

CITY OF SPOKANE HEARING EXAMINER

Re: Variance Application by Steven) FINDINGS, CONCLUSIONS,
and Leslie Yach for property) AND DECISION
located at 2129 West Falls)
Avenue)
) FILE NO. Z1100028-VAR

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks a variance to reduce the required front yard setback for a garage from 20-feet to 8.6-feet.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Steven and Leslie Yach
2129 West Falls Avenue
Spokane, WA 99201

Property Address: 2129 West Falls Avenue in the City of Spokane, Washington

Property Location: The property is located on the south side of Falls Avenue on the north side of the Spokane River in an area known as "Lower Crossing".

Legal Description: Nettletons 1st sub., Lots 24-25, Block 25, Section 13, T.25N, R42.E.W.M. in the City and County of Spokane, Washington.

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 12,184 square feet in area. It is developed with a single family home and had a single car garage which became dilapidated and has since been demolished. Behind the home to the north is a steep bank of greater than 30% slope and to the south, where the property slopes down to the Spokane River there are also slopes greater than 30%. There is extensive vegetation located on and around the project site.

Surrounding Conditions: The zoning all around is residential single family and to the north where the Kendall Yards development is located the properties are zoned Residential Multifamily (RMF) The "Lower Crossing" area where the home is located has several single family homes and to the north across Ohio Avenue, Kendall Yards is developing single family, multifamily and commercial development. To the east and west the area is owned by the City's Parks Department and it is designated Conservation Open Space and it consists of very steep slopes. The Spokane River is on the south.

Project Description: The applicant seeks a variance in order to allow the construction of a new garage to replace the garage that was recently demolished. The new garage is to be larger and erected in the same location as the previous garage. The previous garage had a setback of 8.6 feet from the Falls Avenue right-of-way and the applicant seeks approval to place the new garage at the same distance from Falls Avenue. The applicant testified that this would place the garage approximately 15 feet from the pavement of Falls Avenue. The reason for the variance, is that the site slopes dramatically down to the Spokane River and complying with the 20 foot setback would require substantial engineering over the slope and in addition would place the garage closer to the Spokane River in violation of the shoreline setback areas and would also place the garage within a critical area with geological hazardous slopes of greater than 30% or more.

At the hearing on this matter, the applicant requested a further reduction in the front yard setback of an additional two-feet. After some research, the Hearing Examiner concludes that he lacks authority to make that change. Reducing the proposed setback by an additional 25% is a substantial change and under the code, SMC 17G.060.230, a substantial modification has to be considered a new application and must go through the process again. Therefore, the request for an additional reduction in the setback will not be considered at this time.

PROCEDURAL INFORMATION

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

Hearing Date: August 11, 2011

Notices: Mailed: July 19, 2011
Posted: July 20, 2011

Site Visit: None made.

SEPA: This proposal is categorically exempt under SEPA.

Testimony:

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

Steven Yach
2129 West Falls Avenue
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Variance application
 - 2C Notification Map application
 - 2D Site Plans and Elevation plans
1. Developer Services comments
2. Traffic Engineering comments
3. Solid Waste comments
4. Spokane Tribe of Indians comments
5. Northwest Pipeline comments
6. Notice map, parcel listing and title company certification
7. Notice
8. Affidavit of mailing 07-19-11
9. Affidavit of posting 07-20-11
10. Community Meeting sign in sheet
11. Hearing File Preparation Checklist
12. Letter dated 06-15-11 to Interested Parties from Marla French
re: requesting comments
13. Letter dated 07-15-11 to Steven & Leslie Yach from Marla French
re: exemption from shoreline substantial development permit (emailed to Mike Maher)
14. Letter dated 07-18-11 to Steven & Leslie Yach from Marla French
re: notice of community meeting/application and public hearing instructions

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.

While the code prohibits variances as to use, modifications to locational and dimensional standards in the code are allowed if the variance is approved. This is a request for a reduced front yard setback for a garage. A front yard setback is the type of standard specifically contemplated by the code to be the subject of a variance request. Therefore, this applicant does need a variance from a locational or dimensional standard, and securing such a variance is not prohibited by the code.

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 to vary or modify this particular locational or dimensional standard.

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 located in an area of Spokane known as "Lower Crossing". It is somewhat isolated along the north side of the Spokane River and is confined by steep slopes to the north and to the south as well as to the east and the west. Park and conservation areas exist to the east and west of this single family enclave. Most of the homes that have been constructed along Falls Avenue in this location are between 6 and 15 feet from the property line. All of them had to make concessions because of the steep slopes that exist. While flatter land could be developed with the proper setbacks, the slopes limit development to an area which would encroach into the 20-foot setback.

In addition, complying with the 20-foot setback would place the garage in a critical area, a geologically hazardous area and also closer to the Spokane River which is not a desirable outcome. New shoreline regulations adopted in the summer of 2010 require a 100-foot setback from the ordinary high-water mark. If the applicant complied with the 20-foot setback it would violate this shoreline buffer setback.

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

As stated above, compliance with the standard would place the garage into the Spokane River setback area as well as placing it in a critical area and a geologically hazardous area because of steep slopes on site. Therefore this criterion has been met.

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.

This proposal is categorically exempt under the State Environmental Policy Act (SEPA). There were no adverse environmental impacts noted in the record and no evidence was submitted to show that surrounding properties will suffer significant impacts in any way.

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

As stated above the houses in the area have all been built with reduced setbacks due to the steep slopes on each of their sites. Therefore the development pattern is to have structures closer to the right-of-way than allowed by the current codes. Thus, the appearance of this property will be consistent with other properties along Falls Avenue.

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

There was no evidence to show that any other code standards would be violated because of the granting of this variance.

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 variance application will only affect a locational standard and will not change the use of the property as residential single family nor will it affect any overlay zone standards.

Other variance criteria are not relevant as this use is not located in a floodplain nor is it located in the shoreline area. The applicant sought and received a shoreline exemption from the Planning Department on July 15, 2011. See Exhibit #15.

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 on site to allow the front yard setback for a detached garage to be reduced from the required 20-feet to 8.6-feet. The 8.6 feet will be measured from the south right-of-way line. If changes are proposed, the applicant shall submit the proposed changes to Planning Services for review and approval. If Planning Services finds that the proposed changes are substantial then they shall be forwarded to the Hearing Examiner for review and approval. Any request for a further reduction in the setback must be treated as a new application pursuant to the municipal code.
2. All stormwater and surface drainage generated on site shall be disposed of on site in accordance with SMC 17D.060 "Storm water Facilities". Roof drains shall be directed away from neighboring property and steep slopes. A site surface drainage plan may be required by Engineering Services at the time a building permit for the garage is applied for.
3. If any tribal artifacts or human remains are found upon excavation the applicant shall cease construction and notify the Spokane Tribe immediately.
4. If power lines need to be relocated to avoid the new garage Avista will require the owner of the subject property to be responsible for any costs associated with the relocation of those lines.
5. 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.
6. 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.
7. 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:

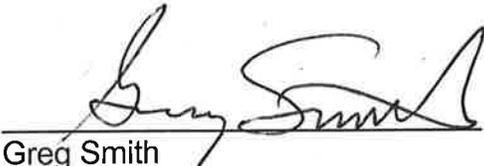
COVENANT

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.

8. 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 16th 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 16th day of August 2011. **THE DATE OF THE LAST DAY TO APPEAL IS THE 6TH 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.