

CITY OF SPOKANE HEARING EXAMINER

Re: Variance Application by Cooke) FINDINGS, CONCLUSIONS,
Development Corporation authorizing) AND DECISION
a deviation from paving and)
landscaping standards related to a)
proposal to construct 14 townhomes) FILE NO. Z16-561VAR
at 614 & 618 S. Garfield Street)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Cooke Development Corporation seeks a Type III Variance in order to authorize the applicant: (1) to exceed the 20% maximum area allowed to be paved in the front or side yard setbacks; and (2) to install the required frontage landscaping in the city right-of-way. The Variance is proposed due to the challenging topography of the development site.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** Oscar Torres
Design Services Northwest, Inc.
204 S. Koren Rd., Suite 700
Spokane, WA 99212

Agent: Cooke Development Corporation
R. H. Bob Cooke & David Shriver
503 E. 2nd Avenue
Spokane, WA 99202

Property Location: The address of the site is 614 & 618 S. Garfield Street, Spokane, Washington.

Legal Description: An abbreviated legal description of the site is included in Exhibit 2A. The site consists of Tax Parcel Nos. 35201.5352 and 35201.5336.

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

Comprehensive Plan Map Designation: The property is designated as Residential 15-30 (R 15-30).

Site Description: The site consists of portions of Lots 8 and 10, Block 3, of Highland Park Hartsons. The two parcels will be aggregated into one lot through a Boundary Line

Adjustment (BLA). The aggregated site will be approximately 31,189 square feet (.72 acres). The predominant feature of the site is a large rock outcropping that rises approximately 15-20 feet above street level, creating steep slopes on portions of the site. The property is not located within Habitat and Species, Riparian Habitat, or flood or wetland overlay areas.

Surrounding Zoning and Uses: Residential Multi-Family (RMF) borders the development site on all sides. The uses in the vicinity of the development site are predominantly multifamily housing. On Garfield, across the street and to the east, is a church.

Project Description: The applicant is requesting relief from two Spokane Municipal Code provisions. First the applicant seeks authorizing to exceed the 20% maximum area allowed to be paved in the front or side yard setbacks on both street frontages at the site (i.e. Garfield Street and Hartson Avenue). Second, the applicant requests permission to install the required frontage landscaping in the city right of way. Both requests will allow the construction of on-site parking for the proposal due to rock outcroppings that otherwise would have to be removed by blasting. The applicant proposes to construct 14 townhouses (configured as 2 buildings of 7 units each).

PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: June 28, 2016
Posted: June 30, 2016

Notice of Application/Public Hearing: Mailed: August 24, 2016
Posted: September 1, 2016

Community Meeting: July 12, 2016

Public Hearing Date: September 29, 2016

Site Visit: September 27, 2016

SEPA: This project is categorically exempt from SEPA.

Testimony:

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

Oscar Torres
Design Services Northwest, Inc.
204 S. Koren Rd., Suite 700
Spokane, WA 99212

Exhibits:

1. Planning Services Staff Report
 - 1A Received on 09-21-16
 - 1B Revised received on 09-27-16
2. Application, including:
 - 2A General application
 - 2B Variance application
 - 2C Site Plan
 - 2D Render of proposed townhouse with variance
 - 2E Rendering of proposed townhouses without variance
 - 2F Aerial and street views of similarly zoned properties with on-site parking
 - 2G Topographic model views
 - 2H Views of property
 - 2I Notification map application
 - 2J Variance counter complete checklist
3. Pre-Development Conference notes
4. Engineering Services comments
5. Development Services comments
6. Spokane Tribe of Indians comments
7. Avista comments
8. Notice map
9. Parcel listing
10. Notice of Community Meeting
11. Notice of Application and Public Hearing
12. Affidavit of mailings
 - 12A Community Meeting 06-28-16
 - 12B Combined Application and Hearing dated 08-24-16
13. Affidavit of posting
 - 13A Community Meeting dated 06-30-16 with copy of sign
 - 13B Combined Application and Hearing dated 09-01-16
14. SEPA Exemption issued 08-18-16
15. Community Meeting sign in sheet
16. Community Meeting flyer describing project
17. Letter dated 06-15-16 to Oscar Torres from Dave Compton
re: community meeting instructions
18. Letter dated 07-20-16 to Interested Parties from Dave Compton
re: requesting comments
19. Letter dated 08-18-16 to Oscar Torres from Dave Compton
re: Notice of Application and Public Hearing Instructions.
20. Public Comments
 - 20A David Hanson Properties, L.L.C., concerns regarding drainage
 - 20B John Wang, supporting variance for off-street parking
- A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed variance must comply with the criteria¹ set forth in Spokane Municipal Code section 17G.060.170(E). The Hearing Examiner has reviewed the proposed variance and the evidence of record with regard to the application and makes the following findings and conclusions:

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

There are no prohibitions in the land use codes against allowing an increase of paved surface in the front or side yard setbacks in the RMF zone, so long as the variance criteria are satisfied. See Exhibit 1B, p. 7. Similarly, the land use codes do not prohibit landscaping within the city right-of-way, if a variance is obtained and the city consents to that use. *Testimony of D. Compton*. Since a variance is not specifically forbidden in this context, this criterion for approval is met.

2. *No other procedure is provided in this chapter to vary or modify the standard or requirement, or compliance with such other procedure would be unduly burdensome. See SMC 17G.060.170(E)(1)(b).*

There are two provisions which allow the standards for paved area within setbacks and landscaping to be modified. See Exhibit 1B, pp. 7-8. The question here is whether those provisions provide adequate relief to the developer, such that a variance is not necessary. A review of these two provisions demonstrates, in the Hearing Examiner's opinion, that a variance is the only viable option to authorize the proposal.

According to the first provision, driveway coverage in the residential zones may exceed the size limitations when the subject property is located on a principal arterial and the increase in site coverage is due to inadequate maneuvering area for the safe exit of vehicles from the site. See SMC 17C.230.145(C)(4)(c). However, the neither Hartson nor Garfield Street are principal arterials. See Exhibit 1B, p. 8. As a result, this exception to the paving requirements does not apply.

Pursuant to the second provision, the planning director has discretion to reduce the minimum requirements for landscaping if certain factors justify that choice. See SMC 17C.200.040(C). The factors include matters such as the lack of usable space between the proposed structure and existing structures on adjoining lots or alleys; the building setback in front of the new structure is less than six feet or is developed as a plaza; or existing trees or other vegetation serve the same or similar function as the required landscaping, to name a few examples. See *id.* In this case, large basalt outcropping in the middle of the property is driving the request to relax paving and landscaping standards. Nothing in the list of factors in SMC 17C.200.040(C) clearly applies to this situation.

¹ The Staff report also addresses the criteria listed in SMC 17C.060.170(C), which generally apply to Type III applications. However, a Type III application for a variance is not subject to the criteria listed in subsection C. See SMC 17G.060.170(E). Therefore, this decision addresses only the criteria listed in Section E.1, i.e. the criteria that govern variance applications.

The Hearing Examiner concludes that there are no other procedures, aside from a variance, that would allow the applicant to increase the paved surface in the front and side yard setbacks or landscape within the right-of-way. Since the only realistic or effective option in this case is a variance, this criterion for approval is satisfied.

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

The Hearing Examiner concludes that a variance from the strict application of the development codes is proper under the circumstances of this case. Specifically, the geology of the site consists of solid bedrock and steep slopes that make up over fifty percent of the site. See Exhibit 1B6. The slopes vary in steepness between 45% and 70% and have an overall height of approximately 15-20 feet from the street level. See *id.*; *Testimony of O. Torres*. From the site visit, it was apparent that the basalt outcropping was the predominant feature of the site. The applicant's depiction of the outcropping also makes that clear. See Exhibit 2G.

The request for a variance arises directly from the physical condition of the land. The applicant did not create the circumstances necessitating a deviation from development standards. Nor is this a case in which a variance is requested merely to reduce the costs of complying with the law or solely due to an economic hardship. Here, the development of the site is directly and materially hindered by a large basalt formation. In fact, this site has been reviewed and rejected for development many times in the past, specifically because of the rock formation. *Testimony of D. Compton*. Without the variance, a project to fully utilize the site would require extensive blasting to remove rock and level the site. See *id.* In the Hearing Examiner's opinion, this is a classic example of a situation that justifies a variance.

The project is well designed to fit the site despite the challenges created by the basalt formation. The variation in the size of the single-car garages to account for the presence of basalt is a good example of this. There is no room for parking on the property, in the manner contemplated by the off-street parking standards. Even if parking is allowed in the street (for example, if the variance was denied), there is still not adequate room to accommodate the 14 townhouses utilizing only on-street parking. *Testimony of D. Compton*.

As a result of the rock outcropping, the applicant's property cannot be developed in the same way as other, similarly-zoned properties in the vicinity. Those other sites are not encumbered by solid bedrock and steep slopes to the same degree as this site. See Exhibit 2B; *Testimony of O. Torres*. But-for the rock formation, the site is large enough to accommodate twice as many units as are proposed. *Testimony of D. Compton*. Certainly, there are challenging slopes and rock formations elsewhere in this neighborhood, as was evident during the site visit. However, unlike the conditions on other sites which have been improved with multifamily buildings, solid bedrock and steep slopes encompass the majority of the site. See Exhibit 2B; *Testimony of O. Torres*. Permitting the variance will allow the applicant to develop on-site parking similar to other multifamily buildings nearby,

and reduce or eliminate the need for parking in the public streets next to the project. See *id.*; see also Exhibits 2E & 2F.

The Hearing Examiner concludes that there is more than sufficient information to demonstrate that strict adherence to the paving and landscaping standards would create substantial hardships for the owner. This criterion for approval of the variance is satisfied.

4. *The following objectives are reasonably satisfied: (i) surrounding properties will not suffer significant adverse effects; (ii) the appearance or use of the property will not be inconsistent with the development patterns of the surrounding property; and (iii) the ability to develop the property in compliance with other standards will not be adversely affected. See SMC 17G.060.170(E)(1)(d).*

The Hearing Examiner agrees with the Staff that the neighbors will not suffer any significant, adverse effects from the approval of the variance. *Testimony of D. Compton.* The variance allows additional pavement for driveway access to the new townhouses, along with frontage landscaping that encroaches into the right-of-way. Neither of the two code deviations will likely impact adjacent properties or the neighborhood.

The driveways will not negatively impact surrounding properties. The driveways will access directly onto the public right-of-way. There is no passage through any neighboring properties. It would appear that the project will not result in any impacts to neighbors, other than might arise from the existence of a driveway, regardless of whether a variance was granted or not. That said, one neighborhood property owner raised two concerns about the project. See Exhibit 20A. First, there was a concern that the development could obstruct clear views of passing vehicles. See *id.* Second, there was a concern that the development would not be suitable for drainage. See *id.* The Hearing Examiner concludes that these concerns are adequately addressed by the design and project requirements.

The project is designed so that the corner of Garfield and Hartson will remain open and unobstructed. See Exhibit 2C. This area is set aside for drainage purposes. *Testimony of D. Compton and O. Torres.* The applicant will be required, at the time of permitting, to develop drainage facilities that will handle drainage from the site. *Testimony of D. Compton.* Further, this area will be landscaped with grass and low-lying shrubs, which will not impact views of drivers. *Testimony of O. Torres.* The chosen design will ensure that the clear-view triangle is maintained. See *id.* There is more than sufficient space set aside to ensure visibility for vehicles traveling past and around the site. *Testimony of D. Compton.* In any event, the applicant must adhere to the code requirements for drainage and maintaining the clear-view triangle. See *id.* According to the Planning Department, these concerns are adequately addressed by the project design and permit process. See *id.*

The variance facilitates the construction of two, 7-unit townhouses. These multifamily buildings will be similar in type and appearance as other multifamily housing units in the immediate vicinity. See Exhibits 2D-2F. This was confirmed during the Hearing Examiner's visit to the development site and the neighborhood. Further, the project must still adhere to the other development standards applicable to buildings in the RMF, such height limitations. See Exhibit 1B, p. 9. There are buildings currently under

construction in the area. The proposal seems to be a natural continuation of the development that is underway in this part of town, rather than something that cuts against the development patterns.

There is no reason to suspect that granting the variance will impede the ability to develop the property in compliance with other standards. Aside from the conditions requiring a variance, the project appears to be designed in conformity with the development standards. *Testimony of D. Compton*. There is nothing about this proposal that creates new nonconformities or deviations from code requirements. *See id.*

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

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

The project site is zoned Residential Multi-Family (RMF). Townhouses are permitted outright in the RMF zone, so there is no question that the use is allowed. With respect to the variance request, the Staff noted:

There are no additional zoning or building code standards, or zoning overlay zones that would prohibit the amount of the paved surface area to be increased in the front or side yard setbacks. Nor is there any prohibition of placing required landscaping in the city's right of way unless the Engineering Department recommended denial of such due to utility issues or roadway sight obstructions.

See Exhibit 1B, p. 9. Staff also noted that the Engineering Department had no objections to the placement of landscaping in city right-of-way adjacent to this site. *Testimony of D. Compton*.

On this record, the Hearing Examiner sees no reason to disagree with the Staff on this issue, and therefore the Hearing Examiner adopts the Staff's analysis. The Hearing Examiner finds 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 variance subject to the following conditions:

1. Approval is for a variance authorizing the applicant: (1) to exceed the 20% maximum area allowed to be paved in the front or side yard setbacks on both street frontages, i.e. Garfield Street and Hartson Avenue; and (2) to install the required frontage landscaping in the city right-of-way. The project shall be developed substantially as set forth in the plans and application hereby approved and on file in Planning and Development.

2. 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.
3. The two contiguous lots that make up the development site shall be aggregated as a condition of project approval.
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. 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.
7. 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.

8. 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 3rd day of October, 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 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 October 3, 2016. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 24th DAY OF OCTOBER 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.