

CITY OF SPOKANE HEARING EXAMINER

Re: Variance Application by 600 Main,) FINDINGS, CONCLUSIONS,
Inc. for Replacement of Skywalk) AND DECISION
over Howard Street at 608 W.)
Main Street) FILE NO. Z16-988VAR

SUMMARY OF PROPOSAL AND DECISION

Proposal: 600 Main, Inc. seeks approval of a variance for the replacement of a skywalk over Howard Street. The proposed replacement skywalk, a structure of about 74 feet 6 inches in length and 13 feet 8 inches in height, will connect a new mezzanine floor within the old Macy's building to the second floor of the Bennett Block. The applicant seeks a variance to allow the replacement skywalk to exceed the maximum allowed slope of one percent. The applicant also seeks a variance to allow the use of two access points that are outside the fifty-foot maximum allowed by code.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Property Owner:** 600 Main, Inc.
Attn: Doug Yost
P.O. Box 2160
Spokane, WA 99210

Agent: Doug Yost
P.O. Box 2160
Spokane, WA 99210

Property Location: The proposed replacement skywalk will connect 608 W. Main Street, the former Macy's building, to 206 N. Howard, also known as the Bennett Block building. The replacement skywalk will cross over Howard Street.

Zoning: The property is zoned DTG (Downtown General).

Comprehensive Plan Map Designation: The property is designated as Downtown in the City's 2001 Comprehensive Plan.

Site Description: This variance request concerns a proposal to replace a skywalk between the former Macy's building and the Bennett Block building to the east. Thus, the site of the project is air space over Howard Street between Main Avenue to the south and Spokane Falls Boulevard to the north, and between these two buildings.

Surrounding Zoning: The properties on either side of the skywalk crossing are zoned DTC. The properties generally south of the project site are also zoned DTC. The properties north of the alley are zoned DTC-100.

Project Description: The purpose of this proposal is to replace and relocate the existing skywalk spanning Howard Street north of Main Avenue that connects the Bennett Block building to the east and the former Macy's building to the west. The span of the previous skywalk (it has already been removed for construction purposes) did not match up with the new mezzanine level of the Macy's building. The replacement structure, as proposed, will not meet the code requirements for a 1% maximum slope. The slope of the proposed structure is approximately 6%. The replacement structure also will not meet the code requirement for pedestrian access to the street level within 50 feet of the skywalk terminus. The Applicant is requesting a variance to allow a skywalk slope in excess of the code maximum of one percent and to authorize the use two existing access points within the Bennett Block that are greater than 50 feet from the skywalk terminus. The Applicant also proposes to relocate the skywalk approximately 106 feet north of its previous location.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code ("SMC") Chapter 12.02, Article III, Skywalks, and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: December 1, 2016
Posted: December 1, 2016

Notice of Application/Public Hearing: Mailed: January 17, 2017
Posted: January 17, 2017

Community Meeting: December 16, 2016

SEPA: This project is exempt from SEPA pursuant to SMC 17E.050.070.

Hearing Date: February 23, 2017

Testimony:

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

Chad Schmidt
NAC Architecture
1203 W. Riverside Ave.
Spokane, WA 99201

Doug Yost
600 Main, Inc.
P.O. Box 2160
Spokane, WA 99210

Bobby Strahl
600 Main, Inc.
P.O. Box 2160
Spokane, WA 99210

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application
 - 2B Variance Permit Application
 - 2C Skywalks Application
 - 2D Notification Map Application
 - 2E Site Plan
 - 2F Skywalk Plan
 - 2G Building Elevation at Howard
 - 2H Skywalk Perspective
 - 2I Conceptual Skywalk Study
3. Developer Services comments
4. Design Review Board comments
5. Department of Ecology comments
6. Notice map
7. Parcel listing
8. Notice of Community Meeting
9. Notice Application and Public Hearing
10. Affidavit of mailings:
 - 10A dated 12-01-16
 - 10B dated 01-17-17
11. Affidavit of posting:
 - 11A dated 12-01-16
 - 11B dated 01-17-17
12. Removal of a Public Sign dated 12-20-16
13. SEPA Exemption, dated 02-16-17
14. Community meeting attendance roster and comments
15. Letter dated 11-23-16 to Doug Yost from Tami Palmquist
re: community meeting instructions
16. Letter dated 12-28-16 to Interested Parties from Ali Brast

- re: requesting comments
17. Letter dated 01-13-17 to Doug Yost from Ali Brast
re: notice of application/public hearing instructions
- A Exhibits received at the hearing:
A-1 Hardcopy of Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

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

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

There is no prohibition in the code against a request for increased slope of a skywalk or for increased distance to street access. See Exhibit 1, p. 3. In fact, skywalks are not regulated under the development standards in SMC 17C. See *id.* City Staff also noted that the Hearing Examiner, conditioned upon a Design Review Board ("DRB") recommendation, is authorized under SMC 12.02.0424 to approve exceptions to such design requirements. See *id.* The DRB recommended approval of the design deviations proposed by the Applicant. See *id.*; see also Exhibit 4. The Hearing Examiner concludes that this criterion is satisfied.

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).*

This criterion acknowledges that variances are generally disfavored. If there is a less drastic way to obtain an exception or deviation from code requirements, that procedure should be followed. If there is no such procedure, or the available procedure is "unduly burdensome," then a variance may be allowed.

The Hearing Examiner doubts that a variance is necessary in order to approve the modification of the slope or access requirements for the skywalk. SMC 12.02.0424 allows the Hearing Examiner to grant exceptions¹ to the skywalk regulations under Chapter 12, provided the DRB first recommends such changes. Those regulations include the slope and street access standards. See SMC 12.02.0460 & SMC 12.02.0474(A). As stated above, the DRB has recommended approval of the replacement skywalk as designed. See Exhibit 4. The design exception authorized in SMC 12.02.0424² does not state that the granting of the

¹ Exceptions may also be granted by the City Council, in appropriate circumstances. See SMC 12.02.0520.

² That code section does reference Chapter 11.02 of the SMC. However, Chapter 11.02 has been repealed. Moreover, Chapter 12.02 has replaced the former provisions related to skywalks. See e.g. former SMC 11.02.0466 (stating the decision criteria for skywalk permits).

exception is dependent upon satisfying the requirements for a variance. Thus, it appears that the Hearing Examiner has the discretion to permit this project without the need for a variance.

If the foregoing interpretation is accurate, the Hearing Examiner would approve the design deviation, given the record in this case. In such an event, the project would be approved without the need to satisfy the variance requirements. Assuming, in the alternative, that a variance application is actually mandated in this case, the Applicant properly requested a variance, having no better alternative to pursue. In either event, approval of the project is appropriate. Therefore, this criterion for approval of the variance is satisfied.

3. *Strict application of the standard or requirement would create an unnecessary hardship because the property cannot be developed to the extent similarly zoned property in the area can be developed due to the physical characteristics of the improvements. See SMC 17G.060.170(E)(1)(c).*

A variance from the height limitation was necessitated by the difference in height between the two receiving structures, i.e. the Bennett Block building and the former Macy's building. Due the difference in the height of the respective second floors, the slope of the proposed skyway is greater than the allowed 1% maximum. See Exhibit 1, p. 3.

The variance for street access is needed because significant construction would be required within the fully-occupied Bennett Block building in order to accommodate an additional, internal access within 50 feet of the skywalk terminus. See Exhibit 1, p. 3. This would require taking square footage away from existing businesses within the Bennett Block. See *id.* In the alternative, an external access could be constructed to satisfy the requirement. *Testimony of A. Brast.* However, creating that access would require the construction of an external staircase that would obstruct and impair a historic building. See Exhibit 1, p. 3. These options are unnecessary, however, given that there are two adequate access points available, one being ADA accessible, although those access routes are outside the 50' limit. *Testimony of A. Brast.* It should also be noted that there was no evidence that these alternative access routes created any emergency, safety or other concern. The Fire Department did not raise any objections to the use of the alternate routes, for example. See *id.*

There is no question that a variance can be granted based upon the height differences between the two buildings. The same is true for a variance related to street access. Under the applicable criteria, a variance can be granted when the "physical characteristics" of "the improvements" do not allow a development. See SMC 17G.060.170(E)(1)(c)(i). Thus, a variance is allowed not only due to conditions of the land itself, but also of improvements to the land, such as the two buildings in question.

The Hearing Examiner does not believe the need for the variance is "self-created," despite the fact that the re-development of the Macy's building in some way contributes to the need for variances. See SMC 17G.060.170(E)(1)(c). The Applicant is undertaking a substantial remodel of the former Macy's building. The design of the building remodel should not, in the Hearing Examiner's view, be dictated by the 1% slope requirement for a skywalk nor the access limitation, provided that workable alternatives exist. With a variance to the skywalk requirement, the skywalk can be made to accommodate the much more substantial project of upgrading the former Macy's building. Even with the additional slope, the skywalk will still satisfy ADA standards for accessibility. *Testimony of A. Brast.* In addition, the design also preserves the view corridor to Riverfront Park better than a skywalk satisfying the 1% requirement. *Testimony of A. Brast.* The design of the skywalk has been approved by the DRB, suggesting that the design has been optimized given the existing conditions. See Exhibit 4. The existing access points can accommodate users. One of those access routes is ADA approved, and neither of the alternative access points were deemed insufficient for any reason by any commenting agency, including the Fire Department.

This is the kind of case contemplated by the variance standards. As a result, the Hearing Examiner concludes that this criterion for approval of a variance is met.

4. *The project should be approved because surrounding properties will not suffer significant adverse effects; the appearance of the property or use will not be inconsistent with the development patterns of the surrounding property; and 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 surrounding properties will not suffer significant adverse effects due to this project. This project merely replaces a skywalk; it does not create an entirely new condition or impact to the immediate vicinity. The increased slope of the skywalk does not appear to have any unique impact on the surrounding properties. The use of existing points for street access, likewise, will not negatively impact the surrounding uses. If anything, it would be better to avoid creating new access routes for the reasons already discussed. There was no testimony that the increased slope or use of existing access routes would have any negative effects.

The downtown area is already developed with a skywalk system. As noted above, this project replaces on part of that network. It does not actually extend the skywalk system beyond its current limits as a result. The design of the new skywalk is aesthetically appropriate and forms a seamless part of the existing skywalk system. Thus, the proposed project, even with the change in slope and relocation, is consistent with the existing development patterns of the surrounding area.

The skywalk is proposed for airspace above city right-of-way, and between two buildings. There is no evidence that the placement of the structure will impede the development of the former Macy's building or other properties. Thus, the project will not cause new nonconformities or impede future development of the property.

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

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

Pursuant to SMC 12.02.0420, a skywalk may be constructed in any part of the City of Spokane. As a result, the proposed variance does not allow an otherwise prohibited use or standard. The Hearing Examiner concurs with Staff that this criterion is therefore satisfied.

6. *Any floodplain variance is subject to the additional criteria found in SMC 17E.030.090 and SMC 17E.030.100. See SMC 17G.060.170(E)(1)(f).*

This application is not subject to floodplain requirements. See Exhibit 1, p. 4. The Hearing Examiner agrees with Staff that this criterion is not applicable. See id.

DECISION

It is the decision of the Hearing Examiner to approve the variance application subject to the following conditions:

1. Approval is for a variance, allowing slope and access design deviations for a proposed skywalk to be constructed across Howard Street. The skywalk is to be built substantially in accordance with the plans submitted to the City and approved by the DRB, which plans are included in the record as Exhibits 2E, 2F, 2G, 2H and 2I.
2. The construction of the replacement skywalk shall adhere to SMC 12.02.0452.
3. The Applicant will cooperate with the City to implement a right-of-way agreement which conforms to current code.
4. Per Engineering comments, if the skywalk is less than 16.5 feet from the street elevation to the bottom of the skywalk, it must be signed appropriately, with the height restrictions verified and approved by the City's Bridge Engineer.

5. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the building codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
6. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.
7. Spokane Municipal Code section 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.
8. 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.

DATED this 8th day of March 2017.



Brian 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 DECISION SET OUT ABOVE.** The date of the decision is the 8th day of March, 2017. **THE DATE OF THE LAST DAY TO APPEAL IS THE 29th DAY OF MARCH 2017 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.