

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by Jeff) FINDINGS, CONCLUSIONS,
and Kimber Royter to allow a Medical) AND DECISION
Office Building in a Residential Multi-)
Family Zone) FILE NO. Z1400036-CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: Jeff and Kimber Royter seek approval of a conditional use permit for the construction of a medical office building on land located at 505 E. 28th Avenue, in the City of Spokane, Washington.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Jeff and Kimber Royter
Tailwind Physical Therapy
2814 S. Grand Blvd.
Spokane, WA 99203

Owner: Manito Masonic Temple
2715 S. Grand Blvd.
Spokane, WA 99203

Agent: Mike Stanicar
Bernardo Wills Architects
153 S. Jefferson St.
Spokane, WA 99201

Property Location: 505 E. 28th Avenue, Spokane, WA

Legal Description: The abbreviated legal description of the property is provided in Exhibit 2A. The parcel number of the project site is 35293.2712.

Zoning: The property is zoned RMF (Residential Multi-Family).

Comprehensive Plan Map Designation: The property is designated as R 10-20 (Residential 10-20 Units per acre).

Site Description: The site consists of approximately 16,740 square feet (.38 acres). The site is paved for use as a parking lot but is otherwise vacant land. The property is situated on Grand Boulevard. The property is currently used by the Manito Masonic Temple, located across Grand Boulevard, for overflow parking. The site is essentially flat and rectangular.

Surrounding Conditions and Uses: The site and the land immediately to the east, west, and north is zoned Residential Multi-Family (RMF). The RMF classification continues to the north of the site along Grand Boulevard. Farther to the east and west of the site, the land is zoned Residential Single Family (RSF). The area to the north, east, and west is a developed residential area. Directly across Grand Boulevard, in the RMF zone, is the Manito Masonic Temple. The land directly to the south of the site is zoned CC1-DC, a centers and corridors designation, and is currently used for commercial purposes.

Project Description: Pursuant to the conditional use permit, the paved parking area will be replaced with a medical office building, associated parking, and landscaping. The proposed medical office building will be approximately 4,000 square feet in size and up to two stories in height. The building will face Grand Boulevard with the parking lot installed behind the building. The Applicant proposes to install fifteen parking spaces next to the building.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code ("SMC") 17C.110, Residential Zones; SMC 17C.320.080(J), Decision Criteria for Office Uses in Residential Zones; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: June 26, 2014
Posted: June 26, 2014

Notice of Application/Public Hearing: Mailed: September 3, 2014
Posted: September 3, 2014

Community Meeting: July 11, 2014

Public Hearing Date: October 16, 2014

Site Visit: September 9, 2014

SEPA: Categorically Exempt

Testimony:

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

Kimber Royter
Tailwind Physical Therapy
2814 S. Grand Blvd.
Spokane, WA 99203

Mike Stanicar
Bernardo Wills Architects
153 S. Jefferson St.
Spokane, WA 99201

Bill Peterson
7611 S. Mountain Springs
Spokane, WA 99223

Sonya Mounts
8521 S. Sagewood Rd.
Spokane, WA 99223

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application with Narrative
 - 2C Notification Map Application
 - 2D Site Plan
 - 2E Overview of site
3. Conditional Use Permit Counter Complete Checklist
4. Pre-Development Conference notes
5. Engineering Services comments
6. Spokane Tribe of Indians comments
7. Notice map
8. Parcel and address listing
9. Notice of Community Meeting
10. Notice Application and Public Hearing
11. Affidavit of mailings:
 - 11A dated 06-26-14
 - 11B dated 09-03-14
12. Affidavit of posting:
 - 12A dated 06-26-14
 - 12B dated 09-03-14
13. Removal of a Public Sign dated 07-27-14
14. Exempt from SEPA
15. Community meeting sign in sheet
16. Letter dated 05-22-14 to Jeff and Kimber Royter from Ali Brast
re: community meeting instructions
17. Letter dated 08-04-14 to Interested Parties from Ali Brast
re: requesting comments
18. Letter dated 08-27-14 to Mike Stanicar from Ali Brast
re: notice of application/public hearing instructions
19. Emails dated 08-26 to 08-29-14 to/from Mike Stanicar and Ali Brast
re: public hearing
- 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 and 17C.320.080. 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 site of the proposed use is zoned Residential Multi-Family ("RMF"). The uses allowed in the RMF zone are shown on Table 17C.110-1. According to the table, an Office use is allowed in an RMF zone as a conditional use ("CU[2]"). The bracketed note [2] denotes that additional standards, found in SMC 17C.110.110, apply to this proposal. Under the pertinent provisions of that code, Office uses in the RMF zone are subject to the provisions of chapter 17C.320 SMC and are processed as a Type III application. See SMC 17C.110.110(B).

The proposed office and associated improvements are allowed in the RMF zone, so long as the Applicant satisfies the decision criteria for conditional uses. 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 Hearing Examiner agrees with the Staff's conclusion that this proposal is consistent with the goals and policies of the Comprehensive Plan ("CP"). See Exhibit 1, p. 3.

The project promotes the efficient use of land by placing development in proximity to other business, public services, places of work, and transportation systems. See CP, Goal LU 3, Chapter 3, p. 17. This project is also consistent with the comprehensive plan objective to encourage infill development. See CP, Policy 3.1, Chapter 3, p. 17. The site is an island of vacant land surrounded by developed property, including a commercial area to the south. The project focuses development in a location where adequate services and facilities exist. See CP, Policy 3.1, Chapter 3, p. 17.

The site is an excellent location for a medical office. The project will make medical services available to people who live in the surrounding neighborhoods. Thus, the proposal implements the goal of encouraging services to be located in proximity to places where people live, work, and shop. See CP, Goal TR 3, Chapter 4, p. 20. The proposal is directly in line with the policy of providing a variety of services within neighborhoods that are both convenient and address the needs of neighborhood residents, thereby decreasing the need for driving. See CP, Policy TR 3.2, Chapter 4, p. 21.

The project represents an opportunity to expand and increase the number of locally-owned businesses. See CP, Policy ED 3.5, Chapter 7, p. 15. The applicants, Jeff and Kimber Royter, live near the development site, and thus are a part of the neighborhood. *Testimony of K. Royter.* Although specific designs for the building have not been determined, the project is intended to be compatible with nearby residences. See CP, Policy TR 3.2, Chapter 4, p. 21. The building is relatively small, the only comments from neighbors were supportive of the project, and the Applicant is sensitive to the need for the project to blend well with the neighborhood. *Testimony of M. Stanicar, K. Royter, B. Peterson, and S. Mounts.*

The Hearing Examiner concludes that this criterion for CUP approval 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 August 4, 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. The concurrency provisions of the municipal code state that a lack of response by a notified facility or service provider shall be construed as a finding that concurrently is met. See SMC 17D.010.020(B)(1).

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).*

The property is currently used as a parking lot. It is generally flat, with a gentle slope from south to north. The site is rectangular in shape. The property is approximately 16,740 square feet, and the proposal is to construct a 4,000 +/- square foot office building, associated parking and to install landscaping. The size and configuration of the property is well-suited to this proposal. There do not appear to be any substantive development challenges given the condition, slope, shape or size of the property. To the extent that further investigation is needed regarding soil conditions, the Engineering Department has required the Applicant to provide a Geotechnical Report and a Drainage Plan. See Exhibit 1, p. 4.

There is no evidence in this record that ground or surface waters are present on this site, or that the project may affect any ground or surface waters. There is also no evidence of natural, historic, or cultural features on this site. Although the Spokane Tribe suggested a cultural survey of the site may be in order, no facts or evidence were presented by the Tribe to substantiate the need. As a result, the Hearing Examiner will not condition the project on the completion of such a survey.

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 Hearing Examiner finds that the proposal will not have significant impacts on the environment. The proposal is exempt from SEPA requirements. See Exhibit 1, p. 4. To the extent any impacts could arise, those potential impacts will be adequately addressed through the permit process and pursuant to the conditions of this approval. For example, the Applicant is required to submit a geotechnical report to confirm soil conditions. See id. A drainage plan is also required for this project. See id. All storm water must be disposed of on-site. See id. In addition, among other things, the Applicant will be required to satisfy the institutional design standards for projects in residential zones. See SMC 17C.110.500-575. For these reasons, and due to the lack of any evidence in the record suggesting a reason for concern, the Hearing Examiner concludes that this criterion for approval of the conditional use permit is satisfied.

6. *With appropriate conditions, the Applicant has satisfied the criteria of SMC 17C.320.080(J), which govern the approval of an office use in a residential zone.*

The Applicant has satisfied the requirements to develop an office use in a residential zone. However, the Applicant may be required to revise the site plan to satisfy the applicable access requirements.

- a. *The property has frontage on a principal arterial. See SMC 17C.320.080(J)(1)(a).*

The property has frontage along Grand Boulevard, which is a principal arterial. Therefore, this criterion is satisfied.

- b. *The subject property is adjacent to or immediately across the street from an existing commercial zone. See SMC 17C.320.080(J)(1)(b).*

The subject property is directly across the street from commercially zoned property. The property to the south and across 28th Avenue is zoned CC1-DC and has already been developed with commercial uses. Therefore, this criterion is met.

- c. *The proposed use is not being developed to a depth greater than two hundred fifty feet. See SMC 17C.320.080(J)(1)(c).*

The maximum depth of this property is approximately one hundred fourteen feet. See Exhibit 1, p. 4. Therefore, this criterion is satisfied.

- d. *Ingress and/or egress onto a local access street are not permitted unless the City traffic engineer determines that there is no alternative due to traffic volumes, site visibility and traffic safety. See SMC 17C.320.080(J)(1)(d).*

Under the current configuration of the project, ingress and egress to the site is on 28th Avenue. According to the Official Arterial Street Map, in this location 28th Avenue is a Local

Access Street. The building is facing Grand Boulevard, and the parking is behind the building. There is no access directly onto the arterial. The existing access point used for the parking lot is retained, which seems sensible and efficient. Most of the block to the south, along 28th Avenue, is zoned and used for commercial purposes. Thus, an access along 28th Avenue would not apparently have any impact on the neighbors or the residential character of the area. However, those practical considerations do not obviate the language actually employed in the municipal code.

The criterion itself leaves very little room to maneuver. The pertinent part of the municipal code states as follows:

Ingress and/or egress onto a local access street are not permitted unless the City traffic engineer determines that there is no alternative due to traffic volumes, site visibility and traffic safety.

See SMC 17C.320.080(J)(1)(d).

The language of this provision is mandatory and unambiguous. Ingress and egress onto a local access street is generally “**not permitted.**” See id. (emphasis added). The intent, no doubt, was to protect residential areas from traffic impacts by requiring that non-residential developments, like offices, directly access an arterial. It is also noteworthy that this type of conditional use is only allowed when the property has frontage on a principal arterial. See SMC 17C.320.080(J)(1)(a). This further supports the Hearing Examiner’s interpretation.

The exception to the rule is narrow. Access onto a local access street is not permitted “**unless the City traffic engineer determines** that there is **no alternative** due to **traffic volumes, site visibility and traffic safety.**” See SMC 17C.320.080(J)(1)(d) (italics added). In other words, to allow access from 28th Avenue, the City Traffic Engineer has to make an affirmative determination that high traffic volume, poor visibility, or safety concerns preclude access to an adjacent arterial, and thereby justify access via a local access street. The City Traffic Engineer has made no such determination in this case, at least as of the date of this decision.

The comments from Traffic Engineering cover a number of details. See Exhibit 5. However, none of the comments address this criterion. See id. The Staff Report makes note of the requirement, but does not address the matter substantively. Staff only advises that Traffic Engineering did not object to access from 28th Avenue. See Exhibit 1, p. 4. The Applicant’s architect quotes the code provision in full. See Exhibit 2B. However, there is no analysis of the specific requirements of the provision. Similar to the Staff, the Applicant’s architect merely notes that neither the Planning Department nor Traffic Engineering objected to the proposed access. This is not sufficient to satisfy the criterion. The fact that Traffic Engineering was silent on the issue is not tantamount to an affirmative determination there is no alternative other than to access the site via a local access street.

In order to approve the current site plan for this project, Traffic Engineering must make an affirmative determination that access onto 28th Avenue is proper, and it must do so consistently with SMC 17C.320.080(J)(1)(d). If Traffic Engineering makes such a determination, the project can proceed as proposed. If Traffic Engineering cannot or will not do so, then the site plan must be revised so that access to the site is from the arterial, rather than from 28th Avenue.

The Hearing Examiner would prefer to approve the project as proposed. There is nothing inherently wrong with the proposed access, as a practical matter and in light of the circumstances of this case. However, the code clearly precludes access through a local access street in the absence of a specific justification from Traffic Engineering. The Hearing Examiner does not have discretionary authority to alter or ignore the language of SMC 17C.320.080(J)(1)(d).

The Hearing Examiner concludes that, as conditioned, this proposal will satisfy the requirements of SMC 17C.320.080(J)(1)(d). However, satisfaction of this criterion will require either that the site plan be approved by Traffic Engineering based upon code standards or that the site plan be revised to create an access route that directly connects to the adjacent arterial.

- e. *All structures have size, scale, and bulk similar to residential uses as provided in SMC 17C.110.500, Institutional Design Standards. See SMC 17C.320.080(J)(1)(e).*

As generally described at the hearing, the proposed structure will be proportional to the nearby residential uses. The proposed building is only 4,000 +/- square feet, with a height of two stories maximum. In the RMF zone, the maximum lot coverage is 50%. Here, the building will cover approximately 22% of the lot. See Exhibit 2F. In the RMF zone, the maximum height is 35 feet at the peak, and 30 feet for the walls. See Table 17C.110-3. At two stories (maximum) the building will honor these height limitations. *Testimony of A. Brast.* In any event, adherence to the height restrictions, along with the other Institutional Design Standards, is a condition of approval.

The Hearing Examiner concludes that this criterion is satisfied.

- f. *The development standards of the underlying zone shall apply to the use. See SMC 17C.320.080(J)(1)(f).*

The Applicant is required, as a condition of project approval, to meet the Institutional Design Standards provided in SMC 17C.110.500-575. This requirement is therefore met.

- g. *Drive-thru facilities are prohibited, except as allowed by the Hearing Examiner. See SMC 17C.320.080(J)(1)(g).*

This proposal does not include a drive-thru facility. Therefore, this criterion is not applicable.

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 applicants, Jeff and Kimber Royter, to construct a medical office building, and install associated parking and landscaping, at 505 E. 28th Avenue. 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. Access to the site from 28th Avenue is permitted only if the City traffic engineer determines that there is no alternative due to traffic volumes, site visibility and traffic safety, consistent with SMC 17C.320.080(J)(1)(d). If the City traffic engineer makes this determination, then the site plan for this project is approved as submitted and no changes to the site plan are required. If the City traffic engineer does not make that determination, then the proposal must be revised to establish access onto the adjacent arterial and the site plan must be modified accordingly. Any revised site plan must be reviewed and approved by Planning Services and the City traffic engineer.
3. The project will 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 2D, or with the application and site plan as revised to achieve compliance with SMC 17C.320.080(J)(1)(d) and the preceding condition of approval.
4. Street trees are required on both Grand Boulevard and 28th Avenue, per the Spokane Municipal Code, in conjunction with the proposed L2 landscape buffer.
5. The project will be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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 20th day of October 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 20th day of October, 2014. **THE DATE OF THE LAST DAY TO APPEAL IS THE 10th DAY OF NOVEMBER 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.