

CITY OF SPOKANE HEARING EXAMINER PRO TEM

Re: Conditional Use Permit Application by)
509 Design LLC convert an existing) FINDINGS, CONCLUSIONS,
institutional building into an interior) AND DECISION
design office and small product)
showroom in a Residential Single-Family) FILE NO. Z22-077CUP3
zone.

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, 509 Design LLC, is seeking a conditional use permit (CUP) to convert an existing institutional building into an interior design office and small product showroom in a Residential Single-Family (RSF) zone. The applicant also intends, at a later date, to build a detached storage building on the parcel, north of the existing structure, at a maximum of 1,200 square feet (sqft) consistent with residential accessory structure coverage, height, and placement limitations.

Typical interior and façade updates are proposed, as well as site landscaping consistent with a change in use to the building. If necessary, the future shop will provide vehicle access from the adjacent alley. The Office use is proposed to operate out of the main floor of the existing building; the small basement will be utilized minimally as storage space. Based on the identified use, a minimum of four parking stalls will be required, which will be accommodated on the street, adjacent to the parcel.

Decision: Approved, with conditions.

FINDINGS OF FACT BACKGROUND INFORMATION

Applicant/ Alan Nolan / 509 Design, LLC
Owner: 12128 N Division St #110
Spokane, WA 99218

Property Location: 320 W Dalke Avenue, Spokane WA (Parcel # 35311.0419).

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

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

Site Description: The site is located on the northeast corner of West Dalke Avenue and North Whitehouse Street in the North Hill neighborhood.

Surrounding Conditions and Uses: Properties in all directions surrounding the site are all zoned RSF, designated Residential 4-10, and the majority of surrounding land is improved with

single-family residences to the north, east, and west; and a city park across Dalke Avenue to the south..

Project Description: The applicant is proposing to convert an existing institutional building into an interior design office and small product showroom. The applicant also intends, at a later date, to build a detached storage building on the parcel, north of the existing structure, at a maximum of 1,200 sqft consistent with residential accessory structure coverage, height, and placement limitations.

The building is currently quite dilapidated, so typical interior and façade updates are proposed, as well as site landscaping. If necessary, the future shop will provide vehicle access from the adjacent alley. The use is proposed to operate out of the main floor of the existing building; the small basement will be utilized minimally as storage space. Based on the identified use, a minimum of four parking stalls will be required, which will be accommodated on the street, adjacent to the parcel.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.110, Residential Zones; SMC 17C.210.060.B, Nonconforming Uses – Conversion; SMC 17C.320.060, Conversion of Public and Semi-Public Facilities; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: January 22, 2022
Posted: January 21, 2022

Notice of Application/Public Hearing: Mailed: April 18, 2022
Posted: April 18, 2022

Community Meeting: February 4, 2022

Public Hearing Date: May 18, 2022

Site Visit: May 16, 2022

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

Testimony:

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

Alan Nolan
509 Design, LLC
12128 N Division St #110
Spokane, WA 99218

Present but did not Testify or Submitted Comments to the Record:

Greg & Julie Wilson
6012 N. Calispel Street
Spokane, WA 99205

Clyde & Barbara Grigsby
6122 N. Whitehouse Street
Spokane, WA 99205

Exhibits:

1. Staff Report, dated 05/12/22, including the following attachments:
 - Notice of Application Packet, including:
 - Notice of Application Instructions
 - Notice of Application and Public Hearing for a Conditional Use Permit
 - Individual Notice Affidavit
 - Public Notice Affidavit
 - Notification Map and Parcel List
 - Public Comments (Wilson 04/18/22; Grigsby 04/23/22)
 - Agency and Department Review Packet, including:
 - Request for Comments
 - Avista Comments
 - General Application
 - City of Spokane Historic Preservation Comments
 - Site Plan and Conceptual Drawings
 - Historic Documentation
 - First Community Meeting materials, including:
 - Notification Map Application, Map, and Parcel List
 - Community Meeting Instructions
 - Notice of Community Meeting for September 29, 2020
 - Second Community Meeting materials, including:
 - Notification Map Application, Map, and Parcel List
 - Notice of Community Meeting for February 4, 2022
 - Community Meeting Instructions
 - Public Notice Affidavit
 - Individual Notice Affidavit
 - Meeting Presentation
 - List of Attendees
 - Meeting Recording
2. Staff Presentation
3. Applicant Presentation

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 (F). The Hearing Examiner Pro Tem 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. A nonconforming use may, by CUP from the Hearing Examiner, be changed to an equal or more compatible use so long as no new building, enlargement or extensive alteration is involved. See 17C.210.060. Additionally, the conversion of existing public or semi-public buildings when the need for an existing public or semi-public building no longer exists is allowed. See 17C.320.060.

There are several historic records which indicate previous institutional uses in the existing structure. See Agency and Department Review Packet. Per the City's Historic Preservation department, the building was originally constructed in 1910 as a one-room schoolhouse for School District 81, originally known as the Byrne's Addition School and later known as Madison Primary School. See *id.* The building was converted to a church in 1955 and then by 1990 the structure had been converted into a daycare facility. See *id.*

The property is zoned RSF, so the existing vacant institutional building is nonconforming to the current zoning category. Either code path mentioned above would be a reasonable solution to convert this existing building into an Office use. See 17C.210.060. It is the Planning Department's opinion that an office and showroom are equal and/or lesser intensity than the previous institutional uses within the building. See Staff Report, p. 3. Occupancy of the building and traffic to and from the site would be much lower as an Office use. See *id.* While the applicant is proposing a new storage building, it is the Planning Department's opinion that this proposed structure is consistent with residential accessory structures and would be allowed regardless of the CUP, so long as no new commercial activity takes place out of the new building. See *id.*

Alternatively, when the need for an existing public or semi-public building in any zone no longer exists, the building may be converted to those uses listed in the zone in which it is located. See SMC 17C.320.060. When the building is located in any R zone, it may be converted to any use allowed in the O zone if a CUP is approved by the Hearing Examiner. See *id.* To qualify to apply for a CUP, the public or semi-public facility may not have more than 12,000 square feet of total floor area and must have been constructed to house the public or semi-public use and operated as such use for a minimum of five years. See *id.* The proposed use is allowed in the O zone, this building has 3,000 square feet of floor area, was originally built as a public school, and operated as a school and a church for decades – both considered public or semi-public uses. See Staff Report, p. 4. Either code path for CUP approval appears to be a reasonable solution in this instance. See *id.*

The Hearing Examiner Pro Tem agrees with Staff's analysis of the non-conforming use and finds this criterion met.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The Hearing Examiner Pro Tem concludes the proposal is consistent with the goals and policies of the CP.

The use proposed for the building is intended to be an interior design office and showroom. See Staff Report, p. 4. This building has been vacant for a number of years and is quite dilapidated. See *id.* Based on the public comments received during the public comment period, it appears

that adjacent neighbors are in support of the redevelopment of this property for the proposed use. See Notice of Application Packet. They support the new business in their neighborhood and are in favor of the exterior improvements proposed to the building believing that they'll improve the character, aesthetic quality, and livability of the neighborhood. See *id.* Staff believes the use and proposed redevelopment could contribute to the neighborhood in a positive way and work towards implementing CP policies and goals. See Staff Report, p. 4. The Hearing Examiner Pro Tem agrees with Staff and concludes that 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 March 23, 2022, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Staff Report, p. 4; see also Agency and Department Review Packet. Staff confirmed that there were no departments or agencies reporting that concurrency could not be achieved. See Staff Report, p. 4. 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 Pro Tem 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 Pro Tem concludes that the property is suitable for the proposed use given its physical characteristics. The structure on site is existing and there are no additions proposed. See Staff Report, p. 5. All work is limited to inside the building or exterior façade and landscape improvements. See *id.* The applicant does propose to build a new accessory structure, at a later date, to be no more than 1,200 sqft consistent with residential accessory structure coverage, height, and placement limitations. See *id.* When and if that structure is built, access would be provided from the adjacent alley, so no new curb cuts are proposed. See *id.*

The use is proposed to operate out of the main floor of the existing building; the small basement will be utilized minimally as storage space. See *id.* Based on the identified Office use, a minimum of four parking stalls will be required, which will be accommodated on the street, adjacent to the parcel, which is allowed by 17C.230.100.G. See *id.*

If any additional improvements are made to the site in the future, the applicant will be required to contact the City's Development Services Center and adhere to all development standards. See *id.*

This site is located within the Critical Aquifer Recharge Zone and must comply with SMC Chapter 17E.010 Critical Aquifer Recharge Areas-Aquifer Protection. See *id.*

Based on the foregoing, the Hearing Examiner Pro Tem 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).

The Hearing Examiner Pro Tem finds that the proposal will not have significant impacts on the environment. There was no evidence presented at the hearing or included in the record suggesting that the proposed use will have any substantive environmental impacts. The business will be required to abide by the City's Noise ordinance stated in SMC Title 10 (10pm-7am quiet hours).

The proposal is also categorically exempt from SEPA requirements. See Staff Report, pp. 1 & 5. The proposed use do not exceed the size thresholds necessary to trigger SEPA review. *Testimony of A. Brast.* The Planning Department's determination that the project is exempt from SEPA is final and not subject to administrative review. See SMC 17E.050.090(A). Exempt developments are not subject to any of the procedural requirements of the environmental ordinance. See *id.* For example, an environmental checklist is not required for such proposals. See *id.* In short, the policymakers have determined that the projects of this scope and nature have only a *de minimis* effect on the environment. As a result, detailed environmental review is deemed unnecessary.

The Hearing Examiner Pro Tem 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 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).*

Based on the historic records, this property appears to have only been an institutional use. See Staff Report, p. 6; see also Agency and Department Review Packet. It seems that surrounding neighbors would have an expectation that this structure would continue to be a non-residential use. See Staff Report, p. 6; see also Notice of Application Packet. Because the structure has been vacant for a number of years and causes some blight to the surrounding properties, the exterior improvements are anticipated to be welcomed by adjacent owners. See Staff Report, p. 6. The Hearing Examiner Pro Tem, therefore, 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).*

For any exterior façade improvements, the applicant will be required to integrate Institutional Design Standards in Residential Zones, SMC 17C.110.500, at the time of building permit. See Staff Report, p. 6. The existing structure is currently a one-story, pitched roof building comparable in scale to residential uses in the surrounding area. See *id.* Again, there are no plans for structural expansion. See *id.* The proposed landscaping and exterior façade improvements will significantly improve the structures compatibility with the surrounding homes. See *id.*

Given the requirements and standards applicable to this project, as well as the project conditions, the Hearing Examiner Pro Tem concludes that this criterion is 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 noise, glare, late night operations, odor, or litter. See Staff Report, p. 6. No additional noise is anticipated outside of the hours of operation. See *id.* The City's noise ordinance requires compliance with SMC Title 10 (10pm-7am quiet hours). See *id.* Any new overhead lighting is required to be contained on the site per SMC 17C.110.520. See *id.* No late night operations are proposed. See *id.* No odor is anticipated from the proposed use. See *id.* Refuse will continue to be picked up each week. See Staff Report, p. 6. The project is not proposing any on-site parking as the minimum parking requirements can be met with available street parking. See *id.* There is no specific evidence in this record that the proposed use of the residence or the site changes will impinge upon the privacy or safety of the neighborhood.

Under the circumstances, the Hearing Examiner Pro Tem 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).*

As mentioned above, the application meets the code requirements for parking. The proposal does not decrease the level of service on any adjacent street. See Staff Report, p. 7. 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 *id.* The Hearing Examiner Pro Tem concludes that this criterion is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner Pro Tem 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. A Change in Occupancy permit will be required to legally change the occupancy of the structure to an office use. Coordination with our Building Plans Examiners in the Development Services Center will initiate this process.
3. Per comments from Avista: there are existing underground electric and gas facilities located on the North and South portions of this parcel. Prior to construction of any new structure, owner/applicant required to coordinate with Avista to confirm location and required distances. Contact Denise Marsh at 509-495-4940.
4. If any artifacts or human remains are found upon excavation, DAHP, the Spokane Tribe of Indians, and the Planning & Development Department should be immediately notified and the

work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.

5. Adhere to any additional performance and development standards documented in comments or required by City of Spokane, Spokane County, Washington Stat, and/or any Federal agency.
6. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

7. SMC 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.
8. This approval is subject to the above-stated conditions. By accepting this approval the Applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above-required covenant constitutes the Applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

SIGNED this 31st day of May, 2022.


Christopher Anderson
City of Spokane Hearing Examiner Pro Tem

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 will be mailed on June 1, 2022. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS JUNE 20, 2022, 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.