

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Conditional Use Permit)
Application by The Falls, LLC for a) FINDINGS, CONCLUSIONS,
12-story residential structure with 38-) AND DECISION
units and one level of underground)
parking in the Downtown General) FILE NO. Z23-598SCUP
zone.)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Collins Woerman, on behalf of the property owner The Falls, LLC, has applied for a shoreline conditional use permit (SCUP) for a 12-story residential structure with 38-units and one level of underground parking. The scope of the proposal also includes a future plan that includes a 12,000-square-foot restaurant with associated parking. A portion of this proposal is within the Shoreline Jurisdiction.

Decision: APPROVED, subject to *revised* conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Agent: Collins Woerman c/o John Eckert
502 W Riverside Avenue
Spokane, WA 99201

**Applicant/
Owner:** The Falls, LLC c/o LB Stone Properties
PO Box 3949
Spokane, WA 99220

Property Location: The project is located at 630 N Lincoln Street and 829 W. Broadway Avenue (parcel nos. 35183.0033 and 35183.0034).

Legal Description: The legal description for the site is provided in Exhibit 2.

Zoning: DTG (Downtown General).

Comprehensive Plan (CP) Map Designation: Downtown

Shoreline Designations: North of the Spokane River; Intensive Urban Environment (IUE); 50-foot buffer; Downtown Shoreline District

Environmental Overlays: Fish & Wildlife Habitat Area (RHA-2)

Site Description: The development site is located on the southeast corner of Lincoln Street and Broadway Avenue, on the periphery of downtown and immediately adjacent to

the upper Spokane River falls. The site has an irregular shape and is approximately 2.25 acres in size. The north portion of the site is vacant, recently demolished and cleared. The south portion of the site is currently asphalt-paved parking. The Spokane River traverses along the eastern and southerly border of the site. The site shares a property line to the east with Riverfront Park. There is pedestrian access to the site along routes from the pedestrian suspension bridge in Riverfront Park and the soon to be completed Post Street Bridge. The site has a unique and scenic view of the Monroe Street Bridge, the Spokane River Gorge, and the upper falls.

Surrounding Zoning and Uses: The properties surrounding the site in all directions are zoned DTG. Directly north of the site, across the street on West Broadway Avenue, is the Wonder Building. To the west, across North Lincoln Street, is a historic building. Directly to the south is the Anthony's Restaurant and the Post Street Bridge. To the west are various commercial buildings and parking areas.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17E.060, Environmental Standards; and SMC 17G.061.310, Decision Criteria.

Notice of Community Meeting: Mailed: October 30, 2023
Posted: October 30, 2023

Notice of Application/Public Hearing: Mailed: February 6, 2024
Posted: February 6, 2024

Hearing Date: March 13, 2024

SEPA: A Determination of Nonsignificance (DNS) was issued by the City on September 28, 2017, under a previous application that subsequently expired (Z17-418SCUP). The DNS was not appealed. It was determined that the DNS was still applicable to the new proposal, as the scope of this current proposal is less intensive than the previous proposal for which the original SEPA checklist and DNS were based upon.

Testimony:

Donna deBit, Senior Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

John Eckert
Collins Woerman
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Wes Southwick
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Present at the hearing or submitted comments to the record:

Kaitlin Desormier
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Cathy Henneberry
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Exhibits:

1. Planning Services Staff Report, 11 pp.
2. Application, including:
 - General Application, pp. 1-3
 - Shoreline Permit Application, pp. 4-10
 - Shoreline/Critical Areas Checklist, pp. 11-13
 - Notification Map Application, pp. 14-15
3. Site Plans, 2 pp.
4. Habitat Management Plan, pp. 32
5. YWCA Hazmat Surveys Report, pp. 255
6. Geotechnical Engineering Evaluation, pp. 34
7. SEPA Determination (p. 1) and Environmental Checklist (pp. 2-26)
8. Request for Comments (pp. 1-2), including:
 - City of Spokane Engineering, p. 3
 - Avista, pp. 4-9
 - Spokane Tribe of Indians, pp. 10-11
9. Notice of Application and Hearing Materials, including:
 - Instructions, pp. 1-2
 - Notice of Application and Public Hearing, pp. 3-4
 - Noticing Map and List of Parcels, pp. 5-6
 - Public Comment, p. 7
10. Community Meeting Materials, including:
 - Instructions, pp. 1-2
 - Notice of Community Meeting, pp. 3-4
 - Meeting Recording Link, p.5
11. Design Review Board Materials, including:
 - Application, p. 1
 - Review Checklist, pp. 2-3
 - Recommendation Meeting, pp. 4-5
 - Design Proposal, pp. 6-40
12. Noticing Affidavits, including:
 - Community Meeting Affidavits, pp. 1-3
 - Public Hearing Affidavits, pp. 4-5
13. Staff Presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed SCUP must comply with the criteria set forth in Spokane Municipal Code Section 17G.061.310. The Hearing Examiner has reviewed the proposed SCUP application and the evidence of record with regard to this section and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use code. See SMC 17.G.061.310(C)(1).*

The Falls is a mixed-use project. The proposal is a 12-story residential structure with 38-units and one level of underground parking. See Exhibit 1, p. 1. The scope of the proposal also includes a future plan that includes a 12,000-square-foot restaurant with associated parking. See *id.* The project site is zoned DTG, a downtown zoning category. See *id.*

The DTG zone is characterized as a mixed-use category. See SMC 17C.124.030(B). A wide range of uses are allowed in this zone. See *id.* In particular, retail, residential, and office uses are encouraged, especially as part of a mixed-use development. See *id.*

The uses specifically allowed in the downtown zones are shown on Table 17C.124.100-1. Pursuant to that table, Residential Household Living is permitted outright in the DTG zone. See Table 17C.124.100-1. The term Residential Household Living includes uses such as apartments and condominiums. See SMC 17C.190.110. The project also includes a restaurant. Those uses also fall into the category of Retail Sales and Service. See Exhibit 1, p. 2. Retail Sales and Service is also allowed, but with certain limitations. See SMC 17C.124.110(A)(6); see *also* Table 17C.124.100-1.

Under the DTG zoning, the proposed uses are allowed. However, that does not end the inquiry. A determination must be made whether the proposal is allowed under the shoreline regulations. According to the official Shoreline Map (SMC 17.E.060.060), this parcel is within the IUE shoreline designation. Pursuant to the shoreline standards, residential multi-family (four or more dwelling units) are categorized as a “conditional use” in the IUE designation. See SMC Table 17E.060-690-1. Restaurants and other improvements facilitating public access to the shorelines are considered “Water-Enjoyment Uses.” See SMC 17E.060.360(D)(3). Water-enjoyment commercial uses are permitted. See Table 17E.060-690-1. As a result, the apartments and condominiums included in the project may be allowed as a conditional use. Parking, which is accessory to a permitted use, is also permitted in the IUE. See *id.*

Under both the zoning and shoreline designations, the proposal is allowed, provided the application satisfies the development standards and the criteria for a conditional use. Therefore, the Hearing Examiner finds this criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17.G.061.310(C)(2).*

The CP designates the site as “Downtown.” This designation is intended to encourage a diversity of activities and a mix of uses. See CP, Chapter 3, Land Use, p. 3-13. A variety of goods and services should be available. See *id.* Downtown serves as the primary economic and cultural center of the region. See *id.*

The site is also designated as IUE under the Shoreline Master Program. The IUE designation contemplates an intensive public use of the shoreline. See CP, Chapter 14, Shorelines, p. 11. Development in the IUE should be managed so that it enhances and maintains the shorelines for a variety of urban uses. See *id.* Priority is given to public access to the shoreline, both physical and visual. See *id.*

The proposal includes a mixture of uses, including condominiums and a future restaurant. This mixture of uses, along with a design intended to enhance the public use and access to the shoreline, is clearly consistent with the designations for the property. The mixture of uses included in the project are also well-supported by several CP goals and policies.

For example, Policy ED 2.4 calls for the support of mixed-use development that brings employment, shopping, and residential activities to shared locations that stimulate economic activity. See CP, Chapter 7, Economic Development, p. 9. Similarly, Policy LU 1.9 promotes a diversity of activities and a variety of uses in the Downtown area. See CP, Chapter 3, Land Use, p. 13. That mixture of uses includes residential, office, entertainment, and retail. See *id.* Policy N 1.1, entitled “Downtown Development,” encourages the development of a variety of housing, recreation, and daily service activities in the downtown area. See CP, Chapter 11, Neighborhoods, p. 5. This promotes downtown as a primary economic and cultural center of the region. See *id.*

The project also addresses the policies that specifically relate to shorelines. For example, the proposed conditions of the project require the Applicant to engage in restoration, rehabilitation, and enhancement of the shoreline in order to offset the impacts of the proposal. See Exhibit 1, p. 10. A Habitat Management Plan was prepared to ensure there would be no adverse impacts from the project. See Exhibit 4. Under that plan, historically degraded areas of the shoreline will be rehabilitated, in furtherance of the policy requiring that there be no net loss of ecological functions. See *id.* The Habitat Management Plan also prescribes noxious weed control, the removal of ornamental/non-native plants, the planting of native grasses, and the replacement of evergreen and deciduous trees, shrubs, and groundcover to exceed the replacement ratios specified by the City Code. See *id.*; see also Exhibit 1, p. 10.

The proposed conditions and mitigation measures fulfill Policy SMP 1.3, which provides that developers must ensure that there is no net loss of ecological functions of the shoreline. See Policy SMP 1.3, CP, Chapter 14, Shorelines, p. 23. Planting with native species also promotes Policy SMP 4.5, which encourages landscaping with native plant communities as new development occurs. See Policy SMP 4.5, CP, Chapter 14, Shorelines, p. 29. The conditions also further the objectives of Policy SMP 5.4. That policy states that new development should include adequate provisions for the protection of water quality, erosion control, landscaping, aesthetic characteristics, habitat, normal public use of the water, and other matters. See CP, Chapter 14, Shorelines, p. 30.

The project also incorporates new public spaces such as a plaza for both car and pedestrian access. See Exhibit 3. This feature is consistent with Policy SMP 8.3, which encourages the enhancement of public access to the river in the Central Business District in the form of plazas, vistas, pedestrian ways, and other means. See CP, Chapter 14, Shorelines, p. 34.

Because the project is consistent with the designations, goals, and policies of the CP, the Hearing Examiner finds that this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010. See SMC 17.G.061.310(C)(3).*

The decision criteria for Type III decisions (such as a SCUP) require that these types of applications satisfy the concurrency requirements under SMC 17D.010. See SMC

17G.061.310(C)(3). Accordingly, on December 21, 2023, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 8.

The city received various comments regarding the proposal. See e.g. Exhibit 8, pp. 3-11. None of the commenting departments or agencies reported that concurrency could not be achieved. See Exhibit 1, p. 11. The Spokane Tribe of Indians acknowledged that while a cultural survey and traditional cultural property study have been completed, the Applicant will still be required to implement an Inadvertent Discovery Plan into the scope of work. See *id.* 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. This criterion is satisfied.

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 17.G.061.310(C)(4).*

The site area is suitable for redevelopment per the site plan submitted with this application. See Exhibit 1, p. 7. The Applicant lists all physical and environmental elements located on the site, or in the vicinity, in the Environmental Checklist that was reviewed with the original proposal in 2017. See *id.* The only change to the site since the last proposal is the removal of the old YMCA building in 2018. See *id.*

City departments and other agencies also reviewed the Environmental Checklist for physical characteristics of the property. See *id.* A Habitat Management Plan and a Geotechnical Engineering Study were prepared for the previous proposal and are part of this record. See Exhibits 4 and 5, respectively. The Applicant will be required to update the Habitat Management Plan if the proposal becomes more impactful than what the original scope covered. See Staff Report, p. 7.

Based upon the foregoing, the Hearing Examiner concludes that this criterion for project approval 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 17.G.061.310(C)(5).*

As mentioned above, required studies were performed and reviewed by applicable departments and agencies. Their findings and recommendations will be incorporated into the conditions of approval for this proposal. An Environmental Checklist dated July 14, 2017, was submitted by the Applicant for the previous proposal, and this most recent proposal falls within the scope of that review. See above; see *also* Exhibit 1. The City issued a DNS on September 28, 2017. See Exhibit 7. The deadline to appeal the DNS expired on October 12, 2017. See *id.* The DNS was not appealed.

The project will be required to meet shoreline design standards found in SMC 17E.060 as well as the Downtown design standards found in SMC 17C.124. See Exhibit 1, p. 7. This

site is also within the North River Overlay (NRO) District and is subject to those standards. See *id.* The NRO provides visual and pedestrian access standards and guidelines to ensure that buildings and other constructed objects do not create barriers that wall off the Spokane River Gorge, Riverfront Park, or the Downtown Core (17C.160.010). See *id.*

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment that cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. For shoreline conditional use permits the following additional criteria apply:

- a. *The proposed use is consistent with the policies of [Revised Code of Washington] RCW 90.58.020 and the Shoreline Master Program.*

The Hearing Examiner agrees with Staff's conclusion that this proposal is consistent with the policies of the Shoreline Master Program. See Exhibit 1, p. 7. In particular, the Staff noted as follows:

This proposal is consistent with 90.58 RCW the Shoreline Management Act. This proposal implements the Shoreline Management Act as enunciated in RCW 90.58.020. This proposal recognizes the interest of the public while enhancing the natural character of the shoreline, results in long term benefit, increases public access to the shoreline, and increases passive recreational opportunities for the public in the shoreline. The procedures of Chapter 173-27 of the [Washington Administrative Code] WAC have been followed.

See *id.* In addition, the proposal is consistent with the adopted shoreline policies, as is discussed in some detail in Paragraph 2 above.

The site is designated in the Shoreline Master Program as IUE and as part of the Downtown Shoreline District. The "intensive urban" environment is intended to support a variety of uses, including higher-intensity urban, residential, commercial, and office uses. See *id.* The density and intensity of these uses is balanced with a mix of open space and recreational and cultural facilities. See *id.* The proposed use fits well within that mix.

The Hearing Examiner concludes that the project is consistent with the policies of state law and the Shoreline Master Program. Therefore, this criterion for approval is satisfied.

- b. *The proposed use will not unreasonably interfere with the normal public use of public shorelines;*

The Hearing Examiner concludes that this project does not affect "normal public use" of the shorelines by the public. This proposal includes multiple areas on site that would allow the public to access views of the shoreline and river. See Exhibit 1, p. 8. There is a plaza space to be installed adjacent to the shoreline, to the east of the drop-off and turnaround for vehicles. This space is intended to also have a connection to the restaurant, providing public access to views of the Spokane River and Downtown Spokane. See *id.* It is of further note to reiterate that this location of the shoreline has dangerously steep slopes above the falls and is not intended to provide physical access to the river, but can only be used for viewing the river, falls, and surrounding areas. This proposal does not interfere

with this imperative and may enhance such. The Hearing Examiner concludes that this criterion is satisfied.

- c. *The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program.*

There are other SCUPs in the general vicinity, however, they all work together to improve the Spokane River Shoreline experience and implement the goals and policies outlined in the Shoreline Master Program. See Exhibit 1, p. 8. Recent redevelopment in the Downtown and the Riverfront Park renovations have all had a positive impact on our community and worked together to increased public access to the Spokane River. See *id.* Avista has added in-water weirs to the Spokane River as part of their aesthetic spill project. See *id.* The Post Street Bridge is near completion and will be a prominent connection of Downtown to the North Bank. See *id.* Huntington Park was renovated and the Gathering Place outside of City Hall was added as a great connection from the falls to the park. See *id.* The Convention Center recently completed a major expansion and shoreline restoration along the Centennial Trail. See *id.* All of these activities have worked in harmony to showcase one of our City's most valuable assets. See Exhibit 1, pp. 8-9. The Hearing Examiner finds this criterion satisfied.

- d. *The proposed use of the site and design of the project is compatible with other authorized uses within the area and with the uses planned for the area under the comprehensive plan and the Shoreline Master Program.*

As has been discussed above, the project is well-designed to fit the site and the surrounding neighborhood. Ultimately, the Hearing Examiner agrees with the Staff's comment on this issue:

This project is suitable for residential and commercial development and will improve public access to the Spokane River. The applicant attended a collaborative workshop with the Design Review Board on October 31, 2023, and had a final recommendation meeting on January 17, 2024. During those discussions all parties agreed that it would be important to provide a pedestrian connection between the two project parcels as they will interact with each other once fully developed. The design of the building itself also provides an attractive mix of outdoor living space and ample windows. The Design Review Board Recommendations are included in the record.

See Exhibit 1, p. 9. In addition, the project will be required to meet shoreline design standards found in SMC 17E.060, as well as the Downtown design standards found in SMC 17C.124 at the time of building permit. See *id.* For these reasons, and for the reasons discussed elsewhere in this decision, the Hearing Examiner concludes that this criterion is satisfied.

- e. *The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located, and the public interest in enjoying the physical and visual access suffers no substantial detrimental effect.*

The redevelopment of the site will allow for enhanced public access as well as new views and vistas of the Spokane River, Downtown, and Riverfront Park. See Exhibit 1, p. 9. Currently the site consists of a parking lot and a vacant lot where the old YMCA building was located, then removed. See *id.* This proposal will provide new shoreline visual access points for the public to enjoy and will increase the amount of native vegetation that exists in the shoreline, because it's currently mostly bare ground with several non-native species. See *id.* While there is not a final design, the location of the future restaurant will take advantage of the views of the falls and park. See *id.* While it is true that construction will create impacts on access and views in the short-term, the long-term effect of the project will be positive. See *id.* The Hearing Examiner concludes that this criterion is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the Shoreline Conditional Use Permit for the mixed use project known as The Falls, subject to the following conditions:

1. This Shoreline Conditional Use Permit is subject to the compliance of this proposal with all applicable codes and requirements including shoreline regulations, public access, building height, bulk, setbacks, and site coverage.
2. The site shall be developed in substantial compliance with the plans submitted with this application, as well as comments received on the project from City Departments and outside agencies with jurisdiction.
3. The Shoreline Master Program, SMC 17E.060 and SMC 17E.020, require no net loss of shoreline ecological functions that could result from the proposal. Pursuant to Section 17E.060.220, the Applicant shall engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts resulting from this proposal.
4. Public access to the Spokane River and river views shall be required as part of the Shoreline Master Program and SMC 17E.060.280. The Applicant is proposing to *provide public access to views of the river from the plaza and the future restaurant.*
5. The contractor is required to have a Construction Stormwater Pollution Prevention Plan in place prior to and during construction in order to prevent sediment laden stormwater run-off or other pollutants from entering the Spokane River.
6. At the time of submitting the proposal for building permit review, the Applicant shall show they have incorporated the recommendations of the Design Review Board into their design per 17G.040.080.D.
7. If the proposal becomes more impactful than what the July 10, 2027, Habitat Management Plan covers, that Habitat Management Plan shall be updated and submitted to the Planning Department for review and approval.
8. 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.

9. Per The Spokane Tribe of Indians comment provided on January 2, 2024, the Applicant will need to incorporate an Inadvertent Discovery Plan into their scope of work.
10. If any artifacts or human remains are found upon excavation, 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.
11. 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.

12. 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 27th day of March 2024.


Kari J. Granrath
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.061.340 and 17G.050.

Decisions of the Hearing Examiner regarding shoreline conditional use permits are reviewed by the Washington State Department of Ecology. After review, they may be appealed to the Washington State Shoreline Hearings Board. **All appeals must be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date of the Ecology decision.**

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.