

HEARING EXAMINER MEETING

PROJECT NOs: USE2023-0027 CONDITIONAL USE PERMIT AMENDMENT

APPLICANT: Daniel Lawrence, Zervas Architects, 209 Prospect ST, Bellingham WA 98225

PROPERTY OWNER: Franklin Force Foundation, 3000 Northwest Avenue Bellingham WA 98255

April 24, 2024



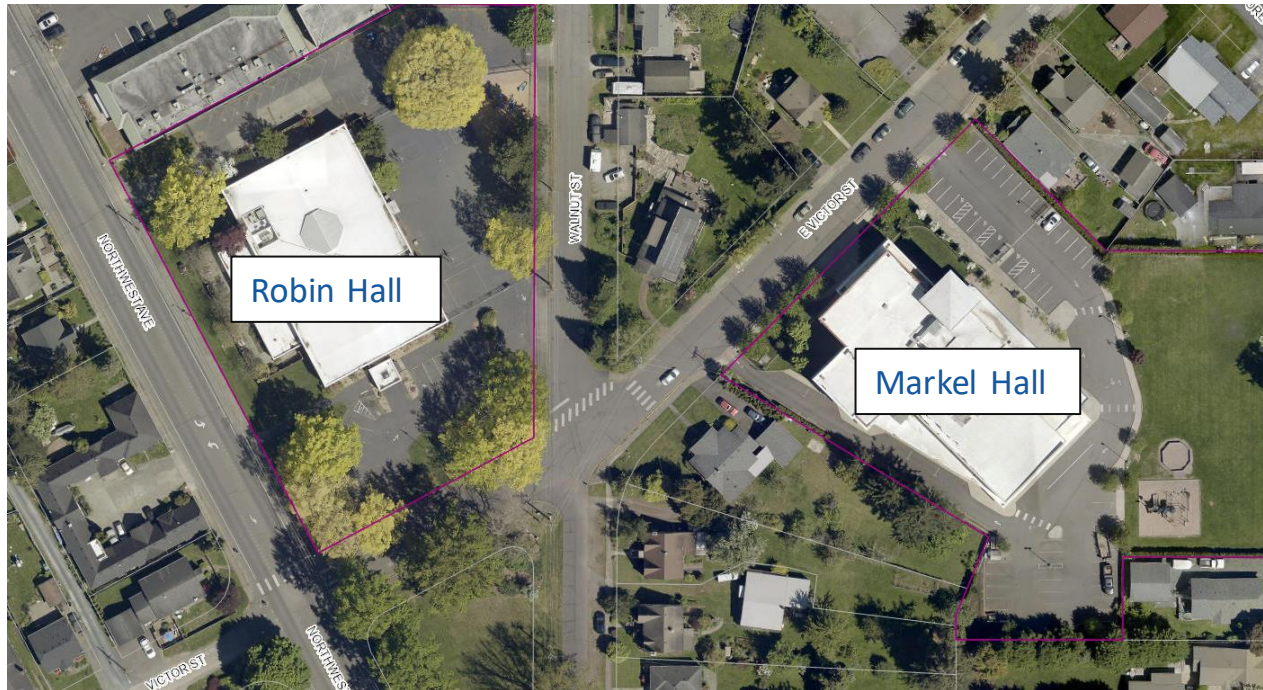
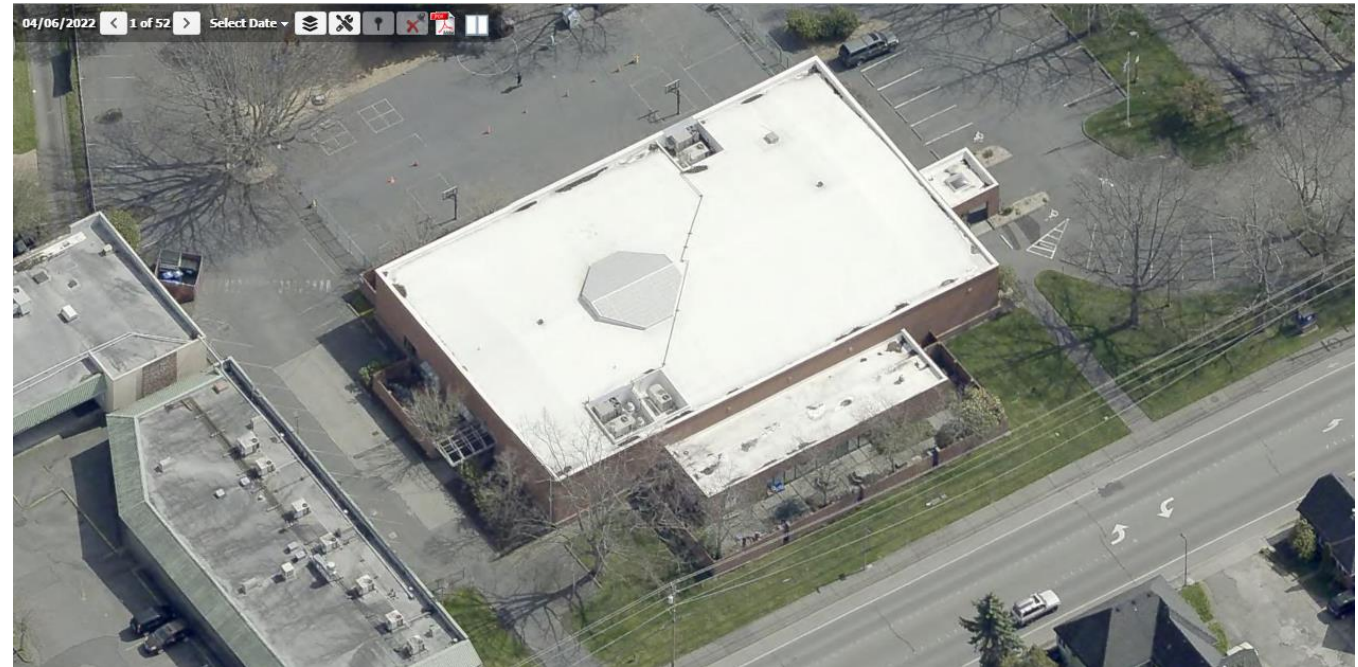
I-III. Proposal and Overview

- Proposed two-story, approximately 7,256 square foot (sf) addition to the existing 18,039 sf Franklin Academy school building at 3000 Northwest Avenue (Robin Hall).
- The proposed addition will house a commons area, eight (8) classrooms, and a staff lounge.
- Student enrollment levels will not be increased. The proposed new classrooms will be used by existing enrolled second graders currently using the facilities at Franklin Academy's 1509 E Victor Street location (Markell Hall).
- Associated site improvements include a fenced and landscaped courtyard abutting Northwest Avenue, restriping existing parking spaces, paving several new parking spaces, removal of masonry walls in two locations to improve sight lines and increase safety, and the planting of street trees along Northwest Avenue. Eight (8) existing on-site trees are proposed to be removed to accommodate the expanded building footprint and the applicant is proposing a 1:1 tree replacement ratio (in addition to the street tree planting).

Jurisdiction:

The Hearing Examiner is granted authority to hold hearings and make decisions on Conditional Use Permits pursuant to BMC 20.14.020.E.

Existing Conditions Aerial Images (CityIQ)



General Information

- Franklin Academy occupies 3000 Northwest AVE and 1509 Victor Street. These properties are governed by a Conditional Use Permit, initially approved by the Hearing Examiner in 2002 (HE-02-PL-047, CUP2002-00013), and later amended in 2007 (HE-07-PL-029, CUP2007-00006) (**Attachment B**).
- BMC 20.16.010(I) allows the director to consider and approve one-time, non-accumulative additions, modifications, or changes when the intent of the hearing examiner, or specific conditions required by the hearing examiner, shall not be reduced, or eliminated, and the modifications meet all of the following criteria:
 1. The alterations result in an improved development plan for both the use itself, and the neighborhood.
 2. Any alterations to structures constitute less than a 10 percent change on a square foot basis of the total floor area as originally approved.
 3. The alterations will not infringe upon any requirements of this title.
 4. The alterations will not have significant impact beyond the site.
- Staff have determined the proposed school expansion does not comply with all of the eligibility criteria for an administrative modification regarding building size, construction phasing, and building design, and therefore, a Conditional Use Permit Amendment is required to be reviewed and approved by the Hearing Examiner.

Zoning:

Columbia Neighborhood, Area 2, Zoned Neighborhood Commercial.

The land use designation of the subject site is Commercial.

IV. Background

- **11/13/2023:** the applicant applied for a Conditional Use Permit Amendment (USE2023-0027), Design Review permit (DR2023-0033), and SEPA checklist (SEP2023-0039) (**Attachments A1, A2, and C**).
- **12/4/2023:** city staff issued a Notice of Complete Application pursuant to BMC 21.10.190.
- **12/4/2023:** city staff issued a Request for Information (RFI) (**Attachment D**).
- **12/21/2024:** the applicant submitted a response to the RFI inclusive of narrative responses to each action item within the RFI, revised architectural plans set inclusive of updated parking data and a tree retention plan (**Attachment E**).
- **1/12/24:** city 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 (**Attachment F**). Potential SEPA mitigation measures were not listed on the notice.
- **1/12/2024:** city staff issued a Request for Information (RFI) for the submittal of a critical area permit application in accordance with BMC 16.55.130(C)(3) and (E) (**Attachment D**).
- **1/17/2024:** the applicant submitted a Traffic Memo prepared by TranspoGroup. Planning staff determined the memo adequately responded to the RFI to continue review of the project (**Attachment G**).
- **2/5/2024:** the applicant submitted the required critical area permit and geotechnical report (CAP2024-0006) (**Attachments C and H**). City staff determined the submittal complete for intake.
- **2/21/2024:** city staff issued a SEPA DNS (**Attachment I**).
- **3/28/2024:** the city issued a consolidated permit decision for the design review and critical area permit applications (DR2023-0033, CAP2024-0006) (**Attachment J**).
- **4/9/2024:** legal notice was provided in accordance with BMC Title 21.

Public Comment

One public comment was received during the public comment period (**Attachment K**) and a second comment was received after the staff report was published (**Attachment N**). The commentors had concerns about tree removal, building design, traffic, geology, and construction impacts. The topics of concern related to tree removal, building design, and geology were analyzed in the design review and critical area permit decision (**Attachment J**).

Staff analysis is in Section IVB of the staff report (page 4) and summarized as follows:

Considering student enrollment is not changing and the existing enrollment levels are 127 students below the threshold analyzed and conditioned by the governing CUP, staff find traffic impacts are negligible and mitigation measures are not required in this Conditional Use Permit Amendment.

Staff find the existing CUP conditions regarding construction controls can mitigate potential impacts. The application materials do not include any requested modifications to the CUP conditions regarding construction and staff find no evidence in the project proposal to indicate this operational condition cannot be met.

VIII. Applicable Regulatory Sections of the BMC and Plans

- Bellingham Municipal Code (BMC):
 - Section 20.00.040: Table of Zoning Regulations – Columbia Neighborhood
 - Section 16.55: Critical Area Ordinance
 - Section 16.60: Land Clearing Ordinance
 - Section 20.12: General Standards
 - Section 20.25: Design Review
 - Chapter 20.33: Commercial Development Standards
 - Chapter 20.16: Conditional Use Requirements and Procedures
 - Title 21: Procedures and Administration
- Columbia Neighborhood Plan
- Bellingham Comprehensive Plan

IX. Conditional Use Permit Review Criteria BMC 20.16.010

BMC 20.16.010(B):

1. The proposed use will promote the health, safety, and general welfare of the community.
2. The proposed use will satisfy the purpose and intent of the general use type in which it is located.
3. The proposed use will not be detrimental to the surrounding neighborhood.

BMC 20.16.010(E):

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

X. Conclusion

Following a review of the applicant’s submittal materials, and consideration of the site context and history, staff believes the proposal, if conditioned properly, will comply with the applicable goals, policies, and regulations - including but not limited to Titles 20 and 21 BMC - and therefore **recommends approval of the CUP amendment for the construction a proposed approximately 7,256 sf building addition, parking lot restriping, and courtyard programming, to 3000 Northwest AVE, subject to the conditions in Section XI of the Staff Report.**

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XI. Department Recommendation

Should the Hearing Examiner find that the proposal described herein and as provided in **Attachments A1, A2, E, G, and H** meets the criteria, staff recommends that all previous CUP conditions remain in effect and recommends modifying the following conditions of the 2002 and 2007 Amended CUP Decisions (**Attachment B**):

Recommended Conditions:

1. Modify Condition 1 of the 2007 HE Order: 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. Retain Condition 2 of the 2002 HE Order: Each site may have one (1) indirectly down-lit, or internally lighted sign. Each sign shall not exceed thirty-two square feet (32' sq.) 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. Retain Condition 3 of the 2007 HE Order: 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. Retain Condition 4 of the 2007 HE Order: 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.
5. Remove Condition 5 of the 2002 HE Order.
6. Retain Condition 6 of the 2002 HE Order: 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. Retain Condition 7 of the 2002 HE Order: Vehicular access to Elizabeth Street from 1509 East Victor Street is prohibited.
8. Remove Condition 8 of the 2002 HE Order.
9. Retain Condition 9 of the 2002 HE Order: 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. Retain Condition 10 of the 2002 HE Order: 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.

XI. Department Recommendation - Continued

11. Modify Condition 11 of the 2002 HE Order: 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 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 7 required street trees and avoid utility conflicts in their location. Submittal of a street tree permit shall be required. Prior to final occupancy, the landscaping shall either be installed or bonded for in an amount no less than 150 percent of the cost of material and installation.
12. Retain Condition 12 of the 2002 HE Order: The applicant shall provide a maintenance guarantee for installed trees and landscape screening prior to issuance of occupancy approval. The guarantee may consist of proof of a two-year (2) maintenance contract with a landscape maintenance firm, assignment of funds or maintenance bond in the amount of fifty percent (50%) of the value of the landscaping labor and materials or other equivalent instrument acceptable to the Planning Director.
13. Modify Condition 13 of the 2002 HE Order: All site and building lighting shall be shielded and/or downcast. Lighting cut sheets and a photometric site plan shall be submitted at time of building permit to ensure off-sight glare is minimized at the property lines.
14. Modify Condition 14 of the 2002 HE Order: The Public Works Department shall approve the stormwater plan for 3000 Northwest AVE prior to issuance of a building permit.
15. Retain Condition 4 of the 2007 HE Order: The applicant, and any subsequent transferees of this conditional use permit, shall take all steps reasonably necessary and within their control to eliminate or mitigate the impact on businesses within the adjacent Neighborhood Commercial area of placement of the school in proximity to existing locations where alcoholic beverages are served or gambling activities are conducted, and particularly the impact of the school on existing or future liquor and gambling licenses for these locations for operations similar to those currently conducted in these locations. Such steps may include, without limitation, fencing or closing off access routes (except for emergency access) to create a separation and increase the walking distance between the school and liquor establishments, and not opposing license applications. It is the intent of this condition to provide, to the extent legally permissible, that location of the school adjacent to businesses 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.
16. Modify Condition 16 of the 2002 HE Order: Design and operation of the site(s) shall be consistent with materials submitted with the application, including, but not limited to the application, SEPA Checklist, and the Consolidated Design Review and Critical Area Permit (Attachment J), except as otherwise provided herein, or as modified pursuant to these conditions.
17. Retain Condition 17 of the 2002 HE Order: The proposal shall comply with all applicable local, state and federal laws and regulations.

XI. Department Recommendation – Continued

18. Retain Condition 18 of the 2002 HE Order: The cost of traffic control marking and signage for safe walking routes shall be the responsibility of the applicant. The Public Works Department shall approve the location and design of all such traffic control devices and may, in its discretion, require that installation be performed by the City.
15. Modify Condition 5 of the 2007 HE Order: All other conditions of the 2002 and 2007 Orders not inconsistent with the provisions of this Order shall remain in effect
16. Retain Condition 6 of the 2007 HE Order: Location and design of access points for the E. Victor Street site and all required street improvements shall be subject to the review and approval of the Public Works Department.
17. Modify Condition 7 of the 2007 HE Order: Prior to occupancy of the temporary portable classrooms and toilet facilities at 1509 E Victor Street, screening shall be installed between these facilities and adjacent residences. The type and design of such screening shall be selected after consultation with the immediately abutting neighbors and the Planning Department.
18. Modify Condition 8 of the 2007 HE Order: The temporary portable classrooms and toilet facilities at 1509 E Victor Street, shall be set back as far as is feasible from property lines abutting residences, 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.
19. Retain Condition 9 of the 2007 HE Order: Construction traffic shall be directed away from the residential neighborhood to the extent feasible.
20. Retain Condition 10 of the 2007 HE Order: Hours of construction except for those construction activities that do not produce noise, light, odors or other noxious influences noticeable to residents of the surrounding neighborhood, are limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday. Exceptions to these hours may be granted by the Planning Director in the case of emergency or necessity. Notice of any scheduled exception shall be provided to adjacent residential neighbors.
21. Modify Condition 11 of the 2007 HE Order: Landscaping, screening and lighting plans submitted by the Applicant to the Planning Department shall be distributed to adjacent property owners and others who request copies, at the Applicant's expense.
22. Retain Condition 12 of the 2007 HE Order: Location, construction, design and use of school facilities shall comply with all provisions of the Bellingham Municipal Code and International Building Codes.
23. Retain Condition 13 of the 2007 HE Order: The mass and bulk of the Victor Street facility shall be substantially as proposed in the materials submitted in support of this application, or less. The E. Victor Street facility shall maintain setbacks from residential areas substantially as shown on the site plans submitted with the proposal, or greater. The design of the facility should take into consideration the location of the structure within a residential neighborhood and potential impacts on the surrounding neighbors.
24. Retain Condition 14 of the 2007 HE Order: If the Planning and Community Development Department receives substantiated complaints regarding violations of the conditions of the Conditional Use Permit or adverse impacts resulting from weekend or evening school events or activities the Director shall have the authority to impose additional conditions and/or to refer the matter to the Hearing Examiner for further hearing that may result in additional conditions.