

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application)
by Whipple Consulting Engineers)
for a Restaurant in an Office-Retail)
Zone) FINDINGS, CONCLUSIONS,
AND DECISION
FILE NO. Z17-364CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: Whipple Consulting Engineers seeks a conditional use permit for a proposed 8,326 square foot restaurant (Thai Bamboo) in an Office-Retail Zone. Any retail space exceeding 3,000 square feet in the Office-Retail Zone requires a Type III Conditional Use Permit.

Decision: Approved, with conditions.

**FINDINGS OF FACT
BACKGROUND INFORMATION**

**Applicant/
Agent:** Whipple Consulting Engineers
2528 N. Sullivan Rd.
Spokane Valley, WA 99216

Owner: Grapetree Village, LLC
2017 E. 29th Avenue
Spokane, WA 99203

Property Location: The address of the site is 2023 E. 29th Avenue.

Legal Description: The legal description of the property is provided in Exhibit 2A. The property is designated as Tax Parcel No. 35284.0197.

Zoning: The property is zoned Office-Retail (OR-35).

Comprehensive Plan Map Designation: The property is designated as Office.

Site Description: The subject property is located on the northwest corner of 29th Avenue and Lee Street. Currently, there is an existing office use (Massage Envy) and an existing parking lot. There are two short plat applications being processed for the site (File Nos. Z17-037PSP and Z17-422FSP). Assuming the short plat applications are approved, the site will be subdivided into two parcels, one for each business on the site.

Surrounding Zoning: The land to the north of the property is zoned Residential Single Family (RSF). The land to the east is zoned Residential Single Family (RSF) and Residential Multi Family (RMF). The land to the south is zoned Centers and Corridors Type 1 (CC1-DC). The land to the west is zoned Office (O-35).

Project Description: The Applicant is proposing a new, 8,236 square foot restaurant that would include dining areas and outdoor seating. The project will also include on-site storm water treatment and landscaping.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code ("SMC") 17C.120, Commercial Zones; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: March 23, 2017 & April 18, 2017
Posted: March 27, 2017 & April 18, 2017

Notice of Application/Public Hearing: Mailed: July 12, 2017
Posted: July 11 & 12, 2017

Community Meeting: April 12, 2017 & May 4, 2017

Public Hearing Date: August 17, 2017

Site Visit: August 15, 2017

SEPA: This project is exempt from SEPA pursuant to SMC 17E.050.070(C) and SMC 17E.050.080 because the proposed use is less than 12,000 square feet and has parking below the limits set by ordinance. See Exhibit 14. The City's determination that the project is exempt from SEPA has not been challenged in these proceedings.

Testimony:

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

Eldon Brown, P.E.
City of Spokane, Engineering Services
808 W. Spokane Falls Blvd.
Spokane, WA 99201

James Sloane
2008 E. 30th Avenue
Spokane, WA 99203

F.J. Dullanty
2007 E. 30th Avenue
Spokane, WA 99203

Dean Moorehouse
4608 S. Grapetree Drive
Spokane, WA 99203

Jeffrey Lavagetto
2719 S. Lee
Spokane, WA 99203

P Mike Taylor
2019 E. 30th Avenue
Spokane, WA 99203

Bill White
P.O. Box 30097
Spokane, WA 99223

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application
 - 2C Notification Map Application
 - 2D Submittal letter
 - 2E Aerial of project site
 - 2F Site Plan
 - 2G Improvement Plan
 - 2H Grading Plan
 - 2I Reciprocal Parking Easement
3. Planning Services comments
4. Street Department comments
 - 4A Trip Generation and Distribution letter dated 04-27-17
5. Engineering Services comments
6. Spokane Tribe of Indians comments
7. Notice map
8. Parcel listing
9. Title Company and Applicant Certification
10. Notice of Community Meeting
 - 10A dated 04-12-17
 - 10B dated 05-04-17
11. Notice of Application and Public Hearing
12. Affidavit of mailings:
 - 12A Community meeting dated 03-23-17
 - 12B Community meeting dated 04-18-17
 - 12C Combined application and hearing dated 07-12-17
13. Affidavit of posting:
 - 13A Community meeting dated 03-27-17, with photo of posted sign
 - 13B Community meeting dated 04-18-17, with photo of posted sign
 - 13C Combined application and hearing dated 07-11-17
 - 13D Combined application and hearing dated 07-12-17, with photo of sign
14. SEPA Exemption dated 08-09-17
15. Community Meeting Sign in sheets
 - 15A Community Meeting 1
 - 15B Community Meeting 2
16. Community Meeting notes
 - 16A 04-13-17, Community Meeting
 - 16B 05-04-17, Community Meeting
17. Letter dated 03-15-17 to Todd Whipple from Donna deBit

- re: community meeting instructions
- 18. Email dated 06-19-17 to Donna deBit from Dave Lucas, Rockwood Neighborhood Council
 - re: Notice of application/public hearing
- 19. Letter dated 06-22-17 to Interested Parties from Donna deBit
 - re: requesting comments
- 20. Letter dated 07-07-17 to Todd Whipple from Donna deBit
 - re: notice of application/public hearing instructions
- A Exhibits received at hearing
 - A-1 Planning's PowerPoint presentation
 - A-2 Email dated 07-26-17 to Donna deBit from Ben Schrimshire
 - Re: opposition to project traffic concerns
 - A-3 Submittal from Whipple Consulting Engineers
 - A-3a revised site plan showing 7 ½ foot dedication
 - A-4 Submittal from Bill White showing aerial views of access points along 29th Ave
 - A-4a Year 2016
 - A-4b Year 2013
 - A-4c Year 2009
 - A-4d Year 2006
 - A-4e Year 1995
- B Submittals received during open record period ending August 31, 2017
 - B-1 Rick Dullanty, dated and received on 08-23-17
 - B-2 Todd Whipple, dated 08-28-17 and received 08-30-17

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 Office Retail (OR). The uses allowed in Office Retail are shown on Table 17C.120-1. See SMC 17.122.100. The table does not specifically identify a restaurant among the regulated uses. See Table 17C.120-1. However, the table does provide that "Retail Sales and Service" is a Limited/Conditional Use in the Office Retail zone. See Table 17C.120-1.

The proposed restaurant fits the "Retail Sales and Service" category. Under the municipal code, a "restaurant" is an "entertainment oriented" type of "Retail Sales and Service." See SMC 17C.190.270(C). If that type of use exceeds 3,000 square feet, it must be approved as a conditional use. See SMC 17C.120.110(6)(c). The proposed restaurant is over 8,000 square feet in size. As a result, a Type III conditional use permit is required in order to authorize the proposed use of the property. See Exhibit 1, p. 3.

Because the applicable provisions of the municipal code allow the property to be used for restaurant, the Hearing Examiner concludes that this criterion for approval 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 Hearing Examiner finds that the project is consistent with the goals and policies of the comprehensive plan.

The proposal is a natural extension of an existing commercial campus. The comprehensive plan recognizes the need to promote the efficient use of land, for example. See Comprehensive Plan ("CP), Chapter 3, LU 3, p. 17. The project is well designed as a part of the existing commercial development, and is compatible with the surrounding uses and building types. See CP, Chapter 3, LU 5.5, p. 24. The proposed building is bounded by a busy arterial to the south, a public street and an apartment building to the east, and commercial uses to the west. The northern edge of the site contains a large basalt formation, creating a natural barrier to the residential uses to the south.

The testimony at the hearing was uniformly in favor of the proposed use, even among those raising traffic and access as serious concerns. There were no specific criticisms of the proposed use, its compatibility with the surrounding uses, the size or intensity of the use, or similar issues. Likewise, there were no genuine questions about the design in light of the surrounding uses or the other uses in Grapetree Village. In light of the record, the Hearing Examiner believes that the proposal promotes development in a manner that is attractive, complementary, and compatible with other land uses. See CP, Chapter 3, LU 5, p. 23.

The proposal also promotes the economic development objectives of the comprehensive plan. The project is consistent with the policy to expand and increase the number of locally-owned businesses in Spokane. See CP, ED 3.5, p. 15; *Testimony of T. Burgess*. The project also encourages economic diversity by establishing a new, small business in this area. See CP, Chapter 7, ED 3.5, p. 15. Projects like this also foster a strong, diverse, and sustainable economy that provides a range of employment and business opportunities. See CP, Chapter 7, ED 3, p. 14.

It must be acknowledged, however, that there was testimony that the project was not consistent with the comprehensive plan in important respects. At the hearing, Mr. Dullanty argued, on behalf of the RockRidge Court Home Owners' Association, that the proposed restaurant did not satisfy a number of transportation policies. *Testimony of F. J. Dullanty*. Specifically, Mr. Dullanty argued that the project was not oriented to pedestrians (Policy 5.1); did not promote alternative transportation options (Policy 5.2); that the applicant failed to consult with neighborhoods regarding traffic issues (Policy 5.3); and that traffic calming measures were overlooked (Policy 5.4). While the Hearing Examiner found Mr. Dullanty's testimony to be persuasive, the Hearing Examiner ultimately disagrees with Mr. Dullanty's application of these policies to this project.

In the Hearing Examiner's view, the cited Transportation policies do not warrant denial or limitation of this particular proposal. Policy 5.1, for example, states an objective to "orient, design, and maintain neighborhoods for pedestrians." The proposal is a single retail building abutting an existing, busy arterial. It is unclear to the Hearing Examiner how a proponent of a single retail use is expected to "orient" or "design" the neighborhood, in particular in given the location, topography, and existing development surrounding the proposed restaurant. If the proposal before the Hearing Examiner was the development of the Grapetree Village as a whole, the posture of the case would be materially different.

For similar reasons, the Hearing Examiner disagrees that the project fails to "promote a variety of transportation options within neighborhoods," as called for by Policy 5.2. The development site, once the short plat is completed, is one retail site in the Grapetree campus. The primary access points to the site are from Lee Street and the Appleby's access directly to 29th. There is also another access point to 29th on the west side of the Grapetree development. These access options are all pre-existing. It is not clear what transportation options this particular applicant should be required to explore. The fact that the applicant did not propose a right-in, right-out restriction or a "pork chop" barrier does not demonstrate that a variety of transportation options are not available. It only shows that one specific idea was not pursued.

It was also argued that the applicant failed to consult with neighborhood associations, pursuant to Policy 5.3. The Hearing Examiner disagrees. The policy itself does not command an applicant to engage in direct consultation with each neighborhood association. Rather, the policy calls for developers to "work with neighborhoods" to identify and address issues of concern. The applicant held two community meetings, providing an opportunity for dialog with the neighborhood. This was consistent with the comprehensive plan policy and was sufficient, in the Hearing Examiner's view.

Finally, it was contended that the applicant failed to consider traffic calming measures, as encouraged by Policy 5.4. It is true that traffic calming measures were not suggested by the applicant, but that is because of the limited traffic being generated by the proposed use. In the Hearing Examiner's view, the fact that the applicant did not propose a "pork-chop" barrier does not establish that the proposal is inconsistent with the comprehensive plan. At the most, it establishes a difference of opinion about what transportation improvements are needed to support this particular proposal. Most of the testimony, by contrast, really concerned the pre-existing conditions of 29th Avenue, not the impacts of this specific project. It is not the applicant's obligation, pursuant to this policy, to devise solutions for the entire traffic corridor.

The Hearing Examiner finds that the project is consistent with the goals and policies of the comprehensive plan, and 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 June 22, 2017, a Request for

Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 19.

The city received various responses to its request for comments. See e.g. Exhibits 3-6. However, none of the comments indicated that concurrency could not be met. See Exhibit 1, p. 3. 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 property is rectangular and is basically flat. There is an existing parking lot on the site and a commercial building immediately west of the proposed building site. The proposal is for a 8,236 square foot restaurant. The proposed building is relatively small and the intensity of the use is consistent with nearby uses. The property is located along a busy arterial and is a natural extension of an existing commercial area. The location is appropriate for the proposed use. The site plan was routed to the relevant departments and no adverse comments were received by the Planning Department. See Exhibit 1, p. 4.

That said, it should be acknowledged that the site does not have sufficient space for parking pursuant to SMC 17C.230, Parking and Loading. See Exhibit 1, p. 4. As a result, the applicant has prepared a reciprocal parking agreement to provide additional parking for the proposed restaurant. See *id.* The reciprocal parking agreement will need to be signed and recorded prior to the issuance of any building permits. See *id.*; *Testimony of T. Whipple.*

Since the project is exempt from SEPA review, there is very little comment in this record regarding the environmental conditions at the site. However, no concerns were raised in comments or during the hearing process regarding any environmental concerns, outside of the traffic issue. There were no concerns raised about surface water, ground water, or wetlands, for example. There is a large basalt formation just north of the site, but that formation is not being altered by the development activity and appears to be just outside the site boundary in any case. There are also no known cultural or historic resources on this site. See Exhibit 5.

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).*

The Hearing Examiner finds that the proposal will not have significant impacts on the environment. This project is categorically exempt from SEPA review because the project falls below the flexible thresholds stated in SMC 17E.050.070(C). In other words, the project is considered "minor new construction," the scale of which is small enough that SEPA analysis is considered unnecessary. In addition, there is no substantive evidence in this record suggesting that there would be significant environmental impacts due to the proposed use.

The only environmental concern raised about the project related to traffic. None of the objections, however, suggested that the project would add a sufficient amount of traffic to impact the capacity of the existing transportation system. The Trip Generation Letter submitted by the applicant's engineer concluded that the trips created by the project would not degrade the Level of Service below concurrency levels. See Exhibit 1, p. 4; see also Exhibit 4A, p. 4. This was not disputed. The traffic concerns raised focused on safety, rather than capacity. *Testimony of F. J. Dullanty, B. White, P. Mike Taylor, & J. Sloane.* The Hearing Examiner views the safety issue as a separate question, which is specifically addressed below. In any case, the Hearing Examiner concludes that there is no evidence of a significant, unaddressed traffic impact arising from this project.

Specific evidence was also lacking that there would be significant, negative impacts on neighboring properties as a result of the proposed use. No one objected to the proposed use. There was no testimony that the project would have negative impacts on the neighbors, whether long-term or short-term. If anything, there seem to be agreement that a new restaurant would be a welcome addition to the area. The building is designed to fit the site and the intensity of the use is relatively low. There are no apparent ways that the project would interfere with the use of neighboring property.

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

6. *The applicant did not fail to provide proper notice of the hearing to the residents of the Rockridge View Condominium.*

During the public testimony, an objection was raised regarding the notice of the hearing. Mr. James Sloane testified that the residents of the Rockridge View Condominium complex did not receive notice of the hearing, despite participating in the community meeting. *Testimony of J. Sloane.* Mr. Sloane stated that the lack of notice

was a "procedural concern." Although he did not elaborate further, the implication of Mr. Sloane's argument was that the notice of hearing was legally defective. Assuming that is the intended argument, the Hearing Examiner respectfully disagrees.

Mr. Sloane testified that he lives at 2008 E. 30th Avenue. *Testimony of J. Sloane.* He stated that there were 24 residents of the condominium, but he did not identify those individuals by name. *See id.* Looking to the online city map, one can see that there are three parcels immediately south of 30th Avenue and west of the intersection with Martin Street. The three parcels, designated as Tax Parcel Nos. 35332.4109, 35332.4209, and 35332.4309 are owned by the owners associations of Rockridge View I, II, and III, respectively. There are eight addresses on each parcel, which generally confirms that there are 24 residents at the condominium properties.

The notification map in the record shows that the three Rockridge View condominium parcels are outside the notification area. *See Exhibit 7.* The notice district ends at 30th Avenue, falling just short of the Rockridge View condominium properties. *See id.* The tax parcels within 400 feet of the project site are also identified by number in the record. *See Exhibit 8.* The Rockridge View parcels are not listed. *See id.* The applicant also submitted a certified list of owners who were entitled to notice. *See Exhibit 9.* Mr. Sloane does not appear on that list. *See id.* Neither do the associations for the Rockridge View condominium properties. *See id.*

The Hearing Examiner concludes that Mr. Sloane and the other unit owners in the Rockridge View condominium were not entitled to notice of the hearing because those owners are outside the 400-foot notification area established under SMC 17G.060.120. As a result, the Hearing Examiner concludes that the notice of hearing was not defective due to the alleged lack of notice to those parties.

7. *Approval of the proposed restaurant should not be conditioned upon transportation improvements to 29th Avenue or a traffic study.*

The majority of the testimony about the proposed project concerned traffic safety. There were various comments about unsafe conditions along 29th Avenue, in particular with regard to access points along that arterial. None of the testifying witnesses suggested that the proposed use should be denied. However, several witnesses directly or indirectly suggested that safety improvements were needed on 29th Avenue or to the site access more specifically. In the alternative, it was suggested that the project should not be allowed to proceed until further traffic analysis was completed. For the reasons that follow, the Hearing Examiner does not agree that the project should be so conditioned.

The Hearing Examiner has no doubt that there are a number of traffic and safety problems on 29th Avenue. For example, Mr. White, an experienced traffic consultant, noted that there has been a proliferation of access points installed along 29th Avenue from Perry to Southeast Boulevard. *Testimony of B. White.* He emphasized that there were multiple location with misaligned access points, creating conflicts for vehicles driving onto the arterial from opposite sides of the street. *See id.* He also noted that 29th Avenue, from Perry to approximately Ray, is a "hot spot" for accidents. *See id.* Mr. Taylor, a city traffic engineer (speaking on his own behalf), made a convincing case for a

comprehensive study of the 29th Avenue corridor, and for the potential implementation of various strategies to improve safety and control the traffic. *Testimony of P. Mike Taylor*. Mr. Moorehouse, an area resident, noted that speeding is a serious problem along 29th Avenue, especially between Perry and Southeast Boulevard. *Testimony of D. Moorehouse*. Several witnesses, including Mr. Moorehouse, pointed out that the traffic volumes on 29th have grown at a rapid pace, and are increasing. *Testimony of D. Moorehouse, F.J. Dullanty, B. White, & J. Lavegetto*.

The Hearing Examiner is convinced that a comprehensive traffic and safety analysis of the 29th Avenue corridor is warranted. The Hearing Examiner also agrees that several different options for traffic control or calming should be analyzed by the City, and that a list of priority projects should be developed to address the concerns raised by those who testified at the hearing. However, the Hearing Examiner does not believe that the burden to analyze and address the traffic and safety issues of the 29th Avenue corridor should be placed at the feet of this applicant. The testimony presented at the hearing did not connect the problems being described to the specific project being proposed. Rather, the testimony described a series of pre-existing conditions along 29th Avenue that need to be addressed. The pre-existing conditions are not properly the responsibility of this project proponent to solve, in the Hearing Examiner's view. See e.g. *Benchmark Land Company v. City of Battleground*, 146 Wn.2d 685, 49 P.3d 860 (2002) (invalidating a project condition to make street improvements because the project had little to no impact on the safety or operations of the adjoining roadway and the required improvements addressed a "preexisting deficiency").

The applicant is seeking approval of an 8,326 square foot restaurant. The project did not trigger a SEPA review because it qualified as "minor new construction." Thus, the potential impacts are deemed to be minor under the regulations. The traffic generated from this project is also relatively small. The city did not require a full traffic study, and with good reason given the scope of the project. The applicant submitted an adequate traffic analysis to support the project, under the circumstances. See Exhibit 4A. There was no testimony that the traffic from this project *created* the need for any specific improvements. Although traffic experts did testify about the problems that existed on 29th Avenue, those experts were testifying as concerned citizens. *Testimony of P. Mike Taylor & B. White*. No traffic analysis or study was submitted to suggest that the proposed project triggered the need for traffic improvements on 29th Avenue.

The primary issue, related specifically to the project, was the misalignment between the Appleby's access and Martin Street. This is certainly a legitimate concern. However, this project does not likely generate enough traffic to materially exacerbate the problem. As the project engineer noted:

It is unlikely that Thai Bamboo will have any impact to the AM traffic patterns as their hours of operation as note are from 11 AM to 10 PM or closing whichever is longer and therefore, the proposal would have NO AM peak impacts, see TGD. The TDGL notes that the proposed use will generate 63 PM Peak trips, of which only 21 are outbound during the PM Peak hour which is approximately one trip every three (3) +/- minutes which in no way should, in my professional opinion, have a detrimental impact to the residents of St. Martin Street, thereby making the discussion by Mr. Dullanty of the "pork chop" moot.

See Exhibit B-2.

In addition, the Appleby's access was approved and installed long ago. The project does not create any new access points to 29th Avenue. The misalignment of the access is not a result of the design of the restaurant project. Nor does the traffic from the project test or exceed the capacity of the existing infrastructure such that site-specific improvements are needed. The misalignment of the Appleby's access and Martin is a pre-existing condition that will be an issue regardless of whether the proposed restaurant is constructed or not. The solution to the misalignment of these two access points is more properly addressed as a system improvement, not as a condition of the proposed restaurant. To the extent that the project results in additional traffic to a corridor that already has traffic challenges, the applicant is paying its fair share as impact fees. Pursuant to the adopted formula, the applicant will be paying over \$23,000 in impact fees. See Exhibit 4A.

The Hearing Examiner also share's Mr. Whipple's concern that a piecemeal solution to the traffic issues on 29th Avenue may have unintended consequences. For example, if the Hearing Examiner imposed a condition requiring a "pork-chop" barrier restricting traffic to right-in/right-out at the Appleby's access, it is not known whether that change will actually improve safety on the whole. Presumably, restricting outbound vehicles in that manner will cause drivers to use Lee or the westerly Appleby's driveway in order to turn to the east. However, there is no information about whether routing more traffic to the westerly driveway would be a good idea. As for Lee, there was testimony that the existing trees greatly restricted the line of sight at that access point, leading to at least one serious accident in recent times. *Testimony of J. Lavegetto*. It is possible that routing more traffic to Lee, which is the obvious choice for drivers wanting to drive east from the restaurant, will be a bigger safety issue than the misalignment with Martin. The better approach, in the Hearing Examiner's view, is a system-wide analysis and consideration of multiple solutions and how those solutions might interact. It may be that the best way to address safety on 29th is a series of improvements that may or may not include the proposed barrier at the Appleby's access. In any case, the system-wide analysis and whatever solutions might be implemented is not properly the responsibility of the owner of the restaurant. It is a public responsibility.

For similar reasons to the above, the Hearing Examiner concludes that the applicant should not be required to conduct a traffic study as a condition of project approval. A sufficient connection between the proposed use and the safety problems on 29th Avenue was not established. In the absence of that connection, it is not appropriate for the Hearing Examiner to require this particular applicant to take on the burden of such an analysis. That burden is better born by the City as part of a more comprehensive analysis of the 29th Avenue corridor.

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 construction of a restaurant at 2215 E. 29th Avenue. The project shall be completed substantially in conformance with the plans and application on file with the Planning and Development Department.
2. At the time of building permit intake, the site plan and layout of the building footprint for the future development shall reflect the plat (Z17-422FSP) requirement of a 7.5 foot right-of-way dedication.
3. A reciprocal parking agreement between the Grapetree Village development (2001 E. 29th Avenue and 2101 E. 29th Avenue) and the project site must be recorded with the Spokane County Auditor's Office prior to any building permit issuance, to ensure that parking requirements for the proposed use are met.
4. The project will be developed in substantial conformance with SMC 17C.120.500-.570, Land Use Standards, Commercial Zones, to maintain compatibility with, and limit the negative impacts on surrounding residential areas.
5. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services shall 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.
6. 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.
7. 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.
8. 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.
9. 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.

10. 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 12th day of September, 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 September 12, 2017. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 3rd DAY OF OCTOBER, 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.