

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by Life Services of Spokane to convert an existing single-family home into a Community Service use)))))	FINDINGS, CONCLUSIONS, AND DECISION FILE NO. Z20-227CUP3
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SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Life Services of Spokane, is seeking a conditional use permit (CUP) to convert an existing single-family home into a Community Service use. The Applicant is proposing to use the residence as the headquarters for The Fatherhood Initiative, one of their programs.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ Life Services of Spokane
Owner: Glendie Loranger
2659 N Ash St
Spokane, WA 99205

Property Location: The subject property is located at 1724 W Chelan, Tax Parcel No. 25121.3203, in NE ¼ Section 12, Township 25 North, Range 42 East, Willamette Meridian, in the City of Spokane, County of Spokane, State of Washington.

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

Comprehensive Plan Map Designation: The property is designated as Residential 4-10 in the City of Spokane Comprehensive Plan (CP).

Site Description: The site, which is owned by the Applicant, Life Services of Spokane, is located at 1724 W. Chelan, directly to the west of their current facility at 2659 N. Ash St. The parcel contains an existing single-family home and detached garage, both built in 1939.

Surrounding Conditions and Uses: Residential Single Family (RSF) surrounds the property in all directions. Land uses to the north, south, and west are single-family homes with Land Use Designations of Residential 4-10. The use directly to the east is the applicant’s main facility and its parking lot, another community service use with the land use designation of Residential 4-10.

Project Description: The applicant, Life Services of Spokane, is proposing to convert an existing single-family home in an RSF zone into a community service use for the headquarters of one of their programs, The Fatherhood Initiative. The Applicant proposes to install an Americans with Disabilities Act (ADA) ramp on the front of the building and a new exterior

staircase on the west side of the building to provide easier access to the basement. Minor interior renovations consistent with the change in occupancy are also proposed.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Decision Criteria; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: October 16, 2020
Posted: October 16, 2020

Notice of Application/Public Hearing: Mailed: February 24, 2021
Posted: February 26, 2021

Community Meeting: October 30, 2020

Public Hearing Date: March 25, 2021

Site Visit: March 23, 2021

State Environmental Policy Act (SEPA): The proposal was determined to be categorically exempt from SEPA analysis. See Exhibit 1D.

Testimony:

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

Glendie Loranger
Life Services of Spokane
2659 N. Ash St
Spokane, WA 99205

Rebecca and Brent Wagner
8518 N. Jefferson Drive
Spokane, WA 99208

Mark Morton
Live Services of Spokane
2659 N. Ash Street
Spokane, WA 99205

Exhibits:

Staff Report, dated 03/20/21, including the following exhibits:

1. Application Materials, including:
 - A General Application
 - B CUP Application, including:
 - Attachment 1 Site Plan
 - C Project Narrative
 - D SEPA Exemption
2. Notice of Application & Public Hearing Materials, including:
 - A Notification Map Application
 - B Noticing Affidavits

3. Public Comments
4. Request for Agency Comments, including
 - A City Treasury
 - B Integrated Capital Management
 - C Special Events Sergeant
 - D Engineering
 - E Washington State Department of Archeology & Historic Preservation (WSDAHP)
5. Community Meeting materials, including:
 - A Notice of Community Meeting for October 30, 2020
 - B Noticing Affidavits
 - C Meeting Recording
 - D Community Meeting comments
6. Staff Presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed CUP must comply with the criteria set forth in SMC Sections 17C.060.170 and 17C.320.080(F). 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 project site is zoned RSF, a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17.110.110. Certain kinds of “institutional” uses are allowed in the RSF zone, including “community services.” See Table 17C.110-1. “Community Services are uses of a public, nonprofit or charitable nature generally providing a local service to people of the community.” See SMC 17C.190.420(A). The use may also provide special counseling, education, or training of a public, nonprofit, or charitable nature. See *id.* Accessory uses may include offices, meeting areas, food preparation areas, parking, and health & therapy areas. See SMC 17C.190.420(B). A CUP must be obtained in order to authorize a Community Service in the RSF zone. See Table 17C.110-1.

The Applicant proposes to use an existing single-family home as the headquarters for The Fatherhood Initiative, one of the Life Center’s social programs. The Life Center is a non-profit organization providing counseling, education, training, and other services to the community. See Exhibit 1B; see *also* Staff Report, p. 3. The Life Center plans to use the residence for educational meetings and small gatherings in furtherance of the fatherhood mentoring program. See Staff Report, p. 3. The Hearing Examiner agrees with the Staff that the proposed use is consistent with the meaning and intent of a “Community Service,” as defined by the code.

One neighboring property owner disagreed with the above analysis. Mrs. Wagner contended that the proposal did not satisfy the definition of a “Community Service.” See Exhibit 3. She also noted that the project included the development of some office space within a residence, a use which is not allowed in the RSF zone. See *id.* The Hearing Examiner disagrees with these contentions.

For the reasons already stated, the Hearing Examiner concludes that the proposed use easily fits within the definition of a "Community Service." Regarding office space, there is no question that a part of the residence will be used for office purposes, in order to provide administrative support for the program. However, an office use may be allowed as an accessory to a Community Service, as provided in SMC 17C.190.420(B). Office is not the primary use being proposed, and thus it is not prohibited in the RSF.

The Hearing Examiner finds that the proposed use is allowed in the RSF zone, provided a CUP 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 CP, although far-reaching in its subject matter, does not appear to squarely address the role of non-profit organizations in providing community services. By the Hearing Examiner's review, the matters covered in the CP are only indirectly applicable to the Applicant's proposal. The goals and policies that are pertinent, albeit somewhat tangentially, support the proposed Community Service.

For example, Policy N2.1 (Neighborhood Quality of Life) seeks to ensure that neighborhoods include adequate public services. Similarly, Policy N2.2 (Neighborhood Centers) suggests that neighborhoods should enable citizens to receive "essential services within their neighborhood." The Staff concluded that these policies support the idea of imbedding community-oriented organizations with neighborhoods. See Staff Report, p. 4. Life Center is also "working to strengthen families in general and mentor fathers in particular, with a goal of creating stronger community members." See *id.* The Hearing Examiner agrees that the proposal is consistent with the goals and policies intended to improve neighborhoods and the quality of life in local communities.

The Hearing Examiner acknowledges that there is some tension between this proposal and the desire to preserve the character of a neighborhood. See Exhibit 3 (Comments of R. Wagner & B. Wagner). The Applicant, after all, is seeking to use a house in the neighborhood for a non-residential purpose. That said, the modifications to the residence are minor in nature, consisting only of an ADA ramp and an additional staircase. The intensity of the proposed use is low, given that the use will consist primarily of meetings, periodic gatherings, and some supporting offices. The house is small and will not be expanded. The aesthetics of the structure will not materially change, and the potential impacts to the neighborhood are relatively small, in the Hearing Examiner's view. See e.g. Paragraphs 5-8 below.

The Hearing Examiner concludes that the project is generally consistent with the goals and policies of the CP. 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 CUP) mandate that all proposals satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on January 29, 2021, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Staff Report, p. 4. Staff confirmed that there were no departments or agencies reporting that concurrency could not be achieved. See *id.* In addition, there is no other evidence in this record suggesting that public facilities or

infrastructure are insufficient to support the proposed use. As a result, the Hearing Examiner concludes that the project satisfies the concurrency requirements of the SMC.

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 concludes that the property is suitable for the proposed use. The site has a small residence, a detached garage, and a fully fenced back yard. The residence will be used for meetings, counseling, and small gatherings related to the Fatherhood Initiative, as well as some office uses to support that use. No major additions or structural changes are proposed to the residence. The only modifications consist of an ADA ramp on the front of the building and an additional staircase for access to the basement on the west side of the building. The residence will remain entirely residential in appearance. The fenced back yard provides a private area for periodic gatherings, with minimum effect on neighbors. Thus, the proposed use will not impact the residential character or aesthetics of the neighborhood.

The proposal merely changes the type of activities occurring within the residence. Thus, there is no need to discuss the size, shape, location, topography, soils, etc. Moreover, there is no evidence of problematic conditions at the site, such as drainage problems. Under the circumstances, there is no reason to believe that the site is not suitable for the proposed use.

The WSDAHP recommended that the property be recorded on a WSDAHP Historic Property Inventory Form and evaluated for eligibility for listing on the National Register of Historic Places. See Exhibit 4E. After conferring with the City's Historic Preservation Officer, it was determined the property is not eligible for the historic registry and, therefore, an Inventory Form would not be required. See *id.* Moreover, there is no evidence that natural, historic, or cultural resources exist at the site.

Based on the foregoing, the Hearing Examiner concludes that this criterion is satisfied.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

As already discussed, the Applicant is seeking to convert an existing, single-family residence to a community service use. The house is relatively small and will not be expanded. The property will satisfy the parking requirements of the proposed use, without the need for additional, on-site parking. See Staff Report, p. 5. The proposed improvements are minor in nature and will have no material impact to the residential appearance of the property.

The proposed use of the property is low intensity. There will be meetings and counseling taking place inside the residence. There will be periodic gatherings outside, but the back yard is fully fenced. This would involve, at the most, about 20 people. *Testimony of G. Loranger.* There should be no more impact from such an activity than from a family barbeque. See *id.* In any event, the Hearing Examiner agrees with Staff that the proposed use is not materially different in intensity from single-family use. See *id.* There were some concerns expressed about the

proposed use, but the evidence did not establish that the project would have “significant, adverse impacts” on the environment or surrounding properties, in the Hearing Examiner’s view. Finally, the project is exempt from SEPA review, suggesting that the anticipated impact is so low as to not require further analysis. See Exhibit 1D.

Subject to the conditions contained in this decision, the Hearing Examiner finds the application will not have a significant impact on the environment or the surrounding properties. Therefore, this criterion is satisfied.

6. *The overall residential appearance and function of the area will not be significantly lessened due to the proposed use. 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).*

The residential appearance and function of the area will not be negatively impacted by this project. The character and appearance of this structure will remain relatively unchanged. As has been mentioned, minimal changes are proposed to the site and exterior of the building. The size of the building will not change, and thus the structure will not be disproportionate to the residential uses in the neighborhood. The intensity of the use will be commensurate with a single-family use, as discussed previously. Under the circumstances, the Hearing Examiner concludes that this criterion for approval is met.

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).*

The proposal is to re-purpose an existing, single-family residence. The changes to the property will not alter the size, building scale and style, setbacks, or landscaping in any way that will diminish the compatibility of the property with the surrounding neighborhood. Very limited mitigation is proposed or needed for this project. However, given the nature of the project, the proposed mitigation should be more than sufficient. See Condition No. 1 (requiring compliance with SMC 17C.110.500 to ensure compatibility with the neighborhood); see *also* Staff Report, p. 6. The Hearing Examiner finds this criterion met.

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 proposal will not affect the livability of the surrounding residences. 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. No noise is anticipated with the change of use that is inconsistent with the existing use. See Staff Report, p. 6. No new lighting is proposed. See *id.* No late-night operations are expected. See *id.* No odor is anticipated. See *id.* Trash will be picked up on the site regularly, consistent with existing single-family use. See *id.* There is no specific evidence in this record that the proposed use impinges upon the privacy or safety of the neighborhood. Under the circumstances, the Hearing Examiner concludes that this criterion for approval has been satisfied.

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. See Staff Report, p. 6. As stated above, no department reported that public facilities were insufficient to support the project. See Paragraph 3 above. The Staff concluded that the project does not decrease the level of service on any adjacent street. See Staff Report, p. 6. Traffic to and from the site will be nominal. It was anticipated that 2 to 5 mentees will visit the property in a typical day. *Testimony of G. Loranger*. Further, the project is exempt from SEPA review. As a result, there was no traffic analysis undertaken and none was required. Finally, Staff has confirmed that public facilities are sufficient to support the proposed use. See Staff Report, p. 6. The Hearing Examiner finds this criterion met.

10. *The Hearing Examiner concludes that it is proper to approve the CUP despite the concerns raised by neighboring residents.*

The City received two written comments on this project. See Exhibit 3. There was also public testimony raising concerns about the proposal. *Testimony of R. Wagner & B. Wagner*. The Hearing Examiner will not attempt to address every issue that was raised, nor discuss the concerns that are sufficiently addressed elsewhere in this decision. However, the Hearing Examiner will comment on some of the issues he believes are important to mention.

a) *Community Meeting*

Mrs. Wagner contended that the community meeting for this proposal was procedurally defective. *Testimony of R. Wagner*. Mrs. Wagner's criticisms were directed at the notice letter. See *id.* Mrs. Wagner stated that she had to obtain computer assistance in order to participate. See *id.* She stated that she did not know whether her neighbors had similar help. See *id.* She worried that others were unable to attend the community for technical reasons. See *id.*

Staff responded that the community meeting was properly held. *Testimony of A. Brast*. Staff also noted that there was only one example of a person being unable to participate, and the Applicant addressed that person's questions afterwards by telephone. See *id.* Staff concluded that, to the extent there were difficulties, the Applicant ensured that the public was properly informed. See *id.* Staff did not believe the community meeting process was defective. See *id.*

For several reasons, the Hearing Examiner agrees with Staff. First, the suggestion that neighbors were unable to participate in the community meeting is largely speculative. It is a legitimate worry, but the evidence only shows that one person had difficulty accessing the meeting. That person was able to get his or her questions answered afterwards, and did not raise any concerns after that. If access to the meeting was denied to multiple potential participants, the record should contain confirmation that those individuals were deprived of the opportunity to participate. There is no such evidence in this record.

Second, the community meeting is intended to provide an opportunity for others to learn about a project. The meeting was conducted in this case, and it does not appear that interested parties were prevented from participating. In that respect, the community meeting requirement was satisfied, despite the criticisms of the form of the notice. Moreover, the conducting of the

community meeting is not necessarily jurisdictional in nature. It is not on the same legal footing as a notice of hearing, for example, where a defect in the notice will typically require to start the process anew.

Third, there was no showing of actual prejudice as a result of the alleged procedural irregularities. Interested parties could still submit comments, discuss the matter with Planning Staff, and participate in the hearing, as desired. On this record, no interested party was deprived of any benefit or right due to difficulty accessing the virtual community meeting. And ultimately, no one was deprived of an opportunity to participate and be heard regarding this proposal.

The Hearing Examiner concludes that the Community Meeting was properly conducted, and did not suffer from any material, legal defects. Even if there were irregularities, no party was prejudiced as a result and, therefore, the Community Meeting was legally sufficient.

b) Potential impacts to residential neighborhood.

Most issues related to neighborhood impacts have already been discussed. See e.g. Paragraphs 5-9 above. However, some additional concerns should be briefly considered.

The Wagners' raised a concern about the reduction/elimination of the landscape buffer between the parking lot and the subject residence, which occurred over time. *Testimony of R. Wagner & B. Wagner*. The Wagners' also suggested that, if the project is approved, some kind of buffer should be created to shield the residential property to the west of the subject residence. See *id.*

With respect to the first concern, the Hearing Examiner does not believe the record is adequate to properly address this issue. The original decision approving the Life Center project was not made part of the record, so the actual wording of the project conditions was not reviewed. In addition, the circumstances leading to the alteration of the parking lot buffer were not explained in any detail. That said, even assuming that the original landscape buffer was eliminated (or replaced with sheds that were not otherwise allowed to serve as a buffer) in violation of the original CUP conditions, this concern would seem to be a question of code enforcement, rather than an issue that is especially germane to this proposal.

Turning to the second point, Staff confirmed that there was no requirement to install landscaping or another buffer to protect the property to the west. *Testimony of A. Brast*. In addition, there is already some screening between the properties in the form of fencing, although that fencing does not create a complete shield for the residence to the west. The Hearing Examiner also questions whether there is a genuine need for screening or buffering. As has already been discussed, the appearance and character of the residence will not be materially affected by the change of use. The subject residence will remain, by all outside appearances, as a residence. Thus, there seems to be no reason to create a buffer between one house and another.

Mr. Wagner contended that the foot-traffic across the front of the house to enter the basement on the west side of the property would impact the residential character of the neighborhood. He also suggested that the installation of basement access was problematic. The Hearing Examiner disagrees.

The installation of a staircase to allow direct access to the basement is not extraordinary. A residential owner would be allowed to make this modification. If a family of 4 to 6 people resided there, and accessed their basement from a west-side staircase on a daily basis, this act alone would not be cause for complaint. The effect of this proposal is fairly equivalent in scope and

intensity. The Applicant has stated that the amount of traffic to and from the residence will be limited. In addition, the house is small, which naturally restricts the use and occupancy of the site to a material degree. The Wagners' fears, while certainly understandable, do not apparently account for the limited scope and intensity of this proposal.

c) Non-conforming use.

The Wagners contended, for various reasons, that the project was inconsistent with the goals and policies of the CP. See Exhibit 3. Among other things, the Wagners cited to Policy LU 1.14, which seeks to limit the impacts of non-conforming uses. See *id.* This contention seems to suggest that the proposal should be denied because it constitutes a non-conforming use. The Hearing Examiner disagrees with this assertion.

A non-conforming use is one which was legal at its inception. Subsequent to the establishment of the use, a change in the applicable codes or standards have taken the use out of compliance. Non-conforming uses are legal uses. However, the continued existence of non-conforming uses is disfavored under the law. The concept is that, eventually, such uses will be phased out.

The doctrine of non-conforming uses has no application to this case. The Applicant has requested a CUP to authorize the use. If a CUP is granted, the use conforms with the law. A conditional use is legally separate and distinct from a non-conforming use. Thus, the principles underlying Policy LU 1.14 are not relevant here.

d) Conclusion.

The Wagners raised many legitimate and well-considered objections to the proposal, only some of which are explicitly addressed above. The Hearing Examiner does not take their concerns lightly, and must acknowledge that converting a residence to other uses does have an effect on the character of a neighborhood. However, on balance and considering the issues as a whole, the Hearing Examiner concludes that the proposal will provide a needed and valuable public service at minimal actual cost to the residential nature of the area. In addition, this is the kind of use that is allowed in a residential zone, albeit on a conditional basis.

The Hearing Examiner concludes that the CUP should be approved, even though the neighbors raise legitimate concerns. The Hearing Examiner concludes that this proposal will have minimal impacts on the neighborhood, especially given its limited scope. As a result, the Hearing Examiner believes this project should be approved.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed CUP subject to the following conditions:

1. 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.
2. Adhere to any additional performance and development standards documented in comment or required by City of Spokane, Spokane County Washington State, and any Federal agency.

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.

3. SMC 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.
4. 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 20th day of April, 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 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 April 20, 2021. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS MAY 11, 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 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.