

**CITY OF SPOKANE HEARING EXAMINER**

Re: Conditional Use Permit Application by ) FINDINGS, CONCLUSIONS,  
James A. Wolff for property located at ) AND DECISION  
the southwest corner of 29<sup>th</sup> Avenue )  
and Martin Street )  
FILE NO. Z2007-46-CUP

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** A Conditional Use Permit application by James Wolff, to allow the development of a 30,000 to 40,000 square foot, three level medical office building with 120 to 150 parking stalls in the Residential Multifamily (RMF) Zone.

**Decision:** Approval, subject to conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant:** James A. Wolff  
12209 East Mission Avenue  
Spokane Valley, WA 99206

**Represented by:** Gary Bernardo  
Bernardo Wills Architects  
107 South Howard Street, 4<sup>th</sup> Floor  
Spokane, WA 99201

**Represented by:** Dwight Hume  
D.J. Hume Company  
9101 North Mt. View Lane  
Spokane, WA 99218

**Property Address:** 2008, 2020, 2028 and 2124 East 29<sup>th</sup> Avenue in the City of Spokane, Washington.

**Property Location:** The property is located on the south side of 29<sup>th</sup> Avenue west of Martin Street in the City of Spokane Washington.

**Legal Description:** A full legal description is in the record attached to Exhibit #2A.

**Zoning:** The property is zoned RMF (Residential Multifamily).

**Comprehensive Plan Map Designation:** The property is designated Residential 15-30 in the City's 2001 Comprehensive Plan.

**Site Description:** The site consists of five parcels on the south side of 29<sup>th</sup> Avenue west of Martin Street. One parcel is at the southwest corner of Martin Street and 29<sup>th</sup> Avenue and the other four parcels are west of that, separated by a parcel with a different ownership which is not part of this application. The site is relatively flat at the east end with significant rock outcroppings on the west side. There are no structures on site and it is covered with pine trees, shrubs and grasses. There are pictures of this site which were submitted at the hearing and they are in the record as Exhibit #A4. The site contains approximately 2.5 acres in size.

**Surrounding Conditions:** To the north the property is zoned O-35 (Office-35) and is being developed as a mixed use development. To the west is a retirement community and to the northwest across 29<sup>th</sup> Avenue is a church. To the south, the property is zoned RMF, but is developed with single-family residential uses. To the east, across Martin Street, there is an office park and the property is zoned for office uses. 29<sup>th</sup> Avenue is designated as a principal arterial in the City's Arterial Street plan.

**Project Description:** The applicant seeks a conditional use permit in order to develop a medical office use on site. The code requires a conditional use permit to develop offices in the RMF Zone. The building itself which is to be between 30,000 and 40,000 square feet, two-stories with a basement, will be located on the western portion of the site with parking surrounding it, except to the north. A site plan is in the record as Exhibit #2D. The building elevation will be low enough as to block noise from 29<sup>th</sup> Avenue for the residences to the south but not high enough to block their view. A section showing the proposed building height in relation to existing residences is in the record as Exhibit #A5.

The applicant has included in the proposal, a parcel on the southwest corner of 29<sup>th</sup> Avenue and Martin Street which is separated from the larger parcel by a parcel which is not under the control of the applicant. Additional parking is contemplated for that parcel with access from Martin Street. At the hearing the agent for the applicant testified that the lot would be used for staff parking to allow more patient parking on the site of the office building. Staff opposes this satellite lot and argues that such a lot is not allowed under current zoning regulations.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code Sections 17C.110, 17C.120, 17C.220, 17C.320.080, 17G.060 and 17G.060.170.

**Hearing Date:** February 7, 2008

**Notices:** Mailed: July 24<sup>th</sup> and December 18, 2007  
Posted: July 24<sup>th</sup> and December 18, 2007

**Site Visit:** None made

**SEPA:** A Mitigated Determination of Nonsignificance (MDNS) was issued by the City on January 11, 2008.

**Testimony:**

Angela Raymond  
City of Spokane Planning Services  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Raymond Wright  
City of Spokane Traffic Planning  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Gary Bernardo  
Bernardo Wills Architects  
107 South Howard Street, 4<sup>th</sup> Floor  
Spokane, WA 99201

Dwight Hume  
D.J. Hume Company  
9101 North Mt. View Lane  
Spokane, WA 99218

John Sonneland  
3220 South Napa  
Spokane, WA 99203

Rick Dullanty  
2007 East 30<sup>th</sup> Avenue  
Spokane, WA 99203

David Baker  
Baker Construction  
1802 East Trent Avenue  
Spokane, WA 99202

Jason Neil  
Waterford Retirement Community  
2929 S Waterford Drive  
Spokane, WA 99202

**Exhibits:**

1. Planning Services Staff Report
  - 1A. Staff Report
  - 1B. Revised Staff Report dated 02-06-08
2. Application, including:
  - 2A. General application
  - 2B. Conditional Use Permit application
  - 2C. Application for notification map
  - 2D. Site plan
  - 2E. Conditional Use Permit Counter Complete Checklist
3. Fire Department comments and correspondence
4. Engineering Services comments
5. Traffic Engineering comments
6. Spokane Regional Clean Air Agency comments
7. Department of Ecology comments

8. Notice map
9. Title Company Certification and Notice parcel listing
10. Notices
11. Affidavit of Mailing dated 07-24 and 12-18-07
12. Affidavits of Posting dated 07-24 and 12-18-07
13. Affidavits Request for publication dated 07-20-07
14. Affidavits of Sign Removal dated 08-13-07
15. SEPA Mitigated Determination of Nonsignificance
16. Environmental Checklist
17. Community Meeting Sign in sheet
18. Community Meeting Minutes
19. Hearing File Preparation Checklist
20. Letter dated 05-13-07 to Planning Department from Marcia Meade  
re: permission for James Wolff to secure a CUP
21. Email dated 07-06-07 to Dave Compton from Gary Bernardo  
re: project parcel numbers and preliminary site plan
22. Letter dated 07-18-07 to Jamie Wolff from Angela Raymond  
re: community meeting instructions
23. Email dated 08-17-07 to Dave Compton from Dwight Hume  
re: CUP application questions
24. Letter dated 08-12-07 to Angela Raymond from Carol Phillips Rankin  
re: traffic concerns
25. Letter dated 08-23-07 to Planning Department from Jack Fallis  
re: ownership of property
26. Letter dated 08-28-07 to Planning Services from Dwight Hume  
re: application and clarification of owners/sellers of property
27. Letter dated 08-30-07 to Interested Parties from Angela Raymond  
re: request for comments
28. Letter dated 12-10-07 to Gary Bernardo from Angela Raymond  
re: notice of application instructions
29. Letter dated 12-26-07 to Angela Raymond from John Sonneland  
with attached letter dated 05-24-07 to John Sonneland from James Wolff  
re: lack of time given to comment, and opposing project
30. Letter dated 01-08-08 to Angela Raymond from Gary Bernardo  
re: inclusion of a remote parcel
31. Letter dated 01-16-08 to Gary Bernardo from Angela Raymond  
re: notice of public hearing instructions
32. Undated letter to Planning Services from Thomas Herion  
re: opposing project
- A Exhibits received at the hearing
  - A1 Letter dated 02-07-08 to Angela Raymond from Marcia Meade  
re: response to John Sonneland's correspondence
  - A2 Statement regarding Parking Lot at 29<sup>th</sup> and Martin
  - A3 Letter dated 02-06-08 to Angela Raymond from Gary Bernardo  
re: response to John Sonneland's correspondence

- A4 Photos submitted by John Sonneland of the site
- A5 Copy of applicants presentation by Gary Bernardo

### **FINDINGS AND CONCLUSIONS**

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing Examiner has reviewed the proposed conditional use permit and the evidence of record with regard to this section and makes the following findings and conclusions:

1. The proposal is allowed under the provisions of the land use code.

Uses allowed in the various residential zone categories are set forth in Table 17C.110-1. That table shows that office uses are allowed in the RMF Zone by conditional use. The text of 17C.110.110 (2) states that the office uses are subject to the provisions of chapter 17C.320.

The appropriate criteria are set forth in SMC 17C.320.080J. The first criterion is that the use must be permitted in the office zone. A review of Table 17C.120-1 shows that both offices and medical centers are a permitted use in the office zone. This proposal therefore complies. In addition, the property is to have frontage on a principal arterial and in this case it does because 29<sup>th</sup> Avenue is designated as a principal arterial. The applicant is to demonstrate that the property is more suitable for office uses than intense residential and also the applicant must demonstrate that the office use will not have a significant negative impact on surrounding residential areas. In the applicant's presentation which is in the record as Exhibit #A5 it is demonstrated why this proposal is more suitable than intense residential at this location and also that the office use will not have significant negative impacts on surrounding residential areas. In addition, the single-family owners immediately to the south did not oppose this conditional use permit. The Hearing Examiner has reviewed the exhibits and presentation and concludes that they adequately demonstrate that the criteria of the ordinance have been met. No evidence was submitted to rebut those exhibits.

The final criterion is that the office must comply with certain regulations in respect to height, setbacks, landscaping and buffering. Staff and the applicant have submitted evidence that convinces the Hearing Examiner to conclude that this proposal will comply with all of those requirements.

An issue was raised by staff about the satellite parking lot on the corner of Martin Street and 29<sup>th</sup> Avenue. Staff notes that commercial parking uses are not allowed in the RMF Zone. See SMC Table 17C.110-1. They are allowed in the office zone by conditional use. See Table 17C.120-1. The term "commercial parking" is not defined in the definition section of the code. There are sections of the code, however, that do offer insight into what constitutes commercial parking.

In SMC 17C.190.220A, it states that the characteristics of commercial parking are that it is not accessory to a specific use. It also states in that section that parking that provides both accessory parking for specific use and regular fee parking for people not connected to the use is also classified as commercial parking. In this case, the parking is solely for the use of the medical office. There are examples of commercial parking set forth in 17C.190.220C and this proposed satellite lot does not meet any of those examples. In 17C.230.100E, it states that required parking for uses in the RMF Zone must be located on the site of the use. The applicant has argued that it has the required amount of parking on site but this is additional parking that will be accessory to the use but which is located one parcel away. Required parking in RHD (Residential High Density) zones or in office zones can be located up to 400 feet away.

Weaving all of these code sections together, the Hearing Examiner cannot find that this remote lot meets the definition of a commercial parking lot under current regulations. It does not meet the definitions found SMC 17C.190 which are the only ones in the code.

It also, however, does not meet the definition of an accessory use. An accessory use is defined as use or activity which is a subordinate part of the primary use and which is clearly incidental to a primary use on a site. (Emphasis added). It is clear that parking for this medical office building is an accessory use to the primary use of the medical office use. It is also clear that accessory uses are to be located on site unless the code specifically states otherwise as it does for certain uses. A suggestion was made at the hearing on this matter that if the remote lot could be attached, even by a thin parcel of land to the main lot then it could be considered part of the site. If the applicant can accomplish this, then the remote lot can be used as part of this conditional use permit. Otherwise it appears that it is not permitted by current regulations.

2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property.

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings set forth in the Planning Services Staff Report Exhibit #1B, pages 4 and 5.

3. The proposal meets the concurrency requirements of Chapter 17D.010SMC.

Staff has circulated the application to all applicable City departments and agencies with jurisdiction and the only department that commented regarding concurrency was the Traffic Department. There were no other agency comments regarding the proposal not meeting concurrency requirements. The Transportation Department's comments have been addressed and incorporated into the MDNS which was issued under SEPA. That condition in the MDNS will become a condition of this approval.

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.

The property appears suitable for the proposed use. Some rock outcroppings will have to be removed but others will remain in place to act as a buffer between this use and the residential uses to the south. The site can be developed as proposed while still complying with all site development standards of the code such as setbacks, landscaping and overall site coverage. In fact, the applicant has stated that it intends to provide much more landscaping than required by the code. There was no evidence in the record that the site is unsuitable for the use and there was no evidence of natural, historic or cultural features onsite except for the rock outcroppings which would inhibit development.

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.

The proposal was analyzed by staff under the State Environmental Policy Act (SEPA). The only mitigating measure related to alleviating transportation impacts. The applicant will pay a fee and also dedicate a certain amount of frontage so that eventually, a center turn lane can be constructed on 29<sup>th</sup> Avenue to assist in mitigating some of the problems people have with accessing 29<sup>th</sup> Avenue from side streets such as Martin Street. The building will be constructed in such a way as to not impede the views of the residences to the south while at the same time shielding some of the noise from 29<sup>th</sup> Avenue from those residences. This site will have sufficient parking and landscaping and will comply with all of the City's development standards. No evidence was presented regarding significant adverse impacts on the use of neighboring properties, that won't be addressed and mitigated.

### **DECISION**

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed conditional use permit subject to the following conditions:

1. Approval is for a conditional use permit for a medical office on the subject site. The site is to be developed substantially in accordance with the site plan submitted which is in the record as Exhibit #A5, page 4. The location of the building, landscaping and parking shall be substantially as set forth on that site plan. If changes are purposed to the site plan, they shall be submitted to Planning Services for review and approval. If Planning Services deems that any proposed changes are substantial, the proposed changes shall be submitted to the City Hearing Examiner for review and approval.

This conditional use permit does not allow the remote lot on the southwest corner of 29<sup>th</sup> Avenue and Martin Street to be used for parking. If, however, the applicant is able to attach that lot in some fashion to the primary lot then it is also approved for staff parking as proposed in the application.

2. The applicant shall complete a boundary line adjustment to aggregate all separate parcels prior to receiving any building permits.

3. All parking areas must be hard surfaced. All lighting will be down shielded. All broken, heaved or sunken sidewalks adjacent to the site shall be replaced to City standards whether existing or caused during construction. New sidewalks are to be installed on 29<sup>th</sup> Avenue if not pre-existing.

4. All surface drainage must be disposed of on-site in accordance with the City's stormwater regulations. Any required landscaping cannot impede or encroach with the drainage design. All surface drainage controls proposed must be approved by Engineering Services at the time of building permit issuance.

5. The applicant shall comply with the condition in the Mitigation Determination of Nonsignificance. That condition is:

*"The owner will donate 7.5 feet of right-a-way along his entire frontage that will be deeded to the City of Spokane for street and roadway purposes and in addition, pay the City at the time of building permit issuance the cost for constructing the required widening along the frontage. The cost of the widening will be \$43,584.00, based on the estimate contained within the memo dated December 7, 2007."*

6. Any signage must comply with SMC 11.17 – Sign Code.

7. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the Uniform Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.

8. Spokane Municipal Code section 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.

9. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

## COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

10. 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 filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 20th day of February 2008.

  
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Greg Smith  
City of Spokane Hearing Examiner

## NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions by the Hearing Examiner regarding conditional use permits are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE DECISION SET OUT ABOVE.** The date of the decision is the 20th day of February 2008. **THE DATE OF THE LAST DAY TO APPEAL IS THE 12th DAY OF MARCH 2008 AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.