

CITY OF SPOKANE HEARING EXAMINER

Re: Application by Land Use Solutions and Entitlement for a zone change from Office (O-35) to Office Retail (OR-35)) FINDINGS, CONCLUSIONS, AND DECISION) FILE NO. Z24-320REZN)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Land Use Solutions and Entitlement, is requesting a zone change from Office (O-35) to Office Retail (OR-35). This rezone would allow a future retail use. This application is being processed as Type III application.

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

**FINDINGS OF FACT
BACKGROUND INFORMATION**

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

Owner: Dave Black Properties, LLC
801 W Riverside Avenue, Suite 300
Spokane, WA 99201

Property Location: The subject property is located at 727 W Francis Avenue (Parcel No. 36312.0101).

Zoning: The parcel is zoned Office (O-35).

Comprehensive Plan (CP) Map Designation: Office.

Site Description: The subject property is located on the south side of Francis Ave., between N. Post St. and N. Wall St. The existing building on site has operated as an office building since 1991. There is existing accessory parking on site that serves the building.

Surrounding Conditions and Uses: Office (O-35) zoning surrounds the site in all directions. There is single-family zoning to the south, two lots down. Land Use to the north is General Commercial, to the east, west, and south is Office,

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17G.061.310 Land Use Application Procedures Decision Criteria; 17G.061.101-1 Land Use Application Tables.

Notice of Community Meeting: Mailed: May 30, 2024
Posted: May 30, 2024

Notice of Application/Public Hearing: Mailed: August 5, 2024
Posted: August 5, 2024

Community Meeting: June 13, 2024

Site Visit: September 5, 2024

Public Hearing Date: September 5, 2024

State Environmental Policy Act (SEPA): A Determination of Nonsignificance (DNS) was issued by the City of Spokane on August 19, 2024. See Exhibit 4. Any appeal of the DNS was due on September 2, 2024. No appeal was filed.

Testimony:

Donna deBit, Senior 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:

Staff Report, dated 8/27/24, including the following exhibits:

1. Application Materials, including:
General Application, pp.1-2
Rezone Application Supplement, pp. 3-4
Notification Map Application, p. 5-7
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
Title Company Certification and Applicant Certification, p. 5
Address List and Notification Map, pp. 6-9
3. Request for Agency Comments, including comments from:
Spokane Fire Department
Avista Corporation
Washington State Department of Ecology
City of Spokane Engineering
Spokane Tribe of Indians
4. August 19, 2024, DNS for Z24-320RZN and SEPA Checklist
5. Community Meeting materials, including:
Community Meeting Instructions, pp. 1-2
Notice of Community Meeting for June 13, 2024, pp. 3-4
Community Meeting Minutes, p. 5
Attendee List, p. 6
6. Noticing Affidavits
7. Staff Presentation
8. Applicant Presentation

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 O-35 to OR-35. The land proposed for reclassification is designated as Office. 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 Office, no CP amendment is required.

SMC 17C.120.030(B) describes the OR zone intent is "to be a higher intensity office zone that allows for larger scale offices and supporting retail and service uses. The size of retail uses is limited to reduce detrimental impacts on nearby residential uses and to assure that the commercial uses are supporting rather than primary uses." See *id.*

While the code (SMC 17C.120.030B) specifically mentions areas such as Downtown and the North Bank as areas where Office Retail is located, it also addresses that the Office Retail zone applies to sites that are already developed with more intense retail and service uses. See Staff Report, p. 3. Francis Avenue is located north of the site and is designated as a state highway. *Id.* The sites along the portion of Francis Avenue that runs east of Ash Street, are all zoned a commercial category and are currently a variety of office and retail uses. *Id.* The code does not prohibit the OR zone from being established in other locations that are not zoned Downtown, and there are other examples of that along Francis Avenue. *Id.*

The Hearing Examiner concludes that the proposal is allowed under the provisions of the land use code and is consistent with the Office designation of the site, negating any need for a CP amendment. As a result, this proposal to rezone the site from O to OR 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 Office in the CP. See Staff Report, p. 1. Beyond the proposed land use designation, Staff have identified several CP Goals and Policies that support this application. See Staff Report, pp. 3-4. 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 1.5 states that office uses are encouraged along the south side of Francis Avenue between Cannon Street and Market Street. See CP, pp. 3-10 and 3-11. Policy ED 3.1 encourages economic growth by supporting the formation, retention, expansion, and recruitment of businesses. See CP, p. 7-9. Additionally, ED 3.2, 3.5, and 3.6 encourage economic diversity, support of locally owned businesses, and expanded opportunities. See CP, pp. 7-9 and 7-10.

The comprehensive plan's land use designation for this property is "Office". Both Office and Office Retail are zones that implement this land use designation. Staff finds the rezone is consistent with the comprehensive plan designation for this property.

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 June 28, 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 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; therefore, no development proposals or site plans are prepared at this time, and any detailed analysis of the suitability of the property will have to wait until a specific development proposal is submitted to the city's Development Services Center. See Staff Report, p. 4. In the application materials, if the rezone is approved, the applicant does indicate the desired use at the site is a coffee house. The retail use would operate within the existing footprint of the building. Even so, given the relatively small size of the parcel and existing structure, the extent and intensity of development and use of the property will be limited by these factors. As such, any proposed use allowable by the ability to perform retail uses will be limited and therefore suitable for the location and proximity of residential properties.

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 OR 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 Exhibit 4. A DNS was issued after using the optional DNS process in Section 197-11-355 Washington Administrative Code (WAC) on August 19, 2024. *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 Staff Report, p. 4.

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. *Id.* These standards include, but are not limited to, land use standards (landscaping, screening, and design), engineering standards, utility standards, and building standards. *Id.* In the OR zone, retail uses are limited in size (3,000 square feet of floor area) to reduce detrimental impacts on nearby residential uses and to assure that the commercial uses are supporting rather than primary uses. *Id.*

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. This application is for a rezone to change the parcel identified in the application from Office (O-35) to Office Retail (OR).
2. Adhere to any additional performance and development standards documented in comment or required by City of Spokane, Spokane County Washington State, and any Federal agency.
3. If any artifacts or human remains are found upon excavation, The Spokane Tribe of Indians and the City of Spokane shall 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. If development occurs, the project will be developed in substantial conformance with SMC 17C.120.500, Land Use Standards, Commercial Zones, Commercial Design Standards, to maintain compatibility with, and limit the negative impacts on surrounding areas.

SIGNED this 5th day of September 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 5th day of September 2024. **THE DATE OF THE LAST DAY TO APPEAL IS THE 26th DAY OF SEPTEMBER 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.