

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application) FINDINGS, CONCLUSIONS,
by Summit Behavioral Healthcare) AND DECISION
LLC Use in a Residential Single-)
Family Zone.) FILE NO. Z24-259CUP3

I. SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Summit Behavior Health Care, LLC (Summit), is seeking a conditional use permit (CUP) for a change of use for an existing building located at 102 W. Rhoades Avenue. The current use is a hospice facility, a Community Services use. The Applicant is proposing a 36-bed, inpatient residential substance use and disorder treatment facility, a Group Living use. The previous use was established under Conditional Use Permit application file no. Z2009-53-CUP3. No additions to the building nor any changes to the site are proposed.

Decision: The application is approved, with *revised* conditions.

**II. FINDINGS OF FACT
BACKGROUND INFORMATION**

Applicant: Summit Behavioral Healthcare, LLC
501 Corporate Centre Drive, Suite 600
Franklin, Tennessee 37067

Owner: Hospice of Spokane
121 S Arthur Street
Spokane, Washington 99202

Property Location: 102 W. Rhoades Avenue, Spokane, WA (Parcel No. 36301.0011)

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

Comprehensive Plan Map Designation: The parcels are designated as Open Space in the City of Spokane Comprehensive Plan (CP).

Site Description: The site is located on the north side of W. Rhoades Avenue, just west of N. Division Street in the Shiloh Hills neighborhood. The site is currently owned by Hospice of Spokane and is improved with the building, parking lot, and site improvements.

Surrounding Conditions and Uses: The surrounding zoning is Residential 1 (R1) to the north and west and General Commercial (GC-70) to the east. Properties to the south are in Spokane County jurisdiction and zoned Medium Density Residential (MDR) and High Density residential (HDR) per Spokane County mapping.

The adjacent land use designations are Open Space to the north and west, Commercial to the east, and Residential Low and Residential Moderate to the south.

Project Description: The Applicant is proposing a change of use for the existing 13,000 square foot building located at 102 W. Rhoades Avenue. The parcel is approximately 2.37 acres in size. The current use is a hospice facility, a Community Services use. The Applicant is proposing a 36-bed, voluntary inpatient residential substance use and disorder treatment facility, a Group Living use. The length of stay for residents will be 30 days or longer. The proposed use is not affiliated with any judicial detainment programs nor any alternative or post incarceration programs. No additions to the building nor any changes to the site are proposed. Interior modifications to the building are expected to accommodate for the proposed use and increased occupancy. The previous use was established under Conditional Use Permit application file no. Z2009-53-CUP3, which approved a 13,000 square foot building with a 12-bed capacity. The previous CUP did include a provision stating the building may be expanded to 16,000 square feet and 20 beds. No expansion is proposed with this application.

III. PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.111, Residential Zones; SMC 17C.320, Conditional Uses; 17C.330 Group Living; and SMC 17G.061, Land Use Application Procedures.

Notice of Community Meeting: Mailed: April 18, 2024
Posted: April 17, 2024

Notice of Application/Public Hearing: Mailed: July 16, 2024
Posted: July 18, 2024

Community Meeting: May 6, 2024

Public Hearing Date: August 8, 2024

Site Visit: August 9, 2024

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

Testimony:

Steven Bafus, Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Nathan Smith
Kutak Rock LLP
510 W. Riverside Avenue, Suite 800
Spokane, Washington 99201
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Andy Hanner
Andy.hanner@summitbhc.com

Stephanie Redwine
Stephanie.redwine@summitbhc.com

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

Cory Barbieri
cbarbieri@g-b.com

Exhibits:

Staff Report, dated 8/2/24, including the following exhibits:

1. Application Materials, including:
 - General Application, pp. 1-2
 - Conditional Use Permit Application, pp. 3-5
 - Project Overview, pp. 6-9
 - Receipt of Fees, p. 10
2. Notice of Application & Public Hearing Materials, including:
 - Notice of Application & Public Hearing Instructions, pp. 1-2
 - Notice of Application and Public Hearing, pp. 3-5
 - Notification Map Application, pp. 6-12
 - Noticing Affidavits, pp. 13-14
3. Request for Agency Comments, pp. 1-3, including:
 - City of Spokane Plans Examiner, p. 4
 - Spokane Fire Department, p. 5
 - City of Spokane Traffic, pp. 6-7
 - Spokane County Public Works, p.8
 - Shiloh Hills Neighborhood Council, p. 9
 - Spokane Tribe of Indians, p. 10
4. Community Meeting materials, including:
 - Community Meeting Instructions, pp. 1-3
 - Notice of Community Meeting for April 27, 2023, pp. 4-10
 - Meeting Attendance, p. 11
 - Noticing Affidavits, pp. 12-13
 - Meeting Audio Recording
5. Historical Records – Decision in Z20009-53-CUP3
6. Staff Presentation
7. Applicant Letter to the Hearing Examiner
8. Applicant Presentation

IV. FINDINGS AND CONCLUSIONS

To be approved, the proposed CUP must comply with the criteria set forth in SMC Sections 17G.061.310(C) and 17C.320.080(F). The Hearing Examiner has reviewed the proposed CUP and the evidence of record with regard to the application and makes the following findings and conclusions:

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

The project site is zoned RSF, a residential category. The uses allowed in the residential zones are shown on Table 17C.111.100-1. See SMC 17.111.110. Certain kinds of “Institutional” uses

are allowed in the RSF zone, including “Group Living.” See Table 17C.111.100-1. Group Living is allowed in the RSF zone, provided a CUP is obtained. See Table 17C.111.100-1.

“Group Living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Residential Household Living.” See SMC 17C.190.100(A). Tenancy is arranged on a month-to-month basis, or for a longer period. See *id.* The residents may or may not receive any combination of care, training, or treatment, as long as they also reside at the site. See *id.* Accessory uses commonly found are recreational facilities, parking of autos for the occupants and staff, and parking of vehicles for the facility. See SMC 17C.190.100(B).

The proposed inpatient residential substance use and disorder treatment facility qualifies as “Group Living” under the zoning code. The proposed use will be a facility serving a population who are seeking voluntary inpatient residential treatment for substance abuse. See Staff Report p. 4. Summit owns and operates 37 inpatient behavioral health facilities in 20 states, including voluntary mental health and substance use disorder treatment and residential chemical dependency programs. See Exhibit 7; *Testimony S. Redwine*. These facilities provide for a range of services, including 24/7 clinical staff, semi-private sleeping quarters and common dining facilities. *Id.* A CUP is necessary in this case because the Applicant proposes to serve patients in a residential setting. See Staff Report p. 3. The proposal is also in compliance with all applicable standards within SMC 17C.330. *Id.*

Pursuant to the foregoing authorities, the proposed Group Living facility is allowed, so long the CUP requirements are satisfied. The Hearing Examiner concludes that this criterion is satisfied.

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

The Summit facility will serve a population who are seeking voluntary inpatient residential treatment for substance abuse. See Staff Report, p. 4. For several reasons, this proposal is consistent with various goals and policies of the CP. See Staff Report, p. 3.

The proposal is consistent with Policy SH 2.2, which seeks to disperse special needs temporary housing evenly throughout all neighborhoods. See CP, p. 10-9. The proposal is also consistent with Policy SH 2.3, which encourages facilities that accommodate special needs populations blend in with the existing visual character of the neighborhood in which they are located. See CP, pp. 10-9.

The Hearing Examiner agrees with the Staff that the proposed use serves all these goals and policies and, therefore, is in the public interest. The Hearing Examiner concludes that this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010 SMC. See SMC 17G.061.310(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.061.310(C)(3). Accordingly, on May 24, 2024, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 3. Staff confirmed that there were no departments or agencies reporting that concurrency could not be achieved. See Staff Report, p. 5. 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.061.310(C)(4).*

The Hearing Examiner concludes that the property is suitable for the proposed use given its previous use as hospice care in a more limited capacity. That aside, criterion only applies “if approval of a site plan is required.” See SMC 17G.061.310(C)(4). Because the proposed use is located entirely within an existing building with no exterior modifications, no site plan was required for this proposal. However, the Applicant provided a site plan as part of the application. *Testimony S. Bafus*. As a result, this criterion is not applicable. 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.061.310(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. In addition, there is no evidence in this record suggesting that the proposal will have substantial impacts on the environment or neighboring properties, especially considering that the structure already exists, and no new exterior construction or expansion is proposed.

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 not in the residential household living category in the residential area. See SMC 17C.320.080(F).*

The proposed Group Living use and increased occupancy will not significantly lessen the overall residential appearance and function of the area as the site is already developed with the building and associated improvements. See Staff Report, p. 6. The Applicant is not proposing any additions to the building or site changes. *Id.* Additionally, the original CUP allowed for additions, which could increase the building to 16,000 square feet. *Id.* This provision for an addition seems to indicate that previous findings also concluded that the proposal, even with a substantial expansion, did not significantly lessen the overall residential appearance and function of the area at time of that application. *Id.* The previous proposal was also required to meet the decision criteria of SMC 17C.320.080. *Id.* The Hearing Examiner, therefore, concludes that this criterion for approval is satisfied.

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 proposed CUP is for the change of use of an existing building. See Staff Report, p. 6. The building was required to meet physical compatibility requirements for the initial CUP. *Id.* The building was constructed in 2014 according to the Certificate of Occupancy on file. *Id.* The building has not been modified in terms of site size, building scale and style, setbacks, or landscaping since completion. *Id.* The Applicant is not proposing any additions or modifications that would reduce current physical compatibility. *Id.* The Hearing Examiner concludes, therefore, that this criterion is satisfied.

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. For example, no noise is anticipated from the proposed use and such use will have to comply with the City's noise ordinance. See Staff Report, p. 7. Nothing in this record suggests that the facility includes any process or activity that would result in odors. There may be some light or glare from existing building or parking lot lights. *Id.* Any new overhead lighting is required to be contained on site per SMC 17C.111.520. The Applicant does not anticipate that this proposal will result in impacts from noise, odor, light, glare, or litter. *Id.* There is no reason to question this conclusion, based on this record.

The current parking lot meets the minimum parking standards defined in SMC 17C.230. *Id.* The Applicant is not proposing any changes to the parking. *Id.* The change of use will trigger compliance with bicycle parking standards defined in SMC 17C.230.200 at time of building permit. *Id.*

No concerns about privacy have been raised. Per the Applicant, the facility is proposing to implement card only access, door alarms at all exterior doors, and exterior video cameras. *Id.* Visitors are not allowed except for family for the specific purpose of a family-oriented therapy session. *Id.* Family visitors are screened upon entry. *Id.* Based on the record before the Hearing Examiner, there is no reason to expect that the Summit facility will result in privacy-related impacts to nearby residential uses.

The Hearing Examiner concludes that the proposed clinic will have no material impact on the livability of the surrounding residential neighborhood. As a result, this criterion for CUP approval is 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. Existing public services are also capable of serving the proposed use. See SMC 17C.320.080(F)(4).*

The site fronts a portion of West Rhoades Avenue, which is Spokane County right-of-way and is improved with a separated sidewalk. See Staff Report, p. 7. The Rhoades Avenue right-of-way east of the subject site is within City of Spokane jurisdiction. *Id.* Per an email from Spokane County Public Works, frontage improvements for the proposed project are not required. *Id.* No departments or agencies stated that the proposal would conflict with street capacity, level of

service, or any other performance measures. *Id.* The site is approximately 300 feet west of North Division Street/US Highway 2, which is classified as an Urban Principal Arterial. *Id.* Spokane Transit Authority operates bus route 25, which has a stop at the intersection of West Rhoades and North Division. *Id.* The site has access to all City of Spokane public services and will not require any additions to be made to fully accommodate the proposed use. *Id.*

The Hearing Examiner concludes that the transportation system and other public facilities and services are sufficient to support the proposed use. Therefore, 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.111.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
2. Adhere to any additional performance and development standards documented in comment or required by City of Spokane, Spokane County, Washington State, and/or any federal agency.
3. An Inadvertent Discovery Plan will be required as part of the scope of work. 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.
4. Any proposed changes to the building and/or site are to be submitted to Planning Services for review. If Planning Services finds those proposed changes to be substantial, they will be forwarded to the Hearing Examiner for review.
5. *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.

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 22nd day of August 2024.



Karl 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 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 August 22, 2024. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS SEPTEMBER 16, 2024, 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.