

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Conditional Use Permit) FINDINGS, CONCLUSIONS,
Application by John Woodhead Jr. for) AND DECISION
the reconstruction of a single-family)
residence located at 2209 W. Falls) FILE NO. Z1500004-SCUP
Avenue, on the shoreline of the)
Spokane River)

SUMMARY OF PROPOSAL AND DECISION

Proposal: John Woodhead Jr. has applied for a shoreline conditional use permit in order to construct a single-family home within the shoreline of the Spokane River. The proposed home will be one story above ground with a full basement and a garage, with a footprint of approximately 2,300 square feet.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ Owner:	John Woodhead Jr. 2004 W. Pacific, #10 Spokane, WA 99201	Agent:	Jim Kolva Jim Kolva Associates 115 S. Adams Street, #1 Spokane, WA 99201
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Property Address: 2209 W. Falls Avenue, Spokane, WA, 99201

Property Location: The site is located adjacent to the Spokane River, and is addressed as 2209 W. Falls Avenue. The parcel number of the site is 25133.1523.

Legal Description: The abbreviated legal description for the site is provided in Exhibit 13.

Zoning: The existing zoning is RSF (Residential Single Family).

Comprehensive Plan Map Designation: The property is designated as Residential 4-10.

Shoreline Designations: Adjacent to Spokane River (north bank); Urban Conservancy Environment Designation; 100-foot buffer; Great Gorge Park Shoreline District.

Environmental Overlays: Habitat and Species, Riparian Habitat Area 2.

Site Description: The site is approximately 13,000 square feet in size.

Project Description: The Applicant proposes to construct a single family residence to replace a residence that was substantially damaged during a storm. Because the damage was extensive, the City of Spokane requested that the Applicant demolish the prior residence. The proposed residence will be a one-story structure with a full basement and garage. The footprint of the proposed residence is approximately 2,300 square feet. The proposed residence is within the shoreline jurisdiction of the Spokane River and is partially within the 100-foot shoreline buffer. The proposed residence will have a footprint that is nearly double in size compared to the previous residence. However, the expansion of the proposed residence will be to the east. The expansion of the footprint will be no closer to the OHWM than the previous residence.

Surrounding Conditions: The property is situated on the north bank of the Spokane River. To the south is the Spokane River. To the east are single-family residences. To the west is undeveloped, park property. On the north boundary of the property is the right of way for Falls Avenue. On the other side of Falls Avenue, to the north of the property, are steep slopes. On the top of the slopes, and long the Centennial Trail, are higher density residential uses.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (“SMC”) 17E.060, Environmental Standards; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: September 19, 2014
Posted: September 22, 2014

Notice of Application/Public Hearing: Mailed: November 11, 2015 & January 20, 2016
Posted: November 11, 2015 & January 21, 2016

Community Meeting: October 8, 2014

Hearing Dates: January 7, 2016 & March 10, 2016

Site Visits: January 5, 2015 & March 9, 2016

SEPA: This proposal is categorically exempt from SEPA review pursuant to SMC 17E.050.080. See Exhibit 17.

Testimony:

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

Jim Kolva
Jim Kolva Associates
115 S. Adams Street, #1
Spokane, WA 99201

John Woodhead Jr.
2004 W. Pacific, Apt. #10
Spokane, WA 99201

Dr. Karen Noble
2133 W. Falls Ave.
Spokane, WA 99201

Mardis Nennon
341 N. Lower Crossing
Spokane, WA 99201

Stephanie Swan
2105 W. Falls Avenue
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Shoreline Permit application
 - 2C Shoreline/Critical Areas checklist
 - 2D Notification Map application
 - 2E Site Plan A
 - 2F Site Plan B
 - 2G Foundation Footprint
 - 2H Photos of site
 - 2I Aerial View of site
3. Fire Department comments
4. Traffic Engineering comments
5. Wastewater comments
6. Developer Services comments
7. Spokane Tribe of Indian comments
 - 7A Letter dated 01-26-15 from Mr. Abrahamson
 - 7B Letter dated 10-15-15 from Mr. Abrahamson
 - 7C Email dated 12-18-15 from Jim Kolva
8. Department of Ecology comments
 - 8A dated 01-20-15
 - 8B dated 01-30-15
9. Notice map
10. Parcel listing
11. Address Listing
12. Notice of Community Meeting
13. Notice of Application and Hearing
14. Affidavit of mailings
 - 14A Community Meeting dated 09-19-15
 - 14B Application and Hearing dated 11-11-15
15. Affidavit of postings:
 - 15A Community Meeting dated 09-22-15
 - 15B Application and Hearing dated 11-11-15
16. Affidavit of sign removal dated 10-10-15
17. SEPA Exemption dated 12-22-15
18. Community Meeting sign in sheet
19. Letter dated 09-02-14 to Jim Kolva from Ali Brast
re: community meeting instructions
20. Letter dated 10-08-15 to Interested Parties from Ali Brast

- re: requesting comments
- 21. Letter dated 01-16-15 to Interested Parties from Ali Brast
re: requesting comments
- 22. Email dated 10-27-15 to Ali Brast from Jim Kolva
re: notice of application
- 23. Letter dated 10-28-15 to Jim Kolva from Ali Brast
re: notice of application and hearing instructions
- 24. Email dated 12-04-15 to Ali Brast from Karen Noble
re: concerns regarding project
- 25. Email dated 12-16-15 to Ali Brast from Jim Kolva
re: recap of comments received
- A. Material received at hearing:
 - A-1 Hardcopy of Staff's PowerPoint presentation
 - A-2 Letter from Karen Noble dated 01-07-16
 - A-3 Letter submitted by John Woodhead signed 11-27-12
- B. Hearing Examiner's decision to schedule a new hearing dated 01-11-16
- C. Exhibits received for rehearing on March 10, 2016
 - C-1 Revised Staff Report dated 03-08-16
 - C-2 Notice of Application and Public Hearing
 - C-3 Affidavit of mailing dated 01-20-16
 - C-4 Affidavit of posting dated 01-21-16
 - C-5 Letter dated 01-15-16 to Jim Kolva from Ali Brast
re: notice of application and hearing instructions
 - C-6 Emails dated 12-16-15 through 02-18-16 to/from Karen Noble and Ali Brast
re: concerns regarding the project

FINDINGS AND CONCLUSIONS

A. Procedural Background.

On January 7, 2016, the first hearing on this application was conducted. During that hearing, a neighboring property owner objected that the notice of application/hearing was defective because signage was not posted at the project site.

On January 11, 2016, the Hearing Examiner determined that the neighbor's objection was well-taken, and therefore the Hearing Examiner issued a Decision to Schedule of New Public Hearing. See Exhibit B. Through this decision, the Hearing Examiner directed the Planning Department to schedule a new public hearing after all the notice requirements under the municipal code were satisfied.

On January 20, 2016, a new Notice of Application/Hearing was mailed to all property owners within 400 feet of the project site. See Exhibit C-3. On January 21, 2016, a Notice of Application/Hearing was posted on the project site. See Exhibit C-4. The mailing and posting procedures were in compliance with the municipal code.

On March 10, 2016, a second hearing on this application was conducted. All testimony and evidence presented at the first hearing was incorporated by reference, without objection by any party. The Hearing Examiner renders this decision based on the

entire record, including the testimony and other evidence presented at the January and March hearings.

B. Discussion.

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

1. The proposal is allowed under the provisions of the land use code.

To be allowed in the shoreline jurisdiction, a use must be permitted in both the shoreline jurisdiction and in accordance with the applicable zoning of the property. See SMC 17E.060.690(C).

The property is zoned RSF and lies within UCE-designated land. See Exhibit 1, pp. 4-5. A single-family residence is permitted outright in the RSF zone. See Table 17C.110-2. Similarly, a single-family residence is permitted outright on property as UCE. See Table 17E.060-04. However, the proposed structure replaces a residence that was located partially within the 100-foot buffer and was therefore a nonconforming use. See Exhibit 1, p. 5. The proposed residence will be constructed in the same location, but with an expanded footprint. See *id.* An existing, nonconforming residential building may be replaced within the existing footprint. See SMC 17E.060.380(E). However, in order to permit the expansion of a nonconforming residence, the Applicant is required to obtain a shoreline conditional use permit. See SMC 17E.060.380(H). Provided the SCUP criteria (discussed below) are satisfied, the proposed residence is authorized under the land use code.

The Hearing Examiner concludes that the project is permitted under both the underlying zoning of the property and the restrictions applicable in the shoreline jurisdiction. Therefore, this criterion is satisfied.

2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property.

The Comprehensive Plan designates the site and the surrounding neighborhood as Residential 4-10. See Exhibit 1, p. 5. Thus, the Comprehensive Plan contemplates that the property will be used for residential purposes. Further, the subject site is a platted lot that was the location for a residence that was constructed in 1907. See Exhibit 2B. The site is already served by City of Spokane sewer and water and by Avista Utilities. See *id.* The Applicant seeks to replace and expand "...an existing house on a platted lot within an established subdivision." See *id.* In the Hearing Examiner's view, this project is clearly consistent with the Comprehensive Plan designation for the site.

The policies of the Comprehensive Plan also support the project. Most notably, SMP 11.47, entitled "Single-Family Use Priority," states as follows:

Give priority to single-family residences when they are developed in a manner that guarantees no net loss of shoreline ecological functions that are necessary to sustain shoreline natural resources.

The single-family residence proposed here fulfills this policy, as well as other parts of the Comprehensive Plan.

The replacement of the existing residence will have minimal impact on the shoreline environment. A residence was constructed at the site in 1907, long before the shoreline regulations went into effect. The foundation of the residence remains, as does landscaping associated with the prior residence. The site has already been disturbed by development; impacts beyond the pre-existing activities are not anticipated on this record. Although the residence will be expanded approximately 50 feet to the east, the expansion is relatively small and will not result in further encroachment toward the water. The Hearing Examiner concludes that there will be no net loss of shoreline ecological functions. See Comprehensive Plan, SMP 1.3 & 4.7.

To the extent that some impacts may arise, the Hearing Examiner believes those concerns are addressed by project conditions. The proposed mitigation measures will, in the Hearing Examiner's view, be sufficient to protect the shoreline environment from the impacts of construction. Thus, the policy that calls for the mitigation of any adverse impacts arising from the project will also be fulfilled. See Comprehensive Plan, SMP 4.6.

Because the project is consistent with the designations, goals, and policies of the Comprehensive Plan, the Hearing Examiner finds that his criterion has been satisfied.

3. The proposal meets the concurrency requirements of Chapter 17D.010.

The Hearing Examiner agrees with the Applicant's contention that this project is exempt from the concurrency requirements. The existing residence (now demolished except for the foundation) is already served by public sewer and water, natural gas, and electricity. See Exhibit 2B. The residents of the property have enjoyed public services, such as fire, police, and education, since the house was constructed. See id. Thus, the public services and facilities that will serve the property do not change as a result of the replacement of the single-family residence.

Pursuant to SMC 17D.010.030(D), "[d]evelopment permits¹ for development which creates no additional impacts on any concurrency facility are exempt from the requirements of this chapter." Such developments include the "...replacement structure with no change in use or increase in the number of dwelling units..." See SMC 17D.010.030(D)(4). In this case, the Applicant is replacing one single-family residence with another. There is no change in use. Further, the structure will remain "single-family," i.e. there is only one dwelling unit, albeit with a bigger footprint. As stated above, there is no apparent impact on public facilities, so the "no impact" condition is also satisfied.

¹ The term "development permit" means any permit issued by the City authorizing construction, including a conditional use permit. See SMC 17A.020.040(V).

The Hearing Examiner concludes that the project is exempt² from the concurrency requirements. As a result, this criterion is satisfied.

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.*

The “site plan” for the project is included in the record as Exhibits 2F. This documents generally shows the location, size, shape, and topography of the property. They also include information about the physical characteristics of the site and details about the proposed project.

The site area adjacent to the right-of-way is fairly flat. See Exhibit 1, p. 6. However, the southern portion of the site adjacent to the river is very steep, with slopes exceeding 30%. See *id.* There is limited flat area on his lot for construction. “Given the 100-foot shoreline buffer and the 15-foot front yard setback, a total of 115 feet, the buildable depth ranges from about 18 feet on the west to about 35 feet on the east...”, according to the Applicant’s rough estimates. See Exhibit 2B. The Department of Ecology has raised concerns about how the soil will be stabilized during and after construction. See Exhibit 8B. It is clear that the site presents challenges for construction.

Despite the challenges, the Hearing Examiner concludes that the site is suitable for this project, for various reasons. The site has been the location of a residence for many decades. It should be acknowledged that the new residence will have a significantly larger footprint than the previous structure. However, the new building will not be closer to the river than the previously existing residence. See Exhibit 1, p. 6. The proposed structure satisfies the setback and height limitations of the RSF zone. See *id.* To address concerns about construction on or near steep slopes or unstable soils, a geotechnical report and erosion and sediment control plan will be required in order to obtain a building permit. See *id.* “Additionally, carefully planned revegetation with native riparian plants will also be required, to help with slope stabilization and to ensure no net loss of shoreline habitat.” See *id.*

There is no evidence, in this record, of the existence of natural, historical, or archaeological features at this site. The Spokane Tribe of Indians did raise that the “...project area *potentially* contains archaeological resources which would be disturbed by the proposed ground disturbing action.” See Exhibit 7B (emphasis added). The Spokane Tribe did not describe the evidence upon which this judgment was based. The Applicant contacted the Spokane Tribe by phone and letter to arrange for a site visit, and received no response. See Exhibit 7 (Woodhead E-mail 12-21-15, 9:48 AM & attached letter); see *also* Exhibit 7C (Kolva E-Mail 12-18-15, 10:22 AM). In addition, the site has been excavated and filled previously, and has no “surface integrity.” See Exhibit 7C (Kolva E-Mail 12-18-15, 10:22 AM). This leads the Hearing Examiner to doubt the historic or archaeological significance of this site. To the extent that such resources are discovered

² Even if the concurrency requirements applied, this criterion would still be satisfied. City staff advised that “...there were no departments or agencies that reported that concurrency could not be achieved.” See Exhibit 1, p. 6. Based upon this record, the Hearing Examiner would conclude that concurrency standards were met. See SMC 17D.010.020(B)(1).

during the construction process, there are procedures that must be followed to protect those resources. The Hearing Examiner concludes that the conditions of approval adequately address the matter, given the lack of specific evidence that historic or archaeological resources exist at this site.

Based upon the foregoing, the Hearing Examiner concludes that this criterion for project approval 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 or neighboring property or the surrounding area, considering the design and intensity of the proposed use.

The Hearing Examiner concludes that there will not be significant impacts to the environment or the surrounding properties as a result of this project. The proposal is for one single-family residence. The proposed residence merely replaces a previously existing residence. If this type or intensity of use created significant impacts on the environment or neighboring properties, there should have been historical evidence to support such concerns. There is no such evidence in this record.

The site is part of an existing residential subdivision. The neighborhood is already developed with single-family residences. The replacement of one of the residences in the neighborhood, i.e. this project, will not have a substantial impact on the surrounding properties. The site is also essentially at the end of a road, with one neighboring house to the east, and a vacant lot to the west. See Exhibit 2B. The project adheres to the setback and height restrictions under the zoning code, so does not affect the aesthetics or visual access any more than other houses in the vicinity. Under such circumstances, it is doubtful there will be any substantive impacts to properties near the site.

The project is exempt from SEPA analysis, which seems consistent with the low impacts that can be anticipated from a project of this type. Nonetheless, there are legitimate concerns about new construction activity near the Spokane River, especially with steep slopes. However, as discussed above, a geotechnical analysis, an erosion control plan, and re-vegetation measures will all be required at the permitting stage, and are intended to address the potential impacts related to steep slopes and a shoreline environment. The more general impacts associated with construction will also be addressed through mitigation measures. In any case, the general impacts of construction are usually temporary, ending when the work is completed.

A neighboring property owner raised an objection to the cantilevered deck proposed by the Applicant. *Testimony of K. Noble*. She believed that the deck extension would impact her view of the river, as well as views from other properties. See Exhibit C-6. She contended that the amount of extension in to the buffer area was unclear or vague, which could lead to greater buffer encroachments in the future, and that there should be a strict limit on how far³ an extension should be permitted. *Testimony of K. Noble*. The

³ The neighbor characterized this issue as "minor." *Testimony of K. Noble*. However, she also testified that she would prefer "zero feet," i.e. that no extension beyond the existing footprint be permitted at all. See *id.*

Hearing Examiner does not agree that this concern justifies additional restrictions or conditions on this project, for at least two reasons.

First, the Hearing Examiner disagrees that the proposed deck will have such an impact on the neighbor's view that the Applicant's proposal should be scaled back or materially revised. The neighbor's general concerns about the view were understandable, but were not very specific. The proposed house is larger than the previous residence, but not so much that there will be significant impacts on the view. The neighbor did not claim that the house would interfere with her view, only the cantilevered deck. But the deck itself will only have a minor effect. The neighbor's characterization of the issue as "minor" seems to acknowledge this reality, at least to some degree. The proposed deck is similar in size and scale as the deck on the previous home. *Testimony of T. Woodhead*. The deck will mostly be the same distance to the river as the previous deck, except that the portion of the deck on the eastern portion of the new residence will be closer by a small amount. See *id.* In addition, the new residence will be lower in height than the old residence as well, which will decrease the visual impact to some extent. See *id.*

After considering the site plan, and visiting the property, the Hearing Examiner is skeptical that any other neighbor's view will be affected by the proposed residence. No other neighbors raised any question or concern about an impact on the views. The proposed residence is at a dead-end, with steep slopes behind the residence and undeveloped park land to the west. Neither the previous or the new residence will materially block views. It is true that the residence impacts the neighbor's view of the river to the west to some degree, but not to a materially greater extent than the former residence. In the end, the Hearing Examiner believes that the proposed deck is appropriate and will not create any serious impediment to the views of any neighbors.

Second, the Hearing Examiner does not accept the contention that the extension into the buffer is unclear or vague. The proposed residence must be constructed in accordance with the approved plans, which includes the deck. Thus, the size of the deck is already specifically limited to that shown on the site plan. *Testimony of J. Kolva*. There is no risk of a new deck/porch being extended 50-60 feet into the buffer at a later date, as suggested by the neighbor. *Testimony of K. Noble*. Any future construction of a deck farther into the buffer would require additional authorization, such as a new conditional use permit.

Third, the Hearing Examiner did not find that there was any prohibition on a cantilevered deck in the relevant code provisions. There is a requirement to ensure there is no net loss of ecological functions of the shoreline. In the Hearing Examiner's opinion, there was no evidence that this proposal will create such impacts. Considering the deck specifically, that part of the structure does not require footings or other improvements that will affect the shoreline. Further, with minor exceptions explained above, the deck is extends to the same location as the previous deck/porch. Thus, the Hearing Examiner concludes that the design of the cantilevered deck is appropriate.

This project will not have significant impacts on the environment or surrounding properties. The Hearing Examiner agrees with the Staff's conclusion that this criterion has been met.

6. *The project owner cannot be required to provide a turn-around or an easement on his property as a condition of approving the SCUP.*

A neighboring property owner requested that this project be conditioned upon the installation of a vehicle turnaround. See Exhibits 24 & C-6. This suggestion was made for two primary reasons: first, a turnaround is needed for fire and emergency vehicles, in particular due to the high risk for fires in the vicinity; and second, a turnaround is needed to facilitate the increasing public use of the "west-end trail." See *id.* In addition, the neighboring property owner requested that the Applicant be required to grant easement rights for a turn-around area. The Hearing Examiner declines to impose such conditions upon the Applicant, for numerous reasons.

First, the fire department, which is the agency with expertise on addressing fire risks, is not insisting on the installation of a turnaround for this project. The fire department did recognize that fire access was lacking and that a fire apparatus turnaround or cul de sac could not be provided in this location. See Exhibit 1, p. 7. However, the fire department did not conclude that the Applicant was required to install a turnaround to address this existing shortcoming. Instead, the fire department is requiring that the new residence be equipped with sprinklers. See Exhibit 1, p. 7. In addition, the fire department has stated that smaller vehicles would be used to respond to a fire in that area, and therefore a turnaround would not be needed for fire apparatus access. See *id.*

Second, a private property owner, such as the Applicant, cannot be legally required to correct preexisting conditions or to confer public benefits as a condition of obtaining a permit, when there is no connection between the problem being addressed and the proposed project. See *e.g. Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 695-96, 49 P.3d 860 (2002) (holding that a project condition was improper when substantial evidence does not demonstrate that the development caused the traffic problems being addressed by the condition). The construction of the proposed residence did not cause the neighboring streets to be narrow, create limited space for a turnaround, or result in the absence of public parking, to provide a few examples. The neighbor is undoubtedly correct that, as members of the public seek to access and use nearby trails, that the streets become congested, parking becomes scarce, and the like. However, these impacts will exist whether the new residence is constructed or not. The Hearing Examiner concludes that it would not be proper to require the Applicant to solve preexisting, public problems as a condition of approving a development permit for a single residence.

Third, the developer cannot be legally required to grant his neighbor or the public easement rights to his property as a condition of permit issuance. See *e.g. Luxembourg Group v. Snohomish County*, 76 Wn. App. 502, 507, 887 P2d 446 (1995) (holding that a developer could not be required to grant an easement to a neighbor's landlocked property because the neighbor's lack of access was not caused by the development). The fact that there is inadequate space in the public right-of-way to turn vehicles has nothing to do with this project. That circumstance exists regardless of whether the home is constructed or not. And the project does not reduce or encroach upon the space that the public would otherwise have the right to use. Thus, the requested easement condition cannot be imposed under Washington law.

Fourth, the Shoreline Management Plan "...specifically exempts single-family residences from providing physical and visual public access..." to the shoreline. See SMC 17E.060.280(U). Therefore, the Applicant cannot be required to take steps to ensure that the public has access to the shoreline, whether through the installation of a turnaround, an access route, or otherwise. See Exhibit 1, p. 7.

The Hearing Examiner believes it is not appropriate to impose the development conditions proposed by the neighboring property owner, and therefore declines to do so.

7. For shoreline conditional use permits the following additional criteria apply:

a. The proposed use is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;

The proposed residence is a fairly low-intensity use. See Exhibit 1, p. 8. The project seeks to replace a damaged residence with a new residence. The project is not the kind of unrestricted, uncoordinated, or piecemeal development of the shorelines that is discouraged by state law. See RCW 90.58.020. Further, a single-family residence is the type of low-intensity use that is consistent with the Urban Conservancy Environment designation of the site. See Exhibit 1, p. 8. For example, the project is designed to retain important ecological functions, even though the site is partially developed. See Exhibit 1, p. 7. Further, the Applicant intends to revegetate portions of the site with native riparian plants, which will restore some upland portions of the shoreline. At the minimum, this will ensure no net loss of ecological functions. See Exhibit 1, p. 8. Ultimately, this project will have less impact on the ecological function of the shoreline than other types of development. See Exhibit 1, p. 8.

The Hearing Examiner concludes that the project is consistent with the policies of state law and the Shoreline Master Program. Therefore, this criterion for approval is satisfied.

b. The proposed use will not unreasonably interfere with the normal public use of public shorelines;

This project does not affect "normal public use" of the shorelines by the public. However, this conclusion must be qualified. This site is under private ownership and does not serve as an access point for public access to the shoreline. The Applicant is not required to provide members of the public with access, physical or visual, to the shoreline through his property. See Exhibit 1, p. 8. Under the shoreline regulations, single-family residences are specifically exempt from providing such access. See SMC 17E.060.280(U). There is an existing trail on the property, closer to the water. This trail is not recognized as a public trail by the City of Spokane. See *id.* The property owner is not required to provide or ensure access to that "informal" trail. See *id.* Finally, this project replaces a damaged residence with a new residence. The impact on public enjoyment of the shoreline would appear to be unaffected by a project of this nature. The Hearing Examiner concludes that this criterion is met.

c. The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program;

There is no evidence, in this record, of multiple conditional use permits affecting the shoreline in this vicinity. Therefore, there is no basis upon which to perform a cumulative impacts analysis. In addition, this particular SCUP would only permit the replacement of one damaged single-family residence. This is not the type of project that is likely to be the “straw that broke the camel’s back” in terms of ecological impact. The area is already developed with single family residences, and thus there is little reason to believe that additional projects are on the horizon. The Hearing Examiner concludes that there are no cumulative impacts that could undermine the goals of the Shoreline Master Program. As a result, this criterion is satisfied.

d. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with the uses planned for the area under the comprehensive plan and the Shoreline Master Program;

See the discussion in paragraphs 5 above. The Hearing Examiner concludes that this criterion is satisfied.

e. The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located, and the public interest in enjoying the physical and visual access suffers no substantial detrimental effect.

See the discussion above in paragraphs 5 and 6b above. The Hearing Examiner concludes that this criterion is satisfied.

DECISION

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

Approval is for a Shoreline Conditional Use Permit to allow the Applicant, John Woodhead Jr., to construct a single-family residence within the shoreline of the Spokane River. The single-family residence will be constructed substantially as set forth in the General Application and Shoreline Permit Application submitted and included in the record as Exhibits 2A and 2B, and the Site Plan⁴ submitted and included in the record as Exhibit 2F. If changes are sought to the applications and Site Plan, 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.

⁴ The Applicant originally submitted two site plans for the project, denominated as Site Plan A and Site Plan B. The Applicant subsequently decided not to pursue Site Plan A. *Testimony of A. Brast*. Therefore, the site plan applicable to this project is Site Plan B, marked as Exhibit 2F in the record.

1. The site will be developed in substantial compliance with the plans presented at Design Review and routed for a second request for comments on October 8, 2015.
2. The project shall comply with Shoreline Master Program, SMC 17E.060 and SMC 17E.020, which provide that a project shall not result in a net loss of shoreline ecological functions.
3. Per the Fire Protection Engineer's comments, due to the lack of fire access, the residence is required to be provided with fire sprinklers.
4. Per the Assistant Traffic Engineer, if frontage improvements are not provided, then at a minimum, a signed paving waiver will be required for future improvements should an LID be formed by the City of Spokane.
5. Per the Department of Ecology, erosion control Best Management Practices shall be followed to minimize the potential for erosion.
6. Per the Department of Ecology, carefully planned revegetation with native riparian⁵ plants and compliance to standards found in SMC 17E.040, "Spokane Geologically Hazardous Areas," are required.
7. As part of the building permit, a Geotechnical Report and an Erosion and Sediment Control Plan that satisfies the requirements of SMC 17D.090, "Erosion and Sediment Control," will be required for the proposed work.
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 approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the International Codes (as adopted in this jurisdiction), as well as requirements of City Departments and outside agencies with jurisdiction over land development.
10. 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.

⁵ The Applicant requested that the term "riparian" be removed from the conditions, on the theory that the word "riparian" suggested plants associated with a water environment, and this property is upland and therefore should be planted with dry-land grasses or the like. The Hearing Examiner has decided that the word "riparian" should remain in the conditions because "[r]iparian vegetation includes not only streamside vegetation that is dependent upon presence of water, but also on the upland vegetation that is part of the zone of influence in the riparian area." See SMC 17A.020.180(U) (defining "riparian").

11. 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.

12. 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.

13. 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 23rd day of March, 2016.



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 of the Hearing Examiner regarding shoreline conditional use permits are reviewed by the Washington State Department of Ecology. After review, they may be appealed to the Washington State Shoreline Hearings Board. **All appeals must be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date of the Ecology decision.**

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.