

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Martin Luther King Jr. Family) AND DECISION
Outreach Center to allow the)
construction of a community center at) FILE NO. Z16-393CUP3
855 S. Sherman Street)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Martin Luther King Jr. Family Outreach Center seeks a conditional use permit in order to permit the construction of two-story building and related improvements in a single-family residential zone. The new building will replace the current buildings being used as the Martin Luther King Jr. (MLK) Family Outreach Center.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ Martin Luther King Jr. Family Outreach Center
Agent: c/o George Watson
855 S. Sherman St.
Spokane, WA 99202

Owner: Same as Applicant.

Property Location: The address of the site is 855 S. Sherman Street, Spokane, Washington, 99202. The site is designated as Parcel Nos. 35203.1310 & 35203.1311.

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 consists of two adjacent parcels, which are the current home of the MLK Outreach Center. The site as a whole is generally flat and square in shape. The site is located on the southeast corner of the intersection of Sherman Street and E. 8th Avenue. The property includes a residence being used as an administrative office, a main building used as an outreach center, a playground, and a covered patio. The footprint of the buildings on the site is approximately 6,750 square feet. There are approximately five off-street parking spaces in front of the outreach center along Sherman Avenue, and another area with room for 2-3 additional vehicles along the alley south of the outreach center.

Surrounding Conditions and Uses: The land to the north, south, east and west of the property is zoned Residential Single Family (RSF). There are single family residences in all directions in the vicinity of the property.

Project Description: The MLK Outreach Center is proposing to remove all the existing structures on the site and to construct a new 11,784 square foot facility. The new facility will be two stories, with a footprint of approximately 5,937 square feet. The site will also include lighting, a playground with fencing, and additional parking. The new parking area will accommodate approximately 22 spaces of off-street parking. The alley will be paved, to the extent of the southern boundary of the site, which will provide access to some of the additional off-street parking.

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: October 21, 2015
Posted: October 21, 2015

Notice of Application/Public Hearing: Mailed: June 9, 2016
Posted: June 9, 2016

Community Meeting: November 9, 2015

Public Hearing Date: July 14, 2016

Site Visit: July 14, 2016

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

Testimony:

Donna deBit, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

George Watson
Martin Luther King Jr. Family Outreach Center
855 S. Sherman St.
Spokane, WA 99202

Freda Gandy
855 S. Sherman St.
Spokane, WA 99202

Exhibits:

1. Planning Services Staff Reports
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application

- 2C Notification Map Application
- 2D Project Narrative
- 2E Aerial view of site
- 2F Site Plan
- 2G Preliminary 1st Floor Plan
- 2H Preliminary 2nd Floor Plan
- 2I Building Elevations
- 3. Engineering Services comments
- 4. Spokane Tribe of Indians comments
- 5. Avista comments
- 6. Notice map
- 7. Address listing
- 8. Parcel listing
- 9. Notice of Community Meeting
- 10. Notice of Application and Public Hearing
- 11. Affidavit of mailings:
 - 11A dated 10-21-15
 - 11B dated 06-09-16
- 12. Affidavit of posting:
 - 12A dated 10-21-15
 - 12B dated 06-09-16
- 13. Affidavit of sign removal dated 11-10-15
- 14. SEPA Exemption dated 07-01-16
- 15. Community Meeting sign in sheet
- 16. Community Meeting Narrative
- 17. Letter dated 06-12-15 to George Watson from Donna deBit
re: community meeting instructions
- 18. Letter dated 05-20-16 to Interested Parties from Donna deBit
re: requesting comments
- 19. Letter dated 06-08-16 to George Watson from Donna deBit
re: notice of application/public hearing instructions
- 20. Public Comments:
 - 20A Letter dated 06-14-16 from Brian Mullin, 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. Certain kinds of “institutional” uses are allowed in the RSF zone, including “community services.” See Table 17C.110-1. “Community Services are uses of a public, nonprofit or charitable nature generally providing a local service to people of the community.” See SMC 17C.190.420(A). A community service is allowed in the RSF zone, provided a conditional use permit is obtained. See Table 17C.110-1. In addition, new Community Service buildings require a conditional use permit and are processed as a Type III application. See SMC 17C.110.110(D).

The Hearing Examiner finds that the proposed building 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).*

In various ways, the Comprehensive Plan (“CP”) generally recognizes the important role of community services. The Hearing Examiner agrees with the Staff that the proposal is specifically supported by Policy N 2.1, Mixed Use Neighborhood Centers. That policy encourages the development of “...neighborhood infrastructure that enables citizens to live, work, shop, socialize and receive other essential services in their own neighborhood.” See CP, Policy N 2.1, Chapter 11, p. 9. The proposal is also supported by Policy ED 5.3, which promotes educational opportunities, such as jobs training. See CP, Policy ED 5.3, Chapter 7, p. 18. The proposed redevelopment of the MLK Family Outreach Center supports its mission to provide services to the community, and as such is consistent with the intent and purpose by the comprehensive plan. 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 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 May 20, 2016, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 18.

The city received a limited response to its request for comments. See *e.g.* Exhibits 3-5. City staff noted that no city departments or outside agencies “...reported that concurrency could not be achieved.” See Exhibit 1, p. 3. 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 flat and square, and is already developed with two buildings, parking, and other improvements. The site has been used to provide community services for over thirty years. Thus, the site has historically been suitable for the proposed use. The new structure, once completed, will take up approximately 30% of the property, and will include a playground and off-street parking. See Exhibit 1, p. 4. The Staff has concluded that the preliminary design is appropriate for the site. See *id.* Further, the new structure will be subject to the development standards of the RSF zone, such as setbacks, height, and lot coverage. See *id.*

There is no evidence in this record suggesting that the physical characteristics of the property make it unsuitable for the proposed improvements. Further, there are no conditions that could undermine the suitability of the site. For example, there are no indications of surface water on the site. See Exhibit 2B. There is no reason to expect that groundwater will be impacted by this project. See *id.* There are no known cultural or historic resources on this site. See Exhibit 1, p. 4. The Spokane Tribe of Indians expressed no concerns about cultural resources at this site. See Exhibit 4.

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).*

There is no evidence that this project may give rise to significant environmental impacts. The MLK Family Outreach Center is an existing facility that has been in operation for many years, apparently without causing significant environmental consequences. There is no reason to suspect that the redevelopment of the site will somehow create new or unique impacts on the neighborhood. See Exhibit 1, p. 4. The project is quite limited in scope. Under the applicable standards, the project is categorically exempt from SEPA review. See SMC 17E.050.080; see also Exhibit 1, p. 4. In any case, project conditions and applicable development standards ensure that the project will have minimal impact on the neighborhood. The Hearing Examiner concludes that the project will not have significant impacts on the environment, and therefore this criterion 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 project. Two existing buildings will be replaced by a new, two-story structure. The new building will be an improvement over the existing structures. The structure will have to meet the design requirements of the RSF zone as well as the restrictions for institutional uses in residential areas. In addition, the site has been used for community services for decades and has not proven itself to be incompatible with the neighborhood, based upon this record. The nature of the use is not changing as a result of this project. Ultimately, the Hearing Examiner agrees with staff that the new building will not be disproportionate to the surrounding residences. See Exhibit 1, p. 5. The Hearing Examiner concludes that this criterion for approval is met.

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).*

The design of the project appears to be proportionate to the neighborhood, and appropriate given the characteristics of the site. See Exhibits 2F-2J. The site is located adjacent to a busy arterial, which would seem an appropriate location for this type of use. The proposal is of an appropriate scale, in particular considering that the new structure will only occupy 30% of the site. See Exhibit 1, p. 4. "While the height of the new facility will be taller than what currently exists on site, it will still remain within the height limitations for the RSF zoning." See Exhibit 1, p. 5. Other development standards will also apply, such as the requirement for landscaping for proper buffering. See *id.* Off-street parking will increase from approximately 8 spaces to 22 spaces. See Exhibit 2F. These features will lessen the potential impact of the project on the surrounding residences. In any event, as stated above, the development standards applicable to the property will ensure that the project is developed in a manner that respects the residential character of the area.

In the Hearing Examiner's view, the new building will have no more impact on the neighborhood than the existing facility. Even if the use becomes more intense following the construction of the new facility, the Hearing Examiner still believes the proposal is compatible with the neighborhood, for the reasons already discussed. The Hearing Examiner concludes that this criterion for approval 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 proposal will not affect the livability of the surrounding residences. The project does not include elements that may cause unanticipated or undue light, glare, odor, or litter, or give rise to diminished privacy or safety. See Exhibit 1, p. 5. No late-night

operations are planned at the facility. *See id.* The hours of operation will remain the same. *See id.* There is no evidence in this record suggesting that livability will be diminished by this project. Under the circumstances, the Hearing Examiner concludes that this criterion for approval has been satisfied.

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. *See Exhibit 1, p. 6.* As stated above, no department reported that public facilities were insufficient to support the project. *See Paragraph 3 above.* Further, the project is exempt from SEPA review. As a result, there was no traffic analysis undertaken and none was required. The nature of the use is not changing as a result of this project. The expansion of the facility was not significant enough to trigger review of impacts on the transportation system. Moreover, there was no evidence introduced at the hearing suggesting that this project would cause any genuine stress on the transportation system. The Hearing Examiner concludes that this criterion is satisfied.

10. *The Hearing Examiner concludes that it is proper to approve the CUP despite the concerns raised by a neighboring property owner.*

There was only one public comment on this project. A neighboring property owner, Mr. Brian Mullin, objected to the project for various reasons. *See Exhibit 20A.* Mr. Mullin believes the center is not located in the proper place. *See id.* He contended that the center actually serves people outside of the immediate neighborhood. *See id.* Mr. Mullin contended that the facility, if expanded, would create a nuisance due to traffic risks, safety hazards, pollution and noise. *See id.* He also objected to the use of on-street parking, which prevented neighbors from using those spaces. *See id.* Finally, Mr. Mullin raise several concerns about the safety of children in the neighborhood. *See id.*

The Hearing Examiner is sympathetic to Mr. Mullin's concerns. However, for a number of reasons, the Hearing Examiner believes this project should nonetheless be approved.

The site has been used as a community center for decades. The Hearing Examiner disagrees that the center is in the wrong location. There is insufficient information in this record to support the claim that the center only serves individuals who live outside the surrounding neighborhood. In addition, it is unclear what territory is included in the "neighborhood" being referenced. In the Hearing Examiner's view, the salient point is that the center is providing services to the community, which may include folks who live close to the center, as well as those who live farther away. There is no regulation confining the service to a specific distance from the center, for example.

The Hearing Examiner does not accept the contention that this use creates any new or unique problems in terms of traffic safety. Since the project is exempt from SEPA review, no traffic analysis was undertaken or required. Mr. Mullin did not provide any

independent information about the traffic flow to and from the site. As a result, there is no information in this record establishing that the expansion of this facility will cause a marked increase in traffic or gives rise to any specific safety issue. The Hearing Examiner believes that the project is exempt for a reason, i.e. the expansion of the facility is considered minor, as a matter of legislative policy, and therefore no specific analysis of traffic is needed. Mr. Mullin's concerns about traffic in the neighborhood are understandable. However, much of that concern is inherent in the frequent use of the automobile, in general, rather than any specific hazard created by the outreach center.

The same analysis applies to other environmental concerns raised by Mr. Mullin. The project is exempt from environmental review. That aside, there is no specific evidence that this project will result in pollution, undue noise, or similar impacts. These were very general claims, and did not have specific evidence, data, or examples to support them.

With respect to the neighbors' need for on-street parking, the project should actually help alleviate some of that problem. The project will increase the center's off-street parking from approximately 8 spaces to 22 spaces. The access points to the new parking area will be from Sherman Avenue and through the alley. The Applicant will be paving the alley adjacent to its property as well, to facilitate access to the additional parking. If anything, these improvements will encourage vehicles visiting the site to enter the site off Sherman, leaving more room for on-street parking along 8th Avenue for the neighbors.

The Hearing Examiner concludes that the CUP should be approved, even though the neighbor raises genuine concerns. The objections to the project largely concern societal ills, not matters which must be resolved by the Applicant.

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 Martin Luther King Jr. Family Outreach Center to construct a two-story building and make other improvements at its property located at 855 S. Sherman Street. The project includes the removal of existing structures at the site. The project will be completed substantially as set forth in the plans and application on file in Planning and Development.
2. 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.
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. 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.

5. 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.

6. 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.

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 18th day of July 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 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 18th day of July 2016. **THE DATE OF THE LAST DAY TO APPEAL IS THE 8th DAY OF AUGUST 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.