

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Appeal by William H. Davis, et al ) FINDINGS, CONCLUSIONS AND  
of a decision by the Planning ) DECISION  
Director Approving an Administrative )  
Conditional Use Permit for Cottage )  
Housing ) FILE NO. Z2009-12-AP  
) (Z2009-012-CUP2)

**SUMMARY OF APPEAL AND DECISION**

**Summary of Appeal:** The appellants filed an appeal of a decision by the Planning Director approving a conditional use permit for cottage housing on the City's south side.

**Decision:** The decision of the Planning Director is upheld.

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

**Appellant:** William H. Davis, et al (a list of all appellants is in the record as Exhibit #1)  
3515 South Altamont Street  
Spokane, WA 99223

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

**Respondent:** Dave Compton, Current Planning  
City of Spokane Planning Services Department  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

**Applicant:** Konstantin Vasilenko  
P.O. Box 6678  
Spokane, WA 99217

**Represented by:** Steve Peterson  
Box 682  
Liberty Lake, WA 99019

Chris Morlan, Architect  
325 West 1<sup>st</sup> Avenue  
Spokane, WA 99021

J. Steve Jolley, Attorney at Law  
Herman, Herman & Jolley, P.S.  
12340 East Valleyway  
Spokane Valley, WA 99216

**Authorizing Ordinances:** SMC 17C.110, Table 17C.110-1, Table 17C.110-2, 17C.110.350,  
17G.050.320, 17G.060 and 17G.060.170

**Zoning:** RSF (Residential Single Family)

**Comprehensive Plan Land Use Designation:** The property is designated as Residential 4-10 on the City's 2001 Comprehensive Plan.

**Date of Decision being Appealed:** May 8, 2009

**Date of Appeal:** May 22, 2009

**Hearing Date:** June 25, 2009 (The record remained open until July 1, 2009, to allow for the submission of additional materials.)

**Testimony:**

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

Jim Bethin  
2521 East 35<sup>th</sup> Avenue  
Spokane, WA 99223

Dean Fowler  
2607 East 35<sup>th</sup> Avenue  
Spokane, WA 99223

Linda Chernikov  
3616 South Cook Street  
Spokane, WA 99223

Natalie Hilderbrand  
2524 East 35<sup>th</sup> Avenue  
Spokane, WA 99223

Mary Prince  
3615 South Cook Street  
Spokane, WA 99223

Steve Peterson  
Box 682  
Liberty Lake, WA 99019

Konstantin Vasilenko  
P.O. Box 6678  
Spokane, WA 99217

James Sakamoto, Engineering Services  
City of Spokane  
808 West Spokane Boulevard  
Spokane, WA 99201

Dave Compton, Current Planning  
City of Spokane  
808 West Spokane Boulevard  
Spokane, WA 99201

Melora Sharts, Community Development  
City of Spokane  
808 West Spokane Boulevard  
Spokane, WA 99201

**Exhibits:**

1. Application for Appeal
2. Appellant's submittals
  - 2A Dwight Hume
  - 2B Jim and Nancy Bethin
  - 2C Flora J. Goldstein
  - 2D Natalie A. (Klemme) Hilderbrand
  - 2E Dean Fowler and Rebecca Smith

- 2F Susie Mason Klemme
- 3. Applicant's submittals
  - 3A Christopher Morlan, Architect
  - 3B J. Steve Jolley, Attorney at Law
- 4. Letter dated 06-02-09 to William Davis et al and Dave Compton from Hearing Examiner
  - re: setting date of appeal hearing
- 5. Email dated 07-02-09 to/from Dwight Hume and Hearing Examiner's Office
  - re: response inquiry
- 6. Staff Report
- 7. General Application
- 8. Site Plans
- 9. Supplemental Application for Administrative CUP and Environmental Checklist, Original and Updated SEPA
- 10. Predevelopment Meeting Summary
- 11. Comments by City Departments and Outside Agencies
- 12. Written Narrative and Property Research Package
- 13. Additional Application Information: Certificate Of Approval Of Boundary Line Adjustment, Trip Distribution Letter, Geotechnical Evaluation, Supplemental Geotechnical Evaluation (Groundwater Mounding Analysis)
- 14. Notifications, Parcel List, Notification Affidavits
- 15. Correspondence
- 16. Correspondence in opposition to project
- 17. Administrative Preparation Checklist

### **FINDINGS AND CONCLUSIONS**

In a decision dated May 8, 2009, David Compton, City Planner (hereinafter "Decisionmaker") granted an administrative conditional use permit to Konstantin Vasilenko (hereinafter "Applicant") for a 24 unit cottage housing development on property located at 3405 and 3431 South Cook Street in the City of Spokane, Washington. The administrative conditional use permit is a Type II permit which can be issued administratively by the Planning Department rather than by the Hearing Examiner after a public hearing. The project is to be located on two separate parcels with each parcel being approximately one acre in area and each parcel to contain 12 cottage style housing units. Cottage style housing is a new type of housing which has been added to the City's most recent Residential Zoning Regulations update. See generally SMC 17C.110.350.

After that decision was issued, a timely appeal was filed by William Davis and several others (hereinafter "Appellants"). Appeals of Type II project permit decisions are to the Hearing Examiner pursuant to SMC 17G.060.210. A hearing was held on the appeal on June 25, 2009, in the City Council Chambers, Lower Level of Spokane's City Hall. At that time testimony was taken and exhibits were entered into the record. Because the Appellants offered new written evidence at the hearing, the Hearing Examiner kept the record open until July 1, 2009 to allow the Applicant to respond to the submittal. Based upon the record, the testimony at the hearing and the appeal statements submitted by the Appellants, the Hearing Examiner by this decision makes the following findings and conclusions.

Review of an administrative decision by the Hearing Examiner is governed by SMC 17G.050.320. Subsections B and C of that section state:

*"B. The Hearing Examiner may affirm, modify, remand or reverse the decision being appealed. In considering the appeal, the Examiner must act in a manner that is consistent with the criteria for the appropriate category of action being appealed.*

*C. The original decision being appealed is presumptively correct. The burden of persuasion is upon the appellant to show that the original decision was in error and relief sought in the appeal should be granted."*

Many issues were raised by the Appellants regarding the site itself and whether or not it qualified for 24 cottage housing units. The site originally was comprised of five lots. The City approved a Boundary Line Adjustment which divided the site into three lots. Two of the three new lots are to be used for the cottage housing development. Each of those two new lots contains approximately one acre in area.

Appellants contend that the boundary line adjustment created lots which are of a size not allowed in the RSF zone; that the ordinance limits cottage housing to 12 units and therefore allowing 24 units on these two sites is improper and that the various easements and reservations of property within the site by the City of Spokane make the site development impossible. The Hearing Examiner disagrees that lots of this size cannot be created by a Boundary Line Adjustment. A Boundary Line Adjustment is an exception to the usual method of subdividing land via a plat. A Boundary Line Adjustment is defined in the code as:

*"Boundary Line Adjustment.*

*A division made for the purpose of adjusting boundary lines which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimensions to meet minimum requirements for width and area for building site."*

This Boundary Line Adjustment meets the definition as set forth above. It does not create additional lots and none of the lots are of insufficient area to meet minimum requirements. Further, SMC 17C.110.350 specifically allows cottage housing developments in the RSF zone on sites of one-half acre or larger. That code section contemplates, therefore, that sites of a half-acre or larger will be used for this type of development. As to density, the code allows each cottage housing development to have a maximum of 12 units but that pertains to each site. There are no separation requirements in the code for different cottage housing developments so there is nothing which prevents two cottage housing developments from being side by side. These two developments are on separate sites and would be allowed if separate owners chose to develop them. The fact that they have a common access point and some common amenities and utilities does not limit each site from being developed with cottage housing. They have street frontage on Southeast Boulevard, but the City will not allow them to access to that street.

Appellants contend that pursuant to SMC 17C.110.205, drainage structures are to be excluded from net area for the determination of density allowed on site. There are no dedicated

tracts for drainage within these two sites, but if the Planning Department upon review determines that drainage areas are to be excluded from net density then the density of the project may have to be reduced. Another assertion made by Appellants was that the transitional lot size requirements of 17C.110.200 should apply because of the size of these two combined sites. In the code section related to cottage housing, SMC 17C.110.350 D3, it specifically states that the transition lot size requirements of that section do not apply.

Appellants also contend that the development plan cannot be accomplished as presented due to reservations of land and easements on behalf of the City when 34<sup>th</sup> Avenue was vacated through the middle of the site and Southeast Boulevard was extended along the north boundary. When that occurred, the City retained an easement in vacated 34<sup>th</sup> Avenue to allow for utilities, specifically cable service. They also retained certain right-of-way adjacent to Southeast Boulevard and for a cul-de-sac in Cook Street. The only one of these reservations which appears to affect the development is the easement in 34<sup>th</sup> Avenue for the cable service. This is an issue for the Applicant to negotiate with the cable company but testimony at the hearing by a representative of the City's Engineering Services Department was that these reservations on the title by the City would not adversely affect the development of the property. If the reservation of right-of-way by the City adjacent to Southeast Boulevard affects the overall size of the site then density may also have to be recalculated.

The Appellants have also argued that the development of the site with cottage housing will create traffic problems in the neighborhood and overflow on-street parking problems. The cottage housing regulations of the zoning code require that a certain amount of parking be developed on site and the Applicant will have to comply with those requirements. Also, the Applicant's traffic engineer submitted a trip generation letter which was accepted by the City's Traffic Department. That trip generation letter noted that the development of the two sites as planned would generate approximately 11, a.m. peak hour trips and 12, p.m. peak hour trips. The Transportation Department was satisfied that the surrounding streets could accommodate that additional traffic and that the number of additional trips would not have a significant impact on traffic in the neighborhood. No testimony was offered by any other traffic experts to refute that claim.

The Appellants also argue that the cottage housing is incompatible with their neighborhood and that it will have an adverse affect on property values. No evidence was submitted to show that there will be any adverse effects on property values, however. By allowing the development of cottage housing in RFS zones, the City Council, through the zoning code has determined that it is a compatible use and appropriate for that zone. The code states that the intent is to support a diversity of housing and increase the variety of housing types for smaller households within existing neighborhoods. While the houses are smaller than most of the homes to the south they are also detached single-family dwelling units.

Other arguments set forth by the Appellants relate to some of the details of the project, i.e. whether there is sufficient landscaping, open space, drainage, and whether or not legal descriptions are correct. As building permits and other permits are applied for, more specific materials and studies may have to be presented to the City. In any case, the Applicant will have to comply with all of the Cottage Housing Site Development Standards set forth in SMC 17C.110.350. This includes the requirement that the proposal go through the design review process.

Applying the presumption of validity to the Planning Department's decision, as the Hearing Examiner must do under the Code, the Hearing Examiner cannot find that the Planning Director's decision approving this cottage housing proposal was in error. The Applicant will have to comply with all requirements of the Cottage Housing Ordinance including the requirement to submit to the review by the Design Review Committee and also the Applicant will have to comply with all of the recommended conditions of approval set forth in the Decisionmaker's conditional use permit approval.

### **DECISION**

Based on the Findings and Conclusions above, it is the decision of the Hearing Examiner to uphold the approval of the administrative conditional use permit for this proposal. The Applicant must comply with the conditions of approval set forth in the Planning Department's decision and with the requirements of the Cottage Housing section of the Zoning Code.

DATED this 9th day of July 2009

  
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Grég 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 administrative appeals 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 9th day of July 2009. **THE DATE OF THE LAST DAY TO APPEAL IS THE 30<sup>th</sup> DAY OF JULY 2009.**

In addition to paying any Court costs to appeal the decision, you may be required to pay 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.