

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Conditional Use Permit Application ) AMENDED FINDINGS,  
by Don Hamilton to change the use ) CONCLUSIONS, AND DECISION  
of Hamilton Studios, located at 1427 )  
W. Dean Avenue, from private offices )  
to office use with an event center. ) FILE NO. Z18-266CUP3

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** Don Hamilton seeks approval of a conditional use permit to allow a historic change of use for the property located at 1427 W. Dean Avenue. The building is being use for a photography studio. The existing structure is on the Spokane Register of Historic Places and the use would be converted from existing office space to include event space for an event center.

**Decision:** Approved, with conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant/** Don Hamilton  
**Owner:** 1423 W. Dean Avenue  
Spokane, WA 99201

**Property Location:** The property is located at the southeast corner of Dean Avenue and Walnut Street. The property address is 1427 W. Dean Avenue, Spokane, Washington, 99201.

**Tax Parcel:** The parcel number of the project site is 25131.4301.

**Zoning:** The property is zoned Office with a height limit of 35 feet (O-35).

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

**Site Description:** The property is located in the West Central neighborhood at the southeast corner of Dean Avenue and Walnut Street. The property is generally flat and rectangular. The property has been fully developed for decades. The property is improved with a building and associated landscaping. The building was constructed in 1928 as the St. Joseph's catholic School Auditorium and Gymnasium. The building has been listed on the Spokane Register of Historic Places since February 2011.

**Project Description:** The applicant proposes to change the use of a historic structure from offices to offices with an event center. The applicant only seeks approval of the modification to its use. There are no improvements proposed, either to the exterior of interior of the premises.

**Surrounding Conditions and Uses:** The land to the north, south, east and west is zoned O-35 (Office with a 35-foot height limit).

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code (“SMC”) 17C.120, Commercial Zones; SMC 17C.335.110(C), Historic Structures—Change of Use, Development Standards; and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: February 9, 2018  
Posted: February 9, 2018

**Notice of Application/Public Hearing:** Mailed: April 13, 2018  
Posted: April 13, 2018

**Community Meeting:** February 26, 2018

**Public Hearing Date:** May 17, 2018

**Site Visit:** May 16, 2018

**SEPA:** The proposal is categorically exempt from SEPA review, pursuant to SMC 17E.050.070, because it falls under the flexible thresholds.

#### **Testimony:**

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

Don Hamilton  
1423 W. Dean Avenue  
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 Site Plan
  - 2E Studio Level Floor
  - 2F Standing Room Party 199 participants floor plan
  - 2G Guest Seating 149 participants floor plan
  - 2H Guest Seating 99 participants floor plan
  - 2I Spokane Register of Historic Places Nomination

- 2J Notice of Management Agreement
- 3. Fire Department comments dated 03-27-18
- 4. Department of Ecology comments dated 03-22-18
- 5. Applicant comments regarding parking calculations dated 03-09-18
- 6. Notice map
- 7. Parcel listing
- 8. Address listing
- 9. Notice of Community Meeting
- 10. Notice of Application and Public Hearing
- 11. Affidavit of mailings:
  - 11A Community meeting dated 02-09-18
  - 11B Combined application and hearing dated 04-13-18
- 12. Affidavit of posting:
  - 12A Community meeting dated 02-09-18
  - 12B Combined application and hearing dated 04-13-18
- 13. Affidavit of Removal of Public Sign for Community meeting dated 02-27-18
- 14. Community Meeting Sign in sheet, dated 02-26-18
- 15. Letter dated 01-18-18 to Don Hamilton from Ali Brast  
re: community meeting instructions
- 16. Letter dated 03-09-18 to Interested Parties from Ali Brast  
re: requesting comments
- 17. Letter dated 04-06-18 to Don Hamilton from Ali Brast  
re: notice of application/public hearing instructions
- A Exhibits received at hearing
  - A-1 Planning's PowerPoint presentation
  - A-2 Parking agreement with Catholic Charities dated 05-11-18

### 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. In addition, the change of use of the historic structure must comply with the criteria set forth in section 17C.110.335(C). The Hearing Examiner has reviewed the proposed conditional use permit and application for change of use, and after considering the evidence of record, 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 seeks permission to use his building as an event center. The Planning Department has determined that the proposed use is classified as Retail Sales and Service, in accordance with SMC 17C.190.270. See Exhibit 1, p. 2. The question, then, is whether a Retail Sales and Service use is allowed at this property.

Mr. Hamilton's property is zoned Office, with a 35-foot height limitation ("O-35"), a commercial category. The uses allowed in the commercial zones are shown on Table 17C.120-1. See SMC 17C.120.100. According to the table, a Retail Sales and Service use is generally not permitted in an Office zone. See Table 17C.120-1. However, the proposed Retail Sales and Service use may nonetheless be permitted under a specific exception for historic structures, provided a change of use application is approved. See Exhibit 1, p. 2. Pursuant to the land use standards for historic structures, a "...**change in the use of an historic structure to any use other than a use listed as permitted in the base zoning district may be allowed by Type III permit** from the hearing examiner..." See SMC 17C.335.110(C) (emphasis added). In other words, the requested Retail Sales and Service use is allowed under the land use codes, so long as the applicant satisfies the change-of-use requirements. This criterion for approval of the conditional use permit is therefore 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).*

Chapter 8 of the Comprehensive Plan, entitled "Urban Design and Historic Preservation," recognizes the social value of preserving historic buildings, the historic fabric, and the cultural heritage of Spokane. In light of this vision, Policy DP 1.1 seeks to preserve or protect outstanding landmark structures, buildings, and sites. See CP § 8.3, DP 1.1, p. 8-5. Likewise, Goal 3 of the Urban Design and Historic Preservation chapter expresses an intention to preserve and protect Spokane's historic sites and structures. See CP § 8.3, DP 3, p. 8-13. In this way, the comprehensive plan generally encourages putting historic structures, such the Hamilton Studios, to productive use while also maintaining and preserving their historic value.

There are also several specific policies that support granting the conditional use permit requested by the applicant. Policy DP 3.10 encourages the use of zoning provisions, building regulations, and design standards that are appropriate for historic sites and structures. See CP § 8.3, DP 3.10, p. 8-15. Examples of such strategies includes the granting of Historic Conditional Use Permits to allow the optimal use of such properties. See *id.* In addition, Policy LU 7.3 specifically calls for allowing compatible commercial and residential uses of historic properties when necessary to promote the preservation of such resources. See CP LU § 7.3, p. 3-31. These policies appear to have been drafted with a project like this one in mind. Mr. Hamilton specifically testified that granting the conditional use permit would not only legalize the use of the property as an event center, but would also facilitate the productive use of the property in a way that preserved its historic heritage and character. *Testimony of D. Hamilton.*

The forgoing goals and policies, among others identified by the Staff, clearly support the approval of the proposed use of the property. Granting the conditional use permit for the Hamilton Studios will allow the owner to put the property to a low-impact commercial use, thereby maintaining the utility of the structure, while also preserving its historic features. The Hearing Examiner concludes that this criterion for CUP approval 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 the conditional use permit under review, require that any proposal satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on March 9, 2018, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 16. Staff reported that "there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 4. Moreover, 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).*

This criterion has little relevance to this project, given that the proposal is merely to change the use of an existing building, not to develop or redevelop the site. In reality, the property has been used as an event center for many years, without creating any apparent difficulties for the neighborhood. The application will merely legalize a use that has been ongoing. It is also noteworthy that the property was originally constructed as a gymnasium and auditorium, and utilized that way for many years. The property is clearly suitable to use as an event center, as this use is consistent with both its historical use and the activities recently carried on at the property. The CUP is for a "change of use," but granting the permit will not result in a material change in how the property is actually being used. In addition, the proposal does not include the construction of any improvements. Thus, there will not be any new or unique impacts to the neighborhood as a result of this application.

The applicant provided plans to demonstrate how the building will be used for events, primarily in the form of seating or standing arrangements, depending on the nature of the event. See Exhibits 2E through 2H. He also explained the various options for the use of the property at the hearing. *Testimony of D. Hamilton*. The proposal was routed to the relevant departments and agencies and the Staff did not receive any adverse comments indicating that the site would not be suitable for the proposed use. See Exhibit 1, p. 4. There was one material concern raised about the proposal, specifically the lack of adequate parking. See *id.* Since there is insufficient parking on-site to support the use, the Planning Department has requested that the applicant submit a joint-use parking agreement with the neighboring property owner, consistent with SMC 17C.230.110(B)(2), in order to demonstrate that sufficient parking will be available. See *id.* Although no formal document has been submitted to the city to date (e.g. an easement or deed restriction), the neighboring property owner has confirmed its willingness to share its parking area with the proposed event center. See Exhibit A-2.

There is no evidence in the record that the property is not suitable due to the size, shape, location, topography, soils, slope, drainage characteristics, or the like. This is not surprising since the structure was used for many years as a gymnasium and auditorium, and subsequently to hold events, without any such concerns being evident, at least on this record. Finally, the proposed use of the site preserves historic and cultural features, rather than detracts from them. Given the circumstances, the Hearing Examiner concludes that the property is suitable for the proposed use. 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. The proposal is categorically exempt from SEPA requirements, suggesting that the potential impacts are *de minimis*, as a policy judgment. See Exhibit 1, p. 5. That aside, there was no evidence presented at the hearing or included in the record suggesting that the proposed use of the structure will have any substantive environmental impacts, whether due to traffic, noise, or some other cause. As the Staff pointed out, the applicant does not propose any exterior renovations or site modifications. See *id.* The building was historically constructed for and used as a gymnasium and auditorium. See *id.* Since the property was acquired by Mr. Hamilton, events have regularly been held at the property. Under the circumstances, legally recognizing that the property may be used for events will have no additional, material impact on the environment or the surrounding properties, in the Hearing Examiner's view.

For these reasons, and due to the lack of any evidence in the record suggesting a reason for concern, the Hearing Examiner concludes that this criterion for approval of the conditional use permit is satisfied.

6. *The Applicant has satisfied the criteria of SMC 17C.335.110(C), which govern the approval of a change of use for an historic structure.*

Pursuant to SMC 17C.335.110(C), a change to any use other than a use allowed under the base zoning may be allowed through a Type III permit approved by the Hearing Examiner. The criteria for approval of a change of use are discussed below.

- a. *The structure is listed on the Spokane Register or the National Register of Historic Places. See SMC 17C.335.110(C)(1).*

The Hamilton Photography Studio was placed on the Spokane Register of Historic Places on February 7, 2011. See Exhibit 1, p. 5; See also Exhibits 2I & 2J. Therefore, this criterion for approval of the change of use is satisfied.

- b. *All proposed changes to the structure have been approved by the landmarks commission as being compatible with the historical designation of the property, the form of approval being specified in the rules of procedure of the hearing examiner. See SMC 17C.335.110(C)(2).*

With reference to this requirement, the Staff reported: "No exterior renovations are proposed to the existing structure; therefore no approval from the landmarks commission is required." See Exhibit 1, p. 5. The Hearing Examiner agrees with the Staff, given that no "changes to the structure" are proposed by the applicant. As a result, the Hearing Examiner concludes that this criterion for a change of use is met.

- c. *The change in use is demonstrated as necessary to ensure that the structure will be preserved, considering all uses allowed in the underlying zone. See SMC 17C.335.110(C)(3).*

The building was constructed in 1928, as an auditorium and gymnasium for St. Joseph's Catholic School. Mr. Hamilton acquired the property to use it for offices supporting a photography studio. The property is zoned for Office use, and Mr. Hamilton is generally utilizing the property consistent with that classification. To make his office use of the property viable, while also preserving the structure in its historic form, Mr. Hamilton has been holding events at the premises. *Testimony of D. Hamilton.* This is the best way, in Mr. Hamilton's view, to retain the historic character of the property while also maximizing its use. See *id.* At the hearing, he clarified that the photography business has been through many changes over the years, necessitating some flexibility in the operation of his business and the property. See *id.* Mr. Hamilton testified:

*...we have gone through a lot of adaptation, maybe even disruption...changes in the decades that we have been there and we believe it is essential to our future, for the building and ourselves, that we be able to maximize it in this way.*

*Testimony of D. Hamilton.* The Hearing Examiner found this testimony to be persuasive, and supportive of the conclusion that the proposed change of use is necessary within the meaning of the municipal code. Moreover, the Hearing Examiner is not aware of a better use of the property under the land use codes, in particular given the policy of preserving historic sites.

The Hearing Examiner concludes that the Applicant has demonstrated that change in use is necessary to ensure the long-term preservation of the historic structure. As a result, this criterion for change of use is satisfied.

- d. *The benefits to the public arising out of preserving the structure are greater than the harm to the public resulting from allowing the proposed use of the structure, considering the factors listed in the municipal code. See SMC 17C.335.110(C)(4).*

The public certainly benefits by preserving historical and cultural structures that give Spokane its unique character. Allowing the proposed use puts this historic building to productive and beneficial use, in the highest and best manner available under the circumstances, and with minimal impact to the surrounding neighborhood. The property has already been put to the proposed use and there is no empirical evidence that the neighborhood had suffered any deleterious effects as a result. The benefits realized from the project outweigh countervailing considerations. On this record, there are few, if any, disadvantages to allowing this project. The only concern raised was directed at parking, and it appears that a joint use agreement will be entered into to address that concern. Otherwise, there are no genuine concerns that the project will result in substantive off-site impacts due to traffic, noise, or other causes.

The Hearing Examiner concludes that the project, on balance, is substantially beneficial to the public. This criterion for change of use is therefore fulfilled.

### **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 Applicant, Don Hamilton, to change the use of an existing, historic structure, located at 1427 W. Dean Avenue, from offices to an office use with an integrated event center.
2. With any building permit application for a change of use, the Applicant shall provide the necessary parking agreements to show the building and all uses will satisfy the parking requirements of SMC 17C.230.
3. Per comments from the Fire Department, the proposal to change the use of the building to a banquet hall (A2) requires the installation of fire sprinklers meeting NFPA 13 where the total occupant load including the stage, service staff, concentrated assembly areas, etc., can exceed 99. Central monitoring will be required for the fire sprinkler system.
4. 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.
5. 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.
6. 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.



7. 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.

8. 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 24<sup>th</sup> day of May 2018.



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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 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 DECISION SET OUT ABOVE.** The date of the decision is the 24<sup>th</sup> day of May 2018. **THE DATE OF THE LAST DAY TO APPEAL IS THE 14<sup>th</sup> DAY OF June 2018 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.