

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application) FINDINGS, CONCLUSIONS,
by Black & Warrick LLC for the) AND DECISION
relocation of a commercial parking)
lot on property located at 4315 S.)
Scott Street) FILE NO. Z17-106CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: Black & Warrick LLC seeks a conditional use permit authorizing the Applicant to relocate a commercial parking lot on the Applicant's property located at 4315 S. Scott Street, Spokane, Washington. The property is located in a residential zone and was previously approved for office use.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Property Owner:** Black & Warrick, LLC
4315 S. Scott Street
Spokane, WA 99203

Agent: Joseph P. Delay
601 W. Main, Suite 212
Spokane, WA 99201

Property Location: The property is located at 4315 S. Scott Street, Spokane, Washington.

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: At the time of the application, the site consisted of three parcels. In March 2017, the three parcels were aggregated into a single lot through a boundary line adjustment. The site is approximately 90,356 square feet in size, or about 2.03 acres. The site is relatively flat. The property does not lie within any environmentally sensitive areas. The site is improved with a building, access routes, paved parking, and landscaping.

Surrounding Conditions and Uses: To the west of the site, the property is zoned both Neighborhood Residential (NR) and Residential Two-Family (RTF). In all other directions, the surrounding property is zoned Residential Single-Family (RSF). To the north of the site is 43rd Avenue and single-family residences. To the east of the site, there is a church. There is open space and parking for the church immediately adjacent to the project site.

Between the Black & Warrick property and the church grounds, there is an unimproved right-of-way for S. Garfield Street which contains utilities. To the west is S. Scott Street, and on the other side of the right-of-way, there are two-family residences and a retail sales and service market and gas station. To the south of the site is the Manito Golf Course.

Project Description: The Applicant is seeking to construct a new commercial parking lot. This parking lot will be installed closer to the office building than the existing lot and will be situated next to 43rd Avenue. The property to be used for the new parking lot was purchased in December 2010 and is not within the boundaries of the special permit granted by the Hearing Examiner in 2001 (File No. Z2000106-HESP) and which approved the original use of the property for office purposes. As a result, a new conditional use permit is required for this proposal. If approved, the existing parking area will be converted into a sports court for the use of occupants of the office building.

PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: October 26, 2016
Posted: November 1, 2016

Notice of Application/Public Hearing: Mailed: March 23, 2017
Posted: March 25, 2017

Community Meeting: November 15, 2016

Public Hearing Date: April 27, 2017

Site Visit: April 26, 2017

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

Testimony:

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

Joseph P. Delay
601 W. Main Ave., Suite 212
Spokane, WA 99201

Russell Neff
4203 S. Garfield St.
Spokane, WA 99203

Mike Terrell
1411 N. Meadowwood Ln,
Liberty Lake, WA 99019

Dave Black
4315 S. Scott St.
Spokane, WA 99203

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application
 - 2C Notification Map Application
 - 2D Ordinance C35250, vacating alley between Garfield Street and Scott Street
 - 2E Record of Survey
 - 2F Aerial of project site
 - 2G Preliminary Site Plan
 - 2H Parking Conceptual Plan
 - 2I Conditional Use Permit Counter Complete Checklist
3. Planning Services comments
4. Engineering Services comments
5. Department of Ecology comments
6. Spokane Tribe of Indians comments
7. Notice map
8. Parcel listing
9. Address listing
10. Notice of Community Meeting
11. Notice of Application and Public Hearing
12. Affidavit of mailings:
 - 12A dated 10-26-16
 - 12B dated 03-23-17
13. Affidavit of posting:
 - 13A dated 11-01-16, with draft and photo of posted sign
 - 13B dated 03-25-17, with proof copy
14. Affidavit of sign removal dated 11-18-16
15. SEPA Exemption dated 04-13-17
16. Community Meeting Sign in sheet
17. Community Meeting Agenda
18. Memo dated 04-25-16 to file from Michael Terrell
re: meeting with city staff
19. Email dated 09-15-16 to/from Dave Black and Tami Palmquist
re: procedures and checklist
20. Letter dated 09-30-16 to Dave Black from Dave Compton
re: community meeting instructions
21. Letter dated 02-17-17 to Interested Parties from Dave Compton
re: requesting comments
22. Letter dated 03-17-17 to Nicholas Pontarolo from Dave Compton
re: notice of application/public hearing instructions
23. Email dated 03-23-17 to Comstock Neighborhood Council from Marigail Sulpizio
re: Notice of application/public hearing
24. Public Comments
 - 24A Betsy Ressa, dated 04-06-17, traffic concerns
 - 24B Patrick Keegan, dated 04-08-17, traffic concerns
 - 24C Paula Holbrook, dated 04-12-17, traffic concerns
- 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. 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. Normally, the proposed use would not be allowed. Office uses and commercial parking areas are generally not allowed in the RSF zone. See SMC 17C.110.110. However, in this case, the office use has been specifically authorized.

On March 6, 2001, the Hearing Examiner approved the conversion of the former children's home to general office uses. See Findings, Conclusion, and Decision, File No. Z2000106-HEP, March 6, 2001. The conversion to office uses was specifically allowed by the municipal code then in effect. Pursuant to the former code, a "semi-public facility" in a residential zone, such as the former children's home, could be converted to office uses. See SMC 11.19.0325 (former code). Following that conversion, the existing parking lot was used to support the office use. *Testimony of D. Compton.* The property has been used for general office purposes ever since.

The current proposal does not change the use or the intensity of the use. *Testimony of M. Terrell.* Rather, the Applicant merely seeks to relocate the parking to another part of its property. The new location for the parking is a recently purchased parcel. Because this additional land was not part of the original site that was approved for office purposes, a new conditional use permit was required. *Testimony of D. Compton.* Even though the proposed location of the parking was not previously approved for office purposes, the proposed use is still an accessory to the previously approved office. See *id.* In addition, the site was formally aggregated to the rest of the Applicant's property. See *id.*; *Testimony of M. Terrell.* An alley was also vacated to ensure that no public right-of-way existed between the office and the proposed parking area. *Testimony of D. Compton.* Legally the site is now configured as a single lot. See *id.*; *Testimony of M. Terrell.*

The office use of the property was approved many years ago. The application merely relocates the parking which is an existing, accessory use to the office. *Testimony of D. Compton.* The application does not alter or replace the previously approved special permit. See *id.* Since that office use is continuing, the requested conditional use permit merely authorizes the accessory use to be located on a different parcel than was originally approved. See *id.* The proposed parking lot is proper under the codes governing office uses. The code describing an office use, for example, provides that parking areas are properly allowed as accessory uses to an office. See SMC 17C.190.250(B). It should also be acknowledged that the current version of the municipal code recognizes that a "semi-public facility" can be converted to office uses in a residential zone. See SMC 17C.320.060. Thus, the rationale for the original approval is still recognized under the current law. See *id.*

The Hearing Examiner concludes the proposed parking area is authorized as an accessory to the previously approved office. As a result, this criterion for approval is met.

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 Staff determined that the proposal is consistent with the goals and policies of the Comprehensive Plan ("CP"), as described by the Applicant. See Exhibit 1, p. 4; see also Exhibit 2B. The Hearing Examiner agrees.

The Applicant merely seeks to relocate the parking area serving the office use. The intensity of the use will be the same. See Exhibit 2B. Although the design is not yet finalized, the number of spaces will not exceed the maximum allowed for an office of this size. *Testimony of D. Compton.* The Applicant will be including landscaping features to minimize the impacts of the new parking lot. *Testimony of M. Terrell & D. Compton.* In this way, the Applicant will be ensuring that off-street parking facilities do not adversely affect the surrounding area. This is consistent with Land Use and Transportation policies of the comprehensive plan. See CP, Chapter 3, LU 5.3, p. 23; see also CP, Chapter 4, TR 2.5, p. 15.

The location of the parking area is also consistent with the objectives of the comprehensive plan. The proposed parking lot will still be located behind the building. The parking area is adjacent to a parking lot for a church, and is separated from the closest residences by 43rd Avenue. The impacts of parking facilities are most significant when parking facilities are adjacent to or between homes. See CP, Chapter 3, LU 5.3 (Discussion), p. 23. Here, the parking area is on a large lot, next to a church and a golf course. In addition, there is a busy road with retail uses across from the office building to the west. There are single family residences to the immediate vicinity as well (primarily directly to the north), but with proper design and landscaping, the impact to those areas is not significant, in the Hearing Examiner's opinion.

Although the existing building has not been placed on an historic registry, the Hearing Examiner's 2001 decision recognizes the historic nature of the facility. See Findings, Conclusion, and Decision, File No. Z2000106-HEP, March 6, 2001. Under the circumstances, the project also furthers a number of comprehensive plan policies that promote the continued use and improvement of structures with historic features or qualities. For example, Goal 4 of the Urban Design and Historic Preservation chapter includes an objective to "[p]reserve and protect Spokane's significant historic structures, neighborhoods, and sites." See CP, Chapter 8, DP 4, p. 17. Under that goal, Policy DP 4.8 provides that land use regulations should encourage adaptive reuse of existing, underutilized buildings. That policy also encourages the use of the conditional use permit process to promote the use and re-use of historic buildings. Policy DP 4.9 provides that the city should assist owners of historic buildings to best utilize their property, while nonetheless preserving historic features. See CP, Chapter 8, DP 4.9, p. 18. Further, Policy LU 7.3, specifically calls for allowing compatible commercial and residential uses of historic properties when necessary to promote the preservation of such resources. See CP, Chapter 7, LU 7.3, p. 29.

The proposal is also consistent with other goals and policies of the comprehensive plan, as discussed in the Staff Report. For these reasons, the Hearing Examiner concludes that 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 February 17, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 21.

The city received a limited response to its request for comments. See e.g. Exhibits 3-6. City staff noted that no city departments or outside agencies "...reported that concurrency could not be achieved." See Exhibit 1, p. 4. 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 parking lot will be installed in an undeveloped portion of the site situated between an existing office building and the parking lot serving the neighboring church. A different area behind the office has been used as the parking area for many years. Relocating the parking area to different part of the property associated with the office is clearly a compatible use of the site.

There are no problematic conditions apparent on this site. The parcel is essentially square in shape. See Exhibit 2F. The parking lot will only be developed on a portion of the site, and is well designed to fit the site. See Exhibits 2G & 2H. The area to be improved is relatively flat and does not pose any significant development challenges. See Exhibit 1, p. 5. The only question was whether street trees could be planted in the right of way, given that a CSO tank was recently installed within 43rd Avenue. The Hearing Examiner believes that the Applicant, in consultation with the city, can work out the most appropriate manner to landscape the area on or near the right-of-way, given the presence of utilities.

There is no evidence in this record suggesting that the site is not suitable due to surface water, groundwater, soil conditions, wetlands, or other conditions. Further, there are no known cultural or historic resources on this site. See Exhibit 1, p. 5; see also Exhibit 6.

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).*

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. Specific evidence was also lacking that there would be significant, negative impacts on neighboring properties as a result of the proposed use.

If any impacts did occur, given the nature of the proposal, those impacts would likely relate to traffic. The comments received from neighbors focused largely on traffic and access questions. See Exhibits 24A-24C; *Testimony of R. Neff*. However, in the Hearing Examiner's view, the potential traffic impacts from this proposal are nominal. The project relocates a parking lot. The Hearing Examiner does not see how such a project would result in materially more traffic to or from the site. The project engineer testified that there would be no change in the traffic patterns to and from the site. *Testimony of M. Terrell*. Some of the issues raised by neighbors, such as excessive through-traffic on 43rd Avenue, are pre-existing conditions. These are not issues that are unique to or primarily arise because of this proposal. If anything, the interests of the neighbors and the Applicant are aligned on this issue. *Testimony of D. Black*. The Applicant is in favor of taking steps to calm traffic on 43rd Avenue, although the actual measures to do so are unknown at that time.

The Hearing Examiner also disagrees with some of the objections regarding access. The site historically has had three access points, two on Scott Street¹ and one on 43rd Avenue. When the additional property was acquired, a second, unimproved access to 43rd Avenue was also obtained. The project will result in improvements to the additional access on 43rd Avenue, which will then be shared with the church. The result is two access points on 43rd and two on Scott Street. Historically, most of the traffic to and from the site has been through an access point on 43rd Avenue. In the Hearing Examiner's view, the proposal does not materially change the use or the intensity of the use.

No traffic analysis was required for this project. No questions or concerns were raised by City Traffic regarding the proposal. In addition, there was no expert testimony addressing potential impacts due to traffic or the location of the access. And there was no evidence that 43rd Avenue did not have the capacity to handle traffic flows to and from the parking area.

¹ It should be acknowledged that one access point on Scott, closest to the golf course, is rarely used because of poor visibility. *Testimony of D. Black*. The Applicant testified that that particular access was unsafe, and that most traffic to and from the parking area will be through 43rd Avenue. See *id*.

The existing parking lot has approximately 38 spaces. *Testimony of D. Compton.* The proposed lot will be for approximately the same number of spaces. *Testimony of M. Terrell.* When the design of the parking area is complete, the number of parking spaces may slightly more or less than the existing lot, but will in any event be below the maximum allowed for this accessory use. *Testimony of D. Compton; Testimony of M. Terrell.* In addition, the new parking area will a significant improvement over the existing parking lot. *Testimony of D. Compton.* Under current standards, there are interior landscaping requirements for new parking areas. *See id.* Those standards will be incorporated into the final design. *See e.g. Exhibit 2G.*

Other impacts of the project appear to be minimal, and would be addressed by project conditions. For example, all storm water and surface drainage must remain on-site. In any event, the project will be required to comply with all applicable codes and regulations.

The Hearing Examiner concludes that the project will not have significant impacts on the environment, and therefore this criterion is satisfied.

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 relocation and improvement of a parking lot as an accessory to the existing office use. The project shall be completed substantially in conformance with the plans and application on file with the Planning and Development Department.
2. Required parking lot screening and landscaping must be accomplished in accordance with the municipal code. Street Trees are required on both 43rd Avenue and Garfield Street, provided, however, that Street Trees within the City right-of-way will only be required to the extent that such landscaping features are feasible given the presence of existing utilities (e.g. CSO tank and related infrastructure). A Street Tree permit must be submitted and approved by the City of Spokane Urban Forester prior to any plantings.
3. The proposed parking lot will need to meet current stormwater requirements. All storm water and surface drainage generated on-site must be disposed of on-site in accordance with SMC 17D.060.140, "Storm Water Facilities," as per the Project Engineer's recommendations. Stormwater requirements can be found in the Spokane Regional Stormwater Manual (SRSM) and City of Spokane Design Standards Section 6. In general, new developments, additions, plats, and binding site plans, and any addition to or replacement of any impervious surface, and manufactured or mobile home parks will require a geotechnical site characterization (report) and drainage report/plan. Please include a detailed Site Plan or Civil Plans, which show and clearly delineate existing and proposed sewer, water, drainage structures, dry well types, swale bottom areas and property lines. Show proposed and existing pavement. The geotechnical report, drainage report and civil plan must be stamped and signed by an engineer licensed in the State of Washington.

4. All stormwater improvements and landscaping must be on site and not in the public right-of-way.
5. Once the Certificate of Occupancy is obtained for the new parking lot, the existing parking lot shall be fenced or cordoned off to discourage continued use until the sports court is completed.
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. The CUP shall be valid for 3 years with no extensions available. See SMC 17G.060.240 and Table 17G.060-3.
8. 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.
9. 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.
10. 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.

11. 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 9th day of May, 2017.



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 9, 2017. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 30th DAY OF MY, 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.