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**THE HEARING EXAMINER OF THE CITY OF BELLINGHAM  
WHATCOM COUNTY, WASHINGTON**

<b>IN RE:</b>  <b>FRANKLIN FORCE FOUNDATION,</b> <b>Applicant</b>  <b>3000 Northwest Avenue</b>  <b>USE2023-0027 / Amendment to</b> <b>Conditional Use Permit</b>	<b>HE-24-PL-010</b>  <b>FINDINGS, CONCLUSIONS, AND</b> <b>DECISION</b>    <b>SHARON RICE</b> <b>HEARING EXAMINER</b>
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**SUMMARY OF DECISION**

The requested amendment to an approved conditional use permit to construct a new addition to Robin Hall of the Franklin Academy at 3000 Northwest Avenue, Bellingham, Washington is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Zervas Architects, on behalf of the Franklin Force Foundation (Applicant), requested an amendment to previously approved conditional use permits to construct an approximately 7,256 square foot addition to Robin Hall of Franklin Academy at 3000 Northwest Avenue, Bellingham, Washington.

**Hearing Date:**

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on April 24, 2024. The record was held open two business days to allow for public comment, with additional days for responses by the parties. Post-hearing comment was submitted, and the record closed on April 30, 2024.

1 **Testimony:**

2 At the hearing the following individuals presented testimony under oath:

- 3 Amy Zimmerman, Zervas Architects, Applicant's Representative  
4 Gretchen Bucsko, Head of School  
5 Matt Hagen, Ram Construction, Applicant's Representative  
6 Sara Ullman, City of Bellingham Planner II  
7 Tung Ha, President of Franklin Academy Board of Trustees

8 **Exhibits:**

9 At the open record hearing, the following exhibits were admitted in the record:

10 Exhibit 1 Planning and Community Development Department Staff Report including  
11 the following Attachments:

- 12 A1. Application for a Conditional Use Permit Amendment and Applicant  
13 Responses to CUP Criteria (USE2023-0017)  
14 A2. Architectural Plans Set, updated December 2023  
15 B. 2002 Hearing Examiner Order and Amended 2007 Hearing Examiner  
16 Order  
17 C. Design Review, Critical Area, and SEPA Land Use Applications  
18 D. Request for Information Letters, dated December 4, 2023 and  
19 January 12, 2024  
20 E. Applicant Response to December 4, 2023 Request for Information  
21 F. Notice of Complete Application, dated December 4, 2023; Notice of  
22 Application and Optional Determination of Non-Significance, dated  
23 January 12, 2024  
24 G. Traffic Memo, prepared by TranspoGroup, dated January 12, 2024  
25 H. Geotechnical Engineering Report, prepared by Joe Schmidt, PE, and  
26 Devin Murphy LG with Geotest Inc., dated February 2, 2024  
27 I. SEPA Determination of Non-Significance, issued February 22, 2024  
28 J. Consolidated Design Review and Critical Area Permit Decision  
29 (DR2023-0033, CAP2024-0006), dated March 28, 2024  
30 K. Public Comment emails from "Wendy", dated January 26 and  
February 16, 2024 with responses from Sara Ullman, Planner, City of  
Bellingham

- 1 L. Preliminary Stormwater Proposal, prepared by Jean Paul Slagel,  
2 Civil Engineer with Freeland & Associates, Inc., dated November 8,  
3 2023
- 4 M. Pre-Application Letter
- 5 N. Public Comment email from Leah Fowler, dated April 12, 2024
- 6 O. Photos of Notice Posting
- 7 1. Notice of Public hearing

- 8 Exhibit 2 Staff PowerPoint Presentation
- 9 Exhibit 3 Post-hearing Comment
- 10 Exhibit 4 Staff's Response to Post-hearing Comment
- 11 Exhibit 5 Applicant's Response to Post-hearing Comment

13 No in-person site visit was conducted, but the Examiner viewed the subject property on  
14 Google Maps.

15 After considering the testimony and exhibits submitted, the Hearing Examiner enters  
16 the following findings and conclusions:

17  
18 **FINDINGS**

- 19 1. Zervas Architects, on behalf of the Franklin Force Foundation (Applicant),  
20 requested an amendment to approved conditional use permits to authorize  
21 construction of an approximately 7,256 square foot addition to Robin Hall, the  
22 Franklin Academy building at 3000 Northwest Avenue, Bellingham,  
Washington.<sup>1</sup> *Exhibits 1, 1.A1, and 1.A2.*
- 23 2. The approximately 80,967 square foot (1.7-acre) subject property fronts  
24 Northwest Avenue to the west, Victor Street to the south, and Walnut Street to  
25 the east. It is located in the Columbia Neighborhood Area 2 and has a  
26 Commercial Neighborhood land use designation, which allows a 10,000 square  
27 foot maximum building size (without discretionary review and approval).  
Development in this Area is subject to special conditions addressing flooding,

28  
29 <sup>1</sup> The legal description of the property is: Lots 11-14 of Block 3 Cornwall Park Acreage; also known  
30 as Parcel No. 380224412399. *Exhibit 1.*

1 shorelines, and clearing. *Exhibit 1; Bellingham Municipal Code (BMC)*  
2 *20.00.040.*

- 3 3. Properties to the north share the site's Neighborhood Commercial zoning. A  
4 commercial shopping center occupies parcels adjacent to the north. The subject  
5 site is one property out of the 11 properties in Area 2 of Columbia. In addition  
6 to the Franklin Academy facilities on their two parcels, other commercial uses in  
7 this area include Yeager's Sporting Goods, Legendary Vinyl Records, Tecalitlán  
8 Mexican Restaurant, Wanida Thia Bistro, Mi Rancho Taqueria and Mi Rancho  
9 Meat Market, and other restaurants and personal service uses in the "Northwest  
10 Shopping Center" building to the north. Properties to the east and west (across  
11 Walnut Street and Northwest Avenue) are zoned Residential Single and are  
12 developed with single-family and multifamily residential uses. The property to  
13 the south across Victor Street is zoned Public Park and is developed with  
14 Peabody Plaza, and landscaped public open space. *Exhibit 1; Google Maps site*  
15 *view.*
- 16 4. The subject property is relatively flat and is improved with existing school  
17 facilities associated with the 18,039 square foot Robin Hall, parking, and  
18 landscaping. It does not contain any wetland, stream, or regulated wildlife  
19 habitat conservation areas; however, it is in an area mapped with coal mine  
20 hazards having a severe potential for subsidence. *Exhibits 1 and 1.H.*
- 21 5. The existing school building is legally nonconforming with respect to the critical  
22 area ordinance, as it was constructed prior to adoption of the ordinance. Pursuant  
23 to BMC 16.55.130.C, expansion, reconfiguration, and/or intensification of any of  
24 the developed elements of a nonconforming institutional development of more  
25 than two thousand square feet requires review and approval of a critical area  
26 permit. Because the proposed addition is larger than 2,000 square feet, it requires  
27 a critical area permit. The Applicant submitted a geologic mine hazard prepared  
28 by a qualified professional as defined in BMC 16.55.510. The report concluded  
29 that the proposed school addition, which would be wood-framed and supported  
30 by shallow, conventional foundations with slab-on-grade floors, is feasible and  
does not require mitigation for protection against geologic hazards. *Exhibit 1 and*  
*1.H.* Design review is also required per BMC 20.25.020.E. Both critical area and  
design review are Type II permit processes, decided administratively by the  
Planning Department. Following review, a consolidated design review and  
critical area permit (DR2023-0033/CAP2024-0006) was approved with  
conditions on March 28, 2024. The conditions imposed require the Applicant to  
incorporate the recommendations in the geologic hazard report into the design

1 and construction of the building addition and to demonstrate compliance with the  
2 applicable critical area ordinance requirements. *Exhibits 1, 1.H, and 1.J.*

3 6. The current proposal would add a two-story, approximately 7,256 square foot  
4 addition to Robin Hall. The addition would house a commons area, eight  
5 classrooms, and a staff lounge. The proposal would not increase student  
6 enrollment; the eight classrooms are needed to provide better accommodations for  
7 existing student classes currently being taught in library and storage spaces.  
8 Additional proposed site improvements include: a fenced, landscaped courtyard  
9 along Northwest Avenue; restriping existing parking spaces; paving two new  
10 parking stalls in the north parking area (adjacent to the retain shopping center);  
11 removal of masonry walls in two locations to improve sight lines and increase  
12 safety; and planting street trees along Northwest Avenue. To accommodate the  
13 proposed improvements, eight existing trees are proposed to be removed. The  
14 Applicant has proposed a 1:1 tree replacement ratio, with replacement trees  
15 planted on-site. *Exhibits 1, 1.A1, and 1.A2.*

16 7. While enrollment would not increase, the proposed new classrooms would  
17 relocate currently enrolled second graders who are now attending classes in  
18 Markel Hall, the building at 1509 E. Victor Street location. The school  
19 implements staggered drop-off and pick-up times. At Robin Hall, pick-up starts at  
20 2:30 p.m. with the first preschool class, and students are released every five  
21 minutes until first grade pick-up starts at 2:55 p.m. Currently second graders are  
22 released at 3:00 p.m. from Markell Hall. If the instant proposal is approved,  
23 second graders would be released from Robin Hall at 3:00 p.m. instead. *Exhibits*  
24 *1, 1.A1, and 1.E.*

25 8. The Applicant commissioned a traffic engineering consultant to analyze potential  
26 traffic impacts related to the proposed reallocation of 45 second graders from  
27 Markel to Robin Hall. The traffic study, prepared by a qualified professional,  
28 determined that overall student enrollment is 127 lower than the maximum  
29 number of students allowed in the 2002 and 2007 CUPs. Noting that the  
30 proposal is not expected to increase enrollment, the traffic consultant concluded  
that the school's overall trip generation should not change with the proposed  
building addition and that the redistribution of trips for the second graders from  
one building to the other would result in negligible traffic impacts. To mitigate  
potential traffic impacts resulting from the shift in students from Markel Hall to  
Robin Hall, Planning Staff recommend retention and modification of all CUP  
conditions related to traffic, access, and school pick-up and drop-off activities.  
With these modified conditions, Staff submitted that the scale and intensity of

1 the proposal would not create excessive vehicular congestion on neighborhood  
2 collector or residential access streets. *Exhibits 1 and 1.H.*

3 9. The Applicant submitted, and Planning Staff agreed, that the impacts of the  
4 proposal would be consistent with the established school use, which has been an  
5 active part of the neighborhood for more than 20 years. The proposed increased  
6 building footprint would be adjacent to Northwest Avenue. Views of the addition  
7 from offsite would be buffered by the proposed courtyard, landscaping, and  
8 fencing. The other improvements, such as repaved and new parking, would  
9 improve the functionality of the site, which would benefit the neighborhood.  
10 Removal of older brick walls in the courtyard would improve sight lines on  
11 campus and the addition of significant windows along the arterial would increase  
12 “eyes on the street,” improving security and curb appeal for neighbors. In  
13 reducing traffic spill over on-street parking, aiding crime prevention through  
14 improved visual surveillance on campus, and adding street trees, the project  
15 would result in net benefits to the neighbors over the existing condition. While  
16 there would be construction-related impacts (noise and traffic disruption), this  
17 would be temporary. To mitigate construction impacts to the extent possible,  
18 Planning Staff recommend retaining and modifying conditions in the 2002 and  
19 2007 CUPs that regulate construction. *Exhibits 1, 1.A1, and 1.E; Testimony of*  
20 *Amy Zimmerman and Gretchen Bucsko.*

21 10. On the subject of crime prevention through environmental design (CPTED),  
22 because the Bellingham Police Department (BPD) no longer provides CPTED  
23 review for development proposals, Planning Staff recommend removing  
24 Condition No. 8 imposed in the 2002 CUP regarding review. Since BPD  
25 stopped providing that function, Planning Staff have been trained in CPTEP  
26 practices, and CPTED is now a component of commercial design review. *BMC*  
27 *20.25.090.B(3)*. Staff submitted that Condition No. 8 is no longer enforceable,  
28 that CPTED review has occurred through the consolidated design review and  
29 critical area permit decision, and that the condition should be stricken. *Exhibit 1.*

30 11. To mitigate impacts of the lighting from the proposed new building façade and  
two story glazed vestibule, Planning Staff recommend the wording of Condition  
No. 13 of the 2002 CUP be slightly modified to require all site and building  
lighting be shielded and/or downcast. If adopted, this amended condition would  
require lighting cut sheets and a photometric site plan to be submitted at time of  
building permit to ensure off-sight glare is minimized at the property lines.  
*Exhibit 1.* Addressing other view concerns, conditions of the consolidated  
design review and critical area require screening of exterior mechanical  
equipment to reduce its visibility. *Exhibit 1.J.*

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2 12. Development in the vicinity of the subject property can be characterized as  
3 being comprised of mid-century commercial buildings along Northwest Avenue  
4 and single-family residential neighborhoods with pre-WWII housing stock.  
5 Occupying two large parcels for more than 20 years, the neighborhood character  
6 includes the Franklin Academy campus. The proposed addition to Robin Hall  
7 adjacent to the site's Northwest Avenue frontage leaves the majority of the  
8 existing building untouched while providing an updated façade consistent with  
9 the architectural design of Markel Hall. The Applicant submitted, and Planning  
10 Staff agreed, that the proposed expansion would maintain the essential character  
11 of the neighborhood in avoiding demolition of the existing building while better  
12 tying the two sites of Franklin Academy into a single architectural identity.  
13 *Exhibits 1 and 1.A2.*

14 13. The subject property fronts on three fully improved public streets. The existing  
15 school facilities are served by the existing public roads and public water,  
16 sanitary, and storm sewer utilities and services. Negligible if any increase in  
17 demand for utilities or services is anticipated as a result of the proposed addition.  
18 Final review for full compliance with the stormwater requirements of BMC  
19 Chapter 15.42 would occur at time of building permit. Planning Staff  
20 recommend removing Condition No. 5 from the 2002 CUP regarding required  
21 improvements to Walnut Street as this work has been completed and approved  
22 by the City. *Exhibit 1.*

23 14. Pursuant to the City's land clearing ordinance codified in BMC Chapter 16.60,  
24 significant trees (which are trees larger than six inches in diameter at breast  
25 height) that are proposed to be removed are required to be replaced at a ratio to be  
26 determined by the Planning and Community Development Department. The  
27 proposal calls for a 1:1 replacement ratio for the eight significant trees that need  
28 to be removed to accommodate the proposed improvements. Additionally, the  
29 proposal would plant seven street trees along the site's street frontages. Most of  
30 the trees proposed for removal are adjacent to the existing courtyard along  
Northwest Avenue that is proposed for demolition. While most of the trees to be  
removed range from six to 16 inches in diameter, Planning Staff required  
additional information from the Applicant explaining the need to remove a 32-  
inch oak tree along Northwest Avenue due to its large size. The Applicant has  
identified this large oak tree as a safety concern, as it has currently heaved the  
existing asphalt in the parking lot along Northwest Avenue more than 12 inches,  
impeding parking and safe use of the adjacent sidewalks. The Applicant stated  
that staff and visitors avoid the affected parking stalls due to the unlevel surface,  
tree limb debris, and sap. Removal of the tree is necessary to accommodating the

1 necessary classroom expansion while improving the existing damaged parking  
2 lot, drive lane, and adjacent sidewalk. The Applicant proposed to reuse the  
3 removed significant trees in the new outdoor areas for the creation of play  
4 structures rounds, or benches. Planning Staff determined that the proposed tree  
5 removal maintains existing canopy coverage to the maximum extent feasible and  
6 submitted that, considering the design constraints necessitating tree removal,  
7 proposed preservation of trees elsewhere onsite, the proposed 1:1 tree  
8 replacement, and mitigation in the form of the felled trees into the landscape plan,  
9 the proposal complies with the intent of the land clearing ordinance. *Exhibits 1  
10 and 1.A2 (see Sheet L1.0); Testimony of Sara Ullman and Amy Zimmerman.*

11 15. The application materials included a professionally prepared preliminary  
12 stormwater report, which indicated that infiltration and dispersion on site are not  
13 feasible and that runoff from proposed/reconfigured roof and pavement surfaces  
14 would be collected in downspouts and/or catch basins and conveyed to the  
15 municipal stormwater system. Final compliance with the requirements of BMC  
16 15.42.060 would be assured through the civil engineering review and building  
17 permit processes. Should approval be granted, construction permits for the  
18 proposed work would also be required to comply with International Building/Fire  
19 Codes and Public Works Engineering requirements to ensure the safety of the  
20 public. The property is accessible to emergency services. The Applicant  
21 submitted, and Planning Staff concurred, that the project would not create any  
22 safety hazards or result in structure inaccessibility. *Exhibits 1, 1.A1, and 1.E.*

23 16. According to the Whatcom County Assessor's information, Robin Hall was built  
24 in approximately 1955. Franklin Academy is not located in an historic district  
25 and is not listed on a local or national historic registry. Though not required to  
26 do so, the proposal complies with the Secretary of the Interior's Standards for the  
27 Treatment of Historic Properties, which include guidance for design and  
28 construction of building additions to historic buildings. Of note, the proposal  
29 does not include demolition and reconstruction of the entire building, but rather  
30 maintains the majority of the building, removing one wall to accommodate the  
two-story addition. Area 2 of the Columbia Neighborhood is not subject to a  
"view" special condition. While the subject property is immediately north of  
Peabody Plaza, the proposal would not impact the park. *Exhibit 1; Google Maps  
site view.*

17. Addressing the CUP criterion that requires a conditional use to demonstrate it  
will not be detrimental to the surrounding neighborhood, Planning Staff  
submitted that the existing CUP has been reviewed and conditioned in  
consideration of significant public input and Staff analysis through two previous



1 public hearing processes resulting in permits that are subject to numerous  
2 operational conditions intended to control detrimental impacts related to  
3 construction, lighting, traffic, landscaping, and enrollment. The instant  
4 expansion does not seek relief from any existing operational conditions. Staff  
5 submitted that the proposal would not result in any new, potentially detrimental  
6 impacts not already analyzed through the previous CUP hearings. *Exhibits 1 and*  
7 *I.B.*

8 18. Planning Staff submitted that the proposal meets the intent of the City of  
9 Bellingham Comprehensive Plan in furthering the following goals and policies:

10 Goal CD-2: Express the City's distinct community identity and sense of place  
11 through improvements to the appearance of new development,  
12 commercial centers, urban villages, transit corridors and streetscapes.

13 Goal CD-5: Ensure that the design and development of urban villages and transit  
14 corridors convey a positive image of the district they are located  
15 within, contribute to the economic vitality and perception of the City,  
16 and improve visual and physical transitions into adjacent  
17 neighborhoods.

18 Goal CD-6: Encourage contextually appropriate infill development projects and  
19 property renovations.

20 Policy CD-1: Enhance the streetscapes along the City's major commercial corridors  
21 and other major streets through coordinated public and private  
22 improvements to convey a positive image of the district they are  
23 located within, contribute to its economic vitality and perception of  
24 the City, and improve visual and physical transitions into adjacent  
25 neighborhoods.

26 Policy CD-5: Promote community identity through streetscape enhancements,  
27 building designs, and treatments marking the primary entrances, or  
28 gateways, to the City.

29 Policy CD-6: Strengthen the urban form of the City's urban villages and  
30 commercial, industrial, and institutional districts by building on the  
character of the existing historical and architectural fabric of the  
community, while allowing for the addition of complementary new  
development and urban design elements.

Ensure that new development is of a type, scale, orientation, and  
design that maintains or improves the character, aesthetics, and  
livability of neighborhoods. While compatibility is more of an issue in  
established neighborhoods, new development needs to take into  
account the context of the area and should result in an improvement to  
the surrounding neighborhood.

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Policy CD-10: Encourage property owners to maintain their properties to help beautify their neighborhoods, including improvement of parking areas through the addition of landscaping, trees, boundary definition, and other enhancements.

Policy CD-17: Create an attractive, walkable environment within and between commercial districts and neighborhoods through careful site planning, architectural design, and pedestrian amenities such as sidewalks, benches, pedestrian-scaled lighting, and other street furniture.

Policy CD-18: Encourage development of public spaces and plazas within commercial, mixed-use and residential projects that can accommodate civic events and function as community gathering areas.

Policy CD-19: Foster placemaking by reinforcing key design themes in building facades, public spaces, streetscapes and other built elements within the visual public realm to create a sense of place and inspire a greater sense of community pride and ownership.

Policy CD-34: Emphasize pedestrian-oriented development that includes building facades that relate to the street and clear pedestrian entries.

Goal CF-7: Ensure school districts serving Bellingham and its UGA provide adequate public school facilities needed to house the expected future student population.

Policy CF-71: Retain neighborhood schools in developed areas and locate new schools consistent with the City's commitment to encourage infill development, walkability, and compact growth.

Planning Staff submitted that the proposal supports the City's goals of investing in and enhancing existing development along key neighborhood corridors to reinforce neighborhood character and support economic vitality. While it is not a public school, Staff determined that the addition would align with City goals and policies that promote maintaining and expanding neighborhood school facilities. Staff opined that private schools play an important role in expanding educational options in the City and also play a role in addressing demand for local public school services. *Exhibit 1; Sara Ullman Testimony.*

19. The Columbia Neighborhood Plan includes goals and policies related to bicycle and pedestrian facilities. Since the adoption of this plan, many originally adopted infrastructure goals have been achieved, including designated bike lanes along Northwest Avenue and a striped crossing of Northwest Avenue at E. Victor Street. The proposed building and site design would support multimodal transportation opportunities by enhancing pedestrian connections from the school to the sidewalk. Staff submitted that approval would be consistent with the goals and policies of the Columbia Neighborhood Plan. *Exhibit 1.*

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- 20. The applications for conditional use permit amendment (USE2023-0027), design review (DR2023-0033), and the SEPA environmental checklist (SEP2023-0039) were submitted on November 13, 2023 and determined to be complete on December 4, 2023. *Exhibits 1, 1.A1, 1.A2, and 1.C.*
- 21. On 1/12/24, Planning Staff issued a notice of application and SEPA optional determination of non-significance (ODNS) pursuant to BMC 21.10.200 and WAC 197-11-355 on January 12, 2024. The final SEPA DNS was issued February 21, 2024. *Exhibits 1, 1.F, and 1.I.*
- 22. Notice of complete application was issued on December 4, 2023 and notice of public hearing was issued April 10, 2024. *Exhibits 1.F, 1.O, and 1.O1.*
- 23. Early public comment opposed the proposal, submitting concerns about tree removal, building design, traffic, geology, and construction impacts. One commenter also expressed the opinion that the academy was occupying too much area within a residential neighborhood and can be considered to be “taking over the neighborhood.” Another expressed the opinion that traffic in the neighborhood is already a nightmare, implying that adding on to the building would increase that existing problem. *Exhibits 1.K and 1.N.* Subsequent public comment maintained opposition to approval, contending that summer construction would be unduly impactful to neighboring residences whose windows need to be open in the warmer weather, subjecting residents to excessive noise and dust. This comment opposed the addition of any parking stalls and the removal of the large tree to allow repair of parking stalls, on the grounds that tree canopy is a higher priority due to climate concerns than parking for a private school use. *Exhibit 3.* One person testified in support of the proposal at the public hearing, submitting that the proposed remodel would provide a better, safer, updated educational environment. He noted that Franklin Academy is one of only two STEM certified schools in Washington State and the only STEM certified school in Whatcom. *Dr. Tung Ha Testimony.*
- 24. In response to the traffic concerns, Staff noted that the Applicant’s traffic study determined that the project would reallocate 186 trips from Markel Hall to Robin Hall as a result of moving the 45 existing second graders from one building to the other. Staff maintained their determination that this reorganization of existing school trips would result in negligible impact to the community. *Sara Ullman Testimony; Exhibits 1 and 1.G.* Staff noted that Condition No. 10 of the existing CUP limits hours of construction to 7:00 a.m. to 7:00 p.m. Monday through Saturday. *Exhibits 1 and 1.B.*

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25. Addressing the concern that the school is dominating the neighborhood, Planning Staff submitted that schools are an essential element of the community, and that the Applicant has been part of the community for more than 20 years. Information provided by the Applicant indicates that the existing school facility is undersized for current needs, and that the proposed building expansion would provide needed classroom space without increasing enrollment numbers beyond the limit established in the controlling CUP. Staff further noted that the subject property is in a commercial zone with a neighborhood use qualifier designation, which designation pursuant to BMC 20.33.020.E is intended to accommodate retail and personal service establishments which will primarily serve the immediate neighborhood populace. While Franklin Academy serves students from the broader Bellingham community in addition to the immediate neighborhood, Staff submitted schools have an anchor effect on neighborhoods through incremental movements of families desiring proximity to school uses. Despite the existing residential development in the vicinity, the site and its underlying zone are primarily commercial, with Franklin Academy representing one of 11 businesses in the vicinity, occupying two parcels. Staff determined that the proposal would not cause the school to dominate the zone. Staff noted hours of construction are enforceable through the City’s code enforcement staff in the Planning department. *Sara Ullman Testimony; Exhibit 1.* An Applicant representative further noted that Franklin Academy serves 75 preschool students, meeting a need public schools do not address. *Gretchen Bucsko Testimony.*

26. Having heard all testimony, Planning Staff maintained their recommendation for approval of the CUP amendment subject to modified conditions stated in the staff report. *Sara Ullman; Exhibit 1.* An Applicant representative waived objection to the recommended conditions. *Amy Zimmerman Testimony.*

**CONCLUSIONS**

**Jurisdiction:**

The Hearing Examiner is granted authority to hold hearings and make decisions on conditional use permit applications pursuant to BMC 20.16.010.D.

**Conditional Use Permit Criteria for Review**

Pursuant to Bellingham Municipal Code 20.16.010.B, conditional use permits for conditional uses allowed in the general use type may be granted by the hearing examiner if the record demonstrates the following:

- 1. The proposed use will promote the health, safety, and general welfare of the community.

- 1       2. The proposed use will satisfy the purpose and intent of the general use
- 2       type in which it is located.
- 3       3. The proposed use will not be detrimental to the surrounding
- 4       neighborhood.

5 Pursuant to BMC 20.16.010.C, in applying the standards set forth in subsection B  
6 (above), the hearing examiner shall consider the following factors as to whether the  
7 proposed use will:

- 8       1. Be harmonious with the general policies and specific objectives of the
- 9       comprehensive plan.
- 10      2. Enable the continued orderly and reasonable use of adjacent properties by
- 11      providing a means for expansion of public roads, utilities, and services.
- 12      3. Be designed so as to be compatible with the essential character of the
- 13      neighborhood.
- 14      4. Be adequately served by public facilities and utilities including drainage
- 15      provisions.
- 16      5. Not create excessive vehicular congestion on neighborhood collector or
- 17      residential access streets.
- 18      6. Not create a hazard to life, limb, or property resulting from the proposed
- 19      use, or by the structures used therefor, or by the inaccessibility of the
- 20      property or structures thereon.
- 21      7. Not create influences substantially detrimental to neighboring uses.
- 22      “Influences” shall include, but not necessarily be limited to: noise, odor,
- 23      smoke, light, electrical interference, and/or mechanical vibrations.
- 24      8. Not result in the destruction, loss, or damage to any natural, scenic, or
- 25      historic feature of major consequence.

26 BMC 20.33.030 and BMC 20.16.020(M)(1), schools are a conditional use in the  
27 Neighborhood Commercial zoning designation and must comply with the following  
28 special requirements:

- 29      i. A school(s) should not become the only use within a neighborhood commercial
- 30      subarea (or district when there are contiguous commercial subareas).
- 31      ii. Any school proposal shall be consistent with the policies outlined within the
- 32      applicable neighborhood plan.

1 **Conclusions Based on Findings:**

2 1. Addressing the conditional use permit criteria for approval established in BMC  
3 20.16.010.B, the following conclusions are entered:

4 a. In expanding classrooms and needed staff spaces in the existing school  
5 building, the proposal would enhance educational opportunities and  
6 promote the public welfare. While pick-up/drop-off traffic would be  
7 reallocated from Markel Hall to Robin Hall, the proposal would not cause  
8 the overall traffic for the school to expand past the enrollment limits  
9 imposed in the previous CUPs. Conditions as maintained and modified  
10 from the previous CUP approvals would ensure that adverse impacts of  
11 construction and tree removal are adequately mitigated consistent with  
12 applicable City requirements. A geotechnical review of the site was  
13 performed, which concluded that the proposed construction would not  
14 result in or exacerbate geologic hazards. *Findings 3, 4, 5, 6, 7, 8, 9, 10,*  
15 *11, 12, 13, 14, 15, 16, 17, 21, 23, 24, 25, and 26.*

16 b. The existing school, and the proposed addition to the school, would be  
17 consistent with the purpose and intent of the Neighborhood Commercial  
18 general use type in which the subject property is located. *Findings 2, 3, 6,*  
19 *7, 8, 13, 18, 19, and 26.*

20 c. Construction would result in impacts to surrounding uses, both residential  
21 and commercial; however, as conditioned, the construction impacts would  
22 be time limited on a day-to-day basis and would be expected to be  
23 completed in one construction season. The record contains no evidence  
24 that reallocation of trips from Markel to Robin Hall would be a significant  
25 detrimental impact. Once construction is complete, the addition to the  
26 school would not result in detrimental impacts to the surrounding  
27 neighborhood. Additional off-street parking, newly planted street trees,  
28 improved surveillance within the campus, and the improved aesthetic  
29 appearance tying Robin Hall in to Markel Hall would be benefits to the  
30 community at large, while the additional class and staff spaces would be a  
benefit to the school community. The proposed tree removal and  
replacement are consistent with the City's land clearing ordinance.  
*Findings 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 23, 24, 25, and 26.*

2. Addressing the conditional use permit criteria established in BMC 20.16.010.C, in  
applying the standards set forth in subsection B (above), the following conclusions  
are entered:

- 1 a. The record demonstrates the addition would be consistent with the general  
2 policies and specific objectives of the Comprehensive Plan. *Findings 2, 6,*  
3 *7, 8, 12, 17, 18, 19, 21, 23, 24, 25, and 26.*
- 4 b. Conditions would ensure that construction impacts are limited in duration  
5 and area of influence. Once completed, the addition would not hinder the  
6 continued orderly and reasonable use of adjacent properties and would not  
7 impact public roads, utilities, and services. *Findings 3, 6, 7, 8, 9, 10, 11,*  
8 *13,14, 15, 21, 23, 24, 25, and 26.*
- 9 c. The architectural design of the addition would be consistent with that of  
10 nearby Markel Hall and would be compatible with the surrounding  
11 Neighborhood Commercial zone. *Findings 2, 3, 6, 7, 8, 9, 12, 13, 16, 23,*  
12 *24, 25, and 26.*
- 13 d. The record submitted demonstrates that the proposed school building  
14 addition would be adequately served by public facilities and utilities  
15 including drainage provisions. *Findings 6, 7, 8, 11, 15, 21, 23, 24, 25, and*  
16 *26.*
- 17 e. The record submitted demonstrates that the addition would not create  
18 excessive vehicular congestion on neighborhood collector or residential  
19 access streets for the following reasons: no increase in enrollment is  
20 proposed; the existing school population as of the hearing was 127 fewer  
21 students than the maximum enrollment allowed by the existing approved  
22 CUPs; and the project would redistribute existing trips from Markel Hall to  
23 Robin Hall but would not increase trips on the road network. *Findings 6, 7,*  
24 *8, 9, 13, 21, 23, 24, 25, and 26.*
- 25 f. There is no evidence in the record that would support a conclusion that the  
26 proposed addition to the existing school building would create a hazard to  
27 life, limb, or property, or result in the inaccessibility of the property or  
28 structures by emergency services personnel or school related traffic.  
29 *Findings 4, 5, 6, 7, 8, 9, 13, 15, 21, 23, 24, 25, and 26.*
- 30 g. There is no evidence in the record that would support a conclusion that the  
proposed addition to the existing school building would create influences  
substantially detrimental to neighboring uses, including noise, odor, smoke,  
light, electrical interference, and/or mechanical vibrations. Conditions  
would limit construction impacts. *Findings 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,*  
*15, 17, 21, 23, 24, 25, and 26.*
- h. The record supports the conclusion that the proposal would not result in the  
destruction, loss, or damage to any natural, scenic, or historic feature of  
major consequence. *Findings 3, 4, 5, 6, 7, 8, 9, 12, 14, 16, 21, and 26.*

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2 3. Regarding the requirements in BMC 20.33.030 and BMC 20.16.020(M)(1), approval  
3 of the proposed addition would not cause the school to become the only use within  
4 the neighborhood commercial subarea. The record supports the conclusion that the  
5 addition to the school would be consistent with the in the Columbia Neighborhood  
6 plan. *Findings 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 18, 19, 23, 24, 25, and 26.*

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### DECISION

Based on the preceding findings and conclusions, the requested amendment to conditional use permit to construct an addition to the Franklin Academy building at 3000 Northwest Avenue, Bellingham, Washington as described herein is **APPROVED** subject to the following amended conditions:

1. Condition No. 1 of the 2007 Hearing Examiner Order is modified as follows: Construction of the school expansion shall proceed in an expeditious manner to minimize the impacts of construction noise and traffic on neighboring residents. Prior to building permit issuance, the Applicant shall provide a construction phasing plan to the City and shall distribute said plan to immediately abutting and kitty corner neighbors (including across rights-of-ways).
2. Condition No. 2 of the 2002 Hearing Examiner Order is retained: Each site may have one (1) indirectly down-lit, or internally lighted sign. Each sign shall not exceed thirty-two (32) square feet in area and be no greater than six feet (6) in height. The message shall be limited to the name and address of the school.
3. Condition No. 3 of the 2007 Hearing Examiner Order is retained: Client contracts shall include a provision prohibiting on-street drop-offs/pick-ups and on-street student parking. Staff and students who drive vehicles to the school shall be issued parking permits to park on-site. Staggered start and release times shall be implemented to minimize a.m. and p.m. peak traffic congestion and conflict with Bellingham Public School bus pick-up and drop-off. A traffic manager shall be employed to manage morning and afternoon pick-up and drop-off and ensure compliance with the traffic restrictions imposed in this Order and the September 2002 Order, including, but not limited to, closure of the northerly Walnut Street gate during drop-off and pick-up times.
4. Condition No. 4 of the 2007 Hearing Examiner Order is retained: Enrollment at 3000 Northwest Avenue shall not exceed 270 students. Enrollment at 1509 E. Victor Street shall not exceed 316 students. Total enrollment at both sites shall not exceed 520 students.



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- 5. Condition No. 5 of the 2002 Hearing Examiner Order is stricken.
- 6. Condition No. 6 of the 2002 Hearing Examiner Order is retained: Vehicular access to and from the northern most Walnut Street curb cut at the 3000 Northwest Avenue site shall be prohibited during drop-off and pick-up times by means of a closed gate or other physical barrier. If closure of this access does not adequately prevent all but a minimal amount of school traffic from using Walnut Street and East Maplewood to enter and exit the site, one or more traffic control personnel should be employed by the school to direct traffic onto East Victor Street to Northwest Avenue.
- 7. Condition No. 7 of the 2002 Hearing Examiner Order is retained: Vehicular access to Elizabeth Street from 1509 East Victor Street is prohibited.
- 8. Condition No. 8 of the 2002 Hearing Examiner Order is stricken.
- 9. Condition No. 9 of the 2002 Hearing Examiner Order is retained: Garbage dumpsters and recycling bins shall be provided for each facility in a location approved by the garbage/recycling hauler(s) and screened from public streets and adjacent properties.
- 10. Condition No. 10 of the 2002 Hearing Examiner Order is retained: Bicycle racks shall be provided at each site to accommodate a number of bicycles equal to at least ten percent (10%) of the number of students.
- 11. Condition No. 11 of the 2002 Hearing Examiner Order is modified as follows: A final landscaping plan and street tree removal/planting permit applications shall be submitted with the building permit application generally consistent with the plans submitted with the application except as conditioned by the Design Review Permit (DR2023-0033). The landscaping plan shall identify plant type, size and quantity and comply with applicable development regulations in BMC 20.12.030. The two new proposed “saw-tooth” parking stalls along the northern property line shall be configured with landscape beds between the property line and wheel stops. The landscape plan shall identify the installation of eight (8) replacement trees for the removal of the existing eight (8) significant trees (in addition to any code required trees). Replacement trees shall be native species. The landscape plan and civil plan shall identify the installation of seven (7) required street trees and avoid utility conflicts in their location. Submittal of a street tree permit shall be required. Prior to issuance of certificate of final

1 occupancy, the landscaping shall either be installed or bonded for in an amount  
2 no less than 150 percent of the cost of material and installation.

3 12. Condition No. 12 of the 2002 Hearing Examiner Order is retained: The  
4 Applicant shall provide a maintenance guarantee for installed trees and  
5 landscape screening prior to issuance of occupancy approval. The guarantee  
6 may consist of proof of a two-year (2) maintenance contract with a landscape  
7 maintenance firm, assignment of funds or maintenance bond in the amount of  
8 fifty percent (50%) of the value of the landscaping labor and materials or other  
9 equivalent instrument acceptable to the Planning Director.

10 13. Condition No. 13 of the 2002 Hearing Examiner Order is modified as follows:  
11 All site and building lighting shall be shielded and/or downcast. Lighting cut  
12 sheets and a photometric site plan shall be submitted at time of building permit  
13 to ensure off-sight glare is minimized at the property lines.

14 14. Condition No. 14 of the 2002 Hearing Examiner Order is modified as follows:  
15 The Public Works Department shall approve the stormwater plan for 3000  
16 Northwest AVE prior to issuance of a building permit.

17 15. Condition No. 4 of the 2007 Hearing Examiner Order is retained: The  
18 Applicant, and any subsequent transferees of this conditional use permit, shall  
19 take all steps reasonably necessary and within their control to eliminate or  
20 mitigate the impact on businesses within the adjacent Neighborhood  
21 Commercial area of placement of the school in proximity to existing locations  
22 where alcoholic beverages are served or gambling activities are conducted, and  
23 particularly the impact of the school on existing or future liquor and gambling  
24 licenses for these locations for operations similar to those currently conducted in  
25 these locations. Such steps may include, without limitation, fencing or closing  
26 off access routes (except for emergency access) to create a separation and  
27 increase the walking distance between the school and liquor establishments, and  
28 not opposing license applications. It is the intent of this condition to provide, to  
29 the extent legally permissible, that location of the school adjacent to businesses  
30 now operating under liquor or gambling licenses issued by the State of  
Washington should not impair the ability of those businesses, or their  
successors, to continue to operate and obtain necessary licenses. This condition  
shall remain in effect, but it is not intended to require the school to take any  
action that is prohibited by law or to close any access in a way that would  
violate the property rights of another person or entity.

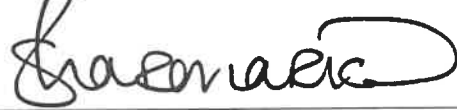
- 1 16. Condition No. 16 of the 2002 Hearing Examiner Order is modified as follows:  
2 Design and operation of the site(s) shall be consistent with materials submitted  
3 with the application, including, but not limited to the application, SEPA  
4 Checklist, and the Consolidated Design Review and Critical Area Permit  
5 (Exhibit 1.J), except as otherwise provided herein, or as modified pursuant to  
6 these conditions.
- 7 17. Condition No. 17 of the 2002 Hearing Examiner Order is retained: The proposal  
8 shall comply with all applicable local, state and federal laws and regulations.
- 9 18. Condition No. 18 of the 2002 Hearing Examiner Order is retained: The cost of  
10 traffic control marking and signage for safe walking routes shall be the  
11 responsibility of the Applicant. The Public Works Department shall approve the  
12 location and design of all such traffic control devices and may, in its discretion,  
13 require that installation be performed by the City.
- 14 19. Condition No. 5 of the 2007 Hearing Examiner Order is modified as follows:  
15 All other conditions of the 2002 and 2007 Orders not inconsistent with the  
16 provisions of this Order shall remain in effect.
- 17 20. Condition No. 6 of the 2007 Hearing Examiner Order is retained: Location and  
18 design of access points for the E. Victor Street site and all required street  
19 improvements shall be subject to the review and approval of the Public Works  
20 Department.
- 21 21. Condition No. 7 of the 2007 Hearing Examiner Order is modified as follows:  
22 Prior to occupancy of the temporary portable classrooms and toilet facilities at  
23 1509 E Victor Street, screening shall be installed between these facilities and  
24 adjacent residences. The type and design of such screening shall be selected  
25 after consultation with the immediately abutting neighbors and the Planning  
26 Department.
- 27 22. Condition No. 8 of the 2007 Hearing Examiner Order is modified as follows:  
28 The temporary portable classrooms and toilet facilities at 1509 E Victor Street,  
29 shall be set back as far as is feasible from property lines abutting residences,  
30 outside of the construction envelope, but no less than 10 feet from the property  
lines. The location of the portable facilities shall be approved by the Planning  
Department after review of the site plan showing the construction area and  
accesses.

- 1 23. Condition No. 9 of the 2007 Hearing Examiner Order is retained: Construction  
2 traffic shall be directed away from the residential neighborhood to the extent  
3 feasible.
- 4 24. Condition No. 10 of the 2007 Hearing Examiner Order is retained: Hours of  
5 construction except for those construction activities that do not produce noise,  
6 light, odors or other noxious influences noticeable to residents of the  
7 surrounding neighborhood, are limited to 7:00 a.m. to 7:00 p.m., Monday  
8 through Saturday. Exceptions to these hours may be granted by the Planning  
9 Director in case of emergency or necessity. Notice of any scheduled exception  
10 shall be provided to adjacent residential neighbors.
- 11 25. Condition No. 11 of the 2007 Hearing Examiner Order is modified as follows:  
12 Landscaping, screening and lighting plans submitted by the Applicant to the  
13 Planning Department shall be distributed to adjacent property owners and others  
14 who request copies, at the Applicant's expense.
- 15 26. Condition No. 12 of the 2007 Hearing Examiner Order is retained: Location,  
16 construction, design and use of school facilities shall comply with all provisions  
17 of the Bellingham Municipal Code and International Building Codes.
- 18 27. Condition No. 13 of the 2007 Hearing Examiner Order is retained: The mass  
19 and bulk of the Victor Street facility shall be substantially as proposed in the  
20 materials submitted in support of this application, or less. The E. Victor Street  
21 facility shall maintain setbacks from residential areas substantially as shown on  
22 the site plans submitted with the proposal, or greater. The design of the facility  
23 should take into consideration the location of the structure within a residential  
24 neighborhood and potential impacts on the surrounding neighbors.
- 25 28. Condition No. 14 of the 2007 Hearing Examiner Order is retained: If the  
26 Planning and Community Development Department receives substantiated  
27 complaints regarding violations of the conditions of the Conditional Use Permit  
28 or adverse impacts resulting from weekend or evening school events or activities  
29 the Director shall have the authority to impose additional conditions and/or to  
30 refer the matter to the Hearing Examiner for further hearing that may result in  
additional conditions.
- 29 29. Any condition of the 2002 and 2007 Hearing Examiner Orders that is not  
expressly modified or stricken herein is retained.

1 DECIDED May 14, 2024.

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**BELLINGHAM HEARING EXAMINER**



Sharon Rice

*Findings, Conclusions, and Decision*

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H:/DATA/HEARING EXAMINER/DECISIONS/Franklin Academy 3000 Northwest Ave CUP Decision

**OFFICE OF THE HEARING EXAMINER**

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