

CITY OF SPOKANE HEARING EXAMINER

Re: Variance Application by Cooke) FINDINGS, CONCLUSIONS,
Development Corporation requesting) AND DECISION
a reduction in setbacks from 20 feet)
to 7.5 feet, in order to facilitate the)
construction of four single-family)
residences at 1623 & 1629 W. Wilson) FILE NO. Z1500062-VAR
Avenue)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Cooke Development Corporation seeks a variance from the setback requirements in order to facilitate the construction of four single-family residences in the RHD zone.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ Cooke Development Corporation
Agent: R. H. Bob Cooke
503 E. 2nd Avenue
Spokane, WA 99202

Owner: R. H. Bob Cooke
503 E. 2nd Avenue
Spokane, WA 99202

Property Location: The address of the site is 1623 & 1629 W. Wilson Avenue, Spokane, Washington.

Zoning: The property is zoned RHD-35 (Residential High Density – 35 foot height limit)

Comprehensive Plan Map Designation: The property is designated as R 15+

Site Description: The site consists of Lots 37, 38, 39, and 40, Block 14, West Riverside 2nd Addition. The four legal lots are currently designated under two parcels numbers, with each parcel being 50 feet in width and 110 feet in length. Tax parcel numbers will be assigned to each of the legal lots through a boundary line adjustment. The slope of the site varies from 0%-16% at the street edge to the front property line; from 16%-30% for the first one-third of the property; and then over 30% on the remaining two-thirds of the site. The property also lies within the Urban Natural Open Space Area.

Surrounding Zoning: The land bordering the north and east of the site is zoned Residential Multi-Family (RMF). To the west, the land is zoned Residential High Density (RHD-35). There is small portion of land to the south and is also zoned the north, south, east and west of the property is zoned Residential High Density (RHD-35), with the remainder of the property to the south being zoned Office Retail (OR-35).

Project Description: The applicant is requesting the front yard setback for 4 underlying lots (currently two tax parcels) be reduced from 20 feet to 7.5 feet to prevent further cutting into the adjacent hillside. A similar variance request by the same property owner was approved in 2005 for 3 adjacent parcels to the east of this proposal.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code ("SMC") 17C.110, Residential Zones; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: June 22, 2015
Posted: June 23, 2015

Notice of Application/Public Hearing: Mailed: September 4, 2015
Posted: September 9, 2015

Community Meeting: July 3, 2015

Public Hearing Date: September 24, 2015

Site Visit: September 18, 2015

SEPA: This project is categorically exempt from SEPA.

Testimony:

Dave Compton, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Holly Brajcich
1632 W. Wilson, Unit B
Spokane, WA 99201

R. H. Bob Cooke
503 E. 2nd Avenue
Spokane, WA 99202

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application

- 2B Variance application
- 2C Notification Map application
- 2D Aerial view of site
- 2E Aerial with slopes highlighted
- 2F Site Plan
- 2G First Floor Site Plan
- 2H Lower Floor Site Plan
- 2I Elevations
- 2J Boundary Survey
- 2K Site Plan with slopes shown
- 2L Shoreline/Critical Areas Checklist
- 2M Counter Complete Variance Checklist
- 3. Planning comments
- 4. Engineering Services comments
 - 4A Draft Geotechnical report from Budinger & Associates received by Planning on 08-07-15
- 5. Spokane Tribe of Indians comments
- 6. Department of Ecology comments
- 7. Notice map
- 8. Parcel listing
- 9. Notice of Community Meeting
- 10. Notice of Application and Public Hearing
- 11. Affidavit of mailings
 - 11A Community Meeting 06-22-15
 - 11B Combined Application and Hearing dated 09-04-15
- 12. Affidavit of posting
 - 12A Community Meeting dated 06-23-15 with copy of sign
 - 12B Combined Application and Hearing dated 09-09-15
- 13. SEPA Exemption issued 08-10-15
- 14. Community Meeting sign in sheet
- 15. Letter dated 05-08-15 to Bob Cooke from Dave Compton
 - re: community meeting instructions
- 16. Email dated 06-24-15 to Dave Compton from Barbara Morrissey
 - re: questions and comments on proposal
- 17. Email dated 7-03/07-08-15 to/from Dave Compton and Bob Cooke
 - re: procedural questions
- 18. Letter dated 08-10-15 to Interested Parties from Dave Compton
 - re: requesting comments
- 19. Letter dated 09-01-15 to Bob Cooke from Dave Compton
 - re: Notice of Application and Public Hearing Instructions.
- 20. Email dated 09-01-15 to Bob Cooke from Dave Compton
 - re: sending comments and notices
- 21. Letter dated 09-21-15 to Dave Compton from Camille Hutchison
 - re: comments on project requesting front yard setbacks remain at 20 feet
- A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed variance must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170. The Hearing Examiner has reviewed the proposed variance 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 project site is zoned "RHD-35", which is Residential High Density with a 35-foot height limitation. Single-family residences are permitted in the RHD zone. See Exhibit 1, p. 3; see also Table 17C.110-2. Provided that the criteria for approving the variance are satisfied, the proposed use is expressly allowed under the land use codes. Therefore, the Hearing Examiner finds 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).*

A geotechnical study was completed for the proposed use. The study includes recommendations regarding excavation, building foundations, slope stability, drainage and the like. See Exhibit 4A. The owner is seeking to reduce the front setback for each lot because the steep slopes in the back of the lots are susceptible to instability. *Testimony of Bob Cooke.* By reducing the front setbacks, the development is proceeding in a manner that protects the natural features of the land. See Goal LU 5.4, Natural Features and Habitat Protection. The modified setbacks also serve to set aside unstable slopes which are not suitable for development. See Goal NE 7.4, Unstable Slope Protection. By not cutting into the hillside, the developer is leaving a much wider natural, greenbelt area. See Exhibit 1, p. 4. In the Hearing Examiner's opinion, the proposed development strikes an appropriate balance between the landowner's right to put the property to productive use, and the need to protect the natural features and physical characteristics of the site. As a result, the Hearing Examiner concludes that the project is consistent with the goals and policies of the comprehensive plan, and therefore this criterion 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 a variance) mandate that all proposals must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on August 10, 2015, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 18. The city received minimal response to its request for comments. See e.g. Exhibits 4, 5, & 6. City staff noted that "All applicable city departments and agencies had the opportunity to review this proposal with no one denying concurrency." See Exhibit 1, p. 4. 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, 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 variance 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 owner has proposed to reduce the front setback from 20 feet to 7.5 feet, in order to address problematic development conditions, in particular as related to steep slopes and soils. The Hearing Examiner finds that, with the approval of the variance and given the owner's designs, the problematic aspects of the site are properly addressed. The proposed residences, one for each of the four lots, are relatively small and are designed to be compatible with the surrounding residential area. The same owner/developer constructed similar residences immediately to the east, and those residences were supported by a similar variance that was granted in 2005. There are no indications of surface water on the site. There is no reason to expect that groundwater will be impacted by this project. There are no known cultural or historic resources on this site. 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 project is categorically exempt from SEPA. Thus, SEPA is not the proper basis to condition this project. Nonetheless, there are two environmental issues that should be addressed: steep slopes and the possible presence of wetlands.

The project is designed, in conjunction with the reduced setbacks, to minimize the impacts on the steep slopes in the southern two-thirds of the four lots. The owner produced a geotechnical study to assist with the design of the project. See Exhibit 4A. Substantial measures are incorporated into this construction project to ensure slope stability. Therefore, the potential impacts on the steep slopes, which are defined as a critical area, are properly addressed.

In addition to the concern regarding steep slopes, the Department of Ecology commented that there may be wetlands on this site. See Exhibit 6. The Department's request for a "wetland reconnaissance" is incorporated as a condition of approval. See *id.* Therefore, this concern is also addressed.

No other potentially significant environmental impacts were identified in these proceedings. The Hearing Examiner agrees with the Staff's conclusion that: "...no

adverse effects will be suffered by the surrounding property owners if this variance is granted." See Exhibit 1, p. 5. Therefore, this criterion for approval is satisfied.

6. *The variance or modification of the standard or requirement is not prohibited by the land use codes. See SMC 17G.060.170(E)(1)(a).*

There are no prohibitions in the land use codes against reducing the front yard requirements of the RHD zone, so long as the variance criteria are satisfied. See Exhibit 1, p. 5. Since a variance is not specifically forbidden in this context, this criterion for a variance is met.

7. *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. See SMC 17G.060.170(E)(1)(b).*

Aside from a variance, the only other possible method to reduce the front setbacks of the properties is through averaging pursuant to SMC 17C.110.220. See Exhibit 1, p. 5. However, averaging would not reduce the setback to the proposed distance of 7.5 feet. See *id.* The Hearing Examiner also believes that it may not be proper to average based upon the 7.5 foot setback of the property to the east of the site, because that front yard was established by a variance procedure in 2005. In any event, the Hearing Examiner concludes that averaging does not result in a genuine alternative to the variance procedure. Since the only realistic or effective option in this case is a variance, this criterion for approval is satisfied.

8. *Strict application of the standard or requirement would create an unnecessary hardship due to the physical characteristics of the land. See SMC 17G.060.170(E)(1)(c).*

The steep slopes on the southern two-thirds of the building sites create a significant obstacle to the development of those lots. As the Staff noted, the geotechnical report provides compelling reasons to avoid cutting too deeply into the upland slopes. See Exhibit 1, p. 6. Doing so creates a risk of destabilizing the slopes which support the upland structures along Riverside Avenue. See *id.* The Staff further stated: "A number of engineering recommendations were outlined in this report to aid in the structural integrity of the proposed homes and prevent slope degradation." See *id.* The proposed measures depend upon the granting of the variance, which will facilitate the construction of the residences closer to Wilson Avenue and further away from the problematic slopes. Even with the variance granted, the construction of the supporting walls for the rear of the residences will alone cost \$100,000. *Testimony of Bob Cooke.* While cost is not a dispositive consideration in a variance case, the cost is highlighted here to demonstrate that the slope stabilization efforts are complex and expensive engineering projects. The owner even suggested that without the variance, the site could not be developed, given the combination of the slopes and soil conditions reviewed from the geotechnical analysis. See *id.*

Ultimately, the Hearing Examiner concludes that there is more than sufficient information to demonstrate that strict adherence to the setback standards would create

substantial hardships for the owner, possibly to include preventing the development of the site altogether. This criterion for approval of the variance is satisfied.

9. *The following objectives are satisfied: (i) surrounding properties will not suffer significant adverse effects; (ii) the appearance or use of the property will not be inconsistent with the development patterns of the surrounding property. See SMC 17G.060.170(E)(1)(d).*

The Hearing Examiner agrees with the Staff's conclusion that the neighbors will not suffer any significant, adverse effects from the approval of the variance. See Exhibit 1, p. 7. As stated above, there aren't any environmental impacts that aren't accounted for by the project design or the conditions of approval. Certainly there will be some inconvenience during the construction phase, but those impacts will be temporary. Public comments on this project were minimal, and none demonstrated that the project posed serious concerns. See *id.*

One issue that should be considered in more detail, however, is parking. Mrs. Camille Hutchinson submitted a letter on behalf of the Peaceful Valley Vistas HOA. See Exhibit 21. In her letter, Mrs. Hutchinson requested that the standard setbacks be enforced, in order to preserve space for on-street parking. She noted that "...there is very little to no space currently to park on Wilson Avenue. The only space available is on the proposed lots or in areas that limit access to garbage trucks and city snowplows." See *id.* Mrs. Brajcich made very similar comments in her testimony at the hearing. In particular, she emphasized that the development of the lots would "take away" parking spaces from the neighborhood, and therefore the standard setbacks should be honored. *Testimony of H. Brajcich.*

Although the Hearing Examiner is sympathetic to the concerns about parking, the Hearing Examiner disagrees that the variance should be denied on such a basis, for both practical and legal reasons. The proposed development provides the required off-street parking necessitated by the development. It is not the legal responsibility of the developer to go beyond that and guarantee parking for other users, such as guests of the condominium development across the street. The lack of parking (or sidewalks, for that matter) along Wilson Avenue is a pre-existing condition. The burden to solve this problem should not be placed solely at the feet of one property owner. It is true that development of the lots eliminates some off-street parking through the installation of driveways. However, driveways are necessary whether a residence is 20 feet or 7.5 feet from its front property line. In other words, a decrease in available off-street parking would occur whether the houses are constructed at the standard setback or not. Moreover, the reality is that no one has an enforceable "right" to park in the city right-of-way. The city merely allows that use. The Hearing Examiner concludes that adherence to the standard setbacks is not a genuine solution to this concern in any event.

The Hearing Examiner also concludes that this project is consistent with the development patterns in the neighborhood. The proposed residences are relatively compact, and fit well with the other homes in the immediate vicinity. As the Staff noted: "The appearance of the proposed homes will be consistent with neighboring properties which are predominantly single family homes on the entire stretch of Wilson Avenue." See Exhibit 1, p. 7. The proposed residences will clearly be consistent with the houses

developed by Mr. Cooke, located immediately to the east of the site. Those residences were built with 7.5 foot front yards, as a result of a variance which was granted in 2005.

The Hearing Examiner concludes that this criterion for approval of the variance is satisfied.

10. The variance does not allow or establish a use that is not permitted in the underlying district, or modify or vary a standard or requirement of an overlay zone. See SMC 17G.060.170(E)(1)(e).

The proposed use is allowed in the RHD zone, and there are no prohibitions on reducing the front yard requirements in the RHD zone. See Paragraphs 1 & 6, above. In addition, there are no overlay zones that would prevent the reduction of front yard setbacks. See Exhibit 1, p. 7. As a result, this criterion for approval of the variance is satisfied.

DECISION

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

1. Approval is for a variance on Lots 37, 38, 39, and 40, Block 14, Riverside West Second Addition. The variance approval will allow single-family structures to be built a minimum of 7.5 feet from the front property line. The property will be developed substantially as set forth in the plans and application on file in Planning and Development. If changes are sought to the plans or application, they shall be submitted to Planning Services for review and approval. If Planning Services finds that the changes are substantial, than they shall be forwarded to the Hearing Examiner for review and approval.
2. The four lots owned by Cooke Development Corporation are currently designated under only two tax parcel numbers. In order to obtain a tax parcel number for each lot to be developed, Cooke Development Corporation is required to complete a boundary line adjustment for these properties.
3. 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.
4. In accordance with the comments of the Department of Ecology, a wetland reconnaissance shall be performed by a qualified wetland specialist or biologist to determine if wetlands are present. If wetlands are observed, a wetland delineation report and possible mitigation planning will be required.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 29th day of September 2015.



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 variances 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 ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is the date the decision is entered into the public record. This decision was entered into the public record on September 29th, 2015. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 20th DAY OF OCTOBER 2015 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.