

CITY OF SPOKANE HEARING EXAMINER

Re: Rezone Application by Russel Page) FINDINGS, CONCLUSIONS,
Architects to rezone a portion of parcel) AND DECISION
36312.0215 and parcel 36312.0702 from)
Office (O-35) to Office Retail (OR-25).) FILE NO. Z20-177REZN

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Russell Page, Russell Page Architects, seeks to rezone a 23,283-square foot (sq. ft.) site located at 801 W. Francis Avenue and 6222 N. Lincoln Street from Office (O-35) to Office Retail (OR-35).

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** Russell Page
Russel Page Architects
204 N Division St., Ste. E
Spokane, WA 99202

**Property
Owner:** 801 Francis Development LLC
624 W. Hastings Rd., #11
Spokane, WA 99218

Property Location: The project site is located at 801 W. Francis Avenue and 6222 N. Lincoln Street.

Zoning: Zoning of parcel 36312.0215 is split between Office (O-35) and Residential Single Family (RSF) zoning. RSF zoning encompasses approximately 3,368 sq. ft. of land. All portions of parcel 36312.0215 is zoned RSF will retain the existing RSF zoning designation. The entirety of parcel 36312.0702 is zoned Office (O-35).

Comprehensive Plan Map Designation: The property is designated as Office in the City of Spokane Comprehensive Plan (CP).

Site Description: The original rezone proposal encompassed two tax parcels, i.e. Tax Parcel No. 36312.0215 addressed at 801 W. Francis Avenue, and Tax Parcel No. 36312.0202 addressed as 6217 N Post Street. Since the original application was made, the Applicant has completed an aggregation of these two parcels. In addition, while the rezone application was pending, the Applicant entered into a contract to purchase an adjacent site, Tax Parcel No. 36312.0702, located at 6222 N. Lincoln St. This property has also been incorporated into the rezone request.

The site is approximately 23,283 sq. ft. in size, or about 0.53 acres. There is an area encompassing approximately 3,300 square feet and on Post Street that is zone RSF. This RSF-

zoned portion of the site is not a part of the rezone application. That portion of the site will retain its RSF zoning.

The area proposed for rezone was formerly improved with residences. The residences located along Francis and Post have been demolished. The residence on the Lincoln property will remain. See Exhibit 13 (Slide 4).

Surrounding Conditions and Uses: Land located to the north (across W. Francis Avenue) is located in Spokane County. Land located to the east and west of the project site is zoned Office (O-35). There are also some areas to the east that are zoned Office Retail (OR-35). Land located to the south of the project site is zoned RSF.

Land uses to the north are commercial in nature. Commercial uses include a strip mall, restaurants, a gas station, drive through uses, and other auto-oriented businesses. This land is designated General Commercial on the land use map of Spokane County. Uses east and west of the project site are a mix of commercial and residential uses. Immediately west of the site is a bank, while the land immediately east of the site contains single-family residences. The City's land use designation for areas east and west of the project site is Office. Land located to the south of the site is developed with single-family homes and the land use designation is Residential 4-10.

Project Description: This application is for a rezone of a vacant site that is ready for redevelopment. The residences formerly on the site have been demolished. One residence will remain in place. Any new construction will be required to meet all applicable land use and other development standards adopted at the time of permit. A proposed commercial building is currently in permit review. The permit review process will be conducted by the City of Spokane Development Services Center staff and is separate from this rezone application.

PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: January 29, 2020
Posted: January 29, 2020

Notice of Application/Public Hearing: Mailed: March 25, 2021
Posted: March 25 & 29, 2021

Community Meeting: February 13, 2020

Public Hearing Date: May 13, 2021

Site Visit: May 8, 2021

State Environmental Policy Act (SEPA): A Determination of Nonsignificance (DNS) was issued by the City of Spokane on April 16, 2021. Any appeal of the DNS was due on April 30, 2021. No appeal was filed.

Testimony:

Melissa Owen, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Mike Kiehn
Russel Page Architects
204 North Division Street, Suite. E
Spokane, WA 99202

Joe Lobb
801 Francis Development LLC
624 W. Hastings Road, #11
Spokane, WA 99218

Jeff Ring
6216 North Lincoln Street
Spokane, WA 99205

Present but did not testify:

Nate Szymanowski
PO Box 9368
Spokane, WA 99209

Exhibits:

1. Vicinity Map
2. Zoning Map
3. Land Use Map
4. Application Materials:
 - a. Original Application Submittal including:
 - i. General Application including additional owner signature page
 - ii. Type III Rezone Application
 - iii. Site Plan (specific to original application)
 - b. Application to add parcel 36312.0702
 - i. Updated notification map application to add parcel 36312.0702
 - ii. Revised General Application and authorization to add parcel 36312.0702
 - iii. Revised Supplemental Application
5. SEPA Checklist
6. Determination of non-significance (DNS)
7. Public Comments
8. Request for Agency Comments, including:
 - a. Chris Van Gelder – City of Spokane Treasury Accounting (email dated October 23, 2020)
 - b. Randy Abrahamson – Spokane Tribe of Indians Tribal Historic Preservation Officer (letter dated October 28, 2020 and 04/19/2021)
 - c. Department of Ecology Letter (letter dated 11/05/2020 and 03/29/2021)
 - d. Gregg Figg – Washington State Department of Transportation (email dated November 6, 2020)
 - e. Erik Johnson – City of Spokane (email dated November 10, 2020)
 - f. Melissa Owen – City of Spokane Planning (email dated November 10, 2020)
9. Noticing Documents, including:
 - a. Combine Notice of Application/SEPA/Hearing
 - i. Public Notice Sign/Posting/Mailing instructions
 - ii. Public Notice Letter with Map
 - iii. Parcel List

- iv. Affidavits
 - 1. Public posting – electronic posting to library and Neighborhood Councils
 - 2. Individual Notice
- 10. Community Meeting Documents including:
 - a. Public Notice Sign/Posting/Mailing instructions and public notice letter (01/15/20)
 - b. Public Notice Sign/Posting/Mailing instructions and public notice letter (01/27/20)
 - c. Community Meeting Summary including sign-in sheet
 - d. Affidavits
 - e. Notification Map Application, map, and parcels
- 11. Pre-Development Final Comments
- 12. Emergency Ordinance – Permit Extensions
- 13. Staff Presentation

FINDINGS AND CONCLUSIONS

Rezoning is a Type III decision that must satisfy the criteria set forth in SMC Section 17C.060.170. See SMC 17C.060.170(C)(1)-(5); see also Table 17G.060-1 (stating that zone reclassifications are Type III decisions). The Hearing Examiner has reviewed the proposed 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 its property from Office to Office Retail, another commercial category. The land proposed for reclassification is designated as “Office” in the CP. “Office Retail” is one of the implementing zones for land designated as “Office” in the CP. *Testimony of M. Owen.* As a result, the proposed rezone can be considered at any time and is processed under the Type III procedures in chapter 17G.060 SMC. See SMC 17G.020.020(A). Thus, the rezone proposal is generally allowed under the land use codes.

The next 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 17C.120.030(B). However, Office Retail uses can also be found in “other areas” that 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.* Thus, the legislature has acknowledged that OR uses can be situated near residential uses.

Francis Avenue is located adjacent to the site and is designated as a state highway. See Staff Report, p. 5. The land to the north and across Francis Avenue is developed with higher intensity uses, including strip malls, restaurants, and drive through businesses, among other things. See *id.* On the south side of Francis, there is a mixture of uses, including several locations in close proximity that are zoned Office Retail (OR-35). See *id.* The nearby OR sites include properties located at the corner of North Normandy and Francis, North Washington and Francis, and North Howard and Francis. *Testimony of M. Owen.*

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 some 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 CP, the land use designation for the property is “Office.” Both Office and Office Retail are zones that implement this land use designation. *Testimony of M. Owen*. Thus, the proposed rezone is consistent with the CP designation for this property. The proposed zone change is also consistent with the relevant goals and policies of the CP.

The 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 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* Staff Report, p. 5.

The proposed rezone is also consistent with CP 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 3.6, 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. Ultimately, the proposed rezone will promote the “future development of the site consistent with commercial zones” and in a manner that is “sensitive to the surrounding residential and commercial areas.” See Staff Report, p. 6.

The Hearing Examiner concludes that the proposed rezone is consistent with the designation, goals, and policies of the CP. 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 mandate that all proposals satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on October 23, 2020, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 8.

The City received comments from various departments and agencies. See *e.g.* Exhibit 8(a)-(f). However, none of those comments indicated that concurrency could not be achieved. See *id.*; see *also* Staff Report, p. 6. In addition, a review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. 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 SMC. Therefore, this criterion for approval 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 proposal to rezone the property is a non-project action. See Staff Report, p. 6. A site plan is not required in order to process or consider this application. See *id.* Even so, it should be acknowledged that the Applicant has submitted a commercial building permit application to construct a new office building at the site. See *id.* In order to approve the building permit application, the Applicant will be required to demonstrate that the project complies with land use (landscaping, screening, and design), engineering, utility, building, and all other applicable construction-related standards associated with new development. See *id.* The City's Development Services Center will review the permit application to ensure that the proposal satisfies those standards. See *id.*

There are no obvious conditions that make the property unsuitable for a future Office Retail use. The area being rezoned is regular in shape (being largely rectangular) and fronts Francis the entire distance between Lincoln and Post. Francis is a busy traveling route, with a mixture of commercial, retail, and residential adjacent to the road. Thus, the site is an appropriate location for an office or office-retail use. There are some slopes on the property, but the topography does not present a material obstacle to development of the site. The size is sufficient to support some kind of office or office-retail use, although the Hearing Examiner is not charged to review or approve a specific development proposal at this time.

There are no environmentally sensitive features that must be considered prior to development of this site. See Paragraph 5. In addition, there are no known natural, historic, or cultural features on the site. See Exhibit 5 (Environmental Checklist ¶ B(13)). The property was previously improved with residences, suggesting that there are no physical limitations that preclude future development.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the known 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 Applicant prepared an environmental checklist, pursuant to SEPA, for this proposal. See Exhibit 5 (Environmental Checklist). The checklist supports the conclusion that the proposed rezone will not have significant impacts on the environment or the surrounding properties.

There are no environmentally sensitive features of the site. For example, no part of the site has been classified as a critical area. See Exhibit 5 (Environmental Checklist ¶ B(8)(h)). There is no evidence that the soils are not appropriate for a future commercial development, or that there are problematic groundwater conditions. There are no surface waters on or near the site. See Exhibit 5 (Environmental Checklist ¶ B(3)(a)(1)-(2)). The property does not lie within a 100-year floodplain. See Exhibit 5 (Environmental Checklist ¶ B(3)(a)(5)). No threatened or endangered

species were identified on or near the site. See Exhibit 5 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)).

The future use of the site, based upon the current record, will not result in significant impacts to the environment. For example, the use will not result in the discharge of waste materials into the ground or into surface waters. See Exhibit 5 (Environmental Checklist ¶¶ B(3)(a)(6), B(3)(b)(2) & B(3)(c)(2)). Drainage from the site will be controlled in compliance with the Spokane Regional Stormwater Manual (SRSM). See Exhibit 5 (Environmental Checklist ¶ 14(a)(1)). Office or office-retail uses will not be a significant source of light or glare. See Exhibit 5 (Environmental Checklist ¶ B(11)). Moreover, lighting from future uses must be controlled in accordance with the City ordinance. See *id.*

There will be some impacts from construction work. However, the impacts from construction will be temporary and can be addressed through standard mitigation measures, such as erosion controls and compliance with the City's noise ordinance. See Exhibit 5 (Environmental Checklist ¶ B(1)(f) & B(7)(b)); see also Conditions 4 & 6.

There was a concern about the potential impacts of traffic from the future use of the site. See E-mail of J. & L. Ring 4-14-2021, 4:37 PM; see also *Testimony of J. Ring*. However, there is no specific evidence in the record suggesting that the future use of the site will generate a significant amount of traffic, or will have any particular impacts on the capacity of the roads or safety. There were no substantive comments from the Traffic Department, the Engineering Department, or Washington State Department of Transportation (WSDOT) raising traffic concerns. The City did not require a traffic analysis for the proposed rezone. The record also does not contain any evidence that traffic from future office-retail uses will create any specific deficiencies in the transportation system. Finally, there was no independent, expert testimony raising concerns about traffic. Under the circumstances, the Hearing Examiner concludes that the proposed rezone will not result in significant traffic impacts requiring mitigation.

The checklist was circulated to the relevant City departments and other agencies. The findings and recommendations of commenting agencies or departments were incorporated into the conditions of approval. See Staff Report, p. 7. In addition, any development on the site will be required to be reviewed by the Spokane Development Services Department to ensure the proposed development satisfies all required development standards. See *id.* After reviewing the proposal in detail, the City issued a DNS for this proposal. See Exhibit 6. The DNS was issued on April 16, 2021, with an appeal deadline of April 30, 2021. See *id.* No appeal was filed. See Staff Report, p. 7. Under the circumstances, there is no basis to condition or deny this proposal based upon SEPA.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment that cannot be adequately addressed through mitigation. The project is compatible with the surrounding uses and zones. Therefore, this criterion for approval is satisfied.

6. *The Hearing Examiner concludes that the proposed rezone should be approved, although some neighboring owners raised understandable concerns about the proposal.*

The owners of the property at 6216 N. Lincoln Street raised several concerns about the proposal. See E-mail of J. & L. Ring 4-14-2021, 4:37 PM; see also *Testimony of J. Ring*. For example, there was a concern that the development would cause a loss of privacy. This impact would occur, it was argued, because of the height of the future building and the loss of a large

tree on the adjacent property (i.e. 6222 N. Lincoln St., which was purchased by the Applicant). In addition, the neighbors were concerned about the impacts of noise, vibration, etc., that could result during any future demolition of the neighboring house. The neighbors were also worried about the presence and removal of asbestos during demolition. These are all legitimate concerns. However, the Hearing Examiner ultimately finds that the proposal, as conditioned, will not have significant impacts on the neighbors and should be approved.

The Hearing Examiner does not believe that this proposal should be conditioned or denied due to privacy concerns. The height of any structures, rather, is governed by the zone code. The current zoning of the site is Office, with a 35-foot height limitation. The Applicant could construct a 35-foot tall office building on the site, without a rezone. After the rezone, the property will be Office-Retail, but the 35-foot height restriction will remain. Thus, the proposal itself has no new effect in terms of the height of future structures. In addition, the height limitation¹ in the RSF-zoned property to the south is also 35 feet. See SMC Table 17C.110-3. Irrespective of this proposal, any owner in this area can build a structure up to 35 feet high. The Hearing Examiner doubts that the “right to privacy” can be invoked to impose a height restriction not found in the zone code. No authority was cited to the Hearing Examiner to support such a theory.

Irrespective of the forgoing, the Applicant has revised its building plans, reducing the proposed structure from two stories to a single story. *Testimony of J. Lobb*. In addition, the Applicant has scrapped its original plan to include a roof-top patio. *Testimony of J. Lobb*. Therefore, the structure will have limited height and will not include a patio looking down over the neighbors’ back yard. The original proposal has been revised, therefore, to reduce the potential impacts on the neighbors’ privacy. It should also be emphasized that there will be screening and landscaping per City standards, providing a buffer between the proposed commercial use and the residential areas to the south. *Testimony of J. Lobb; Testimony of M. Owen*.

With respect to tree removal, there are no rules that require a neighboring owner to retain trees on its property. In addition, there is no legal authority, to the Hearing Examiner’s knowledge, that would support a mandate to retain a tree for privacy reasons. Without such authority, the Hearing Examiner would not be inclined to add conditions to this proposal concerning the tree. The City standards concerning landscaping and screening are intended to protect residential areas from the impacts of adjacent, commercial uses. The Hearing Examiner concludes that compliance with those standards will be sufficient, both legally and practically, to address the potential impacts. See *also* Condition 4 (setting forth a screening and landscaping requirement specifically tailored to benefit 6216 N. Lincoln Street).

The future construction work on the site will undoubtedly result in some impacts to the neighbors, including noise, vibration, and vehicle exhaust, among other things. That being said, the impacts of construction are temporary in nature. In addition, the developer must adhere to a range of regulations related to construction projects. For example, the developer must honor the City’s noise and air quality regulations. *Testimony of M. Owen*. The Applicant must also obtain the appropriate demolition permits when removing a structure. See *id*. This includes requirements to test for asbestos and abate any such conditions. *Testimony of M. Klehn*.

The Hearing Examiner concludes that the conditions on this proposal are sufficient to address the concerns of the neighboring property owners. As a result, the proposed rezone should be approved.

¹ To be clear, the 35-foot height limit in the RSF refers to roof height. See SMC Table 17C.110-3. The wall height for residential structures is limited to 25 feet. See *id*.

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/when development occurs, the project will be developed in conformance with SMC 17C.110.500, Land Use Standards, Commercial Zones, Commercial Design Standards to maintain compatibility with, and limit the negative impacts on surrounding residential and commercial areas.
2. Portions of parcel 36312.0215 addressed as 801 W. Francis that are zoned Residential Single Family (RSF) will retain RSF zoning. As such, the portion of the site zoned RSF may only be used for landscaping or storm water associated with the development of the commercially zoned portions of the site.
3. Landscaping and screening between the parcel currently addressed as 6222 N. Lincoln Street (parcel 36312.0702) and the single family-residence at 6216 N. Lincoln Street (parcel 36312.0703) along the shared lot line are required to meet landscape and screening standards for Office Retail Development adjacent to RSF zones including, but not limited to, a planting strip of 5 feet in depth with L1 visual screen landscaping or site-obscuring decorative wood, iron, etc. fences or masonry walls at least 6 feet in height installed along property lines where any adjacent RSF zone would have views of parking or service areas.
4. Compliance with City noise standards stated in SMC 10.08D, Public Disturbance Noise. The City's quiet hours are from 10 pm to 7 am. This is important due to residential uses in the area.
5. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the Planning Department 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.
6. 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.
7. 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.
8. 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.
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 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 3rd day of June, 2021.



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 rezones 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 June 3, 2021. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS JUNE 29, 2021, 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.