

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Conditional Use Permit Application by ) FINDINGS, CONCLUSIONS,  
Mike Silvey to allow the construction ) AND DECISION  
of a surface parking lot on property )  
located at 2112 E. 29<sup>th</sup> Avenue ) FILE NO. Z16-138CUP3

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The applicant, Mr. Mike Silvey, seeks a conditional use permit in order to permit the construction of a 17-21 stall surface parking lot on an undeveloped lot in a residential multi-family zone. The parking lot will be operated as an accessory use to an existing professional office building located on adjacent property.

**Decision:** Approved, with conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant:** Mike Silvey  
Silvey Construction  
10221 E. Montgomery Avenue  
Spokane, Washington 99206

**Owner:** Sonneland Commercial Properties, LLC  
c/o Andrew Sonneland  
P.O. Box 562  
Colbert, Washington 99202

**Agent:** John Konen & Austin Storhaug  
Storhaug Engineering  
510 E. 3<sup>rd</sup> Avenue  
Spokane, Washington 99202

**Property Location:** The address of the site is 2112 E. 29<sup>th</sup> Avenue, Spokane, Washington. The site is designated as Parcel No. 35332.0001. The property located in the NE ¼ of the NW ¼, Section 25, Township 23 North, W.M., City of Spokane, County of Spokane, State of Washington.

**Zoning:** The property is zoned RMF (Residential Multi-Family).

**Comprehensive Plan Map Designation:** The property is designated as R 10-20 (Residential 10-20 units per acre).

**Site Description:** The site is 10,000 square feet and is undeveloped. The lot is rectangular in shape. The property is a vacant lot situated between an existing office building and associated parking to the west and a surface parking lot to the east. The northern portion of the site is generally flat. However, the site gradually increases in slope from north to south.

**Surrounding Conditions and Uses:** The land to the south, east and west of the property is zoned Residential Multi-Family (RMF). A short distance to the east, there are properties zoned both Office and Center and Corridor. The land to the north of the property is zoned Office-35. To the west of the site is an office building with associated parking. To the east is a surface parking lot, used by the same office building. Opposite the site, across 29<sup>th</sup> Avenue, is a multi-tenant commercial development.

**Project Description:** The Applicant proposes to construct a new, 17-21 stall parking lot, as an accessory use for the office building to the west. The Applicant does not own the subject site. However, the Applicant owns the two adjacent properties on each side of the undeveloped lot. The Applicant intends to construct the parking lot once he owns the subject site and has aggregated it into the two adjacent properties. The uses on the adjacent properties were previously approved by conditional use permit.

### **PROCEDURAL INFORMATION**

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

**Notice of Community Meeting:** Mailed: January 8, 2016  
Posted: January 7, 2016

**Notice of Application/Public Hearing:** Mailed: March 24, 2016  
Posted: March 24, 2016

**Community Meeting:** January 28, 2016

**Public Hearing Date:** April 28, 2016

**Site Visit:** April 27, 2016

**SEPA:** This project is exempt from SEPA pursuant to SMC 17E.050.070(D).

#### **Testimony:**

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

Mike Silvey  
10221 E. Montgomery Avenue  
Spokane, Washington 99206

John Konen  
Storhaug Engineering  
510 E. 3<sup>rd</sup> Avenue  
Spokane, Washington 99202

**Exhibits:**

1. Planning Services Staff Reports
2. Application, including:
  - 2A General Application
  - 2B Conditional Use Permit Application
  - 2C Narrative for 29<sup>th</sup> and Martin Parking lot
  - 2D Notification Map Application
  - 2E Site Plan
3. Engineering Services comments
  - 3A dated 03-07-16
  - 3B dated 04-14-16
4. Spokane Tribe of Indians comments
5. Spokane Transit comments
6. Notice map
7. Parcel listing
8. Address listing
9. Notice of Community Meeting
10. Notice of Application and Public Hearing
11. Affidavit of mailings:
  - 11A dated 01-08-16
  - 11B dated 03-24-16
12. Affidavit of posting:
  - 12A dated 01-07-16
  - 12B dated 03-24-16
13. Affidavit of sign removal dated 02-18-16
14. SEPA Exemption dated 04-15-16
15. Community Meeting sign in sheet
16. Community Meeting notes dated 01-25-16
17. Letter dated 12-29-15 to Austin Storhaug from Ali Brast  
re: community meeting instructions
18. Letter dated 03-01-16 to Interested Parties from Ali Brast  
re: requesting comments
19. Letter dated 02-26-16 to Austin Storhaug from Ali Brast  
re: notice of application/public hearing instructions
- A Exhibits received at hearing
  - A-1 Planning's PowerPoint presentation
  - A-2 Revised Site Plan

## FINDINGS AND CONCLUSIONS

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170 and 17C.320.080(J). The Hearing Examiner has reviewed the proposed conditional use permit 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 Residential Multi-Family ("RMF"), a residential category. To be approved in an RMF zone, an office use with associated parking is required to obtain a conditional use permit and is processed as a Type III application. See SMC 17C.110.110(B); see also Table 17C.110-1. The existing office building was approved as a conditional use in 2008. See Exhibit 1, p.3. However, the original CUP application did not include the subject property. See *id.* As a result, the proposal to expand the parking area associated with the existing office building requires a new application. See *id.* Provided the conditional use and other development standards are satisfied, the proposed use is therefore allowed in this zone. 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.060.170(C)(2).*

The Hearing Examiner agrees with the Staff that this project "helps advance the goals of the comprehensive plan by supporting neighborhood access to a variety of uses." See Exhibit 1, p. 3. The new parking lot will increase the utility of an existing office. See *id.* In this way, the project addresses public needs in a location where people live and work, in furtherance of Goal TR 3, Transportation and Land Use. See *id.* The project also results in the development of neighborhood infrastructure that enables citizens to live, work, socialize, and receive other essential services in their own neighborhood, consistent with Policy N 2.1, Mixed-Use Neighborhood Centers. See *id.* By expanding on the existing use, the project is maximizing the usefulness of existing neighborhood facilities and services, in accordance with Goal N 3, Neighborhood Activities. See *id.* Approval of the project will also promote the objectives Policy ED 3.5, Locally-Owned Businesses, which supports opportunities to expand locally-owned businesses. See *id.* For these reasons, the Hearing Examiner concludes that this criterion for approval is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions (such as a conditional use permit) mandate that all proposals must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on March 1, 2016, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 18.

The city received limited responses to its request for comments, and none of the responding agencies raised a concern about the concurrency standards. See e.g. Exhibits 3A, 3B, 4, & 5. City staff noted that "...there were no departments or agencies

that reported that concurrency could not be achieved.” See Exhibit 1, p. 3. To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. See SMC 17D.010.020(B)(1). In addition, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the conditional use permit is met.

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 finds that the property is suitable for the proposed use given its physical characteristics. The site is an undeveloped lot, situated between an existing office building and an existing parking lot serving the office building. Expanding the parking area that serves the office is clearly a compatible use of the site.

There are no problematic conditions apparent on this site. The parcel is rectangular in shape. See Exhibit A-2. The parking lot will only be developed on a portion of the site, and is well designed to fit the site. See *id.* The area to be improved is basically flat. See Exhibit 1, p. 4. The project will not likely alter the topography to a material degree. See *id.* The southern portion of the site is heavily forested, but this natural area will be retained, with the development activity being undertaken on the northern portion of the site. See *id.*; see also Exhibit A-2. There is no evidence in this record suggesting that the site is not suitable due to surface water, groundwater, soil conditions, wetlands, or other conditions. Further, there are no known cultural or historic resources on this site. See Exhibit 4.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, 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 project involves the construction of a surface parking area. There is no evidence, in this record, that the project could result in significant environmental impacts. In addition, the city has determined that the project is categorically exempt from SEPA review. See SMC 17E.050.080; see also Exhibit 1, p. 4.

If any impacts did occur, given the nature of the proposal, those impacts would likely relate to traffic. However, even the potential impacts regarding traffic are *de minimis*. The project does not require additional trip generation or traffic studies. See Exhibit 2C. The project will not materially change traffic patterns on 29<sup>th</sup> Avenue or add

new traffic. See *id.* In addition, the site will not access 29<sup>th</sup> Avenue. See *id.* Instead, the new parking area will be connected to the office building to the east and the existing parking lot to the west. See *id.* Thus, the proposal will not create a new access point on the adjacent arterial.

Another potential impact would concern the possible removal of trees in the southern portion of the site. This potential impact is avoided, however, because the forested area on the southern portion of the site will be preserved. The Applicant explained the benefits of this design decision as follows:

*The southerly 30% of the site will be left in natural open space to avoid extensive grading and provide buffering to the established residences to the south.*

See Exhibit 2C; see also Exhibit 2B, ¶¶ 4-5.

Other impacts of the project appear to be minimal, and would be addressed by project conditions. For example, the Applicant will be required to provide a geotechnical report and a drainage plan during the building permit process. See Exhibit 1, p. 4. All storm water and surface drainage must remain on-site. See *id.* The project will include landscaping and an expanded drainage area along the frontage of the property. See Exhibit 2C. In any event, the project will be required to comply with all applicable codes and regulations.

The Hearing Examiner concludes that the project will not have significant impacts on the environment, and therefore this criterion is satisfied.

6. *The project satisfies the additional criteria which apply to office uses in a residential zone. See SMC 17C.320.080(J).*

The proposal does not transgress the standards or requirements for approval of a office-related use in the RMF zone, as the following discussion demonstrates.

- a) *The property must have frontage on a principal arterial. See SMC 17C.320.080(J)(1)(a).*

The site is situated on a principal arterial, 29<sup>th</sup> Avenue. See Exhibit 1, p.5. Therefore, the project satisfies the requirement for frontage.

- b) *The subject property is adjacent to or immediately across the street from an existing commercial zone. See SMC 17C.320.080(J)(1)(b).*

The project is situated immediately across the street from property that is zoned O-35, an existing commercial zone. See Exhibit 1, p. 5. This criterion is satisfied.

- c) *Uses permitted in the Office land use category may not be developed to a depth greater than two hundred fifty feet. See SMC 17C.320.080(J)(1)(c).*

The site is not more than 125 feet in depth. See Exhibit 1, p. 5. Thus, the project cannot be developed to a depth that would exceed this standard. This requirement for approval is therefore satisfied.

- d) *Ingress and/or egress onto a local access street are not permitted unless the City traffic engineer determines that there is no alternative due to the traffic volumes, site visibility and traffic safety. See SMC 17C.320.080(J)(1)(d).*

The new parking lot will be connected to the properties to the east and west, eliminating the need for access directly to 29<sup>th</sup> Avenue. See Exhibit 2C; see also Exhibit 1, p. 5. The new parking lot will be accessed by the two existing access points on 29<sup>th</sup> Avenue, as well as the existing access point approximately 150 feet south of the intersection of 29<sup>th</sup> Avenue and Martin Street. See Exhibit 2C. The parking area will not be connected to a local access street. Therefore, this criterion is satisfied.

- e) *All structures shall have size, scale, and bulk similar to residential uses as provided in SMC 110.500, Institutional Design Standards. See SMC 17C.320.080(J)(1)(e).*

The project is for a surface parking lot. There are no structures proposed. Therefore, this standard does not apply.

- f) *The development standards of the underlying zone shall apply to the use. See SMC 17C.320.080(J)(1)(f).*

The Applicant will be required to comply with all applicable development standards in the Spokane Municipal Code, including but not limited to the specific requirements for parking and landscaping. See Exhibit 1, p. 5.

- g) *Drive-thru facilities are prohibited, except as allowed by the hearing examiner. See SMC 17C.320.080(J)(1)(g).*

No drive-through facility is proposed. As a result, this criterion does not apply.

## **DECISION**

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed conditional use permit subject to the following conditions:

1. Approval is for a conditional use permit to allow the Applicant, Mike Silvey, to construct a surface parking lot at the property located at 2112 E. 29<sup>th</sup> Avenue. The parking lot will be constructed consistent with the plans and application on file in Planning and Development, subject to minor adjustments that may be approved by Planning and Development and which are consistent with applicable codes. If changes are sought to the plans or application, they shall be submitted to Planning Services for review and approval. If Planning Services finds that the changes are substantial, than they shall be forwarded to the Hearing Examiner for review and approval.
2. The project will be developed in substantial conformance with SMC 17C.110, Land Use Standards, Residential Zones, to maintain compatibility with, and limit any negative impacts on, surrounding residential areas.
3. The proposed parking lot is being approved as an accessory use of the existing office building to the west. The subject site must be legally aggregated to the property on which

the existing office building is situated, as a condition of project approval, because stand-alone commercial parking lots are not permitted in residential zones.

4. Separated sidewalks are required along 29<sup>th</sup> Avenue, along with the installation of street trees.

5. Consistent with the previously approved conditional use permit for the office building, the applicant shall dedicate 7.5 feet of right-of-way along 29<sup>th</sup> Avenue adjacent to the site. Additionally, the 7.5 feet of right-of-way that was supposed to be previously dedicated for the parcels on either side of this project must also be dedicated.

6. Consistent with the comment of Spokane Transit Authority, the Applicant shall retrofit the existing separated sidewalk on the corner of 29<sup>th</sup> and Martin to accommodate ADA accessible access to the existing bus stop. This can be achieved by bridging the landscaping buffer between the curb and the sidewalk with a concrete pad that extends a minimum of 8 feet along the curb.

7. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services 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.

8. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code, including the International Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.

9. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.

10. Spokane Municipal Code section 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.

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 29<sup>th</sup> day of April 2016.



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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 the decision is deposited in the U.S. mail. This decision was served by mail on April 29, 2016. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 23<sup>rd</sup> DAY OF MAY 2016 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.