

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Substantial Development) FINDINGS, CONCLUSIONS,
Conditional Use Permit Application by) AND DECISION
MGD@GU, LLC for property located)
at 722 North Superior Street)
) FILE NO. Z2010-01-SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks a shoreline substantial development conditional use permit in order to allow the construction of a three-story, 15,000 square foot office building, associated site improvements with a coffee shop/restaurant.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: MGD@GU, LLC
P.O. Box 18567
Spokane, WA 99228

Represented by: Nystrom Olson Collins
912 West Sprague Avenue
Spokane, WA 99201

Property Address: 722 North Superior Street in the City and County of Spokane, Washington

Property Location: The property is located on the east side of Superior Street just north of its intersection with Springfield Avenue, the Spokane River lies immediately to the east in the City of Spokane, Washington.

Legal Description: A full legal description is in the record on the face of the General Application which is Exhibit #2A.

Zoning: CC1-DC (Centers and Corridors, Type1, District Center).

Comprehensive Plan Map Designation: CC Core, which is Centers and Corridors Core in the City's Comprehensive Land Use Plan.

Site Description: The site irregular in shape and contains approximately 43, 560 square feet in area. Most of the site is relatively flat but on the east side it slopes down to the Spokane River. There is a gravel pathway along the Spokane River bank and the rest of the site has been developed as a parking lot. The parking lot has swales and is developed with some trees and other landscaping. There is natural vegetation along the Spokane River bank.

Surrounding Conditions: To the east is the Spokane River and across the river there are condominiums and an office park. To the north is the Centennial Trail and the property is owned by the City of Spokane. To the west and south the uses are listed as wholesale, manufacturing, and some office uses. Properties to the northwest and west are zoned GC-150 (General Commercial with a height limit of 150 feet) and the properties to the south are zoned CC1-DC, the same as the subject site.

Project Description: The applicant seeks a Shoreline Conditional Use Permit in order to develop a three-story, 15,000 square foot office building with associated parking and other required site improvements, such as landscaping. There is also a plan to include a restaurant or coffee shop within the building. In addition, the gravel trail along the Spokane River bank will remain and be open to the public. The proposed site plan for this proposal is in the record as Exhibit #2F.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 11.15, 11.15.054, 11.15.190, 11.15.380, 17C.122, 17G.060.170, and Shoreline Master Program Regulations set forth in the 1982 Supplement Chapter 13.05 and 13.12

Hearing Date: July 22, 2010 (The record remained open until August 19, 2010, due to an error in computing the comment period for the Mitigated Determination of Nonsignificance).

Notices: Mailed: November 9, 2009, and July 6, 2010
Posted: November 9, 2009, and July 6, 2010

Site Visit: July 21, 2010.

SEPA: A Mitigated Determination of Nonsignificance was issued by the City on July 7, 2010. It was re-circulated after the public hearing and finalized on August 19, 2010.

Testimony:

Marla French
City of Spokane, Current Planning
808 West Spokane Boulevard
Spokane, WA 99201

Shane Mercier
Nystrom Olson Collins
912 West Sprague Avenue
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Reports
2. Application, including:
 - 2A General application
 - 2B Conditional use application
 - 2C Floodplain Development permit application
 - 2D Notification Map application
 - 2E Joint Aquatic Resources Permit application (JARPA)
 - 2F Site Plans
 - 2G Critical Areas Assessment checklist
 - 2H Counter complete checklist
3. Pre-Development Conference notes
4. Fire Department comments
5. Engineering Services comments
6. Traffic Engineering comments
 - 6A Trip generation report dated 09-30-09
 - 6B Revised trip generation report dated 03-08-10
 - 6C Correspondence related to the above
7. Design Review comments
8. Spokane Tribe of Indians comments
9. Department of Ecology comments
10. Spokane Regional Clean Air Agency comments
11. Notice map with parcel listing
12. Notices
13. Affidavit of mailing November 9, 2009, and July 6, 2010
14. Affidavit of posting November 9, 2009, and July 6, 2010
15. Affidavit of sign removal December 12, 2009
16. SEPA Mitigated Determination of Nonsignificance
17. Environmental checklist
18. Habitat Management Plan
19. Community Meeting sign in sheet
20. Community Meeting minutes
21. Hearing File Preparation Checklist
22. Letter dated 01-22-10 to Interested Parties from Nikole Coleman
re: requesting comments
23. Letter dated 05-03-10 to Shane Mercier from Nikole Coleman
re: notice of application instructions
24. Letter dated 07-02-10 to Shane Mercier from Nikole Coleman
re: notice of SEPA Mitigated DNS and notice for public hearing instructions

25. Email dated 07-07-10 to Department of Ecology from Marla French
re: SEPA Checklist and MDNS
26. Email dated 07-23-10 to/from Hearing Examiner and Marla French
re: MDNS comment period

FINDINGS AND CONCLUSIONS

To be approved, the proposed shoreline 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 application 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.

Staff has analyzed the proposal's consistency under the provisions of the land use codes and the Shoreline Master Program Regulations and found that the proposal is consistent with those regulations and therefore allowed by the land use codes. The Hearing Examiner agrees and hereby adopts and incorporates the staff's analysis as set forth in the Planning Services Staff report Exhibit #1, Pages 3, 4 and 5.

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 as set forth in the Planning Services Staff report Exhibit #1, Page 5.

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

The proposal was circulated amongst all City departments and agencies with jurisdiction over land development and the only department that had concerns was Traffic Engineering. They had concerns regarding the Hamilton Street Corridor Safety Improvement project. Their concerns were addressed in the MDNS by requiring the applicant to contribute to that project through voluntary fees. Sewer and water is available to service the site and certain other departmental requirements will have to be satisfied during the building permit stage but the applicant has agreed to do so. Therefore, this criterion has been met.

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 site appears suitable for the proposed office building and associated parking. There is nothing about the size, topography or soils which would limit development and there was no evidence presented of the existence of ground or surface water on site or of any natural, historic or cultural features which would inhibit the development of the applicant's office building. If items of cultural significance are found during construction, the Tribes and appropriate agencies must be notified. Therefore, this criterion has been met.

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 or neighboring property or the surrounding area, considering the design and intensity of the proposed use.

The proposal was analyzed under the State Environmental Policy Act and no significant adverse impacts were noted. The City issued a Mitigated Determination of Nonsignificance (MDNS) which will require contributions by the applicant to a street improvement project. Other than that, no other significant impacts on the environment or surrounding properties were noted in the record.

6. For shoreline conditional use permits the following additional criteria apply:

a. The proposed use will not interfere with the normal public use of the shorelines;

The public has access to the Spokane River at this point because there is a gravel trail along the river bank which connects the Centennial Trail to areas south of the site. The applicant has agreed to retain that trail and leave it open to the public.

b. The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program;

The property is zoned for offices uses and they are allowed in the Shoreline Master Program by conditional use. Most of the adjacent areas have been developed with office or other commercial type uses and there are no other conditional use permits proposed at this time for this area. The property to the north is owned by the City and is unlikely to be developed and the properties to the south, along the Spokane River, are already fully developed. No evidence was presented to demonstrate that the granting of this conditional use permit would in any way preclude achieving the goals of the Shoreline Master Program.

DECISION

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

1. Approval is for a shoreline substantial development conditional use permit to allow the construction of a three-story 15,000 square foot office building on site. The proposal is to be developed substantially in accordance with the plans and application on file which are in the record as Exhibit #'s 2A through 2G. Any proposed changes to the plans are to be submitted to Planning Services for review and approval. If Planning Services determines those proposed changes to be substantial, then they will be forwarded to the Hearing Examiner for review and approval.
2. The applicant shall use its best efforts to incorporate a water oriented use, such as a restaurant or coffee shop in the building.
3. The applicant shall comply with the mitigating measures in the Mitigated Determination of Nonsignificance issued by the City.
4. Compliance with SMC 17D.060 "Storm-water Facilities" for storm-water is required and will be reviewed during the Construction Permit process by Engineering Services.
5. The applicant shall comply with the requirements of the City's Fire department which are in the record as Exhibit #4.
6. The applicant shall comply with the recommendations of the Design Review Board and with the Habitat Management Plan.
7. This approval does not waive the applicant's obligation to comply with all other requirements of the Spokane Municipal Code as well as requirements of City Departments and outside agencies with jurisdiction over land development.
8. Spokane Municipal Code 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 23rd day of August 2010.

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 of the Hearing Examiner regarding shoreline conditional use permits are reviewed by the Washington State Department of Ecology. After review, they may be appealed to the Washington State Shoreline Hearings Board. **All appeals must be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date of the Ecology decision.**