

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Riverview Retirement Community to) AND DECISION
allow the construction of a Memory)
Care Facility in a Residential Multi-)
Family Zone) FILE NO. Z17-426CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Riverview Retirement Community seeks a conditional use permit in order to allow the construction of a Memory Care Facility at a site of an existing assisted living facility in northeast Spokane. The proposed building is 20,000 square feet and would provide 20 additional residential rooms at the facility.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** NAC Architecture
c/o Mike O'Malley
1203 W. Riverside Ave.
Spokane, WA 99201

Owner: Riverview Retirement Community
1801 E. Upriver Dr.
Spokane, WA 99207

Property Location: The property is located at 1801 E. Upriver Drive, in the City of Spokane, Washington. The property is designated as Tax Parcel No. 35093.1001.

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

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

Site Description: The site is located on the southeast corner of E. North Crescent Avenue and N. Granite Street at the existing Riverview Village campus. The site is improved with apartments (also referred to as the Terrace) which will remain and a long garage along the north parcel line that will be removed.

Surrounding Conditions and Uses: The site and the properties to the east and north are zoned Residential Multi-Family (RMF). Those areas are improved with multi-family housing. The property to the west is zoned Light Industrial (LI) and is the site of the Avista Campus. The Spokane River is to the south of the site.

Project Description: This project proposal includes the demolition of the existing garage that is located along the north property line, and the addition of a single story Memory Care facility that will be approximately 20,000 square feet in size and provide 20 residential rooms for future patients.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (“SMC”) 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Criteria, and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: June 23, 2017
Posted: June 23, 2017

Notice of Application/Public Hearing: Mailed: August 8, 2017
Posted: August 8, 2017

Community Meeting: July 10, 2017

Public Hearing Date: September 7, 2017

Site Visit: September 6, 2017

SEPA: A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane Planning Department on August 23, 2017. The deadline to appeal the DNS expired on September 6, 2017. The DNS was not appealed.

Testimony:

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

Mike O'Malley
NAC Architecture
1203 W. Riverside Ave.
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application
 - 2C Notification Map Application
 - 2D Proposed Floor Plan
 - 2E Aerial Vicinity Map
3. Department of Ecology comments
4. Spokane Tribe of Indians comments
5. Notice map

6. Parcel listing
7. Address listing
8. Notice of Community Meeting
9. Notice of Application and Public Hearing
10. Affidavit of mailings:
 - 10A dated 06-23-17
 - 10B dated 08-08-17
11. Affidavit of posting:
 - 11A dated 06-23-17
 - 11B dated 08-08-17
12. SEPA Determination of Nonsignificance issued on 08-23-17
13. Environmental Checklist dated 07-13-17
14. Community Meeting Sign in sheet
15. Community Meeting Summary
16. Letter dated 06-14-17 to NAC Architecture from Donna deBit
re: community meeting instructions
17. Letter dated 07-21-17 to Interested Parties from Donna deBit
re: requesting comments
18. Letter dated 08-07-17 to Todd Whipple from Donna deBit
re: notice of application/public hearing instructions
- A Exhibits received at hearing
 - A-1 Planning's PowerPoint presentation

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 and 17C.320.080(F). 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 proposal is for a new building at an assisted living facility. Assisted living facilities and similar uses are identified in SMC 17C.190.100 as Group Living, a Residential category of use. See Exhibit 1, p. 3. The site of the proposed use is zoned Residential Multi-Family ("RMF"). The uses allowed in the RMF zone are shown on Table 17C.110-1. According to the table, a Group Living [1] use is allowed in an RMF zone as a limited/conditional use ("L/CU"). The bracketed note [1] denotes that additional standards, found in SMC 17C.110.110, apply to this proposal. Under the pertinent provisions of that code, Group Living for more than 12 residents in the RMF zone is a conditional use and is subject to the provisions of chapter 17C.320 SMC (among other provisions) and such a proposal is processed as a Type III application. See SMC 17C.110.110(A)(1)(c).

The Hearing Examiner finds that the proposed crisis shelter is allowed in the RMF zone, provided a conditional use permit is obtained and the other development standards are met. Therefore, this criterion 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 Comprehensive Plan ("CP") supports the development of care facilities throughout the city. Goal SH 2 encourages developments that are "responsive to the facility requirements of special needs populations." See CP, Chapter 10, Goal SH2, p. 13. Policies SH 2.1 and SH 2.2 both promote the distribution of such facilities "throughout all neighborhoods." See CP, Chapter 10, Policy SH 2.1 & 2.2, p. 13. In addition, the Hearing Examiner agrees with the Staff that the proposal is specifically supported by Goal LU 5, which promotes development "...in a manner that is attractive, complementary, and compatible with other land uses." See CP, Chapter 3, Goal LU 5, p. 23. Similarly, Policy LU 5.5 seeks to ensure that "...infill and redevelopment projects are well-designed and compatible with surrounding uses and building types." See CP, Chapter 3, Policy LU 5.5, p. 24.

The proposed Memory Care Facility will be constructed in a manner similar to the existing structures on the site. See Exhibit 1, p. 3. The proposed use will also expand the services that Riverview provides to its existing and future residents. See *id.* The proposal will improve the scope of services that are available in that area. See *id.* And the new facility will fulfill a growing need for this type of care, and will do so in a cost-effective manner. *Testimony of M. O'Malley.*

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 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 July 21, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 17.

The city received minimal response to its request for comments. See *e.g.* Exhibits 3 & 4. City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." 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 site is already developed with an assisted living facility. The proposal will eliminate a garage to make room for a new building, but the project will merely expand a pre-existing use of the property. As the Staff notes, the "...current suitability of the parcel(s) in terms of size, shape, topography, soils, slope, drainage, surface/groundwater and natural/historic/cultural features is not changed by the proposed improvements." See Exhibit 1, p. 3. The Hearing Examiner also agrees with the Staff that there is no evidence in this record suggesting that the physical characteristics of the property make it unsuitable for the proposed use. See *id.* The Hearing Examiner therefore concludes that this criterion for approval 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 environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

On or about July 13, 2017, Riverview Retirement Community prepared an environmental checklist, pursuant to the State Environmental Policy Act, for the proposed Memory Care Facility. See Exhibit 13 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example, there are no wetlands or streams on the site. See Exhibit 13 (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 13 (Environmental Checklist ¶ B(3)(a)(5)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 13 (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No environmental hazards (e.g. exposure to toxic chemicals, risk of fire or explosion, hazardous wastes, etc.) are anticipated to arise due to this project. See Exhibit 13 (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 13 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). The project will not produce any light or glare. See Exhibit 13 (Environmental Checklist ¶ B(11)(a)-(b)). The project will create some noise, from an on-site generator, but that equipment will be placed inside a sound-attenuated enclosure. See Exhibit 13 (Environmental Checklist ¶ B(7)(b)(2)). In addition, there are no known places or objects of cultural, historic, or archaeological significance. See Exhibit 13 (Environmental Checklist ¶ B(13)(a)-(b)).

On August 23, 2017, the City of Spokane, as lead agency, issued a Determination of Non-significance ("DNS") for the project. See Exhibit 12. Any appeal of the DNS was due on September 6, 2017. See *id.* No appeal of the DNS was filed.

There was no substantive evidence that environmental impacts make the project unfeasible or materially problematic. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment, which cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. *The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F).*

The residential appearance and function of the area will not be negatively impacted by this project. The project will merely replace a long garage with a newer residential building. Thus, the project is consistent with the property's historic use and will not be out-of-proportion with the residential household uses in the vicinity. The site is directly across the street from other Riverview residences. See Exhibit 1, p. 5. The site is also physically separated from other residential uses that are no part of the Riverview campus. See *id.* Thus, no impact to other residential uses is foreseen. See *id.* The general appearance of the neighborhood will not materially change as a result of this project.

There were no complaints prior to or at the hearing about the potential impact on nearby residential uses. No homeowners submitted comments in opposition to the project. No homeowners testified at the hearing. Further, any impacts on the residential aesthetics of the neighborhood will be mitigated by proper design. For example, the applicant is required to meet the standards set out in SMC 17C.110.500-575, which apply to institutional uses in residential areas. See Exhibit 1, p. 4. The Hearing Examiner concludes that this criterion for approval is satisfied.

7. *The proposal will be compatible with the adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks and landscaping. The proposal will mitigate the differences in appearance or scale through such means as setbacks, screening, landscaping and other design features. See SMC 17C.320.080(F)(2).*

In the Hearing Examiner's view, the building has been designed to fit the site and to be compatible with nearby residential uses. There was no testimony of other evidence suggesting that this project will be incompatible with the adjacent residential uses. In addition, the project will be required to satisfy the design standards for institutional uses in a residential area. See SMC 17C.110.500-575. The project will maintain the landscaping that already surrounds the site. See Exhibit 1, p. 5. The new building will also be

physically separated from residential uses that are not part of the Riverview campus, as noted above. Under the circumstances, the Hearing Examiner agrees with the Staff that this criterion for approval is satisfied.

8. *The proposal will not have significant adverse impacts on the livability of nearby residential lands due to noise, glare, late-night operations, odors and litter, or privacy and safety issues. See SMC 17C.320.080(F)(3).*

The Hearing Examiner concludes that the proposal will not affect the livability of the surrounding residences. There is no reason to anticipate a significant amount of noise from this residential use. See Exhibit 1, p. 5. There was no evidence that this facility will result in glare, odors, or litter. See *id.* Overhead lighting at the site must be contained on site, in accordance with SMC 17C.110.520. See *id.* No concerns were raised about privacy or safety, and the Hearing Examiner cannot conceive of any such impacts, given the nature of the proposal. In summary, the project does not include elements that may cause unanticipated or undue light, glare, odor, or litter, or give rise to diminished privacy or safety. See *id.* Therefore, the Hearing Examiner concludes that this criterion for approval is met.

9. *The proposed use is in conformance with the street designations of the transportation element of the comprehensive plan. The transportation system is capable of supporting the proposed use in addition to existing uses in the area, upon consideration of the evaluation factors provided in the municipal code. See SMC 17C.320.080(F)(4).*

This project does not create any new or unique burdens on the transportation system or on other public facilities. There was no evidence presented that this project was incongruous with the transportation element of the comprehensive plan. This project merely results in the replacement of a garage with a new residential building. It is not anticipated that this change will result in any increase in traffic, given the nature of the use and the special needs of the future residents. See Exhibit 1, p. 6. For example, the patients who will reside at the Memory Care Facility cannot drive. See *id.* The site already has access to City services. See *id.* The project will not require additions to public facilities or increased public services in order to accommodate the proposal. See *id.* Therefore, the Hearing Examiner agrees with Staff that this criterion is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed conditional use permit subject to the following conditions:

1. Approval is for a conditional use permit to allow the construction of a new Memory Care Facility at the Riverview Terrace campus located at 1801 E. Upriver Drive. The Memory Care Facility will be constructed 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, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
3. The applicant shall comply with the requirements of the Spokane Regional Clean Air Agency prior to the construction, installation or establishment of an air pollution source. A Notice of Intent must be submitted to the Spokane Regional Clean Air Agency prior to any demolition project or asbestos project.
4. 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.
5. The applicant shall coordinate with the Spokane Tribe of Indians so that the Tribe has the opportunity to monitor the ground disturbing activities of the project. Any monitoring of ground disturbing activities conducted by the Spokane Tribe of Indians will be accomplished at the sole expense of the Tribe.
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 11th 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 11, 2017. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 2nd DAY OF OCTOBER 2016 AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.