

CITY OF SPOKANE HEARING EXAMINER

Re: Rezone and Preliminary Short Plat) FINDINGS, CONCLUSIONS,
Application by Grant Keller to rezone) AND DECISION, AMENDED
property at Ivory and 15th Avenue)
from RSF to RSF-C and authorize the)
construction of six single-family)
residences) FILE NO. Z17-424FEW3

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant, Grant Keller, has requested approval of a Rezone and Preliminary Short Plat from the Hearing Examiner to rezone the property to RSF-C (Residential Single-Family, Compact) and short plat the existing parcel into six single-family lots utilizing the Pocket Residential development standards.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** Grant Keller
2423 E. Girard Place
Spokane, WA 99201

Owner: Ivory Abbey, Inc.
P.O. Box 8291
Spokane, WA 99203-0291

Property Location: The subject property is located on the northeast corner of 15th Avenue and Ivory Street, in southeast Spokane, Washington. The property is commonly known as 1217 E. 15th Avenue.

Legal Description: The legal description of the property is provided in Exhibit 2K.

Zoning: The property is zoned RSF (Residential Single Family).

Comprehensive Plan Map Designation: The property is designated as R 4-10 (Residential 4-10 units per acre).

Site Description: The site is vacant land which is covered with Ponderosa pines. The site is naturally elevated approximately 6-12 feet above the adjacent street and properties. The site is approximately .59 acres (25,600 square feet) in size. The site is rectangular in shape and is a corner lot located at the intersection of Ivory Street and 15th Avenue. There are no known water features on the site.

Surrounding Conditions and Uses: The subject property is surrounded by RSF (Residential Single Family) zoning on all perimeters. All surrounding land uses are single family. There is a townhouse style condominium development to the southwest on the opposite side of Ivory Street, but all the uses are single family.

Project Description: The proposal is to rezone the existing parcel from RSF to RSF-C (Compact), which allows for the lot to be subdivided into lots as small as 3,000 square feet. The proposal includes the preliminary short plat, which proposes six lots utilizing the Pocket Residential development standards.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code ("SMC") 17C.110.030, Characteristics of Residential Zones; Table 17C.110-3, Development Standards; and SMC 17C.110.360, Pocket Residential Development; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: July 1, 2017
Posted: July 1, 2017

Notice of Application/Public Hearing: Mailed: August 30, 2017
Posted: August 30, 2017

Community Meeting: July 14, 2017

Public Hearing Date: October 5, 2017

Site Visit: October 5, 2017

SEPA: On September 25, 2017, the City determined that the project was exempt from the SEPA process. See Exhibit 17.

Testimony:

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

Grant Keller
2423 E. Girard Place
Spokane, WA 9201

Miles Strampe
1210 E. 15th Avenue
Spokane, WA 99203

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application

- 2B Rezone Application
- 2C Preliminary Short Plat Application
- 2D Notification Map Application
- 2E Site Plan
- 2F Erosion Control Plan
- 2G Grading and Drainage Plan
- 2H Sewer Plan
- 2I Water Plan
- 2J Water Notes and Details
- 2K First American Title Guarantees and blank preliminary plat
- 3. Planning and Development comments
- 4. Engineering Services comments
 - 4A Eldon Brown, P.E., dated 08-17-17
 - 4B Erik Johnson, dated 09-22-17
- 5. Building Department comments
- 6. Fire Department comments
- 7. Spokane Tribe of Indians comments
- 8. Washington State Department of Ecology comments
- 9. Avista comments
- 10. Notice map
- 11. Parcel listing
- 12. Notice of Community Meeting
- 13. Notice of Application and Public Hearing
- 14. Affidavit of mailings:
 - 14A Community meeting dated 07-01-17
 - 14B Combined application and hearing dated 08-30-17
- 15. Affidavit of posting:
 - 15A Community meeting dated 07-01-17
 - 15C Combined application and hearing dated 08-30-17
- 16. Affidavit of Removal of sign dated 07-14-17
- 17. SEPA Exemption dated 09-25-17
- 18. Community Meeting Sign in sheet
- 19. Letter dated 03-15-17 to Grant Keller from Ali Brast
 - re: community meeting instructions
- 20. Letter dated 08-04-17 to Interested Parties from Ali Brast
 - re: requesting comments
- 21. Letter dated 08-24-17 to Grant Keller from Ali Brast
 - re: notice of application/public hearing instructions
- 22. Email dated 09-12-17 to Ali Brast from Miles Strampe
 - re: concerns regarding the project
- A Exhibits received at hearing
 - A-1 Planning's PowerPoint presentation
 - A-2 Email dated 10-04-17 from Antonia DePasquale to Ali Brast
 - re: preservation of trees

FINDINGS AND CONCLUSIONS

To be approved, the proposed rezone and preliminary short plat must comply with the criteria set forth in Section 17G.060.170 of the Spokane Municipal Code. The Hearing Examiner has reviewed the application for a rezone and preliminary short plat 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 site is zoned Residential Single Family ("RSF"). Mr. Keller has proposed to change the zoning to Residential Single Family, Compact ("RSF-C"). Pursuant to SMC 17C.110.030(C), the RSF-C classification is appropriate for properties that are designated as residential 4-10 in the comprehensive plan and are "wholly or partially within one-quarter mile of a CC Core designated on the land use plan map..." See SMC 17C.110.030(C). The development site in this case satisfies these requirements. The property is designated as R 4-10 on the comprehensive plan. See Exhibit 1, p. 1. In addition, the property is only 900 feet¹ from the CC Core designated property at 12th Avenue and Perry Street. See *id.*, p. 3. Finally, it should be noted that single-family residential development is permitted outright in the RSF and RSF-C zones. See Table 17C.110-1;

A preliminary short plat is normally processed as a Type II application. Type II applications are approved administratively by the Planning Director, and are not typically approved by the Hearing Examiner. However, the preliminary short plat is being considered in conjunction with a rezone application, a Type III application which is heard by the Hearing Examiner. In such cases, the applications should be consolidated and reviewed in a single hearing. See SMC 17G.060.250(B)(3). Therefore, the Hearing Examiner can properly decide whether to approve this application in a single, consolidated hearing. Moreover, assuming the rezone is first approved, the proposal to develop six, smaller single family residences on this property is consistent with the standards of the RSF-C zone. See Exhibit 1, p. 3.

The Hearing Examiner concludes that the proposed rezone and short plat application are allowed under the land use codes. As a result, 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).*

This project will result in an attractive residential development on a parcel of land that, although vacant, is surrounded by single-family residential uses. The Hearing Examiner agrees with the Staff that the rezone and short plat will allow for a higher density use near a CC zone and transit lines, which is encouraged by the Comprehensive Plan ("CP"). See Exhibit 1, p. 4. In addition, the project is well designed

¹ One-quarter mile is approximately 1,320 feet.

to fit into the neighborhood, and thus promotes the objectives of Goal LU 5 of the Comprehensive Plan.

The project takes into account the surrounding residential uses and the topographic challenges of the site. The Hearing Examiner agrees that the Applicant has carefully designed the project to fit the site and the neighborhood. *Testimony of G. Keller.* The design respects the quality and nature of the built and natural environment. See CP, Chapter 3, LU 5.1, p. 23. Although the proposed residences will be more compact and have some unique characteristics, consistent with the RSF-C standards, the proposed homes will be of a similar style and nature as the surrounding neighborhood. Thus, the developer has ensured that the project will be compatible with surrounding uses. See CP, Chapter 3, Policy LU 5.2, p. 23; see also CP, Chapter 3, Policy LU 5.5, p. 24 (discussing the need to ensure compatibility when permitting infill developments); see also CP, Chapter 8, Policy DP 3.8, p. 14 (same). The Hearing Examiner also finds that the project is well-designed and will blend in with the existing neighborhood. See CP, Chapter 8, Policy DP 1.4, p. 10.

The project is the first pocket development in the city. *Testimony of A. Brast.* It will result in a slightly higher-density, infill residential development. Its impacts will be limited, however, due to the design features and the relatively small scale of the project. At the same time, the project directs development to an already developed area. This connects a new form of housing with public transit, employment, recreation, and other amenities in a way that is contemplated by the Comprehensive Plan. See CP, Chapter 6, Policy H 1.4 and H 3.4, pp. 8 & 14. As the Staff concluded, the project will "...help provide for a mix of housing types with access to existing infrastructure and transportation." See Exhibit 1, p. 4.

The Hearing Examiner concludes that the proposal is consistent with the goals and policies of the comprehensive plan. Therefore, this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010 SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions (such as a rezone) mandate that all proposals must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on August 4, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 20.

The city received various responses to its request for comments. See Exhibits 3-9. However, City staff confirmed that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 4. 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 site is of sufficient size to support the proposed development, although a rezone has been requested to accommodate the type of housing that is proposed. The parcel is basically rectangular, and thus there are no material challenges created by the shape of the property. Applying the RSF-C standards, the project is well-designed to fit the site. "The site is suitable for development according to all city departments and agencies that commented." See Exhibit 1, p. 4. The property is surrounded by single-family development on all sides. Thus, there is nothing about the location of the site which makes it incompatible with residential development.

There was an understandable concern raised about the topography. There are certainly challenges in that regard because the natural grade is elevated approximately 6-12 feet above the surrounding property. However, there was no evidence that this condition made the property unsuitable for development. There was a concern raised about a potential decrease in privacy for nearby residents. However, there is no rule that homes cannot be constructed on an elevated grade due to privacy concerns. There was no evidence that there were easements or covenants which restricted the construction of homes on the existing grade. There are also no development standards, to the Hearing Examiner's knowledge, that restrict development based upon this potential issue. Upon inquiry from the Hearing Examiner, the Staff appeared to confirm that no such standards exist or apply in this case. *Testimony of A. Brast.* The Hearing Examiner also believes that the privacy concern is somewhat speculative. It is unclear, on this record, precisely who will be impacted and to what degree. Ultimately, the Hearing Examiner does not believe it is appropriate to restrict or limit this project based upon the privacy concern, at least on the record of this case.

There is no evidence in the record that soil or drainage conditions are problematic. There is also no evidence that ground or surface waters are present or will be impacted by the project. Finally, there are no known natural, historic or cultural features on the development site itself. See Exhibit 7.

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 17E.050.080. See Exhibit 17. 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. For example, no environmental issues were raised during the department or agency review period. See Exhibit 1, p. 4.

Specific evidence was also lacking that there would be significant, negative impacts on neighboring properties as a result of the proposed use. The project scale is quite small. The whole project will only result in the construction of six homes. Each home will have a garage, and thus parking for the residences will be handled on site. Despite one suggestion to the contrary, the traffic from a project of this scope is not significant. The project is well-designed to fit the neighborhood, both in scale and aesthetics. The height of the structures will not exceed the zoning requirements. And the project will be required to adhere to the development standards for Pocket Residential Developments. See Exhibit 1, p. 5.

The Hearing Examiner respectfully disagrees with the prediction or opinion that this project will create significant new traffic loads. See Exhibit 22; *Testimony of M. Strampe*. 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. And there was no evidence that the existing transportation system did not have the capacity to handle traffic flows to and from this site.

There was also an objection raised to the removal of trees on the site. See Exhibit A-2. However, there are no rules that preclude the property owner from removing trees from the site. *Testimony of A. Brast*. To the Hearing Examiner's knowledge, there is no legal basis for denying the project or ordering that the property remain as "green space." The owner has the right to develop its property, and that includes the right to remove trees as part of the development process. The Spokane Ponderosa Network raised an understandable concern about the reduction of conifers in Spokane. However, the group did not identify a legal basis to condition or deny this particular project.

The low impact of this project is undoubtedly one of the reasons this project is exempt from SEPA review. 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 rezone and preliminary short plat subject to the following conditions:

1. Approval is for a rezone and preliminary short plat to allow a six-lot subdivision, consistent with the Pocket Residential development standards, of the property located at 1217 E. 15th Avenue. The preliminary short plat will be developed substantially as set forth in the plans and application on file in the Planning Department.
2. The project will be developed in substantial conformance with SMC 17C.110.360, Land Use Standards, Residential Zones, Pocket Residential Development, to maintain compatibility.
3. Each street frontage – Ivory and 15th – shall be limited to a maximum of 40% hard surface coverage between the front property line and the front building line.
4. A Homeowners Association will be required to govern the maintenance of the common space, shared stormwater and any other shared amenities.
5. In order to adhere to front yard averaging requirements per SMC 17C.110.220 (D)(1), the easternmost house in the development proposed along 15th Ave shall be setback 17 feet from the front property line.
6. All garage entrances must be 20 feet back from the back of the sidewalk.
7. Each lot must include addresses and lot numbers on the face of the plat.
8. The City's GIS system indicates that there may be a private stormline on the north side of the property. Prior to final plat, provide the Engineering Department with the exact limits and location of this stormline, along with who it is currently serving.
9. In order for each lot to be served by City Water, the existing water main in 15th will need to be extended west along 15th and north along Ivory Street until it is 10 feet past the south property line of the most northerly proposed lot.
 - a. Water service to each individual lot must be via individual service lines running perpendicular from the main to each lot.
 - b. The developer will be responsible for all costs associated with design and construction of this water main that is necessary to serve this plat.
 - c. The water main shall be constructed and accepted for service prior to the City Engineer signing the final plat
10. The City of Spokane will not be requiring the developer of this particular project to extend public sewer mains in the right-of-way to serve the lots. All lots within this plat must be served by a private sewer system.

- a. All utilities crossing parcel lines must be protected in an easement and the easement must be shown on the face of the plat.
 - b. Maintenance of the shared sewer system will be the responsibility of the Homeowner's Association.
 - c. A copy of the CC&R's outlining the maintenance of all shared facilities including sewer and stormwater must be submitted to City Engineering for review prior the plat being signed.
 - d. The private sanitary sewer system must be constructed and accepted for service prior to the City Engineer signing the final plat.
11. With the final plat, submit a copy of the recorded easement across the west portion of parcel #35291.0120 to Engineering Services.
12. Strike the following comments from the dedication before submitting for Final Plat.
- a. *"Public sewers shall be constructed to provide for the connection of each parcel to the County's system of sewerage..."*
 - b. *"The perpetual easement granted to Spokane County, its successors and assigns for the sole purpose of constructing, installing, operating, maintaining, repairing, altering, replacing, removing and all other uses or purposes which are or may be related to a sewer system....."*
 - c. *The property owners within this plat are responsible for keeping open and maintaining the surface path of natural or man-made drainage....."*
 - d. *The owner(s) or successor(s) in interest agree to join in any city-approved Stormwater management program and to pay such rates and charges as may be fixed....."*
 - e. *The City of Spokane is responsible for maintaining the stormwater facilities in the public right-of-way....."*
13. Modify the following dedicatory statement so that it outlines the maintenance of the shared Stormwater facilities as being the responsibility of the Homeowner's Association. *"The lot owners within this plat shall maintain all natural drainage channels....."*
14. Maintenance of City sidewalks are the responsibility of the adjacent property owner. Prior to the issuance of a Certificate of Occupancy for any structures on the lots, all cracked, broken, heaved, sunken, or missing sidewalk will need to be replaced or repaired.
15. The following statements must appear in the dedication on the final plat.
- a. Development of the subject property, including grading and filling, is required to follow an erosion/sediment control plan that has been

submitted to and accepted by Engineering Services – Developer Services prior to the issuance of any building and/or grading permits

- b. No building permit shall be issued for any lot in this plat until evidence satisfactory to the City Engineer has been provided showing that the recommendations of SMC 17.060 “Stormwater Facilities”, the Spokane Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and the Project Engineer’s recommendations, based on the drainage plan accepted for this final plat, have been complied with. A surface drainage plan shall be prepared for each lot and shall be submitted to Developer Services for review and acceptance prior to issuance of a building permit.
- c. Slope easements for cut and fill, as deemed necessary by Developer Services in accordance with City Design Standards, are granted along all public right of ways.
- d. All public improvements (street, sewer, storm sewer, and water) shall be constructed to City standards prior to the occupancy of any structures served by said improvements.
- e. No building permit shall be issued for any lot in the plat until evidence satisfactory to the City Engineer has been provided showing that sanitary sewer and water improvements, constructed to City standards, have been provided to the lot in question.
- f. All stormwater and surface drainage generated on-site must be disposed on-site in accordance with chapter 17D.060 SMC, Stormwater Facilities, and City Design Standards, and as per the Project Engineer’s recommendations, based on the drainage plan accepted for the final plat.
- g. Prior to the issuance of any building permits, the lots shall be connected to a functioning public or private water system complying with the requirements of the Engineering Services Department and having adequate pressure for domestic and fire uses, as determined by the Water and Hydroelectric Services Department.”
- h. Prior to the issuance of any building permits, the lots shall be connected to a functioning public or private sanitary sewer system complying with the requirements of the Engineering Services Department.” Prior to the issuance of any building permits, the lots shall be connected to a functioning public or private sanitary sewer system complying with the requirements of the Engineering Services Department.”
- i. Prior to the issuance of any building permits, the lots shall be served by fire hydrants and shall have appropriate access to streets as determined by the requirements of the City Fire Department and the Engineering Services Department

- j. Water mains and fire hydrants must be installed at the developer's expense, in locations approved by the City Fire Department and in accordance with applicable State and Federal provisions
16. The submitted preliminary short plat showed proposed structures. Unit A & Unit E did not appear to provide the 5-foot fire separated distance required by the 2015 IRC Table 302.1(1). Without the fire separate distance requirement being met, a 1-hour exterior wall construction or fire sprinklers will be required.
17. Per the Department of Ecology, proper erosion and sediment control practices must be used on the construction site to prevent upland sediments from entering surface water.
18. Per Avista, if there is a border easement, please add to the last sentence of the utility easement: "*Serving utilities reserve the right to cross border easements of future right-of-way acquisition areas*".
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.

AMENDED this 2ND day of November 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 of the Hearing Examiner regarding rezones and preliminary plats are final. They may be appealed to the City Council. All appeals must be filed with the Planning Department within fourteen (14) calendar days of the date of the decision. The date of the decision is the 17th day of October 2017. **THE DATE OF THE LAST DAY TO APPEAL IS THE 31st DAY OF OCTOBER 2017 AT 5:00 P.M.**

In addition to paying the appeal fee 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 City Council.