

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Appeal by Grocery Boys of a ) FINDINGS, CONCLUSIONS AND  
decision by the Planning Director ) DECISION  
relating to a car wash. )  
 ) FILE NO. Z1100007-AP

**SUMMARY OF APPEAL AND DECISION**

**Summary of Appeal:** The appellants have filed an appeal of a decision by the City's Planning Director determining that the City's zoning code does not permit a car wash on the appellant's property.

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

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

**Appellant:** Jasbir Thabel dba Grocery Boys  
3408 North Crestline St.  
Spokane, WA 99207

**Represented by:** Palul Calabro, Attorney at Law  
Paul Lawrence Law, PLLC  
1201 North Ash St, Suite 200  
Spokane, WA 99207

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

**Respondent:** Jo Anne Wright, Acting Planning Director  
City of Spokane Planning Services Department  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

**Represented by:** James Richman, Attorney at Law  
City of Spokane, Legal Department  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

**Authorizing Ordinances:** SMC Table 17C.120-1, SMC 17C.120.290, 17C.190.260, 17C.210  
17G.050, 17G.050.320, 17G.060.

**Zoning:** The zoning is NR-35 (Neighborhood Retail).

**Comprehensive Plan Land Use Designation:** The property is designated as Neighborhood Retail in the City's 2001 Comprehensive Plan.

**Date of Decision being Appealed:** February 24, 2011

**Date of Appeal:** March 7, 2011

**Hearing Date:** May 19, 2011

**Testimony:**

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

Paul L. Calabro, Attorney at Law  
Paul Lawrence Law, PLLC  
1201 North Ash Street, Suite 200  
Spokane, WA 99207

James Richman, Attorney at Law  
City of Spokane, Legal Department  
808 West Spokane Falls Blvd.  
Spokane, WA 99201

Dave Compton  
City of Spokane, Current Planning  
808 West Spokane Falls Blvd.  
Spokane, WA 99201

Jim Haines  
James Architectural Services  
336 South Sherman  
Spokane, WA 99202

**Exhibits:**

1. Application for Appeal
  2. Pre-Development Conference Notes
  3. Letter dated 02-24-11 to Jasbir Thabel and Jim Haines from Jo Anne Wright
  4. SMC 17B.010.010
  5. Appellant's Memorandum in Support of Appeal, with supporting documents
  6. City's Pre-Hearing Response to the Appeal
  7. Correspondence to/from Hearing Examiner's Office to Parties regarding setting Hearing Date
- A Exhibits received at the hearing
- A-1 Memo dated 01-03-11 from Kristen Griffin to Connect Realty
  - A-2 Application for Certificate of Appropriateness for the Spokane Register of Historical Places for address 3402 North Crestline Street.
  - A-3 Emails dated 02-21-11 from Kristen Griffin to Dave Compton and from Dave Compton to Jim Haines
  - A-4 Letter dated 02-24-11 to Jasbir Thabel and Jim Haines from Jo Anne Wright
  - A-5 Real Estate Addendum dated 06-29-10
  - A-6 Spokane City-County Historic Preservation Office Commercial and Residential Demolition Permit Review dated 03-07-11
  - A-7 Demolition Permit #B1014442DEMO

## FINDINGS AND CONCLUSIONS

In a decision dated February 24, 2011, Jo Anne Wright, the City's Acting Planning Director, (hereinafter "Director") sent a letter to Mr. Jasbir Thabel doing business at 3408 North Crestline Street in Spokane and his architect Mr. Jim Haines c/o James Architectural Services, 336 South Sherman Street, Spokane, WA 99202. The letter was an administrative zoning decision regarding a proposed carwash at 3430 North Crestline Street. The letter stated that the carwash could not be established at that site due to the fact that the site had been down zoned to Neighborhood Retail and Neighborhood Retail zoning does not allow a use such as a carwash, which is categorized as a "Quick Vehicle Servicing" use unless the use is on a principal arterial street. This site is currently occupied by a gas station and small grocery store.

After the Director's decision was issued, a timely appeal was filed by Paul Calabro, Attorney at Law of Paul Lawrence Law PLLC, on behalf of Jasbir Thabel (hereinafter "Appellants"). A hearing was held on the appeal on May 19, 2011, in the City Council Briefing Center on the Lower Level of Spokane City Hall. At that time testimony and arguments were presented and exhibits were entered into the record. The Appellants were represented by Paul Calabro, and Stacy Bjordahl, Attorneys at Law. The City was represented by James Richman, Attorney at Law. Based upon the record, the testimony at the hearing and the appeal statements submitted by the Appellants with responses by the City, 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."*

The Director's decision determined that the carwash at this location did not comply with current zoning regulations. As stated in the decision, the site is zoned NR-35. The appellants have a gas station/grocery store at this location currently. They purchased a building on the adjacent lot and had the building demolished. Their plan was to establish a carwash on that additional lot.

Under SMC 17C.190.260, a carwash is categorized as "Quick Vehicle Servicing". Under SMC Table 17C.120-1 "Quick Vehicle Servicing" is listed as a use that is allowed in the NR-35 zone but with the limitation that such uses are permitted only on sites that have frontage on a principal arterial street. There are other standards also. The site is on Crestline Street which is classified only as a minor arterial under SMC 12.08.040 and therefore the addition of the carwash does not meet the requirements of the zoning regulations.

In describing the Neighborhood Retail Designation, the City's Comprehensive Plan states:

*“Drive through facilities including gas stations and similar auto oriented uses tend to provide services to people who live outside the surrounding neighborhood and should be allowed only along principal arterials.”*

This rule was obviously incorporated into the City’s Development Regulations. It applies to both Drive Through Facilities and Quick Vehicle Servicing. See SMC 17C.120.290. That means that the gas station at this location is now a nonconforming use. Nonconforming uses are regulated by SMC Chapter 17C.210. The Hearing Examiner finds that the addition of this carwash on an additional adjacent lot would constitute an enlargement of a nonconforming use. Enlargement of nonconforming uses is covered by SMC 17C.210.050. Subsections A and B of that section reads:

*“A. A person may not enlarge or expand a nonconforming use onto another lot except as provided in this section.*

*B. A nonconforming use in a CC-2, CBD, CB, GC or less restrictive zone may be enlarged onto land in the same ownership which is partly occupied by the nonconforming use and which is in a CC-2, CBD, CB, GC or less restrictive zone. A nonconforming use in a GC, C, or Industrial zone, except the use restricted in the HI zone, may be enlarged onto an adjoining lot in a GC, CB or LI zone.”*

In this case the Appellant's intended to expand a nonconforming use onto another lot. They are in the NR-35 zone and that is not one of the zones listed in the ordinance nor is it less restrictive.

While the department may have committed some error in allowing this application to continue through the process, the State Supreme Court has held that the duty to comply with building and land use codes lies within individual permit applicants, builders, and developers rather than local governments. *Heller Building, LLC v City of Bellevue, 147 Wn App 46, 61 (2008)*. The ordinances and therefore the rules are available to the applicant as well as to City staff.

### **DECISION**

Based upon the findings and conclusions above, as well as the fact that the Director’s decision is presumptively correct, the Hearing Examiner finds that the Planning Director’s decision was correct and therefore should stand.

DATED this 15th day of June 2011

  
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 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 15th day of June 2011. **THE DATE OF THE LAST DAY TO APPEAL IS THE 6<sup>th</sup> DAY OF JULY 2011.**

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.