

**CITY OF SPOKANE HEARING EXAMINER**

Re: Variance Application by Mardis ) FINDINGS, CONCLUSIONS,  
Nenno authorizing an exception from ) AND DECISION  
front yard setback standards related )  
to a proposal to construct a single )  
family residence at 2015 W. Ohio ) FILE NO. Z18-448VAR  
Avenue )

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** Mardis Nenno seeks a Type III Variance in order to allow the applicant to construct a single family residence with no setback in the front yard. If authorized, the variance would reduce the applicable 15 and 20-foot front yard setbacks to 0 feet. The Variance is proposed due to the challenging topography of the development site.

**Decision:** Approved, with conditions.

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

**Applicant/** Mardis Nenno  
**Owner:** 341 N. Lower Crossing St.  
Spokane, WA 99201

**Property Location:** The address of the site is 2105 W. Ohio Avenue, Spokane, Washington.

**Legal Description:** An abbreviated legal description of the site is included in Exhibit 2A. The site is designated as Tax Parcel No. 25133.1524.

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

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

**Site Description:** The parcel is an undeveloped lot, approximately 42.5 feet in width and 97 feet in length. The front of the lot, adjacent to the right-of-way for Ohio Avenue, has a slope that varies from 16% to 30%. However, the majority of the lot, consisting of the southerly 7/8 of the lot, has a slope that exceeds 30%. Thus, a large proportion of the lot is classified as geologically hazardous pursuant to SMC 17E.040.030(B)(2).

**Surrounding Zoning and Uses:** The land to the east, west, and south of the site is zoned Residential Single Family. The land to the east is undeveloped. Most of that property is owned by the city and is set aside as open space. The land to the west

includes undeveloped property and single family residences. There are single family residences developed to the south, between the site and the Spokane River. The land to the north is zoned Residential Multi-Family (RMF). The area to the north is Kendall Yards, which includes higher density housing as well as commercial uses. Immediately across the street from the lot is an undeveloped area. The specific plans for that land are not known at this time.

**Project Description:** The applicant is requesting a reduction the 15-foot front yard setback (primary structures) and the 20-foot front yard setback (garages) due to the steep slopes on the property. The applicant proposes a 0-foot front yard setback for both a residence and its associated garage, consistent with the other houses that have been constructed along Ohio Avenue. Although the front yard setback would be 0 feet, any garage openings must still be at least 20 feet from the sidewalk.

### PROCEDURAL INFORMATION

**Authorizing Ordinances:** Spokane Municipal Code ("SMC") 17C.110, Residential Zones; and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: April 16, 2018  
Posted: April 16, 2018

**Notice of Application/Public Hearing:** Mailed: June 9, 2018  
Posted: June 11, 2018

**Community Meeting:** May 2, 2018

**Public Hearing Date:** June 28, 2018

**Site Visit:** June 27, 2018

**SEPA:** This project is categorically exempt from SEPA.

#### **Testimony:**

Dave Compton, Assistant Planner  
City of Spokane Planning & Development  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Mardis Nenno  
341 N. Lower Crossing St.  
Spokane, WA 99201

Gunnar Holmquist  
317 N. Lower Crossing Rd.  
Spokane, WA 99201

Stephanie Swan  
2105 W. Falls Avenue  
Spokane, WA 99201

Suzy Dix  
7510 S. Farr Rd.  
Spokane, WA 99223

**Exhibits:**

1. Planning Services Staff Report
2. Application, including:
  - 2A General application
  - 2B Variance application with Narrative
  - 2C Notification Map application
  - 2D Record of Survey
  - 2E Parcel Map with subject parcel outlined
  - 2F Site Plan
  - 2G Grades and Houses
  - 2H Photos of neighboring properties
  - 2I Counter Complete Variance Checklist
3. Engineering Services comments
4. Wastewater comments
5. Notice map
6. Parcel listing
7. Notice of Community Meeting
8. Notice of Application and Public Hearing
9. Affidavit of mailings
  - 9A Community Meeting 04-16-18
  - 9B Combined Application and Hearing dated 06-09-18
10. Affidavit of posting
  - 10A Community Meeting dated 04-16-18
  - 10B Combined Application and Hearing dated 09-11-18
11. SEPA Exemption issued 06-01-18
12. Community Meeting sign in sheet
13. Community Meeting notes
14. Project Web Posting
15. Emails dated 04-06-18 to/from applicant and staff  
re: wording on application
16. Letter dated 04-09-18 to Mardis Nenno from Dave Compton  
re: community meeting instructions
17. Letter dated 05-10-18 to Interested Parties from Dave Compton  
re: requesting comments
18. Letter dated 06-01-18 to Mardis Nenno from Dave Compton  
re: Notice of Application and Public Hearing Instructions.
19. Email dated 04-24-18 to Dave Compton from Scott McArthur  
re: questions on project
20. Email dated 06-27-18 to Hearing Examiner from John Woodhead  
re: supporting project
- A Exhibits received at the hearing:
  - A-1 Hardcopy of Planning's PowerPoint presentation

## FINDINGS AND CONCLUSIONS

To be approved, the proposed variance must comply with the criteria<sup>1</sup> set forth in Section 17G.060.170(E)(1) of the Spokane Municipal Code. The Hearing Examiner has reviewed the proposed variance and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The variance or modification of the standard or requirement is not prohibited by the land use codes. See SMC 17G.060.170(E)(1)(a).*

There are no prohibitions in the land use codes against reducing the front yard setbacks in the RSF zone, so long as the variance criteria are satisfied. See Exhibit 1B, p. 5; *Testimony of D. Compton*. Since a variance is not specifically forbidden in this context, this criterion for approval is met.

2. *No other procedure is provided in this chapter to vary or modify the standard or requirement, or compliance with such other procedure would be unduly burdensome. See SMC 17G.060.170(E)(1)(b).*

There is an alternative procedure to reduce the front yard setbacks of the applicant's property. Pursuant to SMC 17C.110.20(D)(1), exceptions may be granted for the front yard setbacks based upon the average setbacks for structures on adjacent lots. See Exhibit 1, p. 5. However, in this case, there are no structures on the adjacent lots upon which to base the averaging process. *Testimony of D. Compton*. As a result, the alternative procedure does not apply. See *id.* In addition, the averaging process does not provide a genuine solution to the challenging topography of the applicant's property. See Exhibit 1, p. 5; *Testimony of D. Compton*. The only viable option to address such conditions is the proposed variance. See *id.* Since the only realistic or effective option in this case is a variance, this criterion for approval is satisfied.

3. *Strict application of the standard or requirement would create an unnecessary hardship due to the physical characteristics of the land. See SMC 17G.060.170(E)(1)(c).*

The Hearing Examiner concludes that a variance from the strict application of the development codes is proper under the circumstances of this case. From the site visit, it was apparent that the extreme slope was the predominant feature of the site. The topography map presented by the Planning Department further illustrated that the site is dominated by slopes in excess of 30%. See Exhibit A-1 (Topography – 2' Contours). Constructing a residence on the site, without the variance, would present significant burdens and would require extensive excavation into the slope. See Exhibit 1, p. 6; *Testimony of M. Nenno & D. Compton*. The applicant's proposal is intended to allow the site to be put to productive use, while also minimizing the amount of cut into the slope. See Exhibit 1, p. 6. This will better guard against unstable slope hazards that could impact the down-slope residences and properties on Falls Avenue. See *id.*; see also Exhibit 2G.

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<sup>1</sup> The Staff report also addresses the criteria listed in SMC 17C.060.170(C), which generally apply to Type III applications. However, a Type III application for a variance is not subject to the criteria listed in subsection C. See SMC 17G.060.170(E). Therefore, this decision addresses only the criteria listed in Section E.1, i.e. the criteria that exclusively govern variance applications.

The request for a variance arises directly from the physical condition of the land. The applicant did not create the circumstances necessitating a deviation from development standards. Nor is this a case in which a variance is requested merely to reduce the costs of complying with the law or solely due to an economic hardship. Here, the development of the site is directly and materially hindered by the challenging topography. In fact, this site has proven difficult to develop or sell specifically because of the steep slopes. *Testimony of S. Dix*. In the Hearing Examiner's opinion, this is a classic example of a situation that justifies a variance.

The Hearing Examiner concludes that there is more than sufficient information to demonstrate that strict adherence to the front yard setback requirements would create substantial hardships for the owner. This criterion for approval of the variance is satisfied.

4. *The following objectives are reasonably satisfied: (i) surrounding properties will not suffer significant adverse effects; (ii) the appearance or use of the property will not be inconsistent with the development patterns of the surrounding property; and (iii) the ability to develop the property in compliance with other standards will not be adversely affected. See SMC 17G.060.170(E)(1)(d).*

The Hearing Examiner agrees with the Staff that the neighbors will not suffer any significant, adverse effects from the approval of the variance. See Exhibit 1, p. 6; *Testimony of D. Compton*. The variance will allow the applicant to develop a single family residence in the same manner as the other houses along Ohio Avenue. See Exhibit 1, p. 6. This code deviation will not have any appreciable impact adjacent properties or the neighborhood.

The proposed use of the property is perfectly consistent with the existing residences along the south side of Ohio Avenue. City Staff noted that all the homes that have been developed on this part of Ohio Avenue were constructed right up to the front property line. See Exhibit A-1 (Ohio Avenue). This circumstance undoubtedly arose because the flat areas of the lots along that street are immediately adjacent to the right-of-way. *Testimony of D. Compton*. The southerly parts of those lots, in varying degrees, are characterized by steep slopes. See *id.* If the applicant constructs a home on her lot, even without any front yard setback, the appearance of that residence will be no different from the other homes along Ohio Avenue. See Exhibit 1, p. 7.

There is no reason to suspect that granting the variance will impede the ability to develop the property in compliance with other standards. Aside from the conditions requiring a variance, the property will be developed in conformity with development standards. *Testimony of D. Compton*. There is nothing about this proposal that creates new nonconformities or deviations from code requirements. See *id.*

The Hearing Examiner concludes that this criterion for approval of the variance is satisfied.

5. *The variance does not allow or establish a use that is not permitted in the underlying district, or modify or vary a standard or requirement of an overlay zone, unless a specific provision allows for such variance. See SMC 17G.060.170(E)(1)(e).*

The project site is zoned Residential Single Family (RSF). The applicant is planning to construct a single-family residence, or sell the property for such use. This is obviously an allowed use in that zone. The granting of the variance will merely make the construction of a single-family residence feasible. Granting the variance will not result in the approval of an unauthorized use on the property. In addition, “[t]here are no zoning or building code standards, or zoning overlay zones that would prohibit the reduction of front yard setbacks.” See Exhibit 1, p. 7. Under the circumstances, the Hearing Examiner finds 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 variance subject to the following conditions:

1. Approval is for a variance authorizing the applicant to construct a residence with a 0-foot front yard setback.
2. A Critical Areas Checklist must be completed before any building permit can be approved.
3. A geo-technical report, prepared by a licensed geo-technical engineer, must be submitted in support of any application for building permit.
4. Driveway widths may not exceed 20 percent of the front yard. Any garage opening shall be at least 20 feet from the sidewalk.
5. 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.
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<sup>2</sup> 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 28<sup>th</sup> day of June, 2018.



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Brian T. McGinn  
City of Spokane Hearing Examiner

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<sup>2</sup> The Staff Report states that a single, one-year extension of the variance may be obtained if a timely request for an extension is submitted to the Hearing Examiner. See Exhibit 1, p. 7 (Proposed Condition No. 5). The Hearing Examiner was unable to find a provision in the municipal code to support this statement, however. For this reason, the conditions of approval reference SMC 17G.060.240 and Table 17G.060-3, rather than incorporating the condition proposed by the Staff.

### 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 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 three days after a written decision is mailed by the local jurisdiction. This decision was mailed on June 28, 2018. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 23<sup>rd</sup> DAY OF JULY 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.