

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Union Gospel Mission to convert a) AND DECISION
nursing home into a crisis shelter, on)
property located at 2407 & 2410 N.) FILE NO. Z16-170CUP3
Hogan

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Union Gospel Mission seeks a conditional use permit in order to allow the conversion of an existing, abandoned nursing home into a crisis shelter for women and children. The Applicant also requested a variance for a six-foot high fence in the front yard on Illinois for a private, outdoor space for the residents. However, the request for a variance was formally withdrawn by the applicant. As a consequence, the application is now limited to a conditional use permit.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** Union Gospel Mission
P.O. Box 4066
Spokane, WA 99220

Owner (at the time of application): Hogan Place, LLC
9158 E St. Rd. 164
Jasper, IN 47546

Owner (at the time of hearing): Union Gospel Mission
P.O. Box 4066
Spokane, WA 99220

Agent: Dwight Hume
Land Use Solutions and Entitlement
9101 N. Mt. View Lane
Spokane, WA 99218

Property Location: The properties are located at 2407 and 2410 N. Hogan, in the Northwest ¼ of Section 9, Township 25 North, Range 43 East, W.M., City of Spokane, County of Spokane, State of Washington. Parcel numbers include 35095.5506 and 35092.5402.

Zoning: The property is zoned RSF (Residential Single-Family).

Comprehensive Plan Map Designation: The property is designated as R 4-10 (Residential 4-10 units per acre).

Site Description: The site is located on the corner of Hogan and Illinois and is a developed site. There is an existing, multi-story building and a small parking area adjacent to the building, located at 2410 N. Hogan. The main parking lot is located across the street at 2407 N. Hogan. The existing building is a vacant nursing home, which received a previous conditional use permit in 1995.

Surrounding Conditions and Uses: The site and the properties directly to the east, north, and west are zoned Residential Single-Family (RSF). Across Illinois, directly to the south, is zoned Residential Multi-Family (RMF) and to the southwest is an area zoned Neighborhood Retail (NR-35). Adjacent to the building, to the east, is a historic building which received a conditional use permit for an office use. To the immediate west is the parking lot for the nursing home. Continuing west there is a gas station. To the southwest, there is a gravel lot. All other surrounding uses are single family homes.

Project Description: The project is the conversion of an existing but unused nursing home into a crisis shelter. The proposed shelter will hold 130 beds. The Applicant requested a reduced parking minimum for the site due to the inability to meet the minimum parking requirements. The Planning Department approved this request on March 25, 2016. The Applicant has also requested permission to install a six-foot tall fence in the front yard on Illinois. At the time of the application, the Applicant was advised to apply for a variance, and the Applicant did so. However, during the processing of the application, the Planning Department determined that the six-foot fence was permitted outright in that location. Following the hearing, the Applicant formally withdrew its request for a variance.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code ("SMC") 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Criteria, and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: February 12, 2016
Posted: February 12, 2016

Notice of Application/Public Hearing: Mailed: April 12, 2016
Posted: April 12, 2016

Community Meeting: March 1, 2016

Public Hearing Date: May 19, 2016

Site Visit: May 18, 2016

SEPA: This project is exempt from SEPA pursuant to SMC 17E.050.080.

Testimony:

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

Dwight Hume
Land Use Solutions and Entitlement
9101 N. Mt. View Lane
Spokane, WA 99218

Phil Altmeyer, Executive Director
Union Gospel Mission
P.O. Box 4066
Spokane, WA 99220

Katie Taylor
2427 N. Madelia
Spokane, WA 99207

Danielle Anderson
2411 N. Hogan Street
Spokane, WA 99207

Exhibits:

1. Planning Services Staff Reports
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application
 - 2C Notification Map Application
 - 2D Aerial view of site
 - 2E Site Plan
 - 2F Commercial & Investment Real Estate Purchase & Sale Agreement
3. Engineering Services comments
 - 3A Letter from Applicant requesting Parking Waiver dated 03-15-16
 - 3B Letter from Planning Services Director responding to request 03-25-16
4. Spokane Tribe of Indians comments
5. Department of Ecology comments
6. Notice map
7. Parcel listing
8. Notice of Community Meeting
9. Notice of Application and Public Hearing
10. Affidavit of mailings:
 - 10A dated 02-12-16
 - 10B dated 04-12-16
11. Affidavit of posting:
 - 11A dated 02-12-16
 - 11B dated 04-12-16
12. Affidavit of sign removal dated 03-01-16
13. SEPA Exemption dated 05-05-16
14. Community Meeting sign in sheet
15. Community Meeting notes received on 03-11-16
16. Letter dated 02-02-16 to Dwight Hume from Ali Brast
re: community meeting instructions

17. Letter dated 03-17-16 to Interested Parties from Ali Brast
re: requesting comments
18. Letter dated 03-11-16 to Ali Brast from Dwight Hume
re: submittal of materials
19. Letter dated 04-01-16 to Dwight Hume from Ali Brast
re: notice of application/public hearing instructions
20. Public Comments:
 - 20A Email dated 04-15-16 from Thomas Sawyer, fencing along Illinois Ave.
 - 20B Letter dated 04-26-16 from Steve Starwick, concerns regarding the project
 - 20C Letter received 04-26-16 from Kathryn Taylor, concerns regarding the project
- 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(F). 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 project site is zoned Residential Single-Family ("RSF"), a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17.110.110. The table does not specifically identify a "crisis shelter" as an allowed use. However, the table does authorize "Community Services" as a conditional use. See *id.*

Community Services are uses of "public, nonprofit or charitable nature generally providing a local service to people of the community." See SMC 17C.190.420(A). Community Services provide services on-site or have employees at the site on a regular basis. See *id.* "The use may provide mass shelter or short-term housing by where tenancy may be arranged for periods of less than one month when operated by a public or nonprofit agency." See *id.* In the Hearing Examiner's view, the proposed crisis shelter easily fits within the meaning of a "Community Service," under the quoted provisions of the municipal code. As a result, the Hearing Examiner agrees with the Planning Department that the proposed use may be permitted as a conditional use. See Exhibit 1, p. 3.

The Hearing Examiner finds that the proposed crisis shelter is allowed in the RSF zone, provided a conditional use permit is obtained and the other development standards are met. Therefore, 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 first goal of the social health chapter sets forth the objective to provide affordable and accessible health and human services to all citizens. See CP, Chapter

10, SH 1, p. 10. This goal includes a policy that specifically supports the requested conditional use permit. Specifically, Policy SH 1.7 seeks to “[p]romote and assist non-profit organizations in purchasing and renovating vacant buildings, in order to provide sites for additional community-related facilities.” See CP, Chapter 10, Policy SH. 1.7, p. 12. The commentary to the policy notes that vacant buildings weaken an area’s integral sense of continuity and community. See *id.* Such buildings “...convey a depressing sense of community decline and can present a public health of safety concern.” See *id.* When a building sits vacant, especially when there is little market demand for that facility, “the property could be ripe for occupation by a non-profit organization whose mission supports the principles of social health.” See *id.*

The abandoned nursing home has sat empty for quite some time. As it turns out, this otherwise ignored building is a perfect fit for the proposed crisis shelter, according to its Executive Director. *Testimony of P. Altmeyer.* The proposal clearly fits within the intent of Goal SH 1 and Policy SH 1.7. As the Planning Department notes, there are other goals and policies of the comprehensive plan that are also generally supportive of the proposal. See Exhibit 1, p. 3-4. As a result, the Hearing Examiner concludes that this criterion for approval is satisfied.

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

The decision criteria for Type III decisions (such as a conditional use permit) mandate that all proposals must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on March 17, 2016, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 17.

The city received minimal response to its request for comments. See e.g. Exhibits 3, 3A, 3B, 4, & 5. City staff noted that “...there were no departments or agencies that reported that concurrency could not be achieved.” 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 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 Hearing Examiner finds that the property is suitable for the proposed use given its physical characteristics. The site is already developed with a nursing home. The proposal will merely put an abandoned structure to productive use. Only minor

remodeling work will be necessary, and those changes will be internal. No changes are proposed for the exterior of the premises. The only structure that is proposed is a six-foot fence. Thus, the project will re-purpose an already developed property, and the project proponents have confirmed that the existing building is ideal for the proposed use. There is no evidence in this record suggesting that the physical characteristics of the property make it unsuitable for the proposed use. The Hearing Examiner therefore concludes that this criterion for 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 of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

This project is categorically exempt from SEPA review, pursuant to SMC 17G.060. As a result, the applicant was not required to prepare a SEPA checklist and no specific environmental analysis was required. In addition, there is no substantive evidence in this record suggesting that there would be significant environmental impacts due to the proposed use.

In the Hearing Examiner's view, specific evidence was also lacking that there would be significant, negative impacts on neighboring properties as a result of the proposed use. There was some testimony that permitting the use of the facility would promote crime in the neighborhood. *Testimony of K. Taylor*. It was also strongly contended that the project would result in serious parking problems in the neighborhood. See e.g. Letter of S. Strawick 4-26-16. Each of these two issues should be considered in turn.

The Hearing Examiner finds that the predictions about crime were speculative. There was no evidence that this type of facility is a magnet for crime. The testimony from the project sponsor provided some contrary evidence based upon actual experience operating a crisis shelter. The Hearing Examiner is not convinced that putting an abandoned structure to productive use will increase crime. The opposite may even be true, but that is speculative as well. In the absence of appropriate data or empirical evidence, the Hearing Examiner is not inclined to condition or deny the requested permit based upon general fears about crime.

The parking issue is more difficult to dismiss. The Hearing Examiner agrees with Mr. Strawick that the city's decision authorizes this facility with parking well below the minimum requirement¹ that usually applies. However, the Hearing Examiner does not believe that permitting the facility to operate with less available parking will result in substantial impacts on the neighborhood. The Applicant has operated a shelter on East Sprague for some time and the demand for parking has been minimal. Given the historical evidence, there will be more than sufficient parking for staff and clientele. The Staff provided some additional details supporting this point of view, stating as follows:

¹ For purposes of this part of the decision, the focus is on the purported impacts on neighboring property owners, not the legal question of whether the parking requirements can be relaxed or not. The parking issue is further addressed in Paragraph 10 below.

While this new use may produce more automobiles for the site than a nursing home, the applicant has indicated that the existing shelter on Sprague has 15-units, and often three families per unit, and a parking lot with 15 stalls. The applicant expressed that, typically the lot on Sprague has 7-8 cars parked in it and only reaches capacity for special events 2-3 times per year. One reason for this is the fact that the residents are often women who do not own cars and typically utilize public transportation. While the proposal did receive a reduced parking minimum approval, it is not anticipated that this use in this location will even require the standard minimum number of parking spaces based on the historic parking use in the Sprague location.

See Exhibit 1, p. 5.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment or substantial impacts on the neighborhood which are not otherwise addressed by project conditions. Therefore, this criterion for approval of the conditional use permit is satisfied.

- 6. The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F).*

The residential appearance and function of the area will not be negatively impacted by this proposed use. The proposal will merely put an otherwise abandoned nursing home to productive use. The new use will most likely be similar in intensity as the former nursing home. See Exhibit 1, p. 5. Thus, the project is consistent with the property's historic use and will not be out-of-proportion with the residential household uses in the vicinity. The general appearance of the neighborhood will not change. The building already exists and no changes are proposed for the exterior of the structure. The only structure proposed at the site is a six-foot fence, which is permitted at this location. *Testimony of A. Brast.* The Hearing Examiner concludes that this criterion for approval is satisfied.

- 7. The proposal will be compatible with the adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks and landscaping. The proposal will mitigate the differences in appearance or scale through such means as setbacks, screening, landscaping and other design features. See SMC 17C.320.080(F)(2).*

This criterion is not particularly relevant to this proposal. For the most part, this criterion contemplates new development because there is an assumption that the Applicant will have control over the design features, such as building scale. Here, the Applicant seeks to re-purpose an existing building. The design features of this structure are already established and will not change. No exterior modifications are proposed for this structure. The only addition is a fence. The Staff has concluded that the fence is permitted outright. In addition, the existing building has been a part of this residential neighborhood for many years. The intensity of the proposed use is not materially different than the uses of the building in the past. The Hearing Examiner concludes that the

proposed use is compatible with the neighboring uses. Therefore, this criterion is satisfied.

8. *The proposal will not have significant adverse impacts on the livability of nearby residential lands due to noise, glare, late-night operations, odors and litter, or privacy and safety issues. See SMC 17C.320.080(F)(3).*

The Hearing Examiner concludes that the proposal will not affect the livability of the surrounding residences. There is no reason to anticipate a significant amount of noise from this residential use. The residents of the facility are not allowed to have radios or other noise-making devices. See Exhibit 1, p. 6. There was no evidence that this facility will result in glare, odors, or litter. It can be anticipated, however, that the facility can control such concerns in the same fashion as with any other residential facility. In addition, there will be staff present at the facility 24 hours-a-day. See *id.*

The Hearing Examiner also concludes that the project does not cause safety concerns or infringe upon the privacy of the neighborhood. There was no evidence that anyone's privacy would be impacted by this occupation of this building. By contrast, there was testimony that this facility would cause an increase in crime, which is certainly a legitimate safety concern. However, the Hearing Examiner has already rejected that claim as speculative. On this record, the Hearing Examiner concludes that the proposed use will not negatively impact the livability of the neighborhood. See *id.* As a result, the Hearing Examiner concludes that this criterion for approval is met.

9. *The proposed use is in conformance with the street designations of the transportation element of the comprehensive plan. The transportation system is capable of supporting the proposed use in addition to existing uses in the area, upon consideration of the evaluation factors provided in the municipal code. See SMC 17C.320.080(F)(4).*

This project does not create any new or unique burdens on the transportation system or on other public facilities. There was no evidence presented that this project was incongruous with the transportation element of the comprehensive plan. This project merely results in the renewed use of an existing structure. The intensity of the use is not likely to be materially different from uses in the past. No traffic analysis was required for this project. In addition, there were no comments from the Engineering Department suggesting that the transportation system was not adequate to support the proposed use of the building. See Exhibit 1, p. 6; see also Exhibit 3. Public improvements are not required in order to accommodate the development. See *id.* The only accommodation made for this project concerned parking, an issue that is addressed in Paragraphs 5 and 10 of this decision. Under the circumstances, the Hearing Examiner concludes that this criterion is satisfied.

10. *The Planning Director has discretion to allow modification to the parking minimums and no specific challenge was lodged regarding the Planning Director's authority. Therefore, the Hearing Examiner will not consider claims that the project cannot be allowed with less than the usual parking minimum.*

The Hearing Examiner does not decide the question of whether the project can be approved with parking below the usual minimums. The Staff contended, and there was no disagreement with this claim at the hearing, that the Planning Director had discretion to allow reduced parking for the proposed use. The municipal code generally supports the Staff's interpretation, stating:

The director may approve ratios that are higher than the maximum or lower than the minimum if sufficient factual data is provided to indicate that a different amount is appropriate.

See SMC 17C.230.130(C). The municipal code also contains standards that allow reduced parking, based upon factors such as the availability of adequate, on-street parking, and the installation of bicycle racks. See e.g. SMC 17C.230.100(G) & SMC 17C.230.110(B)(3). In any case, it is clear enough that the Planning Director has the authority to permit adjustments to the parking requirements, and was exercising that discretion in making her determination in the matter. See Exhibit 3B

Staff contended at the hearing that the Planning Director already made a decision on the parking issue, and therefore that issue was not properly before the Hearing Examiner. This position was not disputed at the hearing. In addition, there was no specific challenge to the Planning Director's authority to make such modifications. For example, the Planning Director's decision on the parking issue was not appealed to the Hearing Examiner.

The Hearing Examiner concludes that the Planning Director had the discretion to allow reduced parking for the proposed use. The Hearing Examiner will not review the Director's decision in the absence of some form of appeal. Having reached this conclusion, the Hearing Examiner must also decline to consider the Applicant's request to modify² the conditions of the Planning Director's decision. The Hearing Examiner cannot both refuse to reach the merits of the Director's decision and, at the same time, make modifications to that same decision.

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 Union Gospel Mission to convert and use an existing, abandoned nursing home as a crisis shelter for women and children. This approval allows the Applicant to use the facility located at 2410 N. Hogan and the parking lot at 2407 N. Hogan for such purposes. The facility will be used in accordance with the plans and application on file in the Planning Department.

2. The project will be developed in substantial conformance with SMC 17C.110, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.

² Specifically, the Applicant requested that the Director's requirement to install bike racks be deleted.

3. The applicant will obtain a new certificate of occupancy due to the change in occupancy as determined by the 2012 IBC.
4. The Applicant will install bicycle racks on site consistent with the requirement in the Reduced Parking Minimum Approval letter.
5. Accessible barrier free parking spaces and aisles must comply with the City of Spokane Standard Plan G-54 & B-80A. An accessible route of travel connecting to the nearest accessible entrances and to the public sidewalk is required with a marked accessible route of travel.
6. 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.
7. 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 well as requirements of City Departments and outside agencies with jurisdiction over land development.
8. 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.
9. The applicant shall comply with the requirements of the Spokane Regional Clean Air Agency prior to the construction, installation or establishment of an air pollution source. A Notice of Intent must be submitted to the Spokane Regional Clean Air Agency prior to any demolition project or asbestos project.
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 31st day of May 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 by the Hearing Examiner regarding conditional use permits and 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 May 31, 2016. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 21st DAY OF JUNE 2016 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.