

CITY OF SPOKANE HEARING EXAMINER

Re: Variance Application by the Spokane) FINDINGS, CONCLUSIONS,
Regional Emergency Communication) AND DECISION
System for property located at)
4390 W. West Drive.)
) FILE NO. Z1100023-VAR

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks a variance to have relief on some unified code development requirements designed for wireless communication facilities. The applicant has an existing emergency communications tower on site and seeks a variance to change the landscaping and screening requirements.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Spokane Regional Emergency Communication System
c/o Madeline Chaney
425 Pontius Avenue North, Ste 200
Seattle, WA 98109

Property Address: 4390 W. West Drive in the City of Spokane, Washington

Property Location: The property is located west of Canyon Drive, south of W. West Drive and east of West Cliff Place in the City and County of Spokane, Washington.

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

Zoning: RSF (Residential Single-family)

Comprehensive Plan Map Designation: The property is designated Residential 4-10 in the City's 2001 Comprehensive Plan.

Site Description: The site is irregular in shape and contains approximately 16 acres. It is owned by the City of Spokane. The location of the proposed cell tower upgrade is reasonably flat but the total site has several slopes that are up to or over 30%, mostly on

the north boundary. There are also many rock outcroppings located within 20 feet of the proposal to the south. On site there are two existing City water tanks with the closest being approximately 25 feet away from the communication tower compound. There is a gravel driveway to access the uses on site and that driveway extends from Canyon Drive.

Surrounding Conditions: There is single family residential zoning bordering the site on all sides except to the south where it is RHD-35 (Residential High Density with a 35-foot height limit). There are apartment buildings located in that area. Apartment buildings are located to the south of the site and there are single family residential uses to the east and to the west. To the north is the Indian Canyon Golf Course which is a City of Spokane municipal course.

Project Description: The applicant proposes to renovate an existing communication facility which is used as an emergency communication tower site for various law enforcement agencies and other emergency agencies. The plan is to renovate the existing facility by upgrading the radio and power backup systems. They will also replace an existing equipment shelter with a new 14-foot by 30-foot prefab equipment shelter. There will be an enlargement of the secured fenced area and an addition of a larger generator inside the shelter with a new propane fuel tank in the fenced area. New antennas will be added to the existing tower but the height of the tower will not be increased. It is currently 120-feet tall. Initially, the applicant sought a side yard setback variance because the new equipment shelter was to be only two feet from the property line instead of the required 5-feet. Because of changes in site design, the equipment shelter is now to be 6-feet 8-inches from the side yard setback so no variance of the setback is necessary. The applicant does, however, still seek a variance of the landscaping and screening requirements and the fencing requirements.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 17C.110, SMC Table 17C.110-1, Table 17C.110-3, 17C.355, 17G.050, 17G.060, and 17G.060.170.

Hearing Date: August 25, 2011

Notices: Mailed: April 29, June 24 and July 29, 2011
Posted: May 6, June 30 and August 9, 2011

Site Visit: None made.

SEPA: While the proposal appears to be categorically exempt under SEPA, the City issued a Determination of Nonsignificance (DNS) on July 18, 2011.

Testimony:

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

Madeline Chaney
425 Pontius Avenue North, Ste 200
Seattle, WA 98109

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Variance application
 - 2C Notification Map application
 - 2D FCC Radio Station Authorizations
 - 2E Site Plans
 - 2F Variance Counter Complete Checklist
3. Developer Services comments
4. Traffic Engineering comments
5. Spokane Regional Clean Air Agency comments
6. Spokane Tribe of Indians comments
7. Northwest Pipeline comments
8. Notice map with parcel listing and legal description
9. Notices
10. Affidavit of mailing 04-29, 06-24, and 07-29-11
11. Affidavit of posting 05-06, 06-30 and 08-09-11
12. SEPA Determination of Nonsignificance
13. Non-Ionizing Electromagnetic Exposure Analysis and Engineering Certification
14. Community Meeting sign in sheet
15. Community Meeting agenda
16. Hearing File Preparation Checklist
17. Email dated 01-05-11 to Dave Compton from Madeline Chaney
re: requirements for CUP
18. Letter dated 01-12-11 to Madeline Chaney from Dave Compton
re: community meeting instructions
19. Email dated 03-30-11 to Dave Compton from Madeline Chaney
re: notification map
20. Letter dated 04-06-11 to Planning Services department from City Administrator
re: authority to act as agent
21. Letter dated 05-23-11 to Interested Parties from Jo Anne Wright
re: requesting comments
22. Letter dated 06-16-11 to Madeline Chaney from Dave Compton
re: notice of application instructions

23. Letter dated 07-18-11 to Madeline Chaney from Dave Compton
re: notice of public hearing instructions
24. Email dated 08-26-11 to Dave Compton from Madeline Chaney
re: variance of the side setback is not required

FINDINGS AND CONCLUSIONS

To be approved, the proposed variance must comply with all of the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing Examiner has reviewed the proposed variance and the evidence of record with regard to this Section and makes the following Findings and Conclusions:

1. A variance or modification of the standard or requirement is not prohibited by the land use codes.

The municipal code prohibits variances to change the use of a site but allows variances in order to modify certain development code standards. In this case the applicant is seeking modifications to development code standards for landscaping and screening and for fencing of this wireless communication facility. There is nothing in the code that prohibits that type of variance from being granted.

2. No other procedure is provided in this chapter to vary or modify the standard or requirement, or compliance with such other procedure would be unduly burdensome.

There are no other procedures in the code that allow for a modification of these particular development standards. Therefore the applicant has satisfied this particular criterion.

3. Strict application of the standard or requirement would create an unnecessary hardship due to one or more of the reasons listed below. Mere economic hardship or self-created hardships are not considered hardships for the purposes of this section.

- a. The property cannot be developed to the extent similarly zoned property in the area can be developed because the physical characteristics of the land, the improvements, or uses located on the land do not allow such development.

The property is unique in that it is already fully developed with an emergency communications tower, an equipment shelter and two city water tanks. The applicant seeks to add more antennas to the existing tower and also replace the equipment shelter with a bigger equipment shelter. The City has developed new regulations regarding landscaping and fencing, which are designed to screen communication towers from surrounding residential properties. In this case, however, as stated in the applicant's variance application, which is in the record as Exhibit #2B, the screening appears to be

unnecessary. The site of the proposal is approximately 240 feet from West Canyon Drive and the site is mostly hidden from view by existing brush and mature trees. Further, because of the nature of the emergency system it requires a taller fence than would be allowed for a standard commercial wireless tower. It also requires barbed wire. The applicant further requests that the fence have no screening so that the technicians visiting the site have clear view of the site when they perform maintenance and repairs on site. In addition, the site is extremely rocky and there is a very shallow depth to bedrock area for planting and landscaping and there also is currently no water service to the site.

Therefore the variance application is unique to this particular site as other properties in the area are developed with various densities of housing or with the golf course making this site unique.

b. Compliance with the requirement or standard would eliminate or substantially impair a natural, historic, or cultural feature of area-wide significance.

There was no testimony presented that there are any natural, historic or cultural features of area wide significance on site. Therefore, the granting of the variance would not affect this particular criterion.

4. Notwithstanding the proposed modification of the standard or requirement, all of the following objectives shall be reasonably satisfied:

a. Surrounding properties will not suffer significant adverse effects.

There should be no adverse effects on surrounding properties. A DNS was issued by the City under the State Environmental Policy Act (SEPA) and no significant impacts were noted in any of the environmental documents. The site is designed to function better as a emergency communications system and radio site and will be up-graded in order to better maintain the regional public safety communication system as it exists on site. The existing tower will not move nor will its height be increased. The building equipment shelter will be enlarged somewhat, but as noted it is at least 235-feet from the nearest road and is not visible from surrounding properties and therefore should have no adverse impacts.

b. The appearance of the property or use will not be inconsistent with development patterns of the surrounding property.

The appearance of the property will remain essentially the same with just a slightly larger equipment shelter. There are two water storage reservoirs on site which have been there for approximately 50-years and the tower has existed on site since 1998. There is substantial buffering due to existing terrain features and therefore there should be little effect on surrounding residences. No evidence was submitted to show that the appearance of the property will be significantly adverse.

c. The ability to develop the property in compliance with other standards will not be adversely affected.

There was no evidence presented to show that the property cannot comply with all other standards of the ordinance.

5. 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 specific provisions allow a variance.

The applicant is not changing the use. The use was established in 1998 and will remain the same so there are no changes in use proposed.

6. Floodplain variance is subject to the additional criteria of SMC 17E.030.090 and SMC 17E.030.100.

This criterion does not apply because this is not a floodplain variance.

DECISION

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

1. Approval is for a variance to waive the requirement for landscaping for this communications tower and to also waive the requirement for decorative fencing. This will allow fencing with a chain link fence topped with barbed wire to an overall height of 8-feet. The proposal is to be accomplished substantially in accordance with the site plans in the record and the general application and variance application. If the applicant seeks to modify this approval, the applicant shall seek approval from the Planning Services Department. If Planning Services determines the changes to be substantial then they shall be submitted the Hearing Examiner for review and approval.

2. 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.

3. 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.

4. 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.

5. 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 31st day of August 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 11.02.0730.

This decision 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 31st day of August 2011. **THE DATE OF THE LAST DAY TO APPEAL IS THE 21st DAY OF SEPTEMBER 2011 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.