

CITY OF SPOKANE HEARING EXAMINER

Re: Request for a Change of Conditions) FINDINGS, CONCLUSIONS,
to Conditional Use Permit) AND DECISION
Application File No. Z18-202CUP3) FILE NO. Z18-202CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: In 2018, KSS Holdings LLC was granted a conditional use permit (CUP) to operate a coffee shop, a retail sales and service use, in the existing structure located at 1801 E. 11th Avenue, in a single-family residential zone. Through this application, the current operator of the coffee shop, Meeting House LLC, seeks approval of a modification of the conditions imposed upon the use, specifically to expand the hours of operation and to permit the sale of beer and wine.

Decision: Approved, with *revised* conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant Elisabeth Krahn
Meeting House Café
1801 E. 11th Avenue
Spokane, WA 99202

Owner: South Perry Meeting House, LLC
518 W. Riverside Avenue, Suite 200
Spokane, WA 99201

Agent: Taudd Hume
Witherspoon Brajcich McPhee
601 W. Main Avenue, Suite 714
Spokane, WA 99201

Property Location: The property is located in the Perry District, in southeast Spokane. The site is situated on the northeast corner of the intersection of 11th Avenue and South Pittsburgh Street. The address of the site is 1801 E. 11th Avenue, Spokane, Washington, 99202. The site is designated as Parcel No. 35213.1126.

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

Comprehensive Plan (CP) Map Designation: The property is designated as Residential (4-10 units).

Site Description: The site is a developed lot in a residential neighborhood. The lot is approximately 6,570 square feet in size and is relatively flat. The existing building, originally constructed as a grocery store, is approximately 1,975 square feet. The existing

building is located in the southwest corner of the lot, with its entrance facing 11th Avenue. There is also a small garage in the northwest corner of the lot.

Surrounding Conditions and Uses: The land to the north, south, east, and west of the property is zoned RSF. There are single-family residences in all directions in the vicinity of the property.

Project Description: On May 1, 2018, the City's Hearing Examiner approved a CUP for a Retail Sales and Service Use in the existing structure at 1801 E. 11th Ave. The property is zoned RSF, but because the structure was originally legally constructed for commercial purposes in 1925, it met the qualifications to apply for an Existing Neighborhood Structures in Residential Zones Conditional Use Permit.

In his decision for this application, the Hearing Examiner imposed conditions on any business that would operate out of the building, stating that business hours are limited to 7AM to 5PM, and alcohol shall not be served or sold at the premises. A coffee shop/café opened in the building in February 2020. The business owner now seeks a change in conditions to the hours of operation and the limitation on alcohol sales. The applicant is requesting to be allowed operating hours from 7AM to 10PM and permission to serve beer and wine. The applicant has stipulated they do not intend to serve spirits or liquor of any kind. No changes to the site are proposed.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.110, Residential Zones; SMC 17G.060.170, Decision Criteria; and SMC 17C.370, Existing Neighborhood Structures in Residential Zones.

Notice of Application/Public Hearing: Mailed: May 14, 2021
Posted: May 14, 2021

Public Hearing Date: September 8, 2021

Site Visit: September 6 & October 29, 2021

State Environmental Policy Act (SEPA): This project is exempt from SEPA pursuant to SMC 17E.050.080.

Testimony:

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

Taudd Hume
Witherspoon Brajcich McPhee
601 W. Main Avenue, Suite 714
Spokane, WA 99201

Elisabeth Krahn
Meeting House Café
1801 E. 11th Avenue
Spokane, WA 99202
elisabeth@meetinghousecafes.com

Steve DeWalt
2222 W. 2nd Avenue
Spokane, WA 99201
Steve.I.dewalt@gmail.com

Ben Stuckart
benstuckart@gmail.com

Rob Brewster
2208 W. 2nd Avenue
Spokane, WA 99201
Rob.brewster@gmail.com

Brian O'Brien
1843 E. 11th Avenue
Spokane, WA 99202
Bobrien59@comcast.net

Kay Tuck
1728 E. 10th Avenue
Spokane, WA 99202
foxykaybeth@gmail.com

Mark Doering
1015 S. Pittsburgh
Spokane, WA 99202
Markdoering20@gmail.com

Paul Levernier
450 W. 16th Avenue
Spokane, WA 99203
Plev617@outlook.com

Dave Tuck
1728 E. 10th Avenue
Spokane, WA 99202
Dave.Tuck@flynncompanies.com

Sola Raynor
402 S. Blake Road
Spokane Valley, WA 99216
Raynosm1@gmail.com

Duwane Huffaker
1824 E. 11th Avenue
Spokane, WA 99202
thezero@fastmail.fm

Present at the Hearing or Submitted Comments to the Record:

Laurie Connolly & Patty Conaty
2850 E. Rockhurst Lane, #654
Spokane, WA 99223

Makaya Judge
makayajudge@gmail.com

Katie Droter
2004 E. 16th Avenue
Spokane, WA 99203
katie1516@icloud.com

Bryan Burke
648 S. Denver Avenue, Apt. 2
Spokane, WA 99202
Bobforapples1276@gmail.com

Ryan Van Hook
R2vanhook@gmail.com

Garth & Cindy Davis
1726 E. 12th Avenue
Spokane, WA 99202
Garthdavis82@hotmail.com

Susan Levernier
Plev617@msn.com

Leah Kliment
leahkliment@me.com

Judy Evans
1727 E. 11th Avenue
Spokane, WA 99202
judyongsparrow@gmail.com

Shannon Schnibbe
Mccloskey.shannon@gmail.com

Lori Otis
1817 E. 12th Avenue
Spokane, WA 99202
Loriotis2406@gmail.com

Jackie Caro
1524 E. 10th Avenue
Spokane, WA 99202
Jacqueln.caro@gmail.com

Ryan Mckee
Rpmckee59@gmail.com

Amy Mickelson
1804 E. 12th Avenue
Spokane, WA 99202
amy@ideamakers.com

Martin & Linda Bond
1728 E. 11th Avenue
Spokane, WA 99202
lindathehomey@gmail.com

Cynthia Schroeder
1844 E. 11th Avenue
Spokane, WA 99202
Bahji55@hotmail.com

Mike Hause
1828 11th Avenue
Spokane, WA 99202
mikehau@comcast.net

Sari Sadhaka
1718 E. 11th Avenue
Spokane, WA 99202
Slevernier.rn@gmail.com

Victoria Benson
Vbenson797@gmail.com

Kramer Erb
kramererb@gmail.com

Amy Barker
Amybarker2@gmail.com

Lesla Delisi
lesadelisi@yahoo.com

Ricky Schrantz
rschrantzpt@gmail.com

Exhibits:

1. Planning Services Staff Report, including:
 - A Application Materials
 - B Request for Agency Comments
 - C Noticing Documents
 - D Public Request to Move Hearing Date with Response
 - E Public Comments – First Comment Period

- F Public Comments – Second Comment Period
- G Staff presentation
- 2. Planning Director’s Decision on Type II CUP Application File No. Z17-482CUP2 (Grain Shed)
- 3. Applicant’s Letter dated May 14, 2021, included with the original Notice of Hearing

FINDINGS AND CONCLUSIONS

In order to be approved, the proposed change of conditions must be consistent with the terms of SMC 17C.370, the recently adopted code section that, in certain circumstances, allows neighborhood commercial uses in residential zones. In addition, the CUP application must comply with the criteria set forth in SMC sections 17G.060.170 and 17C.320.080(F). The provisions of the code that are most pertinent to this decision are discussed below.

1. *Only the CUP criteria related to the proposed extension of hours and the sale of beer and wine are relevant to the change in conditions application.*

The Hearing Examiner considered all the CUP criteria when he approved the original CUP application for a coffee shop. The current application does not change the underlying use or result in physical changes to the land or structures. Rather, the Applicant is seeking to change the operating conditions to allow extended hours and the sale of beer and wine. The Hearing Examiner’s decision, therefore, should be focused on the criteria that are relevant to that proposal.

There is no reason to reconsider the decision criteria set forth in SMC 17G.060.170, which govern Type III applications. The proposed change of conditions satisfies those criteria for the reasons explained in the original decision approving the CUP. Accordingly, the proposed change of conditions is allowed by the land use code and is consistent with the CP. See Findings, Conclusions, and Decision, File No. Z18-202CUP3, May 1, 2018, pp. 4-8 (addressing SMC 17G.060.170(C)(1)-(2)). The proposal does not transgress concurrency requirements. See *id.*, pp. 8-9 (addressing SMC 17G.060.170(C)(3)). The property is suitable for the proposed use, given its physical characteristics. See *id.*, p. 9 (addressing SMC 17G.060.170(C)(4)). And there is no reason to believe that the proposed change of conditions will have significant impacts on the environment or that additional mitigation is warranted under SEPA. See *id.*, pp. 9-10 (addressing SMC 17G.060.170(C)(5)). The proposed changes do not change the basic nature of the use, result in physical changes to the property, create material demands on public services or infrastructure, or result in identifiable environmental harms. Therefore, the proposed change of conditions is consistent with the criteria set forth in SMC 17G.060.170.

The Hearing Examiner reaches a similar result with respect to several of the conditional use criteria that apply to non-residential uses in residential zones. See SMC 17C.320.080(F). The proposed change of conditions will not result in the installation of utilities or infrastructure, or the construction of buildings that are disproportionate with nearby residences. See Findings, Conclusion, and Decision, File No. Z18-202CUP3, May 1, 2018, p. 10 (addressing SMC 17C.320.080(F)(1)). In fact, the proposed change of conditions will not result in any physical changes at all. There will be no impacts based upon the size or scale of the structures, the proposed setbacks, or other design features. See *id.*, p. 10 (addressing SMC 17C.320.080(F)(2)). In addition, the proposed change of

conditions does not change the analysis regarding the capacity to the transportation system or the alleged traffic impacts. See *id.*, pp. 12-13 (addressing SMC 17C.320.080(F)(4) and traffic impacts generally). There is no specific evidence in this record suggesting that the proposal will result in a material increase in traffic, or that the capacity of the transportation system would be impacted in any significant respect due to the change of conditions.

In the Hearing Examiner's view, analyzing the proposed change of conditions turns upon the terms of SMC 17C.370 and the decision criteria set forth in SMC 17C.320.080(F)(3). As a result, the discussion below will focus on these provisions of the municipal code. The most pertinent arguments of the parties will also be considered in this context.

2. *SMC 17C.370 allows the sale and service of alcohol in the residential, single-family zone.*

As discussed in the original decision, a coffee shop qualifies as "retail sales and service," a use that is allowed in a residential zone pursuant to SMC 17C.370. The proposal to extend the hours and sell beer and wine is an operational change. It does not change the underlying use of the property, which remains "retail sales and service." The proposed use, therefore, is allowed by the land use codes for the reasons stated in the original decision approving the CUP.

Having said that, many argued that extending the hours and selling beer and wine rendered the use fundamentally incompatible with its residential location. The sale of alcohol, in particular, was identified as the most troublesome aspect of the proposal. The question, then, is whether the retail sale of alcohol is outside the scope of what is allowed pursuant to SMC 17C.370. In other words, it seems important to specifically consider whether SMC 17C.370 contemplates the sale of alcohol in an RSF zone.

On this record, it is clear that the City Council contemplated that the neighborhood commercial uses allowed under SMC 17C.370 could include the retail sale of alcohol. The impetus for this law was the desire to allow the owners of the Grain Shed to brew and sell beer. *Testimony of B. Stuckart*. The adoption of SMC 17C.370 was the culmination of a two-year effort to facilitate small, neighborhood commercial uses, like the Grain Shed and the Meeting House. See *id.* The terms of SMC 17C.370 corroborate this history.

SMC 17C.370 specifically applies in the residential zones, including RSF. See SMC 17C.370.020. The uses allowed under SMC 17C.370 include "retail sales and service uses found in SMC 17C.190.270." See SMC 17C.370.030(E)(2)(b). Examples of retail sales and service include *restaurants, cafés, and taverns and bars*, among many other uses. See SMC 17C.190.270(C)(3). The sale or service of alcohol is not typically associated with a café, although there may be exceptions to this generalization. However, restaurants routinely serve wine and beer with meals. Of course, the sale of alcohol is the business model of taverns and bars. Thus, the uses contemplated by SMC 17C.370 include neighborhood businesses that sell and serve alcoholic beverages.

The issue in this case, it follows, is not whether the use is allowed under the code. The use is permitted, when supported by the appropriate findings. This issue here is whether there are significant impacts and, if so, whether mitigating measures can adequately address those impacts.

3. *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 record contains no substantive evidence that the proposed change of conditions will have significant impacts due to glare, odors, litter, late-night operations, or privacy issues. Therefore, these potential impacts will not be discussed further. The comments and testimony do raise questions, directly or indirectly, about potential impacts that may arise due to noise and safety issues.

- a. *Noise.*

Neighbors objected that extending the hours and serving alcohol would disrupt the peace and quiet for the area residents. See e.g. Exhibit 1E (Letter of S. Levernier). Adjacent owners emphasized that noise and disturbances of the peace would impact their ability to enjoy their properties and sleep. See Exhibit 1E (E-mail of M. Doering 5-9-21, 3:39 PM; E-mail of D. Tuck 5-9-21, 9:11 PM; & E-mail of K. Tuck 5-9-21, 5:51 PM). This disruption can arise from traffic, people arriving and departing, customers talking and drinking in the outdoor patio, and a business that is operating until 10PM.

Mr. Doering, the next-door neighbor, was concerned about the additional noise at night, in particular because he works in construction and must get up early. *Testimony of M. Doering*. Mr. Tuck, whose back yard is next to the Meeting House, raised similar concerns. *Testimony of D. Tuck*; see also Exhibit 1E (E-mail of K. Tuck 5-9-21, 5:51 PM). If the business hours are extended to 10PM, the neighbors objected that the additional noise will make it difficult to get an adequate night's sleep. See *id.*; see also Exhibit 1E (Letter of S. Levernier). Perry Street Brewing, as an example, is frequently crowded and noisy, and the noise can be heard from ½ block away. See Exhibit 1E (Letter of S. Levernier); *Testimony of D. Tuck*. The neighbors urge denial of this proposal in order to avoid similar impacts in this location.

In response to the objections concerning noise, the Applicant made two primary arguments. First, the Applicant contended that the original decision confirmed that there were no noise impacts from this use. *Testimony of T. Hume*. The Applicant argued that there is no basis to “re-litigate” the noise issue. See *id.* Second, the Applicant argued that the proposed use is “permitted outright,” subject only to conditions that are proven to be necessary. See *id.* The Applicant contended that conditions related to noise must be based upon the noise ordinance and the related state regulations. See *id.* Unless the use results in noise that exceeds the proscribed sound level thresholds, there is no basis to impose conditions on the proposal, according to the Applicant. See *id.* The Hearing Examiner disagrees with the Applicant’s contentions, for the reasons that follow.

The original application proposed operating hours from 7AM to 5PM. The change of conditions would allow the business to continue operating until 10PM, or five more hours each day. The change to the operating hours is significant and is material to the level of impact that the business may have on its neighbors, in particular related to sound. The limited hours of operation, per the original proposal, was one of the reasons the Hearing Examiner did not find it necessary to further analyze the noise question or impose any specific conditions to mitigate such effects. See Findings, Conclusions, and Decision, File No. Z18-202CUP3, May 1, 2018, p. 11. Considering the noise issue is not re-litigating a settled question because the two proposals are not the same. In addition, the neighbors’

objections specifically addressed the impacts of extending the operating hours well past 5PM. See e.g. *Testimony of S. Levernier, M. Doering, & D. Tuck*. The Hearing Examiner agrees with the neighbors that allowing the business to operate until 10PM will have some, substantive impact on the peace and quiet normally enjoyed in the evenings, and thus it is proper to consider modifying the conditions to account for that effect.

The Hearing Examiner disagrees with the Applicant's claim that the use is "permitted outright." While it is true that restaurants, taverns, and bars are listed as uses that *may* be allowed in the zone, the authorization to carry on such activities is only permitted on a conditional basis. There is a difference between a "conditional use" and a use that is "permitted outright." See e.g. *Washington Shell Fish, Inc. v. Pierce County*, 132 Wn.App. 239, 255, 131 P.3d 326 (2006) (contrasting a use that is "permitted outright," and therefore presumptively allowed, with a use that requires a CUP); see also Table 17C.110-1 (identifying uses as either "P" or "CU"). A "conditional use" is not subset of uses that are "permitted outright." The Applicant cannot avoid the conditional nature of the proposed use by characterizing it as permitted outright, albeit subject to conditions.

The Applicant is undoubtedly correct that when uses are "permitted outright," a decision maker's discretion is much more limited. However, the proposed use here is a "conditional use." Substantially more discretion is afforded to the decision maker when reviewing an application for a CUP. As the Court of Appeals has stated:

...this case involves a CUP application. The very nature of this type of land use decision is that of a use allowed at the discretion of local government, subject to those conditions that are deemed appropriate by local decision makers. Thus, when reviewing such decisions, we recognize the broad range of discretion counties have in determining whether to grant a particular application and the conditions that are appropriate in each case.

See *Timberlake Christian Fellowship v. King County*, 114 Wn.App. 174, 181, 61 P.3d 332 (2002).

The Hearing Examiner's discretion in this case is not strictly confined to enforcing the sound level thresholds in the noise ordinance. The conditional use standards applicable to this case are broader than that.

The City Council determined that sites like the Meeting House can only be approved on a conditional basis. Conditional use standards are applied precisely because, among other things, such uses may "*change the desired character* of an area." See SMC 17C.320.010 (italics added). A review of such uses is necessary "due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood." See *id.* To approve a non-residential use in a residential zone, the Hearing Examiner must conclude that the proposed use does not unduly impact the "livability" of the neighborhood, due to noise and other factors. See SMC 17C.320.080(F)(3). Under the recently adopted ordinance, the Hearing Examiner must determine that the benefits of the proposed use and improvements to the structure/property mitigate the "potential negative impacts on the *residential character* of the area." See SMC 17C.370.030(E) (italics added). Ultimately, the Hearing Examiner has discretion to deny a conditional use when "the nature of the use would have negative impacts on the *residential character* of the area that cannot be mitigated with conditions of approval." See SMC 17C.320.020(E) (italics added).

The Hearing Examiner has been charged to assess the impacts of the proposal on the “residential character” and “livability,” as well as to determine whether the benefits mitigate the burdens. Judgements about “residential character” and “livability” and relative benefit are largely qualitative. The Hearing Examiner would prefer to couch his decisions on objective, numerical standards, and does so whenever possible. However, some criteria do not lend themselves to straightforward, mathematical formulas. In addition, the CUP criteria do not restrict the Hearing Examiner’s review of noise impacts to the formulas set forth in the noise ordinance. In the Hearing Examiner’s view, that is because the issue calls for an exercise of discretion. In a case like this, then, the Hearing Examiner may strike a balance between permitting the conditional use and adopting conditions that make the use less intrusive into the quality of life in an otherwise purely residential area.

b. Safety Issues.

As was true when the CUP was first reviewed, the only potential “safety” issue raised in this record concerns the sale/service of alcohol. In the original decision, the Hearing Examiner did not adopt any specific findings of fact on this issue because the applicant stipulated that the proposal under consideration did not include the sale or service of alcohol. See Findings, Conclusions, and Decision, File No. Z18-202CUP3, May 1, 2018, p. 11. That concession was incorporated into the conditions of approval, making it unnecessary to address the issue further. The proposed change of conditions, however, seeks permission to serve beer and wine in conjunction with extending the business hours. As a result, the Hearing Examiner must now consider the issue.

Some neighbors suggested that the Hearing Examiner could not consider the proposal because the proponent had previously agreed not to serve alcohol. Mr. Huffaker suggested the concessions was the result of a “compromise” that should be maintained. *Testimony of D. Huffaker.* Mr. O’Brien called the concession a “promise.” *Testimony of B. O’Brien.* Mr. Levernier, meanwhile, characterized the “stipulation” as a binding finding of fact. *Testimony of P. Levernier.* The Hearing Examiner disagrees.

At the time of the original application, the applicant stated, for the record, that the proposed business would not sell alcohol. That concession was made based upon the business model of the prior tenant. *Testimony of T. Hume; see also* Exhibit 1F (E-mail of R. Brewster 5-28-21, 4:26 PM). The terms of the original CUP are binding, so long as the conditions are not modified. However, a request for a change of conditions was submitted by the new tenant, who wants to pursue a different business model. In a case like this, the request for a change of conditions is treated no differently than a new application for a CUP. The same process was followed, i.e. notice was issued and an open record, public hearing was conducted to consider the matter. The original request could have included longer hours and the sale of alcohol, for example. There is no rule forbidding such a proposal. Moreover, change of condition requests are routinely considered, and are evaluated based upon the same criteria that apply to the original application. The Hearing Examiner concludes that he is obligated to consider the proposed change of conditions, based upon its merits.

Several neighbors testified in opposition to allowing the sale/service of alcohol at the Meeting House. Understandably, the neighbors were worried about drunk driving and the safety of children who play in the area. *Testimony of B. O’Brien & D. Huffaker.* Mr. Huffaker also described safety concerns related to the traffic, narrow streets, limited vision when making turns, and the like. *Testimony of D. Huffaker.* He predicted the problems

would get worse if alcohol is added to the equation. See *id.* In addition, some neighbors believe that the sale of alcohol was sure to be accompanied by a range of social ills. See *id.* Mr. O'Brien argued that the harms to the community are certain to follow the sale of alcohol in the middle of a residential community. *Testimony of B. O'Brien.*

The Hearing Examiner is sympathetic to the neighbors' concerns about the potential impact of alcohol sales. However, the Hearing Examiner believes the proposed change of use should nonetheless be approved, for a range of reasons. Initially, the Hearing Examiner reiterates that the ordinance approving the reuse of neighborhood commercial buildings in residential areas specifically contemplated business that sell/serve alcohol. See Paragraph 2. For example, SMC 17C.370 specifically allows restaurants, taverns, and bars in residential areas. The policymakers designated these uses as conditional in order to address the potential impacts to residential neighborhoods. Even conceding that, there is no question that the sale and service of alcohol was one of the activities that was contemplated when the ordinance was adopted.

The record in this case is insufficient to justify denying the proposed change of conditions based upon the alleged impacts from alcohol sales. The neighbors predicated that alcohol sales would lead to drunk driving, endangerment to children, traffic problems, and other impacts. However, these predications were based not upon specific evidence but general worries and fears about the future. Although those fears may be understandable, Washington case law provides that projects cannot be conditioned or denied based upon generalized fears. See *Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995) (holding that local officials could not deny a permit based upon generalized, unsubstantiated fears of area residents that a youth home would lead to crime, harassment of the elderly, nuisance activities, and decreased property values). One neighbor asserted that the harms to the community from alcohol sales were a "statistical certainty." *Testimony of T. O'Brien.* However, this record contains no statistics or other data on the issue. There is no expert testimony or other specific evidence providing a basis to deny this project due to impacts attributable to alcohol sales. Many neighbors voiced their strenuous objections to the proposal. However, expressions of community displeasure do not provide a legal basis for the Hearing Examiner to deny a permit. See *Maranantha Mining, Inc. v. Pierce County*, 59 Wn.App. 795, 805, 801 P.2d 985 (1990) (stating that decisions must be based upon reasons backed by standards and policies, not community displeasure).

Several factors should mitigate against the potential impacts of the sale of alcohol. The Meeting House will be required to obtain a beer and wine license, and follow all the regulations that apply to a business that serves alcohol. *Testimony of E. Krahn.* This includes appropriate training and certification for employees, a process which is overseen by the Liquor Board. See *id.* No hard liquor or spirits will be served at the Meeting House. See *id.* The business will offer beer and wine in conjunction with meals. See *id.* Despite claims to the contrary, the Hearing Examiner does not view the proposed use as a typical tavern or bar. Rather, the focus of the Meeting House is operate as a restaurant, providing drinks along with the sale of food.

The Meeting House is also a relatively small venue, with an expectation to primarily serve residents in the vicinity. The Applicant noted that "...a large percentage of our customers are pedestrians." See Exhibit 1B. Others disagreed, contending that the customers were not from the neighborhood, but drive to the shop. *Testimony of B. O'Brien; see also* Exhibit 1E (E-mail of L. Bond 5-10-21, 1:00 PM). The Hearing Examiner acknowledges that the

customer base will include a mix of area residents and people who will drive to the location. On the whole, however, the business exists to serve the community where it is located, rather than serving a more regional population. The Hearing Examiner concludes that the Meeting House is a small-scale, neighborhood-oriented business, and its impacts to the neighborhood will be limited as a result.

For the foregoing reasons, the Hearing Examiner concludes that it is not appropriate to condition or deny the proposed change of conditions due to safety concerns.

4. *The proposed change of conditions should be approved because it supports a neighborhood commercial use that is beneficial to the community.*

Both the proponents and opponents of the change of conditions expended considerable time comparing and contrasting the Meeting House with other neighborhood commercial uses. Most of the time, the testimony focused on the Grain Shed, another small-scale commercial use in the Perry District.

The Applicant argued that the change of conditions should be approved on the same basis as the Grain Shed was approved. *Testimony of T. Hume*. The Grain Shed and the Meeting House are both zoned RSF. *Testimony of A. Brast*. Both commercial uses were approved under the new ordinance, SMC 17C.370. *See id.* The CUP issued for the Grain Shed has no restrictions on the sale of alcohol. *Testimony of T. Hume*. In fact, the impetus for the new ordinance was a proposal to allow the Grain Shed to brew and sell beer. *Testimony of B. Stuckart*. In addition, the Grain Shed is not restricted in its operating hours. *Testimony of T. Hume*. Specifically, the Grain Shed is allowed to be open from 5AM to 10PM. *See Exhibit 2*. Under the circumstances, the Applicant argued that denying the same freedoms to the Meeting House constituted a “dangerous double standard.” *See Exhibit 1C*.

The Hearing Examiner agrees that the Grain Shed provides a good analogy to the Meeting House. Both are relatively small, neighborhood-scale commercial uses, situated on residentially zoned property, and adjacent to residential uses. Both properties are allowed to operate a commercial business under the terms of SMC 17C.370, thus the same standards should apply. For this reason, in part, the Hearing Examiner agrees that the Meeting House should be allowed to serve beer and wine, as well as to remain open for longer than the current conditions allow. That said, the Hearing Examiner rejects the claim that placing any limitations on the Meeting House constitutes a “dangerous double standard.” There are plenty of sound reasons to make a distinction between the Grain Shed and the Meeting House.

The CUP issued for the Grain Shed was processed as a Type II permit. *Testimony of A. Brast*; *see also Exhibit 2*. There was no public hearing and the administrative decision contains somewhat sparse findings. For example, there is no analysis in the Planning Director’s decision about alcohol sales and only a brief mention of operating hours. *See Exhibit 2*. The record before the Planning Director was not provided. The Grain Shed decision is relevant, but provides very limited guidance on the central issues raised in this case. In any event, the Hearing Examiner’s decision must be made on a case-by-case basis and on the record before him. The Planning Director’s decision on a Type II permit is not binding on the Hearing Examiner.

As the neighbors point out, there are several other reasons that the Meeting House should not be considered equivalent to the Grain Shed. Among other things, the Grain Shed is

located on a busy arterial. *Testimony of B. O'Brien; see also Exhibit 1D (Letter of D. Huffaker 5-4-21)*. There are apartments and a church located across from the Grain Shed. *Testimony of S. Raynor; see also Exhibit 1D (Letter of D. Huffaker 5-4-21)*. Thus, it is not completely surrounding by single-family residences like the Meeting House. In addition, the residential area next to the Grain Shed has fewer homes than the area surrounding the Meeting House. *See id.* The residential street adjacent to the Grain Shed is also ten feet wider than the residential streets next to the Meeting House. *Testimony of A. Brast.*

The Hearing Examiner concludes that the Meeting House should be permitted to serve beer and wine and extend its hours. However, the Hearing Examiner also concludes that the evening hours of the Meeting House should be limited to 8PM, in order to limit the impacts to the neighborhood. The Applicant argued that the Meeting House should be able to operate until 10PM, subject only to the restrictions of the noise ordinance, just like the Grain Shed. *Testimony of T. Hume.* The Applicant also argued that the Grain Shed has been operating for some time, with no negative impacts, and thus no restrictions should be imposed. *See Exhibit 1B.* The Hearing Examiner disagrees.

As previously discussed, the record supports some limitation on the hours to ensure the peace and quiet in the evenings. *See Paragraph 3.a.* In addition, the experiences of the Grain Shed cannot support the assumption that there will be no impacts arising from operating the business from 8PM to 10PM. Although the Grain Shed is allowed to stay open until 10PM, in practice the Grain Shed is only open past 5PM on two days each week. *See Exhibit 1D (Letter of D. Huffaker 5-4-21).* On those two days, the Grain Shed closes at approximately 7PM. *See id.; see also Exhibit 2D.* Thus, the analogy to the Grain Shed breaks down when considering the actual hours of operation. The Grain Shed does not provide empirical evidence of either the presence or absence of impacts later in the evening.

Testimony on this proposal did not just discuss the Grain Shed. Comparisons were made between the Meeting House to several other neighborhood-scale commercial businesses. For example, project proponents argued that the Meeting House was really no different than Lindemann's, Flying Goat, Downriver Grill, Rocket Bakery on 43rd, or Wisconsin Burger, to name some of the examples. *Testimony of B. Stuckart, T. Hume.* Staff noted, however, that all of these properties are zoned either Centers & Corridors (Lindemann's) or Neighborhood Commercial (the remainder), which are commercial classifications. *Testimony of A. Brast.* In addition, all these properties are located on arterials, except Wisconsin Burger which is a half block from an arterial. *Testimony of S. Raynor, A. Brast.*

None of the examples discussed at the hearing are precisely the same as the Meeting House. Most notably, the Meeting House is a residentially zoned property located on a residential street. Even so, from the big picture perspective, there are compelling similarities between the Meeting House proposal and other neighborhood retail sites. The Hearing Examiner agrees with Mr. Stuckart that businesses such as the Rocket Bakery on 43rd and Flying Goat are good examples of successful neighborhood-scale businesses. SMC 17C.370 was intended to replicate that success by reversing commercial blight, promoting neighborhood business development, and creating more walkable communities. *Testimony of B. Stuckart.* The Hearing Examiner also agrees that, generally speaking, neighborhood-scale commercial brings people together and creates more vibrant communities. *See id.* The Hearing Examiner believes the proposed change of conditions for the Meeting House will serve these objectives as well.

With some limitation on the hours of operation, the Hearing Examiner concludes that the proposal will provide substantial benefits to the community. The Hearing Examiner further concludes that the impacts to the surrounding residential area are either mitigated or will be minimal. This fulfills the requirements of the new ordinance. See SMC 17C.370.03(E). As a result, the proposed change of conditions should be approved.

5. *Project conditions are not warranted based upon traffic impacts or lack of parking.*

The Hearing Examiner has already concluded that there is insufficient evidence of traffic impacts to warrant additional project conditions, and that the Hearing Examiner's prior analysis of the issue was sufficient to address the matter. See Paragraph 1. The issue should be briefly revisited, however, to address two comments regarding traffic. First, one of the neighbors noted that the existing streets near the Meeting House were narrow and that additional traffic from the Meeting House could lead to accidents or create safety hazards. *Testimony of D. Huffaker*. Second, the Streets Department suggested that the change of conditions could lead to additional traffic and, therefore, may cause additional impacts on the neighbors. See Exhibit 2D.

No traffic analysis was prepared or required for this proposal, or for the CUP when originally proposed. The traffic anticipated from this small venue is too small to require such an analysis. In addition, the project opponents did not enlist a traffic engineer or another qualified professional to opine about capacity issues or traffic safety. There is no expert testimony on these issues. As a result, the Hearing Examiner has no substantive information upon which to impose traffic mitigation measures upon the Applicant. To do so, there would need to be specific evidence that the Applicant's proposal will result in deficiencies in the transportation system. That evidence is lacking. The Hearing Examiner also doubts the propriety of requiring the Applicant to address pre-existing conditions, such as the narrowness of the existing residential streets.

The Streets Department did raise the possibility that the proposed change of conditions would result in additional traffic. However, the Streets Department did not describe how much traffic might be anticipated or suggest that a traffic analysis was needed or proper. Instead, the Street Department suggested that a parking analysis should be conducted. Apparently, the Street Department was not concerned about the capacity of the roads, but rather whether there would be sufficient parking. Ultimately, however, the Planning Department determined that a parking analysis was not properly required in order to consider this application.

Turning to the parking issue, the Hearing Examiner concludes that no conditions should be imposed with respect to parking. First and foremost, there is no off-street parking requirement applicable to this proposal. SMC 17C.370 was adopted without any parking requirements. This was a conscious decision by the policymakers. Parking requirements would undermine the goal of putting these small, neighborhood commercial buildings back into productive use. *Testimony of B. Stuckart*.

Second, the Hearing Examiner doubts that the proposed change of conditions will create significant impacts with respect to parking. The testimony on this issue was admittedly a mixed bag. Some people stated that there was plenty of parking or that parking has not been a problem, at least so far. See Exhibit 1E (E-mail of L. Kliment 5-7-21, 8:36 AM); see also Exhibit 1F (Email of R. Schrantz 5-28-21, 4:46 PM); *Testimony of D. Huffaker*. Others suggested that parking is a problem near the Meeting House, or that the problem will only

get worse if the hours are extended and alcohol is added to the mix. See Exhibit 1E (Letter of B. O'Brien 5-8-21; E-mail of D. Tuck 5-9-21, 5:51 PM; E-mail of L. Bond 5-10-21, 1:00 PM); see also Exhibit 1F (E-mail of L. Delisi 5-28-21, 4:42 PM); *Testimony of D. Huffaker*.

The Hearing Examiner acknowledges that extending the hours of operation and selling alcohol will tend to increase the number of customers visiting the Meeting House. There will be some additional traffic, and there will be some additional competition, at times, for available parking. However, there is no specific evidence establishing that public parking is insufficient to support the Meeting House as well as the neighbors. Even if there are some conflicts, the policymakers authorized the use with no parking requirements at all. As the Hearing Examiner noted in his original decision approving the CUP, parking on public streets is a public resource that must be shared.

The Hearing Examiner directs the reader to his prior decision for further comment on the traffic and parking issues. Ultimately, the Hearing Examiner concludes that additional conditions to address traffic or parking are not justified by this record.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed change of conditions. To effectuate this decision, and to address the potential impacts to the surrounding residences, the Hearing Examiner revises Condition No. 3 of the CUP to read as follows:

The business hours of the approved use are limited to the hours of 7AM to 8PM. The sale or service of alcohol at the premises is allowed but is restricted to beer and wine only. The business must obtain the appropriate license from the Washington State Liquor and Cannabis Board and otherwise comply with the applicable rules and regulations governing the sale and service of beer and wine.

Prior to commencement of activities authorized by this approval, the applicant shall submit evidence to this file that the property owner has signed and caused an updated Covenant, attaching the conditions of approval including the revised Condition No. 3, to be recorded with the Spokane County Auditor's Office.

DATED this 5th day of November 2021.



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 a change in conditions 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 5th day of November 2021. **THE DATE OF THE LAST DAY TO APPEAL IS THE 29th DAY OF NOVEMBER 2021 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 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.