

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Spokane Public Schools for a) AND DECISION
Community Service Use in a Residential)
Single Family Zone.) FILE NO. Z22-449FEW3

I. SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Spokane Public Schools (SPS), is seeking a conditional use permit (CUP) to authorize a Community Service Use in an RSF zone. SPS proposes to construct a new, single-story, 4,965-square foot (SF) addition to the southeast corner of the existing Logan Elementary school. The new addition will house an early learning center and a community wellness center. The proposal for the early learning center is subject to review as a Type II CUP, which is an administrative decision. The proposal for the community wellness center, however, is a Type III CUP that must be considered and approved by the Hearing Examiner.

Decision: The Type III CUP for a community wellness center is approved, with conditions.

**II. FINDINGS OF FACT
BACKGROUND INFORMATION**

Applicant: Spokane Public Schools – Capital Projects and Planning
Attn: Greg Forsyth
2815 E. Garland Ave
Spokane, WA 99207

Owner: Spokane Public Schools
200 N. Bernard St.
Spokane, WA 99201

Property Location: Logan Elementary School is located at 1001 E. Montgomery Avenue (Parcel Nos. 35084.0405, 35084.0404, and 35084.0403), on the northwest side of the E. Montgomery Avenue and N. Columbus Street intersection.

Zoning: The parcels are zoned Residential Single Family (RSF).

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

Site Description: Logan Elementary is currently located on multiple adjacent parcels that include the school building and accessory parking lot, playgrounds, and playfields totaling an approximate building footprint of 45,000 SF and total approximate lot area of 203,000 SF.

Surrounding Conditions and Uses: The land use designation of all of the properties to the north, east, and south is Residential 4-10 units, with the properties to the west designated as a Center and Corridor Core Area.

Project Description: SPS is proposing to construct a new, single-story 4,965 SF addition to the southeast corner of the existing Logan Elementary building. The addition will house two early learning classrooms and a community wellness center. The Applicant plans to reconfigure the landscaping, hardscaping, and fencing, as well as to modify the existing parking.

III. PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: October 12, 2022
Posted: October 12, 2022

Notice of Application/Public Hearing: Mailed: January 17, 2023
Posted: January 19, 2023

Community Meeting: October 27, 2022

Public Hearing Date: February 8, 2023

Site Visit: February 7, 2023

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

Testimony:

Tavis Schmidt, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

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938 E. Montgomery Avenue
Spokane, WA 99207

Exhibits:

Staff Report, dated 1/31/23, including the following exhibits:

1. Application Materials, including:
General Application
CUP Application
CUP Attachment Pages

2. Notice of Application & Public Hearing Materials, including:
 - Notice of Application & Public Hearing Instructions
 - Notice of Application and Public Hearing
 - Noticing Affidavits
 - Notice of Application and Public Hearing and Noticing Map
3. Site Plan and Conceptual Renderings
4. Request for Agency Comments, including
 - City of Spokane Engineering
 - City of Spokane Solid Waste Collection
 - Washington State Department of Ecology
5. Community Meeting materials, including:
 - Community Meeting Instructions
 - Notice of Community Meeting for October 27, 2022
 - Notification Map Application/Map
 - Noticing Affidavits
 - Meeting Attendance
 - Meeting Presentation
 - Affidavit of Sign Removal
6. Design Review Board Staff Report, File No. DRB 2201
7. Staff Presentation

IV. 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. Certain kinds of “Institutional” uses are also allowed in the RSF zone, including “Community Services.” See Table 17C.110-1. A Community Service is allowed in the RSF zone, provided a CUP is obtained. See Table 17C.110-1. In addition, expansions of a facility exceeding 1,500 SF “require a conditional use permit and are processed as a Type III application.” See SMC 17C.110.110(D).

“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). These services are typically provided on an ongoing basis, rather than being limited to special events. See *id.* 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, and health and therapy areas, among other things. See SMC 17C.190.420(B).

The proposed community wellness center easily qualifies as a “Community Service” under the zoning code. The community wellness center is intended to provide basic services for mental and

physical health to students of the school and their families. *Testimony of M. McFadgen & G. Forsyth*. It is intended to provide health services and advice to meet the needs of underserved populations in the community. *Testimony of G. Forsyth*. The proposed center includes amenities such as small lab/office area, exam rooms, and a counselor's room. *Testimony of M. McFadgen*. However, the center is not intended to operate as a primary care clinic. *Testimony of G. Forsyth*. There is no diagnostic equipment to facilitate such services, for example. *See id.* Rather, the community wellness center will focus on counseling and referring patrons to more permanent health care solutions. *See id.* The community wellness center may also provide training and education opportunities for students in the medical fields. *See id.*

SPS has proposed a new Community Service in an RSF zone. Pursuant to the foregoing authorities, this land use is allowed, so long the CUP requirements are satisfied. The Hearing Examiner concludes that this criterion is 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 proposal to develop a community wellness center is consistent with various goals and policies of the CP. *See Staff Report*, pp. 3-4. The proposed center will provide social and health services to students and their families. *Testimony of G. Forsyth*. It will also provide services to a historically underserved population. *See id.* These characteristics are consistent with Policy N 2.2, which encourages the provision of essential services within a neighborhood, as well as Goal SH 2, and Policies SH 2.1-2.2, calling for facilities to serve special needs populations and the distribution of services throughout the city.

The community wellness center will operate in an addition to an elementary school that has served the Logan Neighborhood for decades. Placing the clinic in this location will promote access to neighborhood facilities and community-based programs, consistent with Policies SH 4.1 & 4.2.

The SPS will own the center, but will not operate it. *Testimony of M. McFadgen*. That responsibility will be delegated to a third-party provider qualified to provide social and health services. *See id.* The provision of social and health services also dovetails nicely with the operation of a school. *See id.* SPS has seen success using this type of model at Rogers High School, which now includes a wellness center operated by CHAS. *See id.* Given these characteristics, the proposed center is consistent with Policy SH 1.5, which encourages public/private partnerships that complement each other and facilitate centrally located services, as well as Policy SH 2.6, which encourages the clustering of services such as day care, health care, human services, educational programs, and schools.

For these reasons, and based upon the additional goals and policies identified in the Staff Report, the Hearing Examiner 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 December 5, 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 Exhibit 4*. 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 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 given its physical characteristics. The existing Logan Elementary School has been operating in that location for decades. The site is already developed with the school building, playground, parking lot, and landscaping. The site is basically flat and does not present any specific, physical limitations on development. SPS is proposing a 4,965 SF addition on the southeast corner of the building/site. See Staff Report, p. 4. The plans and conceptual drawings demonstrate that the property is sufficient in size and shape to accommodate the proposal. See Exhibit 3. The addition will be one story in height and designed to complement the school and blend in with the neighborhood. See Exhibit 1, p. 11. The size and scale of the addition will be compatible with the size of the site and the single-family homes across the street. See *id.*; see also *Testimony of M. McFadgen*.

There is no evidence that the soils, drainage characteristics, or the presence of ground or surface water makes the site unsuitable for the proposal. There are no known cultural or historic resources on this site. See Staff Report, p. 5. In any case, the development will be required to satisfy all the applicable design standards, such as height, setbacks, and lot coverage. See *e.g.* Condition 3.

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).*

This application is categorically exempt from SEPA review per SMC 17E.050.080. As a matter of policy judgment, then, this type of use is not considered to have significant impacts on the environment. That aside, there is no evidence in this record suggesting that the proposal will have substantial impacts on the environment.

The site has been the home of Logan Elementary School for more than 100 years. See Staff Report, p. 5. The addition is a single story and less than 5,000 SF in size. The scale of the proposal fits with the neighborhood. The proposed use is new, but at that scale will not result in a material change in the intensity of the use or the corollary impacts. The parking available is sufficient to support the use, in accordance with the parking standards. *Testimony of M. McFadgen*. The project is designed to complement the school and blend in with the neighborhood. Moreover, the applicant will be required to meet the standards set out in SMC 17C.110.500 through SMC 17C.110.575, Institutional Design Standards in Residential Zones, at

time of building permit review. See Staff Report, p. 5. These standards provide additional assurance that the proposed use will be harmonious with the surrounding neighborhood.

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 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 school has been operating in that location for decades. The proposed addition is a single-story and is less than 5,000 SF. The expansion of the school building is relatively modest in scale. The addition was professionally designed to complement the school and blend in with the surrounding residences. *Testimony of M. McFadgen*. For example, the materials for the addition were selected with this goal in mind. See *id.* The design also minimizes impacts to sidewalks, parking, and other features that may affect the neighbors. See *id.* Given these features, the proposed addition is not disproportionate to the nearby residential uses. 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 new addition will not have a material, negative impact on the neighborhood. See Staff Report, p. 6. The new addition will match the construction material, building scale, and style of the existing school building. See *id.*; see also Exhibit 3. The addition will meet setbacks and all other development standards of the RSF zone. See Staff Report, p. 6; see also Condition 3. Landscaping will be required for proper buffering. See SMC 17C.200.040(A)(1)(e). The project must also adhere to SMC 17C.110.500 through SMC 17C.110.575, Institutional Design Standards in Residential Zones, which further assures that the project will be compatible with the neighborhood. See Condition 1. The Hearing Examiner 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 undue light, glare, odor, or litter, nor will it give rise to diminished privacy or safety. See Staff Report, p. 6. No late-night operations are planned at the center. See *id.* The hours of operation will be normal business hours, roughly coinciding with the operating hours¹ of the school. *Testimony of T. Schmidt & G. Forsyth*.

One could object that operating a health clinic in an elementary school raises inherent safety or security issues. While this is a reasonable concern, the community wellness center will be operated independently from the school. There will be no doors connecting the early learning

¹ That said, it should be noted that the community wellness center may operate 12 months of the year, unlike the school. *Testimony of G. Forsyth*.

center or the school with the community wellness center. *Testimony of M. McFadgen*. There will be a clear, separate, main entrance to the community wellness center. *See id.*; *see also* Exhibit 3, p. 3. Staff and patrons of the center will access the center through that main entrance. *Testimony of M. McFadgen*. The center is disconnected from the school in this manner in order to maintain school lockdown procedures. *Testimony of G. Forsyth*. The project will also include some basic security features. The SPS explained:

The building, campus, driveway, and parking areas will be illuminated with state-of-the-art fixtures that will minimize spill-over light. The building will be alarmed and include a fire control system and security monitoring system.

See Exhibit 1, p. 12. The Hearing Examiner concludes that the project design properly addresses any safety and security concerns. No evidence was presented at the hearing to suggest otherwise.

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).*

The project does not create any new or unique burdens on the transportation system or on other public facilities. *See* Staff Report, p. 7. As already stated, no department reported that public facilities were not adequate to support the project. *See* Paragraph IV.3. The site will continue to have access to all City of Spokane public services. *See* Staff Report, p. 7. On-site parking will be modified to compensate for the additional square footage being added, and access to the on-site parking will be provided through the existing parking lot. *See id.*

Having said that, there was public testimony raising the concern that the project will increase the demand for on-street parking and, thereby, reduce the available parking for neighbors. *Testimony of J. Crane*. This problem will be exacerbated by the fact that the City has instituted a “no parking” area on the north side of Montgomery Avenue, next to the school, to accommodate pick-up and drop-off of students. *See id.*; *see also Testimony of G. Forsyth*.

While the Hearing Examiner is sympathetic to this concern, there are insufficient grounds to justify additional conditions related to parking. The school already provides 43 off-street parking spaces. *See* Exhibit 1, p. 5. Two of those spaces will be lost when the addition is constructed, leaving 41 spaces to support the project. *Testimony of M. McFadgen*. However, under the parking standards, only 31 spaces are required, even after accounting for the addition. *See id.*; *see also* Exhibit 1, p. 5. The proposal, therefore, satisfies the code requirements for off-street parking.

The Hearing Examiner does not doubt that the normal operation of a school has an impact on on-street parking available for area residents. However, it must also be acknowledged that individual homeowners do not have a “right” to park on the street in front of their residences. The public right-of-way is owned by the public, not any individual property owner. In the end, the public right-of-way is a common resource that must be shared, and that means there will be limitations and conflicts to some degree. That said, if there are changes to be made to the parking scheme along a public right-of-way, that is a matter for the Traffic Department to determine. This record is not sufficient to support specific conditions related to this proposed development.

The Hearing Examiner concludes that this criterion is satisfied.

V. 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, and Institutional Design Standards to maintain compatibility with and limit the negative impacts on surrounding residential areas.
2. Spokane Tribe of Indians requests that if any artifacts or human remains are found upon excavation, the Planning Service office should be immediately notified, and the work in the immediate area cease.
3. Adhere to any additional performance and development standards documented in comments or required by City of Spokane, Spokane County, Washington State, and any Federal agency.
4. 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.

5. 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.
6. 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 23rd day of February 2023.



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 February 24, 2023. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS MARCH 20, 2023, 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.