

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Bouten Construction to allow the) AND DECISION
construction of three duplexes in a)
Residential Multi-Family Zone as part)
of an expansion of the Riverview) FILE NO. Z18-901CUP3
Retirement Center community)

SUMMARY OF PROPOSAL AND DECISION

Proposal: Bouten Construction, on behalf of the property owner, seeks a conditional use permit in order to allow the construction of three duplexes. Each duplex will be one story in height and will be approximately 3,700 square feet in size. The duplexes are proposed as part of an expansion to the existing Riverview Retirement Center community. The duplexes will together house up to 36 memory care residents. The development includes a new driveway into the site along with parking and landscaping. An existing residential structure will also be removed as part of the project.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** Bouten Construction
c/o Jake Clossen
627 N. Napa St.
Spokane, WA 99220

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

Property Location: The property is located at 2315 E. Upriver Drive, in the City of Spokane, Washington. The property is designated as Tax Parcel No. 35091.2929.

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 approximately 1.73 acres in size. The site is generally flat with a gentle slope from north to south with an approximate grade of 3-8%. The site is located on the northeast corner of E. Upriver Drive and N. Stone Street, and is part of the Riverview Retirement Center community which is immediately west of the site. The site is improved with an existing residential building which will be removed as part of the

proposed project. Otherwise , the site consists of shrubs, trees, and grass. There are no wetlands or surface water bodies on the site. However, the Spokane River is located approximately 100 feet south of the property. A portion of the site, along the southern boundary, is located within the Shoreline Jurisdiction. However, no construction within the shoreline or its setback is proposed.

Surrounding Conditions and Uses: The properties to the north, east, and west are zoned Residential Multi-Family (RMF). Directly to the north of the site is undeveloped land owned by Riverview Village. To the northwest are the Riverview Village apartments. To the west of the site is the main campus of the Riverview Retirement Community. To the east are apartments and multi-family residences. The Spokane River is to the south of the site. The property along the Spokane River is zoned Residential Single-Family (RSF), but the land is set aside as conservation land.

Project Description: The applicant proposes to construct three duplexes, one story each, for a total of six dwelling units. Each duplex will be approximately 3,700 square feet in size. There will be a total of 36 new resident beds, in 18 double-occupancy rooms, for memory care residents. The project includes the removal of an existing single family residence as well as adding a new driveway, landscaping and parking.

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: September 5, 2018
Posted: September 5, 2018

Notice of Application/Public Hearing: Mailed: January 7, 2019
Posted: January 8, 2019

Community Meeting: September 19, 2018

Public Hearing Date: January 24, 2019

Site Visit: February 6, 2019

SEPA: A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane Planning Department on January 8, 2019. The deadline to appeal the DNS expired on January 22, 2019. The DNS was not appealed.

Testimony:

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

Jake Clossen
Bouten Construction
627 N. Napa St.
Spokane, WA 99220

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Conditional Use application
 - 2C Notification Map application
 - 2D Site Plan dated 09-19-18
 - 2E Vicinity map aerial view
3. Request for Comments letter dated 11-13-18
 - 3A Development Services dated 11-29-18
 - 3B Spokane Tribe of Indians dated 12-10-18
 - 3C Department of Ecology dated 11-28-18
4. Determination of Nonsignificance "DNS" dated 01-08-19
5. Environmental Checklist dated 10-09-18
6. Notice Map
7. Parcel Listing
8. Notice of Community Meeting instructions dated 08-31-18
 - 8A Notice of Community Meeting
 - 8B Affidavit of Mailings dated 09-05-18
 - 8C Affidavit of Posting dated 09-05-18
 - 8D Community Meeting Sign in Sheet
 - 8E Community Meeting Public Meeting Summary
9. Notice of Application Instructions dated 12-19-18:
 - 9A Notice of Application & Public Hearing
 - 9B Affidavit of Mailings dated 01-07-19
 - 9C Affidavit of Posting Combined Application and Hearing dated 01-08-19
- A Exhibits received at the hearing:
 - A-1 Hardcopy of 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 to construct three new duplexes in order to provide additional housing for patients of 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 duplexes are 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 duplexes will be designed and constructed to maintain the residential feel of the neighborhood and the surrounding senior living sites. 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 also be an improvement to the existing assisted living facility. See *id.*

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 November 13, 2018, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 3.

The city received only a few comments in response to its request for comments. See Exhibits 3A-3C. Those comments did not raise an objection to the project based upon any alleged failure to fulfill the concurrency standards. City staff concluded 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. There is no evidence in this record suggesting that the physical characteristics of the property make it unsuitable for the proposed use. See Exhibit 1, p. 4. The site is relatively flat and there are no known environmental constraints. See *id.*; see also Exhibit 5 (Environmental Checklist). The property has historically been used for residential purposes. 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 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.

On or about October 9, 2018, Riverview Retirement Center (through a project engineer) prepared an environmental checklist, pursuant to the State Environmental Policy Act, for the proposed duplexes. See Exhibit 5 (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 5 (Environmental Checklist ¶ B(3)(a)(1)). A southerly portion of the site lies within the shoreline jurisdiction. See Exhibit 5 (Environmental Checklist ¶ B(3)(a)(5)). However, the project will not include any work, other than landscaping, in that area. See Exhibit 1, p. 2. No waste materials will be discharged into the ground or into surface waters. See Exhibit 5 (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 5 (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 5

(Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). The project will not produce any significant light or glare. See Exhibit 5 (Environmental Checklist ¶ B(11)(a)-(b)). The project will create some noise during the construction phase. See Exhibit 5 (Environmental Checklist ¶ B(7)(b)(2)). Once the construction is completed, no significant, long-term sources of noise are anticipated. See *id.* In addition, there are no known places or objects of cultural, historic, or archaeological significance. See Exhibit 5 (Environmental Checklist ¶ B(13)(a)-(b)).

On January 8, 2019, the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 4. Any appeal of the DNS was due on January 22, 2019. 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. And there were no public comments at all regarding this project.

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)(1).*

The residential appearance and function of the area will not be negatively impacted by this project. The project will merely replace an existing residence, on a relatively large lot, with three new duplex buildings. Those duplexes are still a residential use. Each duplex is a single-story and approximately 3,700 square feet in size, which is not extraordinary in proportion to common single-family residences. Thus, the project is consistent with the property’s historic use and will not be out-of-proportion with the residential uses in the vicinity. The site is across the street from other residences and more Riverview Retirement residences are in the vicinity. See Exhibit 1, p. 5. The Hearing Examiner agrees with the Staff that the general appearance of the neighborhood will not materially change as a result of this project. See *id.*

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 project been designed to fit the site and to be compatible with nearby residential uses. See Exhibit 2D. There was no testimony of other evidence suggesting that this project will be incompatible with nearby residential uses or the neighborhood generally. 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 include new parking to accommodate visitors and the parking needs of each building. The project also includes landscaping to lessen the aesthetic impacts of development on the neighborhood. See Exhibit 1, p. 5; see *also* Exhibit 2B. 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 replaces an existing residence with new residential buildings. It is not anticipated that this change will result in a significant increase in traffic, given the nature of the use and the special needs of the future residents. See Exhibit 1, p. 6; see *also* Exhibit 5 (Environmental Checklist ¶ B(14)(f)). For example, the patients who will reside at the Memory Care Facility cannot drive. See *id.* The only traffic would be by family members occasionally visiting the site. See Exhibit 2B. The site already has access to City services. See Exhibit 1, p. 6. 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 3 new Memory Care Duplexes at 2315 E. Upriver Drive. The duplexes 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 Notice of Construction and Application for Approval is required to be submitted to Spokane Regional Clean Air Agency and approved by Spokane Clean Air prior to the construction, installation, or establishment of an air pollution source. A Notice of Intent must be submitted to the Spokane Clean Air Agency prior to any demolition project or asbestos project.
4. The applicant shall conduct sub-surface testing to investigate whether there are cultural, historic, or archaeological resources at the site.
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. 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.
7. All stormwater and surface drainage generated from the new addition shall be disposed of on-site in accordance with recommendations of SMC 17D.060 Stormwater Facilities, the Regional Stormwater Manual, City Design Standards, and the Project Engineer's recommendations based on drainage plans accepted for the conditional use permit. All drywells, existing and proposed, must be shown on the plans and must be registered with the Washington State Department of Ecology in accordance with underground injection control requirements.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 7th day of February 2019.



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 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 February 7, 2019. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 4TH DAY OF MARCH 2019 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.