

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Liquidation Holdings Company, LLC to) AND DECISION
change the nonconforming use of a)
building from an industrial service use to) FILE NO. Z19-083CUP3
another use in the industrial category, on)
property in the OR-150 zone)

SUMMARY OF PROPOSAL AND DECISION

Proposal: Liquidation Holdings Company, LLC, has applied for a Conditional Use Permit (CUP) to change the use of a building under Spokane Municipal Code (SMC) 17C.210.060. The building was historically used in conjunction with the City of Spokane's fleet services operations. The city's use of the building was classified as an Industrial Service use and constituted a nonconforming use in the OR-150 zone. The applicant is proposing to change the use of the building to Manufacturing and Production, another industrial use. The proposed use is also a nonconforming use in the OR-150 zone.

Decision: Approved, with conditions.

FINDINGS OF FACT BACKGROUND INFORMATION

Applicant: Liquidation Holdings Company, LLC
505 W. Riverside, Ste 103
Spokane WA 99201

Owner: City of Spokane
808 W. Spokane Falls Boulevard
Spokane WA 99201

Agent: Taudd Hume
Parsons | Burnett | Bjordahl | Hume, LLP
159 S. Lincoln, Ste 225
Spokane WA 99201

Property Location: The site is located at 127 W. Mission (the building is addressed as 1410 N. Normandie), and is designated as Tax Parcel No. 35181.0201.

Zoning: The property is zoned OR-150 (Office Retail, height limit 150 feet).

Comprehensive Plan Map Designation: The property is designated as Office in the City of Spokane Comprehensive Plan ("CP").

Site Description: The building, which is the subject of the application, is located in a complex of buildings located at 127 W. Mission Avenue. This complex of buildings occupies an entire city block. Historically, the property was developed for warehouse and light industrial uses. The

property was most recently used by the City of Spokane in conjunction with its Fleet Services operations. As a result of this history, the property contains many old warehouses, repair shops, garages, and sheds. However, the property is currently vacant. The building, which is the subject of the application, is situated in the southeast corner of the block, at the corner of Atlantic Street and Sinto Avenue. The building's address is 1410 N. Normandie Street, although Normandie Street, which formerly cut through the site, has been vacated.

Surrounding Conditions and Uses: The properties to the north, east, west, and southwest of the site are zoned OR-150, like the project site. These properties are primarily developed with office uses. There is a multifamily building to the immediate east of the site, at the corner of Atlantic Street and Mission Avenue. The properties to the immediate south of the eastern half of the site are zoned Community Business, with a 150-foot height limitation. This property is the location of a retail business, the North Bowl Bowling Alley. To the southeast and slightly farther east of the site, the property is zoned General Commercial. Those properties are being use for various commercial purposes.

Project Description: The applicant is proposing to the change the nonconforming use of a building from one type of industrial use to another. The building was most recently used by the City of Spokane in conjunction with its Fleet Services Operations. This use by the city is considered an Industrial Service Use and constitutes a nonconforming use in the OR zone. SMC 17C.210.060 allows for the conversion of nonconforming uses in the OR zone to an equal or more compatible use so long as no new building, enlargement, or extensive alteration is involved. The request is to change the use of the building to a Brewery/Distillery (Manufacturing and Production), which is also in the Industrial Use category. The proposal also includes striping 29 parking stalls to meet the minimum parking requirements.

PROCEDURAL INFORMATION

Authorizing Ordinances: SMC 17C.210.060 Nonconforming Uses – Conversion and SMC 17G.060.170 Decision Criteria.

Notice of Community Meeting: Mailed: December 20, 2018
Posted: December 20, 2018

Notice of Application/Public Hearing: Mailed: April 23, 2019
Posted: April 23, 2019

Community Meeting: January 8, 2019

Public Hearing Date: May 23, 2019

Site Visit: May 22, 2019

State Environmental Policy Act (SEPA): A SEPA Determination of Nonsignificance (DNS) was issued using the Optional DNS process per 197-11-355 Washington Administrative Code (WAC) on April 23, 2019, which began the 14-day appeal period. No appeals were filed.

Testimony:

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

Taudd Hume
Parsons | Burnett | Bjordahl | Hume, LLP
159 S Lincoln, Ste 225
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report dated 05/15/19
2. Application, including:
 - 2A General application
 - 2B CUP application
 - 2C Site plan
 - 2D Notification map application
3. Pre-Development Conference Notes dated 08/09/18
4. Request for Comments letter dated 03/26/19, and responding comments:
 - 4A Street Department Traffic Operations dated 04/09/19
 - 4B Washington State Department of Ecology (WSDOE) dated 04/08/19
 - 4C City of Spokane Engineering dated 04/05/19
5. DNS dated 04/23/19
6. Environmental Checklist dated 03/22/19
7. Notice of Community Meeting instructions dated 12/05/18, including:
 - 7A Notice of Community Meeting with list of parcels within 400 feet
 - 7B Affidavit of Mailing dated 12/20/18
 - 7C Affidavit of Posting dated 12/20/18
 - 7D Community Meeting Sign-in Sheet
 - 7E Community Meeting Recording
8. Notice of Application Instructions dated 04/10/19, including:
 - 8A Notice of Application & Public Hearing
 - 8B Affidavit of Mailing dated 04/24/19
 - 8C Affidavit of Posting dated 04/24/19
9. Historical information regarding North 1410 Normandie Street
- A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed CUP must comply with the criteria set forth in SMC Section 17G.060.170. The Hearing Examiner has reviewed the proposed CUP 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 building, which is the subject of the CUP application, is situated on property in the OR zone. The applicant proposes to use the building for a brewery/distillery. This use is classified as Manufacturing and Production pursuant to SMC 17C.190.320. See Exhibit 1, p. 3. Normally, Manufacturing and Production is not allowed in the OR zone. See Table 17C.120-1. However, in this case, the applicant has applied for a CUP to allow the proposed use, based upon an exception contained in the nonconforming use ordinance.

The nonconforming use ordinance provides, in relevant part, as follows:

In the residential, O, OR, NR, and NMU zones, a nonconforming use may, by conditional use permit from the hearing examiner, be changed to an equal or more compatible use so long as no new building, enlargement or extensive alteration is involved.

See SMC 17C.210.060(B). In order for this provision to authorize the proposed brewery/distillery, the Hearing Examiner concludes that two conditions must be met: (1) the record must demonstrate that legal, nonconforming use rights currently exist at the proposed site; and (2) the applicant must demonstrate that the new nonconforming use is an equal or more compatible use and "no new building, enlargement, or extensive alteration" is proposed or required.

The Hearing Examiner concludes that the conditions to approve the proposed nonconforming use are satisfied. The record demonstrates that a legal, nonconforming use exists at the proposed site. In order to establish a legal, nonconforming use, the first step is to verify that the use was legal when it commenced. See *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998) (stating that a nonconforming use is a use that lawfully existed prior to a zoning enactment and that is maintained thereafter, although it does not comply with the current zoning restrictions). The Staff submitted the building permit records for the building, confirming that the warehouse was legally constructed on the site. See Exhibit 9. In addition, the City has building permit records for nearly all the buildings on the site. *Testimony of A. Brast*. All the buildings, including the warehouse proposed to be used as a brewery/distillery, were constructed in conformity with the zoning code and other standards applicable at the time. See *id.* In other words, the zoning formerly allowed manufacturing and industrial uses. See *id.* The change in the zoning to OR made all the buildings and uses on the site nonconforming. See *id.*

The next step is to confirm that the nonconforming use rights have not been extinguished for some reason. The nonconforming use ordinance states that whenever a matter before the hearing examiner involves a nonconforming use, the hearing examiner must determine whether that nonconforming use has been abandoned. See SMC 17C.210.030(B). In order to make this determination, the Hearing Examiner looks to the terms of SMC 17C.210.030(A), which provides in pertinent part:

Any nonconforming use which is discontinued for a period of two years... loses all rights to continue under this chapter.

See SMC 17C.210.030(A). The question of abandonment must be considered here because the property is currently vacant, and has been for some time.

The Hearing Examiner concludes that the nonconforming use rights on the property remain legally viable. The building was most recently used by the city in conjunction with its Fleet Services Operation, a legal nonconforming use. The city's Fleet Services Operation ceased approximately 12–18 months ago when the city moved its operations to another location. *Testimony of A. Brast.* On or about February 22, 2019, the applicant submitted its application for the CUP, seeking to convert the use from Industrial Service Use to Manufacturing and Production, another type of industrial use. See Exhibit 2A; *Testimony of A. Brast.* The Hearing Examiner concludes that the prior, nonconforming use ended less than two years ago, and that the intent to continue to use the property for nonconforming purposes is clearly stated in the CUP application. Therefore, the nonconforming use rights associated with the property have not been abandoned within the meaning of SMC 17C.210.030(A).

The Hearing Examiner concludes that the proposed brewery/distillery is an “equal or more compatible use” than the city's fleet service operations that were conducted on the property previously. The city's prior use of the property was significantly more intense than the use proposed by the applicant. *Testimony of A. Brast.* Fleet Services required multiple trips to the property each day for maintenance, fueling, and related activities. See *id.* The proposed brewery/distillery will house far fewer employees and will require far fewer vehicle trips each day. *Testimony of T. Hume.* In terms of ingress and egress, the proposed brewery/distillery will be more akin to the surrounding office uses than the prior, industrial operation. See *id.* The proposed operation will generate less noise and the contamination potential is significantly decreased as well. *Testimony of A. Brast.* The proposed use will be similar in its impacts to the office and commercial uses in the immediate vicinity. *Testimony of T. Hume.* In general, the proposed use will have lower impacts on the surrounding properties. *Testimony of A. Brast.*

Finally, the Hearing Examiner concludes that the proposed use will not involve a new building, an enlargement, or an extensive alteration, and thus will be consistent with the requirements of SMC 17C.210.030(B). No new building is proposed by the applicant. There is no proposal to increase the footprint of the building, or to increase the height of the structure. *Testimony of A. Brast.* No additions are proposed to the building. See *id.*

The Staff emphasized that the proposal does not include any significant alterations¹ to the property. See Exhibit 1, p. 3. The Staff acknowledged that there is no definition of “extensive alteration” in the SMC. However, in the Staff's opinion, an “extensive alteration” would be one that involves an addition to a building, in particular an addition that increased the nonconforming conditions. *Testimony of A. Brast.* Reading the nonconforming use ordinance in context, the Staff believes that an extensive alteration is one that would make the nonconformity worse or would make the property less compatible with the surrounding uses. See *id.* With that understanding, the Staff concluded that interior renovations and rehabilitation of the façade of the building would not transgress the restriction against “extensive alterations.” See *id.*

¹ The applicant is proposing to stripe 29 parking stalls to comply with the minimum parking requirements. See Exhibit 1, p. 3. Although this does constitute an alteration of some kind, the Hearing Examiner concludes that this change is nominal. Adding stripes to the ground to delineate parking is not an “extensive alteration” of the property. It does not change the nature or intensity of the use. Nor does clearly delineating the parking result in unique or significant impacts that go beyond what occurred during the prior industrial service use.

The applicant confirmed that there are no plans to make structural alterations to the building. *Testimony of C. Batten.* The building, however, is in very poor condition. *See id.* There may be some work to reinforce or “re-support” some structural elements of the building. *See id.* The Hearing Examiner concludes that taking steps to ensure that the structure is sound does not, under the circumstances presented here, result in an “extensive alteration.” These are basic actions that are necessary for purposes of safety. The structural reinforcements do not change the footprint or size of the building. In addition, there is no evidence that structural reinforcements would exacerbate the nonconformities or make the use less compatible with the neighborhood.

The Hearing Examiner also agrees with the applicant and the City that interior remodeling to make the building suitable for the use is not necessarily the type of modification that the nonconforming use ordinance is intended to discourage. The existing nonconformities with the current zoning standards are not increased by interior remodeling. Nor are improvements that improve the appearance of the property contrary to the policies underlying the nonconforming use doctrine. On the contrary, improvements to the façade of the building will make the property more attractive, increasing its compatibility with the office and commercial uses in the area. If anything, the proposed measures to improve the site will be a step toward revitalizing this area of town. *Testimony of T. Hume.*

The Hearing Examiner agrees with Staff that the proposed use and its various components are either equal to or more compatible to the historical use and, therefore, this criterion has been met.

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 Staff Report sets forth various policies of the CP that tend to support the proposed use of the Normandie site. *See Exhibit 1, p. 4.* For example, allowing the property to be used for a brewery/distillery creates an opportunity to increase the number of locally owned businesses, consistent with Policy ED 3.5, Locally Owned Businesses. The proposal also, broadly speaking, supports the development of a good business climate, in furtherance of Policy 7.1, Collaborative Nurturing of the Business Climate. The fact that the proposed use will, for the reasons stated above, be more compatible with the surrounding uses than the previous use and will help to renovate a rather run-down site suggests that the project is also consistent with Policy LU 5, Development Character, and Policy LU 5.5, Compatible Development. Other policies may also have some application to this case, although fairly indirectly in the Hearing Examiner’s view.

Having said that, the Hearing Examiner does not believe that the CP is terribly relevant to the analysis of this proposal. The proposal is to convert the site from one nonconforming, industrial use to another nonconforming, industrial use. The CP designates the site for Office, and the land use codes implement that intent, restricting the property to office and retail uses. It is only because the City has adopted specific development regulations allowing the existing industrial use to continue, that this proposal can even be considered. Both the prior and the proposed industrial uses are fundamentally inconsistent with the long-term plan contemplated by the CP. However, it should be emphasized that the CP is a general guide for development. *See Cougar Mountain Associates v. King County*, 111 Wn.2d 742, 756, 765 P.2d 264 (1988). It is not a document for making specific land use decisions. *See Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). If there is an inconsistency between

the development regulations and the CP, the conflict must be resolved by applying the development regulations. *Cougar Mountain*, 111 Wn.2d at 757.

Based upon the foregoing authority, the Hearing Examiner concludes that the specific development regulations allowing the conversion of the property from one industrial use to another take precedence over the general objectives of the CP. By enacting SMC 17C.210.030(B), the city legislative body specifically authorized the continuation of a nonconforming, industrial use in the OR zone, provided the standards for a CUP were satisfied. Under the circumstances, the CP designation of the property as "Office" cannot operate to preclude a use allowed by the specific development standards. Therefore, this criterion for approval 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 CUP) mandate that all proposals satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on March 26, 2019, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 4. There were no departments or agencies that reported that concurrency could not be achieved. See Exhibit 1, p.4.

A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. 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 SMC. Therefore, this criterion for approval of the CUP 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 proposal is limited to changing the use of an existing building. The only work on the site that is currently proposed is to stripe 29 parking stalls. Any further site work or interior remodeling will be handled through the building permit process. See Exhibit 1, p. 5. That said, the entire block on which the building is located was developed for industrial purposes and has been used for industrial purposes for many years. The site contains various buildings relate to that use, including old warehouses, repair shops, garages, and sheds. The applicant seeks to convert one of the buildings from an industrial service to a manufacturing and production. There is nothing in this record to suggest that the existing building is not suitable for the proposed change in use. Further, there is no evidence in this record that the property itself is not appropriate for the proposed use. The entire site has been dedicated to industrial uses for decades, and none of the site characteristics proved problematic during that time, judging from the paucity of evidence in this record in that regard.

There is nothing about the shape, size, or topography of the property that makes the proposed use unsuitable. The proposed use is located on a site that has historically been used for industrial purposes, which were more intense than the use proposed by the applicant. On the whole, the proposed use will be compatible with the surrounding uses. See Paragraph 1 above.

There was no evidence that the condition of the soil or drainage characteristics posed any issues for this use. There is no evidence of the presence of surface water or that the presence of groundwater is a cause for concern. The property is located in the Aquifer Sensitive Area and the Aquifer Critical Recharge Area, but that does not preclude the proposed use. It does mean that the provisions of SMC 17E.010 must be honored, however. See Exhibit 1, p. 5. There was no evidence of the existence of natural features that might be impacted by the proposed use. In addition, there are no known places or objects of cultural, historic, or archaeological significance. See Exhibit 6 (Environmental Checklist ¶ B(13)). Based upon the foregoing, the Hearing Examiner concludes that the change of use for this site is appropriate. 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 SEPA, demonstrates that the project will not have significant environmental impacts.

In February-March 2019, Liquidations Holding Company, LLC prepared an environmental checklist, pursuant to SEPA, for the proposed change of use. See Exhibit 6 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties.

The site is already fully developed with a building and parking areas. Almost 100% of the site is covered with impervious surfaces. See Exhibit 6 (Environmental Checklist ¶ B(1)(g)). There are no wetlands or surface waters on the site. See Exhibit 6 (Environmental Checklist ¶ B(3)(a)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 6 (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 6 (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 6 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)).

The project will not produce any significant light or glare. See Exhibit 6 (Environmental Checklist ¶ B(11)(a)-(b)). The project will create some noise during the construction phase. See Exhibit 6 (Environmental Checklist ¶ B(7)(b)(2)). Once the construction is completed, no significant, long-term sources of noise are anticipated. See *id.*

The Staff generally agrees with the Applicant that the proposed use will likely have lower impacts on the surrounding properties than the historic use in terms of traffic, contamination potential, and noise. See Exhibit 1, p. 5; *Testimony of A. Brast*. The proposed use will be more similar to the commercial uses on Division, rather than the historic industrial use. *Testimony of T. Hume*. To address any visual effects of the project, the applicant will be required to comply with any design standards set out in SMC 17C.120.500 through SMC 17C.120.580, Commercial Design Standards and any other applicable site development standards at the time of building permit review. See Exhibit 1, p. 5.

On April 23, 2019, the City of Spokane, as lead agency, issued a DNS for the project. See Exhibit 5. Any appeal of the DNS was due on May 7, 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. Agency comments on the project were very limited. 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 CUP is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed CUP to allow a change of the nonconforming use of the existing building located at 1410 N. Normandie from an Industrial Service Use to Manufacturing and Production, in accordance with SMC 17C.210.060(B), subject to the following conditions:

1. The project will be developed substantially in conformance with the plans and application on file in Planning and Development.
2. The project will be developed in substantial conformance with SMC 17C.120, Land Use Standards, Commercial Zones, to maintain compatibility with, and limit the negative impacts on, surrounding areas.
3. Per comments from WSDOE, applicant must determine if wastes produced at the facility or the project site are dangerous wastes and must comply with any applicable requirements.
4. Adhere to any additional performance and development standards documented in comments or required by City of Spokane, Spokane County, Washington State, and any Federal agency.
5. This approval does not waive the applicant's obligation to comply with all of the requirements of the SMC, including the International Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
6. 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.

7. SMC 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.
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 4th day of June, 2019.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by SMC 17G.060.210 and 17G.050.

Decisions by the Hearing Examiner regarding CUPs 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 Revised Code of Washington (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 4, 2019. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE JUNE 28, 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.