

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Cascadia Development to allow the) AND DECISION
construction of an assisted living)
facility, in a Residential Single-Family)
Zone, on property located at 4515 S.)
Freya Street) FILE NO. Z17-489CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: Cascadia Development seeks a conditional use permit in order to allow the construction of a new 50-unit/60-bed assisted living facility. The proposed structure is a single-story building, approximately 39,000 square feet in size. The applicant also seeks approval of three (3) future, adjacent residential cottages to house 6 residents each.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** Cascadia Development
c/o Justin Yonker
2520 W. Washington Ave., #1
Yakima, WA 98903

Owner: BFG Spokane Propco IV, LLC
2520 W. Washington Ave., #1
Yakima, WA 98903

Property Location: The property is located at 4515 S. Freya Street, in the City of Spokane, Washington. The property is designated as Tax Parcel No. 34031.0007.

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 project site is approximately 4.65-acre parcel of undeveloped land located east of Freya Avenue and south of 44th Avenue. The site is vacant and is treed. The topography of the property is relatively flat with an approximate slope of 6% from the northwest corner to the southwest corner of the site.

Surrounding Conditions and Uses: Single Family Residential (RSF) zoned property surrounds the project site for almost ½ mile in all directions. There is Residential Multi-Family (RMF) property approximately 700 feet to the west of the project site. The project

site is surrounded by single family residential development, with some multifamily development to the west.

Project Description: The project proposal includes the development of a new 50-unit/60-bed Memory Care community. The new structure would be a single story building, approximately 39,000 square feet in size. The applicant also seeks approval of three future residential cottages to house 6 residents each. Landscaping, screening, lighting, and site improvements (paving, striping, and signage) will also be installed to meet development standards.

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: March 21 & August 23, 2017
Posted: March 22 & August 25, 2017

Notice of Application/Public Hearing: Mailed: November 2, 2017
Posted: November 4, 2017

Community Meetings: April 11 & September 7, 2017

Public Hearing Date: November 30, 2017

Site Visit: December 8, 2017

SEPA: A Mitigated Determination of Nonsignificance ("MDNS") for a prior proposal for an assisted living facility was issued by the City of Spokane Planning Department on February 2, 2008. A modified MDNS was issued on February 11, 2008. On November 20, 2017, the City adopted the previously prepared environmental documents by reference. See Exhibit 14.

Testimony:

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

Todd Whipple
Whipple Consulting Engineers
2528 N. Sullivan Rd.
Spokane Valley, WA 99216

Paul Rasmussen
Cascadia Senior Living & Development
506 N. 40th Avenue, Suite 1
Yakima, WA 98908

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General Application
 - 2B Conditional Use Permit Application
 - 2C Notification Map Application
 - 2D Site Plan
3. Developer Services comments
4. Street Department comments
 - 4A Trip Generation and Distribution letter dated 05-11-17
5. Spokane Tribe of Indians comments
6. Department of Ecology comments
7. Notice map
8. Parcel listing
9. Notice of Community Meeting
 - 9A dated 04-11-17
 - 9B dated 09-07-17
10. Notice of Application and Public Hearing
11. Affidavit of mailings:
 - 11A Community meeting dated 03-21-17
 - 11B Community meeting dated 08-23-17
 - 11C Combined application and hearing dated 11-02-17
12. Affidavit of posting:
 - 12A Community meeting dated 03-22-17
 - 12B Community meeting dated 08-25-17
 - 12C Combined application and hearing dated 11-01-17, with photo of sign
13. Affidavit of Removal of Public Sign:
 - 13A Community meeting dated 04-28-17
 - 13B Community meeting dated 08-25-17
14. SEPA Determination of Nonsignificance dated 11-20-17
15. Environmental Checklist:
 - 15A dated 12-21-07 (labeled still valid)
 - 15B dated 09-06-17 (labeled submitted by applicant, not required)
16. Community Meeting Sign in sheet, undated
17. Community Meeting notes, dated 09-07-17
18. Letter dated 08-22-17 to Justin Yonker from Donna deBit
re: community meeting instructions
19. Letter dated 09-21-17 to Interested Parties from Donna deBit
re: requesting comments
20. Letter dated 10-31-17 to Justin Yonker 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 applicant proposes to construct a new 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 Single-Family ("RSF"). The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17C.110.110. According to the table, Group Living is allowed in the RSF zone as a conditional use. See Table 17C.110-1. As such, this proposal requires approval through a Type III process. See Exhibit 1, p. 3.

The Hearing Examiner finds that the proposed assisted living facility is allowed in the RSF 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, the proposal is also consistent with Policy LU 5.5, which 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 Staff noted that the project will be developed with the surrounding neighborhood in mind. See Exhibit 1, p. 3. The proposed use does not conflict with adjacent uses. See *id.* There are no critical areas on the site. See *id.* And it is also readily accessible to adequate transportation, utility and service systems. See *id.* The proposed structures are single-story, further enhancing compatibility with surrounding residences.

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 September 21, 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 comments in response to its request. See e.g. Exhibits 3-6. However, City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 3. 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 project is designed to fit well within the 4.65-acre site. See Exhibit 2D. In addition, according to the Staff, the "site plan of record illustrates how the proposed project will meet or exceed the applicable performance standards of the Development Code." See Exhibit 1, p. 4.

The site is situated next to Freya, providing direct access to an arterial without impacting neighborhood street systems. See *id.* The properties to the north, south, and east are buffered in some measure by the storm detention areas at the north and south borders and the retained trees along the eastern border of the site. The site is relatively flat and appears to be well-suited to the proposed use. There are no critical areas or other problematic conditions on the site. The project engineer testified that drainage can be challenging in this area, but that the drainage systems have been properly designed to address any concerns. *Testimony of T. Whipple.* Those designs have been accepted by the City. See *id.* Finally, there are no known cultural or historic features on the site. See Exhibit 1, p. 4.

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).*

An environmental review process was completed in 2007-2008, concerning a proposal to construct a much larger assisted living facility on the same site. That process started with an environmental checklist which was prepared on or about December 21, 2007. The Planning Department issued an MDNS for that project in February 2008. Shortly thereafter, a modified MDNS was issued. Upon reviewing Cascade Development's application, the Planning Department determined that the prior environmental documents were sufficient for purposes of considering the impacts of the new proposal. See Exhibits 14 (attachment) & 15A. As a result, the Planning Department adopted the prior environmental documents by reference. See Exhibit 14. Even though it was not required, the applicant prepared an environmental checklist specific to the project. See Exhibit 15B.

The checklists support the conclusion that this project will not have significant impacts on the environment or the surrounding properties. With respect to the site, there do not appear to be environmentally sensitive conditions. For example, there are no wetlands or streams on the site. See Exhibit 15A (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 15A (Environmental Checklist ¶ B(3)(a)(5)). No threatened or endangered species were identified on the site. See Exhibit 15A (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). In addition, there are no known places or objects of cultural, historic, or archaeological significance. See Exhibit 15A (Environmental Checklist ¶ B(13)(a)-(b)).

Turning to the project itself, the development will not create significant, new hazards for the environment or surrounding properties. For example, no waste materials will be discharged into the ground or surface waters. See Exhibit 15B (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 15B (Environmental Checklist ¶ B(7)(a)).

The project will not be a significant source of light or glare. Exterior parking lot lighting and building fixtures will be on at night for safety. See Exhibit 15B (Environmental Checklist ¶ B(11)(a)). However, focused and shielded LED lighting will be used. See *id.* Light from the project will not be safety hazard or interfere with views. See Exhibit 15A (Environmental Checklist ¶ B(11)(b)).

The construction of the project will result in some noise. See Exhibit 15B (Environmental Checklist ¶ B(7)(b)(1)). However, those impacts will be limited to normal business hours. See *id.* In addition, the construction phase is temporary in nature.

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.

Finally, there was no evidence 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.

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 proposed structures are only one-story tall and thus will not be out-of-proportion with the surrounding residences. The surrounding residences are also shielded, to a degree, by the arterial on the west side of the site and landscape buffers and trees to the north, east, and south. The proposal use is far less intense than the assisted living facility that was approved several years ago, and will blend in well with the neighborhood. 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, pp. 5-6. 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. 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 facility 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 developer will also be required to add in new landscaping and screening from adjacent properties and right-of-way. See Exhibit 1, p. 5. 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. Public services, including water supply, sanitary waste, police and fire protection, are capable of serving the proposed use. See SMC 17C.320.080(F)(4).*

The proposed use conforms to the street designations of the transportation element of the comprehensive plan. The site is adjacent to Freya Street, which is designated as a Principal Arterial. See Exhibit 1, p. 6. As the Staff notes, Principal Arterials are intended to support relatively heavy traffic flows between major traffic generators. See *id.* There is no question that a Principal Arterial can handle the traffic to and from this type of facility. In addition, it is not anticipated that a large volume of traffic will be generated by this proposal. The residents at the new facility, given the nature of their care, will not be allowed to drive. See *id.* Only staff and visitors will be operating vehicles. See *id.*

To the extent that there are traffic impacts, those concerns will be addressed through the payment of impact fees. In fact, through the SEPA process, an impact fee was adopted for a project that was significantly larger than the proposal. See *id.* The current fee, which was adopted by reference, likely exceeds the impacts anticipated from this project and perhaps should be adjusted accordingly. See *id.* In addition, the developer will be required to make frontage improvements, as well as to dedicated 15 feet of right-of-way. See *id.*

There is no evidence that this project will require additions to public facilities or increased public services in order to accommodate the use. The site has access to all City of Spokane public services. See *id.* No departments or agencies commenting on the project suggested that public facilities or services would be impacted by the project.

Under the circumstances, the Hearing Examiner concludes that this criterion for approval 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 assisted living facility at the property located at 4515 S. Freya Street. This approval authorizes the construction of a single story building as well as three future residential cottages, along with associated site improvements. The 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.110.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
3. A dedication of fifteen feet of public right-of-way is required along Freya Street.
4. 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.
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 13th day of December, 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 December 13, 2017. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 3rd DAY OF JANUARY 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.