

CITY OF SPOKANE HEARING EXAMINER

Re: Application by Gonzaga University for a zone change from Context Area 4 (CA4) to Residential High Density with a height limit of 55 feet (RHD-55).) FINDINGS, CONCLUSIONS,
) AND DECISION
) FILE NO. Z23-150REZN
)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Gonzaga University (GU), is requesting a zone change from Context Area 4 (CA4) to Residential High Density with a height limit of 55 feet (RHD-55). This rezone would allow institutional housing to accommodate a new 90-bed residence for student housing on the GU campus. This application is being processed as Type III application.

Decision: The rezone application is approved.

FINDINGS OF FACT **BACKGROUND INFORMATION**

Applicant/ Gonzaga University
Owner: c/o Ken Sammons
502 E Boone Ave
Spokane WA 99258

Property Location: The subject property is located at 802 E. Sharp Avenue (Parcel No. 35171.2601).

Zoning: The parcels are zoned Context Area 4 (CA4).

Comprehensive Plan Map Designation: The parcels are designated as Institutional in the City of Spokane Comprehensive Plan (CP).

Site Description: The site includes one tax parcel, located at the corner of North Cincinnati Street and East Sharp Avenue. The site is fully developed. There are three existing residential buildings on the site, including a single-family home, a triplex, and an apartment building. The buildings are currently being used for institutional housing and an institutional office. The Applicant plans to demolish the existing buildings to accommodate the new student residence hall. The site is level and is located next to other university uses.

Surrounding Conditions and Uses: The surrounding zoning includes Context Area 4 (CA4) to the north, Context Area 2 (CA2) to the east, Context Area 3 (CA3) to the southeast, and Residential Two-Family to the south and west. The surrounding land uses include Center and Corridor Transition Area to the north, Center and Corridor Area to the east, and Institutional to the south and west.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17G.060T, Land Use Application Tables; SMC 17C.110.215(C), Residential Height Exceptions; and SMC 17G.060.170(C), Decision Criteria for Type III Applications.

Notice of Community Meeting: Mailed: March 17, 2023
Posted: March 17, 2023

Notice of Application/Public Hearing: Mailed: May 12, 2023
Posted: May 12, 2023

Community Meeting: April 3, 2023

Public Hearing Date: May 31, 2023

State Environmental Policy Act (SEPA): A Determination of Nonsignificance (DNS) was issued by the City of Spokane for a previous variance application, on February 1, 2023. See Exhibit 4. Although the variance application was denied, the proposed development was the same. No additional environmental determination is necessary for the current proposal. Any appeal of the DNS was due on February 15, 2023. No appeal was filed.

Testimony:

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

Ken Sammons
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502 E Boone Ave
Spokane WA 99258
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Greg Byrd
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Exhibits:

Staff Report, dated 1/15/23, including the following exhibits:

1. Application Materials, including:
 - General Application, pp.1-2
 - Rezone Application, pp. 3-9
 - Site Plan and Elevations, pp. 10-18
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
 - Noticing Affidavits, pp. 5-10
3. Request for Agency Comments, including comments from:
 - City of Spokane Treasury Department
 - Spokane Tribe of Indians
4. February 1, 2023, DNS for Z22-473VAR
5. December 8, 2022, SEPA checklist for Z22-473VAR
6. Community Meeting materials, including:
 - Community Meeting Instructions, pp. 1-2

- Notice of Community Meeting for April 3, 2023, pp. 3-4
- Noticing Affidavits, pp. 5-8
- Meeting Attendance List, p. 9
- Letter to Neighbors with noticing attachments, pp. 10-13
- Meeting Summary, p. 14
- 7. 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 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.060.170(C)(1).*

The Applicant seeks to change the zoning of its property from Context Area 4 (CA4) to Residential High Density with a 55-foot height limit (RHD-55). The land proposed for reclassification is designated as "Institutional" in the CP. See Staff Report, p. 1. The institutional designation includes uses such as "middle and high schools, colleges, universities, and large governmental facilities." See CP, § 3.4, p. 3-40. College and university campuses, which are institutional in nature, commonly include residential uses of various intensity, from single-family uses to apartments or dormitories.

Both the existing zoning, CA4, and the proposed zoning, RHD-55, are consistent with the Institutional designation of the site. Residential uses are generally allowed in the CA4 zone. See Figure 17C.123.040-F. However, the roof height in this zone is limited to 35 feet. See *id.* The Applicant seeks a rezoning, in material part, to increase the height of the planned residential structure. See Exhibit 1, p. 4. The Applicant plans to construct a 3-story, 90-bed residence hall, very similar in size and height to Twohy Residence Hall, located on university land adjacent and to the south. *Testimony of K. Sammons.* The proposed residence hall will have a 35-foot eave height and a 50-foot ridge line on a pitched roof. See Exhibit 1, p. 4.

The RHD zone permits Institutional uses, including Schools, Colleges, and Religious Institutions. See Table 17C.110-1, Residential Zone Primary Uses. Residential Household Living is also permitted outright in the RHD zone. See *id.* This includes multi-dwelling structures, such as a student residence hall. See Table 17C.110-2, Residential Housing Types Allowed. The maximum height in the RHD zone is 35 feet. See Table 17C.110-3. However, the maximum height in the RHD can be increased through the rezoning process. See SMC 17C.110.215(C)(1) ("Changes to the height limits in the RMF and RHD zones require a rezoning."). The height limits available include 35 feet, 40 feet, 55 feet, 70 feet, or 100 feet, depending on location. See *id.* The Applicant is proposing a rezoning to RHD, with a 55-foot height limit, i.e. RHD-55.

At the hearing, the Hearing Examiner raised the question as to whether the proposed rezoning would also require a CP amendment. Such a legislative action would be required, pursuant to the Growth Management Act, if the proposed rezoning was not authorized by the existing CP. See RCW 36.70A.130. Initially, the Hearing Examiner had some doubts about this question, because the CP does not enumerate the implementing zones for the Institutional category. Ultimately,

however, the Hearing Examiner agrees with the Staff and the Applicant that the proposal is properly considered as a site-specific rezone, which does not require an amendment to the CP.

The municipal code provides that a “proposal for a site-specific rezone that would implement the CP and land use map (and, therefore, does not require plan modification) is quasi-judicial and may be considered at any time, subject to the procedures set forth in chapter 17G.060 SMC.” See SMC 17G.020.020; see also RCW 36.70B.020(4) (confirming that a site-specific rezone, authorized by the CP, requires only a project permit application). The Staff confirmed that the proposed rezone is consistent with the Institutional designation of the site. See Staff Report, p. 4; *Testimony of T. Schmidt*. The Hearing Examiner agrees. As previously discussed, the CP provides that colleges and universities are among the “Institutional” uses contemplated by the plan. In addition, colleges and multi-dwelling housing are among the permitted uses in the RHD zone. The proposed zoning classification will facilitate the construction of a new student residence hall, a use that is typical on a college campus. In short, an RHD-55 classification clearly fits the Institutional designation of the site.

The Hearing Examiner concludes that the proposal is consistent with the Institutional designation of the site. As a result, the proposal to rezone the site from CA4 to RHD-55 is allowed under the land use codes. This criterion is met.

2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. SMC 17G.060.170(C)(2).

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. 3-17. Policy LU 1.4 states that higher density residential uses are encouraged closer to Centers and Corridors. See CP, p. 3-8. Policy LU 3.1 encourages efficient development by focusing growth in areas where adequate services and facilities exist. See CP, p. 3-17.

The proposed rezone satisfies each of these objectives. The proposed residence hall is within one block of the center and corridor of Hamilton Street. See Staff Report, p. 4. Within that corridor, retail businesses, places of work, and transportation systems are plentiful. See *id.* The project is located in an area that is already built out. See *id.* The necessary infrastructure and public facilities are already in place. See *id.*

Policy H 2.4 states that housing should be located in relation to other land uses like employment, transportation, and educational uses. See CP, p. 6-12. The proposed rezone will facilitate the construction of a new student residence hall, within a college campus. See Staff Report, p. 4. Thus, the housing directly supports educational uses. See *id.* In addition, as stated above, the residence hall will be constructed in close proximity to transportation facilities and places of employment.

Goal LU 5 states that development should be done in a manner that is attractive, complementary, and compatible with other land uses. See CP, p. 3-27. 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, p. 3-28. The site is part of the GU campus and is adjacent to other properties owned by the university. The proposed development is housing for GU students, which is certainly compatible with residential and other institutional uses nearby. See Staff Report, p. 4. For example, the proposed residence hall will be very similar to the Twohy Residence Hall on the

adjacent land to the south. It will also be similar to other residential buildings on the campus. See *id.*; *Testimony of K. Sammons*. Based upon the conceptual drawings and project details, the proposed residence hall is well-designed to be attractive, complementary, and compatible with nearby land uses. The residence hall will blend in well with other buildings and uses in the vicinity, in the Hearing Examiner's view.

Despite the foregoing, the Hearing Examiner acknowledges that the adjacent property owner to the east did raise some compatibility concerns about the proposal. Specifically, the neighboring owner objected that a 55-foot residence hall would cast a shadow over the commercial building immediately to the east. *Testimony of G. Byrd*. Because of this, the neighboring owner requested that the Hearing Examiner impose a buffer of some kind between the project site and the property to the east. See *id.* In addition, he worried that providing only 13 off-street parking spaces (as shown on the conceptual site plan) would not be sufficient. See *id.* The residents of the new hall would likely exacerbate the already difficult parking conditions at the owner's properties. See *id.*

While the Hearing Examiner is sympathetic with the neighboring owner, the Hearing Examiner does not believe that shadowing or parking issues justify imposing special conditions or restrictions on the future use of the site. The project site is currently zoned CA4, while the commercial property to the east is zoned CA2. See Exhibit 6, p. 5 (Surrounding Zoning). There is no requirement for graduated heights or setbacks/buffering between the project site and the commercial property to the east. *Testimony of T. Schmidt*. The City Council did not deem such protections were necessary as between these types of uses. In addition, the Hearing Examiner is not aware of any law protecting the neighboring owner from shadowing caused by adjacent structures. The neighboring property owner did not cite to any law or regulation that would provide a legal basis for the Hearing Examiner to impose buffering requirements or height restrictions in order to address potential shadowing. The Hearing Examiner does not believe he has authority to impose such conditions.

The site plan for the proposal is only conceptual, and Development Services has not reviewed the development project for compliance with specific development standards, such as parking. *Testimony of T. Schmidt*. If and when the development proceeds, the Applicant will be required to satisfy the parking standards as a condition of its building permit. According to the Applicant, the project was designed to provide 13 spaces in order to satisfy the applicable parking standards. *Testimony of K. Sammons*. Assuming this design is confirmed during the formal review, nothing further can be required of the Applicant. The Hearing Examiner can neither waive nor increase the parking standards adopted by the City Council. In other words, the Hearing Examiner does not have the discretion to impose more stringent parking requirements, in the absence of being granted such authority by the City Council.

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

3. *The proposal meets the concurrency requirements of chapter 17D.010 SMC. SMC 17G.060.170(C)(3).*

The application was circulated on April 13, 2023, to all City departments and outside agencies with jurisdiction. See Exhibit 3. Comments were received from the City of Spokane Treasurer and the Spokane Tribe of Indians. See *id.* However, the comments did not indicate that concurrency could not be met. See *id.*; see also Staff Report, p. 4. A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency

requirements. Finally, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

The Hearing Examiner concludes 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. SMC 17G.060.170(C)(4).*

The proposal to rezone the property is a non-project action. See Staff Report, p. 4. A site plan is not required in order to process or consider a rezone application. Therefore, this criterion has limited relevance to this proposal. At this stage, there are no specific development plans to consider. However, as previously mentioned, the Applicant has submitted a conceptual plan that is part of the record. See Exhibit 1, pp. 10-18; see also Exhibit 1, p. 6 (Conceptual Site Plan and Rendering). As a result, we know the Applicant's intention is to develop the site with a student residence hall and related improvements.

In order to obtain approval of its future development plans, 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 Staff Report, p. 5. The City's Development Services Center will review the permit application to ensure that the proposal satisfies those standards. See *id.* That said, there are no obvious conditions that make the property unsuitable for a future RHD use, such as the anticipated residence hall.

The location is appropriate for a multi-dwelling structure or another use consistent with the RHD zoning. The site is rectangular in shape and is basically flat. See Staff Report, p. 4. The shape and slope of the property, therefore, does not pose any genuine obstacles to its redevelopment. The site is already improved with a single-family residence, a triplex, and a small apartment building. See Exhibit 1, p. 6. The site, therefore, is clearly able to support residential development and use. There is no reason to believe that the site would not have sufficient space to accommodate the proposed residence hall, once the existing structures are demolished. In any case, the specific design elements will be reviewed during the building permit process. See Staff Report, p. 4.

There is no evidence of other physical or environmental conditions that make development of the site problematic. See Staff Report, p. 4; see also Exhibit 5. Similarly, there are no known natural, historic, or cultural features on the site. See Exhibit 5 (Environmental Checklist ¶ B(13)). The Spokane Tribe confirmed that there is a low probability of locating cultural resources on the site. See Exhibit 3, p. 4. Nonetheless, the Tribe requested that the Hearing Examiner require an inadvertent discovery plan for the future development. This requirement was incorporated into the conditions of approval. See Condition 4.

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 RHD 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.060.170(C)(5).*

On or about December 8, 2022, Gonzaga University prepared an environmental checklist, pursuant to the State Environmental Policy Act, in support of a variance application. See Exhibit 5 (Environmental Checklist). The variance was requested to facilitate the construction of the proposed residence hall. Following the denial of the variance application, GU proposed to rezone the property to facilitate the same project. *Testimony of K. Sammons*. Because an environmental review was previously completed for essentially the same proposal, in the same location, a new checklist and threshold determination was not required. *Testimony of T. Schmidt*.

On February 1, 2023, the City of Spokane issued a Determination of Non-significance (“DNS”) for the proposed variance. See Exhibit 4. This threshold determination applies to GU’s current, non-project application for a rezone, because the potential environmental effects of the proposal were already considered in conjunction with the prior application. No appeal of the DNS was filed. That said, if GU ultimately proposes a development that exceeds the SEPA thresholds, per Section 17E.050.070 (Flexible Thresholds for Categorical Exemptions), then that development will be required to complete the SEPA review process specific to that development. See Staff Report, p. 4.

As previously stated, there is no substantive evidence in this record that environmental impacts make the project unfeasible or materially problematic. See Staff Report, p. 5. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. See Exhibits 4-5. 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.

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 substantial conformance with SMC 17C.110, Land Use Standards, Residential Zones, to maintain compatibility with, and limit the negative impacts on surrounding areas.
2. 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.

3. The developer shall prepare an Inadvertent Discovery Plan (IDP) prior to any ground disturbing activities.
4. This approval does not waive the applicant's obligation to comply with all of the requirements of the SMC, including the International Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
5. Any future 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. SMC 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 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.

SIGNED this 7th day of July, 2023.



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 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 7th day of July, 2023. **THE DATE OF THE LAST DAY TO APPEAL IS THE 21st DAY OF JULY, 2023, 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.