

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit by Whipple)
Consulting Engineers to develop on) FINDINGS, CONCLUSIONS,
approximately 2.75 acres two residential) AND DECISION
care facilities totaling 32 beds in the)
Residential Multi Family Zone.) FILE NO. Z24-329CUP3

1 SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant is proposing to develop, through a Conditional Use Permit (CUP) on approximately 2.75 acres of land on one parcel, two residential care facilities: one 16-bed Enhanced Service Facility (ESF) as defined in Revised Code of Washington (RCW) 70.97 and Washington Administrative Code (WAC) 388-107, and one 16-bed Intensive Behavioral Health Treatment Facility (IBHTF). The project will access the public street system via North Crescent Avenue, which is currently an unimproved right-of-way along the project frontage. The unimproved right-of-way will be improved during development and construction. All building permits will be required to be obtained prior to any construction activities. This proposal requires a Type 3 (Group Living use category) CUP with a public hearing before the City Hearing Examiner.

Decision: Approved, with conditions.

2 FINDINGS OF FACT/BACKGROUND INFORMATION

**Applicant/
Agent:** Whipple Consulting Engineers, Inc.
Contact: Ray Kimball
21 S. Pines Rd.
Spokane Valley, WA 99206

Owner: River City Homes 1, LLC
P.O. Box 11742
Spokane Valley, WA 99211

Property Location: 2600 East Illinois Avenue, Spokane, WA (Parcel No. 35091.27060)

Legal Description: See Exhibit 2, p. 2

Zoning: RMF (Residential Multi Family)

Comprehensive Plan (CP) Map Designation: Residential Moderate (Higher Intensity Residential Area)

Site Description: The site is located at 2600 E. Illinois Avenue with frontage and access on East North Crescent Avenue and is currently owned by River City Homes 1, LLC. The site is currently undeveloped and is bordered by the BNSF railway on the north side. East North

Crescent Avenue is currently undeveloped dirt and will be fully improved during the construction of the proposed Assisted Living Facility.

Surrounding Conditions and Uses: RMF zoning is to the north on a parcel that contains the BNSF railroad; Residential 1 (R1) exists to the north of Illinois Avenue, while to the south, east, and west is RMF zoning. Land use to the north, south, east, and west is Residential Moderate; north of the BNSF railroad and Illinois Avenue is Residential Low; south of East Upriver Drive is Conservation Open Space of the Spokane River.

3 PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.111, Residential Zones; SMC 17C.320.080 (F), Conditional Use Decision Criteria; and SMC 17G.061.310, Decision Criteria.

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

Notice of Application/Public Hearing: Mailed: August 21 and September 10, 2024
Posted: August 21 and September 11, 2024

Community Meeting: May 8, 2024

Site Visit: October 22, 2024

Public Hearing Date: October 2, 2024

State Environmental Policy Act (SEPA): A Mitigated Determination of Nonsignificance (MDNS) was issued by the City of Spokane on October 10, 2024. Any appeal of the MDNS was due on October 24, 2024. No appeal was filed.

Testimony:

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

Austin Fuller
Whipple Consulting Engineers, Inc.
21 South Pines Road
Spokane Valley, WA 99206

Ray Kimball
Whipple Consulting Engineers, Inc.
21 South Pines Road
Spokane Valley, WA 99206

Phil Faris
2811 E. Upriver Drive
Spokane, WA 99207
phil@connects.org

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

Richard Schubach
pa.schubach@gmail.com

Unsigned
rich73leon@gmail.com

Exhibits:

1. Staff Report
2. Application materials, including:
 - General Application, pp. 1-2
 - Conditional Use Permit, p. 3
 - Notification Map Application, pp. 4-5
 - Supplemental Information and Development Narrative, pp. 6-13
 - Plans, Concepts, and Renderings, pp. 14-21
3. Request for Agency Comments, pp, 1-3, including:
 - City of Spokane Historic Preservation, pp. 4-12
 - Spokane Tribe of Indians, p. 13
 - Washington State Department of Ecology (WSDOE), pp. 14-15
 - City of Spokane Street Department, p. 16
 - City of Spokane Engineering, p. 17
 - Spokane Fire Department, pp. 18-20
 - Technically Incomplete Letter, pp. 21-22
4. MDNS and SEPA Checklist
5. Notice of Application & Public Hearing Materials, including:
 - Notice of Application & Public Hearing Instructions, pp. 1-2
 - Notice of Application and Public Hearing for October 3, 2024, pp. 3-4
 - Noticing Affidavits for October 3, 2024, pp. 5-9
 - Notice of Application and Public Hearing for October 2, 2024, pp. 10-11
 - Noticing Affidavits for October 2, 2024, pp. 12-27
 - Public Comments, pp. 27-35
6. Community Meeting materials, including:
 - Community Meeting Instructions, pp. 1-2
 - Notice of Community Meeting for April 27, 2023, pp. 3-5
 - Mailing List, p. 6
 - Noticing Affidavits, pp. 7-11
 - Meeting Attendance, pp. 12-16
 - Meeting Notes, pp. 17-18
 - Meeting Audio Recording
7. Staff Presentation
8. Applicant Letter to the Hearing Examiner
9. Applicant Presentation
10. SEPA MDNS Determination

4 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:

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

The project site is zoned MFR, a residential category. The uses allowed in the residential zones are shown on Table 17C.111.100-1. See SMC 17C.111.110. Certain kinds of “Institutional” uses are allowed in the MFR zone, including “Group Living.” See Table 17C.111.100-1. Group Living is allowed in the MFR 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. *Id.* The residents may or may not receive any combination of care, training, or treatment, as long as they also reside at the site. *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 ESF and IBHTF qualify as “Group Living” under the zoning code. The proposed use will be a facility serving a population who are medically fragile (ESF) or more intensive, supervised care (IBHTF). *Testimony A. Fuller.* A CUP is necessary in this case because the Applicant proposes to serve patients in a residential setting. See Exhibit 1, p. 4.

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.

4.2 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 proposed use will be a facility serving a population who are medically fragile (ESF) or more intensive, supervised care (IBHTF). *Testimony A. Fuller.* For several reasons, this proposal is consistent with various goals and policies of the CP. See Exhibit 1, p. 4.

The proposal is consistent with policy LU 1.4, which directs new higher intensity residential uses to areas in an around Centers and Corridors designated on the Land Use Plan Map and to areas where existing development intensity is already consistent with development of this type. See CP, pp. 3-9 & 3-10. The proposal is also consistent with Policy LU 3.1, which encourages coordinated and efficient growth and development through infrastructure financing and construction programs, tax and regulatory incentives, and by focusing growth in areas where adequate services and facilities exist or can be economically extended. See CP, pp. 3-18 & 3-19. Finally, the proposal is also consistent with Policy LU 5.5, which seeks to ensure that infill and redevelopment projects are designed to be compatible with and complement surrounding uses and building types. See CP, p. 3-29. Additionally, North Crescent Avenue will be improved as part of this project, which support Policy TR 17, which promotes the identification and prioritization of resources for paving exiting dirt and gravel streets and alleyways to reduce air pollution and prioritize infill and economic development. See CP, p. 4-28.

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.

4.3 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 July 11, 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 Exhibit 1, 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.

4.4 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.061.31(C)(4).

The Hearing Examiner concludes that the property is suitable for the proposed given the proposed site plans, layout concepts, and renderings provided by the project proponent. That aside, criterion only applies “if approval of a site plan is required.” See SMC 17G.061.310(C)(4). Because the project proponent will submit a site plan together with the building plans as a Building Permit package, which will be reviewed, to ensure compliance with applicable codes, including but not limited to the Spokane Municipal Code. The Building Permit package will be routed to all necessary City departments and outside agencies deemed to be necessary for the review and ultimate approval of the site plan. As a result, this criterion is not applicable. Based on the foregoing, the Hearing Examiner concludes that this criterion is satisfied.

4.5 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 proposed use is to be constructed on a site with no known previous structures and the site is located less than 0.10 miles of the Spokane River. See Exhibit 1, p. 5. During review of the SEPA, comments were received from both the Spokane Tribe and the Office of Historic Preservation requesting a Cultural Resource Survey to be completed and submitted to them prior to any ground disturbance activity. *Id.* As a result, an MDNS determination was issued for the SEPA on October 10, 2024. See Exhibit 10.

The proposed Group Living use has not been determined to increase the existing impacts and will have no significant adverse impacts to the environment. *Id.* However, the area has had extensive use by the Spokane Tribe in years prior to the arrival of European-Americans. See Exhibit 1, p. 6. The potential is high for artifact and other remains to be present on the site due to the long cultural history of the area and proximity to the Spokane River. *Id.* However, the artifacts may be sparse after years of non-Indian occupation and development, including the adjacent railroad. *Id.*

During the hearing, the Applicant indicated that the required Cultural Resources Survey had been requested and was pending implementation. *Testimony A. Fuller.* Therefore, 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.

4.6 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).

This proposal is located in an area adjacent to an existing BNSF railroad line and is under-developed. See Exhibit 1, p. 6. Immediately to the east of the subject site is an apartment complex which was constructed within the last few years. *Id.* To the south are other residential household living uses of various intensity, which have existed along East Upriver Drive for decades. *Id.* The remaining area to the west remains undeveloped at this time. *Id.* The submitted proposed site plan and architectural renderings show the site to be developed at an intensity and scale likely less than the apartments in the area, but more than the single family uses. *Id.* There are no commercial uses of a higher intensity located in the immediate area. *Id.* The Hearing Examiner, therefore, concludes that this criterion for approval is satisfied.

4.7 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 submitted preliminary site plan and architectural renderings, show the intent to develop this site in a compatible manner taking into account the site size, building scale, and setbacks. See Exhibit 1, pp. 6-7. There is landscaping, screening and other design features shown on the submitted plans. See Exhibit 1, p. 7.

The proposed use is compatible with the adjacent residential neighborhood development based on the submitted proposed plans. *Id.* However, at this time these plans are only conceptual in nature and have not been reviewed for full compliance with the Spokane Municipal Code, the adopted Building Code, or any other regulating documents. *Id.* A full review of the site, building, and architectural plans will be conducted at time of Building Permit submittal. *Id.* The new buildings will be required to comply with the Multi-Unit Design Standards just like a new multi-family building on this site would be; this will help ensure compatibility with surrounding uses. *Id.* The Hearing Examiner concludes, therefore, that this criterion is satisfied.

- 4.8 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, it is anticipated that due to the moderate intensity of the proposed group living use, noises will be equal to or less than other potential residential household living type uses which would be outright permitted in the zone. *Id.* Nothing in this record suggests that the facility includes any process or activity that would result in odors. The new construction will provide exterior lighting of the building and parking area. *Id.* The exterior lighting will be required to be shielded to reduce glare onto adjacent properties. *Id.* 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. Therefore, the Hearing Examiner concludes that the proposed use will have no material impact on the livability of the surrounding residential neighborhood. As a result, this criterion for CUP approval is satisfied.

- 4.9 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 public right-of-way is currently undeveloped dirt with few public utilities available directly adjacent to the subject site. See Exhibit 1, p. 8. If the CUP is approved, the proposed use will be required to improve the public services for utilities along with the full improvement of the roadway. *Id.* The public facilities to be improved would include water and sewer services, and the improvement to pedestrian facilities with the construction of sidewalks connecting to the existing facilities to the east. *Id.* Beyond the subject site, the existing transportation systems are capable of supporting the proposed use. *Id.* No City department or agency identified limitations or deficiencies to the Public Systems currently serving the site other than what was identified above. *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.

5 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.111.400, Land Use Standards, Residential Zones, Multi-Unit Design Standards, to maintain compatibility with, and limit the negative impacts on surrounding residential areas.
2. A cultural resource survey will be completed prior to any ground disturbing activity on the site. Copies of the cultural resource survey report will be submitted to the Spokane Tribe, the City Historic Preservation Office and within the building permit package.

3. The project site and buildings shall be developed in substantial compliance with the plans submitted with the application, as well as comments received on the project from City Departments and outside agencies that reviewed the project for concurrency.
4. 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.
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 25th day of October 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 October 25, 2024. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS NOVEMBER 18, 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.