

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Conditional Use Permit and Variance ) FINDINGS, CONCLUSIONS,  
Application by Felice Law Offices, P.S. ) AND DECISION  
for property located at 2425 West )  
Pacific Avenue ) FILE NO. Z2010-04-CUP3/VAR

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The applicant seeks a conditional use permit and variance to allow an office use in an existing multifamily home at 2425 West Pacific Avenue.

**Decision:** Denial of the application.

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

**Applicant:** Felice Law Offices, P.S.  
225 West Main Avenue, Suite 100  
Spokane, WA 99201

**Represented by:** Stacy Bjordahl, Attorney at Law  
Parsons/Burnett/Bjordahl, LLP  
505 West Riverside Avenue, Suite 500  
Spokane, WA 99201

**Property Address:** 2425 West Pacific Avenue in the City of Spokane, Washington.

**Property Location:** The property is located on the south side of Pacific Avenue at its intersection with Coeur d'Alene Street in the City of Spokane Washington.

**Legal Description:** The property that is the subject of this application is a condominium building. There are three condominium units in this building and the applicant seeks the office use in the Robbins House Condominium Unit 1, and undivided interest in the common area. The Assessor's parcel number is 25242.2501.

**Zoning:** The property is zoned RHD-35 (Residential High Density with a 35-foot height limit).

**Comprehensive Plan Map Designation:** The property is designated Residential with a minimum of 15 units per acre in the City's 2001 Comprehensive Plan.

**Site Description:** The site contains approximately 14,310 square feet and is developed

with an existing building containing three condominium units. On the south side of the building there is a parking area and garages to serve the property. They are accessed from Coeur d'Alene Street which adjoins the property on the west. The home was built in 1898 and is part of the Brown's Addition National Historic District.

**Surrounding Conditions:** The property surrounding is all zoned RHD-35, the same as the subject site. There are no offices adjacent to or near this proposal. Most of the surrounding properties have been developed with large older homes which are part of the Brown's Addition Historic District. Some of those old homes have been converted to apartments and condominiums while others have remained single family residential. Across Coeur d'Alene Street to the west is a large complex which was developed as apartments but has since been converted to condominiums. The site has access to the City street system from Pacific Avenue and Coeur d'Alene Street both of which are designated as local access streets on the City's Arterial Street Plan.

**Project Description:** This building has three condominium units within it. The applicant seeks approval of an office use for the largest condominium located on the main floor. The applicant seeks to turn the office into a law practice for no more than four fulltime employees. The site has sufficient parking for such a use and additional parking for the other two condominium units. The applicant has stated that traffic generation is expected to be approximately 10 to 15 trips per day Monday through Friday.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code Sections 17A.020.220, 17C.110, Table 17C.110-1, 17C.110.110, 17C.320, 17C.320.080(J), 17G.060 and 17G.060.170.

**Hearing Date:** May 25, 2010

**Notices:** Mailed: December 11, 2009, and March 26, 2010  
Posted: December 15, 2009, and March 26, 2010

**Site Visit:** The Hearing Examiner has viewed this site on several occasions over the last few months.

**SEPA:** This proposal is categorically exempt under SEPA.

#### **Testimony:**

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

Dave Kokot  
City of Spokane Fire Department  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Stacy Bjordahl, Attorney at Law  
Parsons/Burnett/Bjordahl, LLP  
500 West Riverside Avenue, Suite 505  
Spokane, WA 99201

Roger Felice  
639 North Riverpoint Blvd #6E  
Spokane, WA 99202

Karl Fleming  
2424 West Pacific Avenue  
Spokane, WA 99201

Suzanne Fleming  
2424 West Pacific Avenue  
Spokane, WA 99201

Bryon Boughten  
2306 West Pacific Avenue, Unit D  
Spokane, WA 99201

James Cornwall  
2306 West Pacific Avenue, Unit C  
Spokane, WA 99201

Linda Kirkbride  
2417 West Pacific Avenue  
Spokane, WA 99201

**Exhibits:**

1. Planning Services Staff Reports
2. Application, including:
  - 2A General application
  - 2B Conditional use application
  - 2C Variance application
  - 2C Notification Map application
  - 2D Site Plan
3. Fire Department comments
4. Engineering Services comments
5. Traffic Engineering comments
6. Spokane Regional Clean Air Agency comments
7. Spokane Tribe of Indians comments
8. Northwest Pipeline comments
9. Notice map with parcel listing
10. Address listing
11. Legal description and plan
12. Notices
13. Affidavit of mailing December 11, 2009, and March 26, 2010
14. Affidavit of posting December 15, 2009, and March 26, 2010
15. SEPA Exemption
16. Environmental Checklist
17. Community Meeting sign in sheet
18. Community Meeting minutes
19. Hearing File Preparation Checklist
20. Letter dated 12-07-09 to Stacy Bjordahl from Dave Compton  
re: community meeting instructions

21. Emails dated 01-12-10 to Dave Compton/Staff from Stacy Bjordahl  
re: fee schedule
22. Letter dated 02-04-10 to Interested Parties from Dave Compton  
re: requesting comments
23. Letter dated 03-09-10 to Stacy Bjordahl from Dave Compton  
re: notice of application instructions
24. Letter dated 04-15-10 to Stacy Bjordahl from Dave Compton  
re: notice of public hearing instructions
25. Public comment received in opposition to proposal.
  - 25A Bryan Boughten
  - 25B Micah Colby, President of Board, The Ridge Condominium Owner's Association
  - 25C James Cornwall
  - 25D Karl Fleming
  - 25E Suzanne Fleming
  - 25F Charlie and Linda Kirkbride
  - 25G Con and Leanah Schaulau
  - 25H Maxine Terhaar
- A. Items submitted at the hearing.
  - A-1 Memorandum in support of application, submitted by the applicant

### **FINDINGS AND CONCLUSIONS**

To be approved, the proposed conditional use permit and variance 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 variance 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.

This property is zoned RHD-35. Offices uses are permitted in the RHD Zone with a Type III Conditional Use Permit (CUP) pursuant to SMC 17C.110.110. Before the Hearing Examiner can approve a CUP for an office use in an RHD zone, however, the Hearing Examiner must find that the proposal complies with the criteria in SMC 17C.320.080(J). In this case, the applicant's proposal does not comply with those criteria because it does not have frontage on a principal arterial as required, nor is it adjacent to or immediately across the street from an existing commercial zone. When the City adopted its new residential zoning regulations under growth management, those conditions were placed by the City Council on any approval for office uses in the Residential Medium Density or the Residential High Density zones. The Hearing Examiner lacks authority to override those requirements.

The applicant seeks to have the requirements set aside through the variance procedure. A variance is defined in SMC 17A.020.220 as:

*Variance.*

*A grant of relief from the requirements of this chapter that permits construction in a manner that would otherwise be prohibited by Title 17 SMC.*

A variance is a device that allows relief from a dimensional requirement such as a set-back because of unique characteristics of the piece of property the applicant owns which would make development impossible or create a hardship. It cannot be used to establish a use which is not otherwise allowed in the zone. SMC 17G.060.170(E) (1) (e) states:

*No variance may be granted to allow or establish a use that is not allowed in the underlying districts as a permitted use or to modify or vary a standard or requirement of an overlay zone, unless the specific provisions allow a variance.*

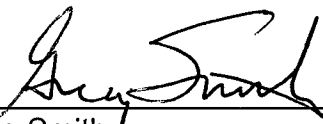
In this case, if the Hearing Examiner were to override the requirements for a CUP in the RHD zone, it would be allowing a use that would not otherwise be permitted. It's clear that use variances are not allowed either by the City or by the Courts of Washington State. They are considered de facto zone changes and must be approved by the legislative body. Since the legislative body adopted the requirements and conditions under which a CUP could be used to allow an office use in a residential zone, the Hearing Examiner is bound by those requirements and lacks authority to vary them.

In addition to the above findings the Hearing Examiner hereby adopts and incorporates the findings on this proposal set forth in the Planning Services Staff Report, Exhibit #1, pages 3-10.

**DECISION**

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to deny the application for the CUP and variance.

DATED this 9th day of June 2010.

  
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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 9th day of June 2010. **THE DATE OF THE LAST DAY TO APPEAL IS THE 30th DAY OF JUNE 2010 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.