

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
James Cotter to allow a Parking Garage) AND DECISION
in an Office Retail Zone)
) FILE NO. Z1400024-CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: James Cotter seeks approval of a conditional use permit for the construction of a 128-stall parking garage on land in an Office Retail zone, located at 603 S. Howard Street, in the City of Spokane, Washington.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ James Cotter
Owner: 1802 NE Loop 410, Ste. 111
San Antonio, TX 78217

Agents: Jim Moore
1121 N. Argonne, Ste. 121
Spokane Valley, WA 99212

Russ Wolfe
Wolfe Architectural Group
1015 N. Calispel St.
Spokane, WA 99201

Property Location: 603 S. Howard St., Spokane, WA
(NE ¼ Section 19, Township 25 North, Range 43 East, W.M.)

Legal Description: The abbreviated legal description of the property is provided in Exhibit 2A. The parcel number of the project site is 35191.5201.

Zoning: The property is zoned OR-150 (Office Retail, height limit 150 feet). The property is also located in the Cliff Drive Special Height District.

Comprehensive Plan Map Designation: The property is designated as Office.

Site Description: The site consists of approximately .31 acres. The site is paved for use as a parking lot but is otherwise vacant land. The existing parking lot serves the Qual Med Office

Building. The site is rectangular. The site naturally slopes from north to south. The parking area is on a flat area which is elevated above 6th Avenue.

Surrounding Conditions and Uses: The land to the north, south, east, and west of the site is zoned Office Retail, with a height limit of 150 feet (OR-150), and is designated as Office under the comprehensive plan. The land to the north and east is improved with office buildings. The land to the west and the south is occupied by multi-family apartment buildings.

Project Description: Pursuant to the conditional use permit, the paved parking area will be replaced with a four-story parking garage and perimeter landscaping. The proposed parking garage will include 128 parking stalls. The project will include the demolition of the existing surface parking lot, grading and construction of the new garage, and installation of new landscaping. The proposed structure will have a floor area of approximately 13,500 square feet and an overall gross area of approximately 40,500 square feet. The facility is designed and intended to support the Qual Med Office Building to the northeast.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (“SMC”) 17C.120, Commercial Zones; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: May 2, 2014
Posted: May 5, 2014

Notice of Application/Public Hearing: Mailed: October 1, 2014
Posted: October 1, 2014

Community Meeting: May 19, 2014

Public Hearing Date: November 6, 2014

Site Visit: November 3, 2014

SEPA: A mitigated Determination of Nonsignificance (“DNS”) was issued by the City of Spokane on October 22, 2014.

Testimony:

Ali Brast, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Russ Wolfe
Wolfe Architectural Group
1015 N. Calispel St.
Spokane, WA 99201

James Adam Cotter
1 Cotswold
San Antonio, TX 78257

Jim Moore
1121 N. Argonne, Ste. 121
Spokane Valley, WA 99212

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application
 - 2C Notification Map Application
 - 2D Aerial view of site
 - 2E Site Plan
 - 2F Conceptual rendering of new structure
3. Conditional Use Permit Counter Complete Checklist
4. Pre-Development Conference notes
5. Engineering Services comments:
 - 5A Engineering Services comments dated 08-05-14
 - 5B letter to applicant listing corrections required dated 08-06-14
 - 5C Email to applicant with landscaping and options dated 08-22-14
 - 5D Engineering Services comments dated 09-29-14
6. Notice map
7. Parcel listing
8. Address listing
9. Notice of Community Meeting
10. Notice of Application and Public Hearing
11. Affidavit of mailings:
 - 11A dated 05-02-14
 - 11B dated 10-01-14
12. Affidavit of posting:
 - 12A dated 05-05-14
 - 12B dated 10-01-14
13. SEPA Determination of Nonsignificance dated 10-22-14
14. Environmental Checklist
 - 14A Undated
 - 14B Revised dated 09-08-14
15. Community meeting sign in sheet
16. Letter dated 04-29-14 to Jim Moore from Ali Brast
re: community meeting instructions
17. Letter dated 07-16-14 to Interested Parties from Ali Brast
re: requesting comments
18. Email dated 08-19-14 to Matt Gray from Ali Brast
re: sending copy of sewer card
19. Email dated 09-09-14 to Matt Gray from Ali Brast
re: SEPA and CUP application
20. Letter dated 09-30-14 to Russ Wolfe from Ali Brast
re: notice of application/public hearing instructions
- A Exhibits received at hearing
 - A-1 Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170. The Hearing Examiner has reviewed the proposed conditional use permit and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The proposed parking garage is considered commercial parking under the applicable codes. See Exhibit 1, p. 3; see also SMC 17C.190.220. The site of the proposed use is zoned Office Retail with a 150-foot height limitation ("OR-150"). The uses allowed in the OR zone are shown on Table 17C.120-1. According to the table, commercial parking is allowed in an OR zone as a conditional use ("CU[3]"). The bracketed note [3] denotes that additional standards, found in SMC 17C.120.110, apply to this proposal. Those additional standards, however, merely provide that a commercial parking use within a building or structure is a conditional use. See SMC 17C.120.110(3). An application for a conditional use permit for a parking garage is processed as a Type III application, and therefore is heard by the Hearing Examiner. See Exhibit 1, p. 3.

The zoning code includes a 150-foot height limit, as stated above. However, the project site is also located within the Cliff Drive Special Height District, which imposes an additional height restriction. See Exhibit 1, p. 4. As the Staff explained:

The project site is located within the Cliff Drive Special Height District, which states that no structure may exceed three stories or the elevation of two thousand one hundred fifty feet, whichever is higher, exclusive of any antenna, chimney, or flagpole. The spot elevation in the road is 1,972 and the District Overlay states the structure may be up to 2,150. The proposed four-story parking garage will not exceed this allowance and is therefore permitted.

See Exhibit 1, p. 4. The difference between the maximum elevation (2,150) and the estimated elevation of the site (1,972) is approximately 178 feet. Thus, the zoning code height limitation of 150 feet controls, since that is the more restrictive standard. In any event, the proposed structure is only four stories and will be well within the 150-foot maximum. See Exhibit 14B (Environmental Checklist ¶ B(10)(a)).

The proposed office parking garage allowed in the OR zone, so long as the Applicant satisfies the decision criteria for conditional uses. In addition, the structure height is within the applicable limits of both the zoning and the height overlay standard. As a result, the Hearing Examiner concludes that this criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The development of a parking garage at the proposed location is consistent the goals and policies of the comprehensive plan. The construction of the new parking garage promotes the efficient use of land by replacing an existing, paved parking lot with a higher capacity, new parking garage. The nature of the use does not change, but the capacity to serve the need will

be much greater. This more efficient use of the property is consistent with Goal LU 3 and Policy LU 3.1. See CP, Chapter 3, p. 17.

The proposal is also consistent with other goals and policies of the comprehensive plan. Goal LU 5 calls for development to occur in a manner that is complementary and compatible with other land uses. See CP, Chapter 3, p. 23. Policy LU 5.2 encourages the use of site locations that enhance compatibility with surrounding uses. See id. Policy LU 5.3 seeks to ensure that off-street parking facilities do not adversely affect the surrounding area. See id. The proposed facility is consistent with these objectives because it is designed and located in a manner that is sensitive to maintaining compatibility with surrounding properties.

The location is clearly appropriate. The site is already used for parking. The existing parking lot does not satisfy current design standards. See Exhibit 1, p. 3. The new facility, by contrast will include landscaping and storm water treatment, bringing the property into conformance with current standards and reducing run-off effects from this site on neighboring properties. See id. The applicant also took pains to develop a site plan that was sensitive to neighboring uses. See id. The site plan incorporates landscape buffers between the structure and the residential buildings to the south and east. See id. The trees along the southern border of the property will be preserved as much as possible, as part of the landscape buffer and to assist in reducing glare and noise onto neighboring properties. *Testimony of R. Wolfe.* The design itself is intended to blend well with the neighborhood. *Testimony of R. Wolfe.* For example, the building will include brick inlay, to capture the style of nearby buildings to better blend with the surroundings. *Testimony of J. A. Cotter.* The Applicant is also committed to making improvements to the right of way, including new sidewalks and curbs, landscaping, and lighting to improve safety for pedestrian traffic. See Exhibit 14B (Environmental Checklist ¶ B(10)(c)).

The Hearing Examiner concludes that the proposal is consistent with the Comprehensive Plan. Therefore, this criteria for approval of the conditional use permit is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions, such as the conditional use permit under review, require that any proposal satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). All development permit applications are subject to a concurrency test, unless expressly exempted. See SMC 17D.010.020(A). A Type III application for a conditional use permit, such as the proposed project, is not exempt from the concurrency requirements. See SMC 17D.010.030(E) (listing the exempt permits).

On July 16, 2014, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 17. No agencies or departments reported that concurrency could not be achieved. See Exhibit 1, p. 3. To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. See SMC 17D.010.020(B)(1). In addition, a review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the conditional use permit is 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. See SMC 17G.060.170(C)(4).*

Assuming the conditions of approval are satisfied, the property is a suitable location for the proposed parking garage. In addition, the site plan properly accounts for the conditions on the land. These conclusions were reached for the following reasons.

The site appears to be well-suited for the proposed parking facility. The site is already being used as a parking lot for doctors working at the medical office building to the northeast, just across the street. This is an appropriate use of property that is surrounded by office and multifamily uses and which is zoned consistent with such use.

The site is basically rectangular in shape, and therefore shape of the property does not pose any unusual construction challenges. The site is of sufficient size to support the proposed building, although the development will utilize most of the available space. *Testimony of R. Wolfe.* Thus, while the project can be described as “compact,” given the limited space for the intended use, the site plan is well thought out and appropriate for the both the site and the neighboring uses. See Exhibit 2E.

The building site has a slope of approximately 4%. See Exhibit 1, p. 4. It appears that the parking area is elevated above 6th Avenue, to create a flat area for parking and to compensate for the naturally occurring slope. The slopes rise significantly south of the property, and drop steadily north of the property. One need only drive up Howard Street from the Lewis & Clark High School to understand that the slopes around the site are fairly steep. To address the issue, the applicant proposes “to push the lower level of the parking flush with or slightly below 6th Avenue.” See id. The applicant is also proposing to employ retention on the southern and eastern property lines in conjunction with construction of the parking garage. See id. Although the site is sloped, the grade does not appear to be problematic from a development standpoint.

There are no known historic or cultural features on the site. See Exhibit 14B (Environmental Checklist ¶ B(13)(a)). There were no comments, such as from the Spokane Indian Tribe, suggesting that the site had any historic, archaeological, or cultural interest. If anything is discovered in the course of development, the required protocols must be followed to protect such resources. The conditions of approval reiterate this requirement.

There are genuine concerns about this site, however, regarding the potential soil/rock conditions, drainage, and shallow groundwater. See Exhibit 1, p. 4. To address these concerns, the applicant will be required to complete a full geotechnical evaluation of the site prior to submitting an application for a building permit. See id. In addition, because the site will utilize roughly 90% of the site, the Applicant will be installing an on-site detention tank to provide controlled storm water discharge into the public system. See id. This will contrast with the current situation; right now, the asphalt lot drains freely into the street. See Exhibit 2B. The applicant must also comply with CARA regulations in order to protect ground water quality. See

id. Thus, there are safeguards in place which address the concerns about soil/rock conditions, drainage, and shallow ground water. Those safeguards are incorporated into the conditions of approval of this project.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

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 of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

The environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

On or about September 8, 2014, the Applicant prepared an environmental checklist, pursuant to the State Environmental Policy Act, for the proposed parking garage. See Exhibit 14B (“Environmental Checklist”). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example, there are no wetlands or streams on or near the site, which could be affected by the proposed construction. See Exhibit 14B (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 14B (Environmental Checklist ¶ B(3)(a)(5)). No part of the site has been designated as “environmentally sensitive.” See Exhibit 14B (Environmental Checklist ¶ B(8)(h)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 14B (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No environmental hazards (e.g. exposure to toxic chemicals, risk of fire or explosion, hazardous wastes, etc.) are anticipated to arise due to this project. See Exhibit 14B (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 14B (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)).

On October 22, 2014, the Planning and Development Department of the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 13. Any appeal of the DNS was due on November 5, 2014. See id. No appeal of the DNS was filed.

The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

Nonetheless, the potential impacts that might be anticipated from a parking garage should be briefly considered. The most likely environmental impacts of this type of facility arise from traffic, light/glare, and possibly aesthetics. Although these are issues that should be considered, based on this record, no such impacts are anticipated to arise from this project.

There will be little, if any, increase in traffic as a result of this project. The Applicant asserted: “No additional trips are anticipated.” See Exhibit 14B (Environmental Checklist ¶

B(14)(f)). On the surface, this claim seems unrealistic given that the number of parking spaces available at the property will be increased from around 32 to approximately 128. Upon further consideration, however, this claim has merit and may bear out. Parking for the Qual Med facility is currently served by on-site parking, the parking lot on 6th Avenue (the development site), and by leased parking on the other side of Stevens Street. *Testimony of R. Wolfe*. Once the garage is constructed, the parking for the building will be provided by the new garage, eliminating the need for the leased parking area. The parking garage will serve only the Qual Med facility. *Testimony of R. Wolfe*. Therefore, no additional vehicle trips would be anticipated from additional users, such as renters of parking space. There is no reason to suspect that the number of vehicle trips to the Qual Med facility will change as a result of the new garage. The affected road system, then, will not apparently be affected by the relocation of the parking. City Engineering did not raise any concern about traffic impacts, whether in the form of increased trips or any alleged stresses on infrastructure. No mitigation measures specific to this question were suggested by the city. There was no testimony at the public hearing raising a concern about potential traffic impacts.

There will be minimum impacts from light or glare because of the lighting technology employed and the solid wall construction. See Exhibit 14B (Environmental Checklist ¶ B(11)(b)). The Applicant plans to mitigate any impacts of light and glare through the exclusive use of indirect and shielded lighting. See Exhibit 14B (Environmental Checklist ¶ B(11)(d)). In addition, lighting control and occupancy sensors are required under the Washington State Energy Code. See id.

The project will not have significant impact on the aesthetics of the area or cause substantial interference with neighboring uses. The access to the proposed facility will be via 6th Avenue, utilizing the same or a similar location as the existing curb cut for the surface parking lot. See Exhibit 1, p. 4. As a result, the use of the parking garage will not place any additional burden on neighboring properties. See id. Since additional parking will be available to the employees and patients of the medical office, some on-street parking should become available for other users. See id.

The project also incorporates buffers to adjacent, residential uses, in order to lessen any impacts to those properties. The Staff noted:

The properties to the south and the east are residential in use, so the applicant wanted to provide as much setback as possible along those property lines to buffer them from the proposed parking structure. In keeping with this, the City of Spokane's Engineering department agreed to allow the required six-foot landscape strip to encroach into the right-of-way on 6th Ave, to allow the structure to be set back five feet from the southern property line and leave room for a five-foot landscape buffer between the uses.

See id.

The project design also pays respect to aesthetic considerations. The Applicant plans to include brick inlays so the structure blends nicely with nearby brick buildings. *Testimony of J. A. Cotter*. The structure will also include decorative lighting. See Exhibit 14B (Environmental Checklist ¶ B(10)(c)). In addition to landscaping, the Applicant will be making improvements to the right of way, including new sidewalks and curbs. See id. Finally, the project must adhere to the city's design standards for parking structures. At the minimum, the standards will ensure that the visual impacts of the project are lessened. See SMC 17C.230.310.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment that cannot be adequately addressed through mitigation. In addition, the project will not adversely affect neighboring properties. Therefore, this criterion for approval of the conditional use permit is satisfied.

DECISION

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

1. Approval is for a conditional use permit to allow the applicant, James Cotter, to construct a four story, 128-stall parking structure, along with associated landscaping, at 603 S. Howard Street. Any changes to the application must be submitted to Planning Services for its review and approval. If Planning Services finds the proposed changes to be substantial, then the changes shall be forwarded to the Hearing Examiner for review and approval.
2. All parking garage entrances must have pedestrian warning and safety devices for approaching vehicles.
3. The project shall be developed in accordance with the application and site plan that was submitted at the time of application for this Conditional Use Permit, i.e. Exhibit(s) 2A, 2B, and 2E.
4. Adequate access and maneuvering within the garage for refuse and emergency vehicles is required per current City Standards.
5. The project shall maintain clear view at intersections, pedestrian ways, and driveways. Illumination lighting shall be confined to the site.
6. Accessible barrier-free parking spaces are required and need to comply with current City of Spokane Standard Plans G-54 & G-80A. Accessible routes of travel connecting to the nearest accessible entrances with a marked accessible route of travel are required within the garage. All barrier-free spaces and aisles need to be designed, drawn, and noted on the plans per these Standards. The site plan shall state the sign locations and the van-accessible stalls. The van accessible stalls must also meet the building code height requirement.
7. The project shall meet the design standards identified for 'Exterior Design of Parking Structures' outlined in SMC 17C.230.310.
8. The applicant shall comply with the standards and requirements identified by Engineering Services and as set forth in Exhibit 5. Those standards and requirements mandate, among other things, the submission of a geotechnical report and drainage plan, on-site disposal of storm water and surface drainage, and the payment of impact fees.
9. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the Uniform Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.

10. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.

11. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.

12. Spokane Municipal Code section 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.

13. 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.

14. 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 10th day of November 2014.



Brian T. McGinn
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 10th day of November, 2014. **THE DATE OF THE LAST DAY TO APPEAL IS THE 1st DAY OF DECEMBER 2014 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.