could not be met. See *id.*

The one comment that staff received from the Spokane Tribe of Indians stated that although there is a low probability for encountering cultural resources, the Spokane Tribe still requests an inadvertent discovery plan. See *id.* The other comments received stated either no concern to the proposal or conditions will be met during the building permit phase. See *id.*

The Hearing Examiner concludes that the project satisfies the concurrency requirements of the SMC. Therefore, this criterion for approval of the rezone is satisfied.

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. SMC 17G.061.310(C)(4).*

This is a non-project application, even though there is a development proposal, the site plan and approval of the proposed development will occur through the building permit process. See *id.* The parcel included in this proposal consists of approximately 7,810 square feet with sufficient street frontage for the proposed use. See Staff Report pp. 4-5. The site is relatively flat. There are no known environmental constraints that exist on the site; therefore, making the site suitable for development allowed within the CC4 zone. See Staff Report p. 5.

The Hearing Examiner concludes that there is nothing about the size, shape, topography, or location that makes the site unsuitable for future uses allowed in the CC4 zone. Therefore, this criterion for a rezone 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.061.310(C)(5).*

An Environmental Checklist was reviewed and routed by the City of Spokane as a non-project SEPA action. See *id.* A DNS was issued after using the optional DNS process in Section 197-11-355 Washington Administrative Code (WAC) on January 10, 2024. See *id.* In the future, if the owner proposes development that exceeds the SEPA thresholds (per Section 17E.050.070 Flexible Thresholds for Categorical Exemptions) then that development will be required to complete SEPA specific to that development. See *id.*

Any development on the parcels referenced above would be required to be reviewed by the Spokane Development Services Department to ensure they are meeting all required development standards. *See id.* These standards include, but are not limited to, land use standards (landscaping, screening, and design), engineering standards, utility standards, and building standards. *See id.*

As elaborated upon in the Discussion section above, this Hearing Examiner does have some reservations about effects on surrounding properties and potential incompatibility with the carefully implemented FBC/CA guidelines for this area. However, as proposed, or as may be allowed under CC4 standards, the approval of this request is not likely to have *significant* adverse effects.


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

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. If development occurs, the project will be developed in substantial conformance with SMC 17C.122, Land Use Standards, Center and Corridor Zones, to maintain compatibility with, and limit the negative impacts on surrounding areas.
2. Adhere to any additional performance and development standards documented in comments or required by City of Spokane, Spokane County, Washington State, and any Federal agency.
3. Spokane Tribe of Indians requests an inadvertent discovery plan.

SIGNED this 13th day of March 2024.



Karl J. Granrath
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.061.340 and 17G.050.

Decisions of the Hearing Examiner regarding rezones 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 13th day of March 2024. **THE DATE OF THE LAST DAY TO APPEAL IS THE 27th DAY OF MARCH 2024, AT 5:00 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.