

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by)
Ramka Properties LLC to operate a)
grocery/convenience store in the)
commercial structure located at 2024 E.)
Boone Avenue and in the RSF zone.)

FINDINGS, CONCLUSIONS,
AND DECISION

FILE NO. Z21-009CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Ramka Properties LLC, is seeking a conditional use permit (CUP) to convert the commercial structure at 2024 E. Boone into a retail sales and service use, specifically a neighborhood grocery store. Spokane Municipal Code (SMC) 17C.370 allows existing neighborhood commercial structures that once housed legal commercial uses to reinstate a commercial use through the CUP process. No additions to the building or site work are proposed. The Applicant is proposing to utilize available street parking on Boone Avenue and Crestline Street to satisfy the parking requirements for the use.

Decision: Approved, with *revised* conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Dave Nagra
Ramka Properties, LLC
PO Box 529
Veradale, WA 99037

Owner: Tyler Arnold
2024 E Boone Ave
Spokane, WA 99202

Property Location: The subject property is located at 2024 E. Boone Avenue; Tax Parcel No. 35162.2705; in the City of Spokane, County of Spokane, State of Washington.

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

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

Site Description: The site is located on the southwest corner of E. Boone Avenue and N. Crestline Street. in the Chief Garry Park Neighborhood. The site is improved with a single commercial building, which is approximately 3,700 square feet in size. See Exhibit 1C. The lot is approximately 100 feet x 71 feet, or 7,100 square feet. See *id.*

Surrounding Conditions and Uses: The zoning surrounding the site, in all directions, is RSF. There is a small pocket of Neighborhood Retail zoning at the corner of Boone and Napa, one

block to the west. There is also a site, one block to the north and one block west, designated as Office. However, the area is predominantly zoned RSF. With the exception of the Office and Neighborhood Retail sites just mentioned, the adjacent land use designations to the north, south, east, and west are Residential 4-10. The site is located within a developed, residential neighborhood.

Project Description: The Applicant is proposing to renovate the existing structure into a retail sales and service use, specifically a corner grocery/convenience store. No site work is proposed. On-street parking will satisfy the parking requirements for the proposed use. Façade improvements consistent with the change in use are likely.

PROCEDURAL INFORMATION

Authorizing Ordinances: SMC 17C.110, Residential Zones; SMC 17C.370, Existing Neighborhood Structures in Residential Zones; SMC 17C.320, Conditional Uses; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: November 30, 2020
Posted: December 1, 2020

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

Community Meeting: December 16, 2020

Public Hearing Date: April 22, 2021

Site Visit: April 22, 2021

State Environmental Policy Act (SEPA): This application is categorically exempt under SEPA.

Testimony:

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

Dave Nagra
Ramka Properties, LLC
PO Box 529
Veradale, WA 99037

Justin Folkins
RenCorp Realty
502 W. Riverside Avenue, Suite 103
Spokane, WA 99201

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

Tyler Arnold
2024 E. Boone Avenue
Spokane, WA 99202

Heather Lowdon
2023 E. Boone Avenue
Spokane, WA 99202

Doug Salter
1210 N. Lacey Street
Spokane, WA 99202

Renae Dehle
1107 N. Crestline Street
Spokane, WA 99202

Present but did not testify or submitted comments to the record:

Cathy Gunderson
2427 E. Sharp Avenue
Spokane, WA 99202

denaliandluke@gmail.com
(no other identifying information)

otterpoprental@gmail.com
(no other identifying information)

Exhibits:

Staff Report, dated 04/13/21, including the following exhibits:

1. Application Materials, including:
 - A General Application
 - B CUP Application
 - C Site Plan
 - D Site History Email with Newspaper Clips
2. Request for Agency Comments, including
 - A City of Spokane Treasury
 - B Spokane Tribe of Indians
 - C City of Spokane Engineering
 - D Washington State Department of Ecology (WSDOE)
3. Public Comments
4. Notice of Application Instructions & Public Hearing Materials, including:
 - A Notification Map Application
 - B Noticing Affidavits
5. Community Meeting Instructions, including:
 - A Notice of Community Meeting for December 16, 2021
 - B List of Attendees
 - C Noticing Affidavits
 - D Meeting Recording
6. Staff Presentation
7. Pre-Development Conference Final Comments

FINDINGS AND CONCLUSIONS

To be approved, the proposed CUP must comply with the criteria set forth in SMC Sections 17G.060.170 and 17C.320.080(E). 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. A convenience/grocery store is considered “Retail Sales and Service,” a commercial category. Normally, a “Retail Sales and Service” use is not permitted in the RSF zone. See Table 17C.110-1. However, this proposal is expressly allowed by a recently adopted ordinance that authorizes the reuse of existing commercial buildings in residential neighborhoods. See SMC 17C.370.

The purpose of SMC 17C.370 is “...to **allow existing neighborhood commercial structures that once housed a legal neighborhood commercial use to be reused** for low impact neighborhood scale and neighborhood serving businesses.” See SMC 17C.370.010 (emphasis added). This chapter only applies to “existing structures where it can be documented that they once contained a legal non-residential use and where these structures are now located in a residential zone.” See SMC 17C.370.020.

This does not mean, however, that every old commercial building in a residential area can automatically resume operations. The building must be in existence at the time the ordinance was adopted by the City Council. See SMC 17C.370.020. Historically, the building must have housed a legal neighborhood commercial use. See SMC 17C.370.020. A Type III CUP is required for projects with a floor area of 3,000 square feet or more, and for any non-residential project on a site that does not have frontage on a designated arterial. See SMC 17C.370.030(A)(1). In such cases, the Applicant must satisfy the conditional use criteria found in Section 17G.060.170. See SMC 17C.370.030(D). The Applicant must also demonstrate that the proposed use is allowed, consistent with the limitations of the ordinance. See SMC 17C.370.030(E). The Hearing Examiner may approve an application when it is determined that the benefits of the proposed use and improvements would mitigate potential negative impacts on the residential character of the area. See *id.*

The Hearing Examiner concludes that this proposal satisfies all the requirements of SMC 17C.370. The Applicant seeks to repurpose a commercial building that was in existence when SMC 17C.370 was adopted. The historical record establishes that the property was the location of various neighborhood commercial uses. For example, the site was the location of “a little store” (1921), a barber shop (1922), a shoe repair shop (1937), and a home and hobby supply store (1950), among other things. See Exhibit 1D. Thus, the historical use of the site satisfies the first part of SMC 17C.370.030(F)(1), which requires that the building was “originally legally built to accommodate a non-residential use.”

There is another part to SMC 17C.370.030(F)(1), however, that must be addressed. The second part of that provision states, in relevant part, as follows:

...at the time of application, its existing use must not be classified within the institutional use category as described in Article V of chapter 17C.190 SMC, which may be converted under SMC 17C.320.060.

See SMC 17C.370.030(F)(1). In other words, SMC 17C.370 does not authorize the re-use of an existing building in the RSF zone if the existing use of that building is an “Institutional Use,” such as a church. See SMC 17C.190.470. This provision could preclude the approval of this application under SMC 17C.370, since 2024 E. Boone Avenue was most recently used as a church, known as the Jedi Alliance. See Staff Report, p. 3. However, Staff concluded that a

conditional use under SMC 17C.370 was appropriate in this case for at least three reasons. First, the building is vacant and, therefore, does not have a current use. See *id.* Second, the church use of the building was never legally established through a certificate of occupancy or otherwise. See *id.* Third, the alternative provision to change the use of the building, SMC 17C.320.060, was intended to apply to buildings originally constructed for institutional purposes, such as a school or church. *Testimony of A. Brast.* For these reasons, Staff concluded that SMC 17C.370 governs this request to re-purpose the building. See Staff Report, p. 6; *Testimony of A. Brast.*

The Hearing Examiner agrees with Staff, even though the code is somewhat ambiguous on this issue. The code does not define “existing use.” There is no explicit rule, for example, that the use is fixed by the most recent, active use. Nor is it clear to the Hearing Examiner why using a building as a church for a limited period of time should preclude other uses of that structure, assuming an appropriate application is submitted. That said, Staff is correct that the building was vacant at the time of the application and had no current use at that point. In addition, even if a prior use of a building as a “church” could operate to preclude conversion to a commercial use under SMC 17C.370, certainly the prior use must have first been legally established to have such a preclusive effect.

Here, Staff confirmed that the most recent tenant did not go through the building permit process to legally establish the use of that property as a church. See Staff Report, p. 3. There is no Certificate of Occupancy establishing the use of the property as a church. See *id.* It follows, then, that the owner should not be required to follow a change of use procedure to legally change the use from an Institutional Use to some other use. See SMC 17C.320.060 (governing the conversion of public and semi-public facilities).

The Hearing Examiner also acknowledges that Staff’s interpretation and application of the land use codes is entitled to due deference, in particular in cases in which the applicable code contains ambiguities. See *e.g. Keller v. City of Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979) (stating that considerable deference should be given to the code interpretations of the officials charged to apply and enforce those codes). Under the circumstances of this case, the Hearing Examiner is inclined to defer to the Planning Department’s interpretation of SMC 17C.370 and SMC 17C.320.

The Applicant has submitted a complete application for a Type III CUP, as required under SMC 17C.370. The criteria to issue a CUP have been satisfactorily addressed, as has been discussed throughout this decision. Moreover, the proposed grocery store is among the uses authorized pursuant to SMC 17C.370. Uses authorized under that section include: “Retail sales and service uses found in SMC 17C.190.270.” See SMC 17C.370.030(E)(2)(b). “Stores” selling consumer goods, dry goods, groceries, household products, and similar items are examples of “Retail Sales and Service.” See SMC 17C.190.270(C)(1).

Finally, the Hearing Examiner must consider whether the benefits of the project and improvements mitigate the impacts to the residential character of the neighborhood. There will certainly be some impacts from operating a grocery store in a residential neighborhood, such as parking of vehicles, some additional traffic, and the like. There were also concerns about the potential effects of alcohol sales in the neighborhood. Although the foregoing concerns are genuine and understandable, the Hearing Examiner does not agree that the project should be denied on such grounds. See Paragraphs 8 and 10. The Hearing Examiner also believes that the mitigation conditions will be sufficient to address the relatively minor impacts of this proposal.

The Hearing Examiner concludes that the public benefits that arise from the limited development of small-scale, neighborhood commercial outweigh the countervailing concerns raised about the proposal. The Hearing Examiner acknowledges that some inconveniences will arise. On balance, however, the Hearing Examiner finds that the proposed use will not cause significant problems for the neighborhood, in particular given the size, scale, and intensity of the proposed use.

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 project will refurbish a former commercial property into a grocery store. The site has been the location of a variety of neighborhood commercial uses since at least the 1920s. Other uses have included a general corner store, a barber shop, shoe repair shop, and a home & hobby supply store, among other things. Thus, there is a long history of neighborhood commercial use of the property. It seems appropriate for this property to serve as a small, local corner grocery store. This history is also incongruous with any claim that a small grocery store is incompatible with the neighborhood.

The Hearing Examiner believes that this remodeling project is consistent with Goal LU 5, entitled "Development Character." That goal promotes development in a manner that is attractive, complementary, and compatible with other uses. See CP, Goal LU 5. Similarly, Policy LU 5.5 seeks to ensure that redevelopment projects are well-designed and compatible with surrounding uses and building types. See CP, Policy LU 5.5. The building is small and fits in with the neighborhood. That will not change—the Applicant has not proposed any expansions or additions to the building.

The building is quite small, consisting of 3,700 square feet of space. The intensity of the use and probable impacts of the project are naturally limited by the small scale of the enterprise. Policy N 4.4, Neighborhood Business Traffic, recognizes that neighborhood businesses should be of a size and type that fits with the character of a neighborhood. See CP, Policy N 4.4. A corner grocery store seems to fit this concept. Further, the proposed use is intended to serve the immediate neighborhood. See Staff Report, p. 4. In addition, the limited size of the business should result in less non-local traffic through the neighborhood. This is not a use that is likely to generate a large amount of community or regional traffic.

Chapter 11 of the CP concerns neighborhoods. That chapter recognizes that it is beneficial to neighborhoods to have a "variety of compatible services" available to residents. See CP, p. 11-4. The CP also includes policies consistent with the objective of the ordinance. Policy N 2.4, entitled "Neighborhood Improvement," seeks to encourage "...revitalization and improvement programs to conserve and upgrade existing properties and buildings." See CP, Policy N 2.4. And, as Staff points out, the CP also includes policies that encourage the development of small businesses. See CP, Policy ED 3.5 & ED 3.6.

On balance, the Hearing Examiner believes the scale and nature of this proposal is not unduly burdensome on the neighborhood, and that it fulfills the policy objectives of the City Council in passing the ordinance that authorized this use. The Hearing Examiner concludes that the proposal generally fulfills the policies and objectives of the CP. Therefore, this criterion for a CUP 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 must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on February 26, 2021, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 2. The Staff Report notes: "...there were no departments or agencies that reported that concurrency could not be achieved." See *id.* In addition, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied. The Hearing Examiner concludes that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval is fulfilled.

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

The Hearing Examiner finds that the property is suitable for the proposed use given its physical characteristics. The property is already improved with a small commercial building. The history seems to confirm that this is a suitable site for a neighborhood commercial use. As stated above, the site has been used for such purposes since at least the 1920s. The existing structure is relatively modest in size and appears to fit within the neighborhood. The proposed improvements will be made inside the building along with some exterior façade upgrades. See Staff Report, p. 4. No exterior additions will be made to the building. See *id.*

There is no evidence that the size, shape, topography, slope, soils, drainage characteristics, or other physical conditions pose a genuine issue for this project. There is no evidence of surface water on the site, or the presence of natural, historic, or cultural features in need of protection. The site is in the Critical Area Recharge Zone and, therefore, any activities must adhere to the standards found in SMC Chapter 17E.010, Critical Aquifer Recharge Areas (CARA)-Aquifer Protection. See Staff Report, p. 4. There is no reason to suspect that this project will impact the aquifer, however, or that the CARA standards will not otherwise be satisfied.

The Hearing Examiner concludes that the property is suitable for the proposed use given the conditions and characteristics of the site. As a result, 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).*

The Applicant proposes to convert an old, neighborhood commercial building into a grocery store, a use that is consistent with its history. The proposal is a small-scale retail operation, which would primarily serve people in the neighborhood, as opposed to drawing patrons from greater distances. The property is located in the middle of a residential area, at the intersection of two residential streets. However, there is no evidence that the capacity of these streets will be taxed by the proposed use, given its relatively small size and scope.

The presence of a commercial use, even a small one, in this location will create some inconveniences for neighbors, in particular due to the lack of parking. There were concerns about a range of other things. However, the impacts on the neighborhood will not constitute a *significant* interference on the uses of neighboring property or the area, in the Hearing Examiner's judgment. The limited hours and noise limitations (per the applicable ordinance) will mitigate some of the potential issues arising from the proposed use. The project will also be required to satisfy the standards for conditional uses in residential areas, providing some additional assurance that the project design will be compatible with the neighborhood. See SMC 17C.110.500 *et seq.* Finally, it must be acknowledged that the project is categorically exempt from SEPA review, suggesting that the environmental impacts are *de minimis* in the judgment of the policy-makers.

The Hearing Examiner concludes that the project will not have significant impacts on the environment or the surrounding properties and, therefore, this criterion is satisfied.

6. *The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F)(1).*

The residential appearance and function of the area will not be negatively impacted by this project. The site is already improved. The Applicant intends to re-purpose an existing building. The building will not be expanded to accommodate the proposed use. The site already has utilities and is supported by basic infrastructure. In addition, the project consists primarily of interior remodeling work and a refresh of the exterior façade. The existing building was constructed and historically used as a small, neighborhood commercial site. See Staff Report, p. 6. The building is one story tall consisting of approximately 3,700 square feet of usable space. See Exhibit 1C. The building is roughly proportional to the nearby residences. Thus, the building is already of a size/scale that fits with the neighborhood. The Hearing Examiner concludes that this criterion for approval is met.

7. *The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks and landscaping; or; the proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping and other design features. See SMC 17C.320.080(F)(2).*

The lot is approximately 7,100 square feet in size. See Exhibit 1C. The site does not stand out as being out of proportion to the residential lots in the neighborhood. The existing building is a one-story, flat-roofed structure; so its style is distinct from the houses that surround it. However, it was originally constructed for commercial use, so the distinct style and architecture is not surprising. The building is a commercial type, but it nonetheless blends well with the neighborhood given its scale and style. There are no plans for structural expansion of the building. Further, the building is comparable in size the residences in the neighborhood.

Because this project concerns a new commercial use of an existing structure, rather than new construction, there are limitations on the types of mitigation that can be employed. For example, the existing building's size and location on the lot are already established. The setbacks to the sidewalks or frontage roads cannot reasonably be changed. Nonetheless, changes to the exterior façade and the site will require the Applicant to adhere to the Institutional Design Standards in

Residential Zones, SMC 17C.110.500, at the time of building permit. See Exhibit 1, p. 6; *Testimony of A. Brast*.

The Hearing Examiner concludes that the proposed use is compatible with the neighborhood, and that appropriate mitigation measures have been imposed, given the circumstances. As a result, this criterion for approval is satisfied.

8. *The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to: noise; glare from lights; late-night operations; odors and litter; and privacy and safety issues. See SMC 17C.320.080(F)(3).*

The Hearing Examiner concludes that the proposal will not have a significant adverse effect on the livability of the surrounding neighborhood.

There was no evidence that a grocery store would be a significant source of noise. There may be some noise from remodeling activities, but that will be a temporary situation. Presumably, there will be a little bit of noise from the establishment, from traffic and customers going in and out of the store. However, nothing in this record demonstrates that a greater effect is likely to occur. In addition, the operation will be required to comply with the restrictions of the noise ordinance, which includes quiet hours from 10 p.m. to 7 a.m., among other things. See Staff Report, p. 6.

There is no reason to believe that the proposed grocery store will be a significant source of light or glare. There was no proposal to include unusual or extraordinary exterior lighting. Given the size and design of the building, the Hearing Examiner would not anticipate much more light than might emanate from a single-family residence. To the extent there is extra lighting to support the commercial use, any new overhead lighting is required to be contained on-site consistent with SMC 17C.110.520. See Staff Report, p. 6.

No late night operations are proposed. See Staff Report, p. 6. At the hearing, the Applicant acknowledged that the hours of operation would be consistent with the noise ordinance. In other words, the hours will be limited to 7 a.m. to 10 p.m. *Testimony of T. Hume & D. Nagra*. Thus, there will be no impacts from late-night operations.

There was testimony that the installation of a dumpster at this location would cause odors and attract raccoons, rodents, and generally create a nuisance. *Testimony of R. Dehle*. However, Staff concluded that no odors are anticipated from this use. See Staff Report, p. 6. Refuse will be picked up on a weekly basis. See *id*. In addition, there is no proposal to install a dumpster at this time. *Testimony of A. Brast*. The store is allowed to have up to three 95-gallon carts at the site, which would seem sufficient for the proposed use. See *id*. The Hearing Examiner concludes that refuse can be reasonably managed at the property without creating a nuisance to the neighbors.

No concerns were specifically raised about privacy, and the Hearing Examiner cannot conceive of any privacy-related impacts of this proposed use. Thus, privacy concerns do not warrant further consideration.

There were some comments that could bear on the question of safety. Neighbors were concerned that a convenience store would attract the homeless, drug addicts, or others who would engage in bad behavior. *Testimony of H. Lowdon*. There were also predictions that the store would become a center for loitering, littering, and would cause an increase in crime in the neighborhood.

Testimony of R. Dehle & H. Lowdon. There were also concerns about the impacts of the sale of alcohol. See Exhibit 3 (public comments). Similar concerns were raised by neighbors during the community meeting. See e.g. *Comments of G. Wellein.*

The neighbors' concerns about the proposed convenience store were understandable, but the predictions that the proposed use would attract "bums" and crime, as one neighbor put it, was based more on fear and speculation than actual evidence. There was no data connecting this kind of use to increased crime, a higher need for police presence, the creation of nuisance conditions, or a greater prevalence of disturbances of the peace. Generalized complaints and community displeasure about a proposal, without more specific evidence, is not a proper basis to deny a proposed use. See *Maranatha Mining, Inc. v. Pierce County*, 59 Wn.App. 795, 804, 801 P.2d 985 (1990). No expert testimony was provided on these issues, and no government agencies or departments (e.g. the police department) commented that the proposal would give rise to these problems.

The Hearing Examiner is inclined to agree with the Applicant that putting a vacant building to productive use is at least as likely to discourage loitering, vandalism, and crime as to attract it. Vacant buildings tend to attract squatters, become the target of vandalism, and create a blight on a neighborhood. In addition, SMC 17C.370 was undoubtedly enacted, at least in part, to reduce the blight and other problems created by vacant buildings. The Hearing Examiner also believes the City Council adopted the ordinance to put otherwise underused properties to productive use, increasing investment and, hopefully, helping to improve or revitalize neighborhoods by encouraging small-scale commercial activities. This proposal is consistent with these policy judgments, in the Hearing Examiner's view.

With respect to alcohol sales, the Hearing Examiner feels compelled to repeat the comments he made on a very similar proposal that was approved in 2020. See Findings, Conclusion, and Decision, File No. Z20-021CUP3 (December 22, 2020). Alcohol sales are legal and common at convenience stores, grocery stores, and supermarkets. Alcohol sales are just one of many products sold at such businesses. The City Council made a policy decision to allow commercial uses, including retail sales and services, in a residential neighborhood. This undoubtedly includes the possibility of selling alcohol, provided the legal requirements for doing so are satisfied. Notably, the City Council did not prohibit the sale of alcohol in residential areas when it passed SMC 17C.370. *Testimony of A. Brast.* Moreover, the Hearing Examiner accepts the Applicant's assurance that the Applicant will operate this business responsibly, and in accordance with the rules, including checking identification, refusing to serve the visibly intoxicated, etc. Without more specific evidence that this proposal is a genuine cause of impacts on the neighborhood, the Hearing Examiner is inclined to approve the proposed use, including the retail sale of beer and wine.

The Hearing Examiner finds this criterion met.

9. *The proposed use is in conformance with the street designations of the transportation element of the comprehensive plan. The transportation system is capable of supporting the proposed use in addition to existing uses in the area, upon consideration of the evaluation factors provided in the municipal code. See SMC 17C.320.080(F)(4).*

This project does not create any new or unique burdens on the transportation system or on other public facilities. As stated above, no department reported that public facilities were not adequate to support the project. Further, Staff specifically noted: "The proposal does not decrease the level

of service on any adjacent street. The site has access to all City of Spokane public services, and will not require any additions to be made in order to fully accommodate the proposed site development.” See Staff Report, p. 7. As such, there is no concern about impacts to the transportation system. The Hearing Examiner concludes that this criterion is satisfied.

10. The Hearing Examiner concludes that the CUP should be approved, despite the potential inconveniences related to parking.

The proposal does not include any on-site parking. Some neighbors objected that the proposal should provide additional parking. There were also concerns that patrons of the store would occupy the on-street spaces in front of the nearby houses, eliminating parking for the neighbors. The Hearing Examiner acknowledges that the parking situation may be inconvenient for the neighbors, at times. However, the Hearing Examiner does not believe this proposal should be further conditioned or denied on such grounds.

If there were parking requirements for this proposal, the Hearing Examiner would require those standards to be satisfied, and would deny the project if that were not possible. Here, however, there is no requirement for the Applicant to provide off-street parking. See Staff Report, p. 6. This was a policy choice by the City Council, and was undoubtedly in recognition of the reality that neighborhood-scale commercial sites have often been developed without providing parking. The areas around such sites are already developed. If these buildings are to be re-purposed, an off-street parking requirement would be counterproductive or preclusive of the desired use. In addition, if neighborhood commercial is developed in the manner contemplated, the uses should predominantly serve the nearby residents, rather than the motoring public. Thus, the intent is undoubtedly to establish uses that are not dependent on the automobile. Parking and traffic are less of an issue in such cases.

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. *Per the stipulation of the Applicant at the hearing, alcohol sales at the grocery/convenience store shall be restricted to beer and wine sales. The sale of hard alcohol is prohibited.*
3. WSDOE requires proper hazardous waste disposal for any waste generated on site, as well as proper erosion and sediment control practices to be used on the construction site and adjacent areas to prevent upland sediments from entering surface water for any site improvements.
4. If any artifacts or human remains are found upon excavation, Washington State Department of Archaeology and Historic Preservation (WSDAHP), the Spokane Tribe of Indians, and the Planning & Development Department should be immediately notified and the work in the immediate area cease. Pursuant to Revised Code of Washington (RCW) 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the WSDAHP before excavating,

removing or altering Native American human remains or archaeological resources in Washington.

5. Adhere to any additional performance and development standards documented in comments or required by City of Spokane, Spokane County, Washington State, and/or 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.

6. 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.
7. 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 30th 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 May 3, 2021. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS MAY 27, 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.