



Request for Appeal or Reconsideration

Application

Rev.20170927

Please answer each question completely. If more space is needed, attach additional paper.

Appellant:

Jessica Hieronymous; Kayleigh McKinley; Steve Kocharhook; Mark Perry; Sheila Sams; John Manix; Karl Schimanski; Tod Dufield; Eric Bradfield; Katherin Perry; Steven Wright; Jackie Schimanski; Maureen Smith Jack McKinley; Carrie Croall; Richard (Mark) Smith; Carol Manix; Debbie Stanzifer; Joan Kocharhook;

Name: Patricia Wright; Dan Hieronymous

Address: See Attachment A at pp. 2-5

Phone: See Attachment A at pp. 2-5 Email: See Attachment A at pp. 2-5

Respondent:

Name: Brimfull Properties/City of Spokane

Address: 13515 N. Addison, Spokane, WA 99208/808 W. Spokane Falls Blvd., Spokane, WA 99201

Phone: 909-621-3023/509-625-6300 Email: greengable.rebecca@gmail.com/
PermitTeam@spokanecity.org

File Number (of application or permit, if applicable): Z21-071CUP2

This is an appeal or reconsideration of:

- Hearing Examiner
- Planning Commission
- City Engineer
- City Council
- Junk Vehicle Determination
- Planning Director
- Director of Building
- Traffic Engineer
- Homeless Encampment Decision
- Other: _____

This is an appeal or reconsideration to the:

- City Council
- Planning Examiner
- Hearing Examiner
- Other: _____

What is the decision being appealed or request for reconsideration?

(i.e. approval or denial of a special permit or issuance of a building permit, etc.)

Interim Planning Director's Decision Approving Conditional Use Permit, dated July 12, 2021.

Why is the decision wrong?

- Error or misinterpretation of FACT Error in PROCEDURE
 Error or misinterpretation of LAW or COMPREHENSIVE PLAN

Please identify the specific factual, legal or procedural errors or misinterpretations that you believe resulted in the decision being wrong and how correcting the error would result in a different decision. If you believe a misinterpretation of the law or Comprehensive Plan or procedural error was made, please identify the specific laws, code sections or plan policies that you believe were misapplied, misinterpreted, or violated:

Please see Attachment A for detailed identification of the factual, legal, and procedural errors and misinterpretations that resulted in the decision being wrong; and how correcting them would result in a different decision; and for citations to the Comprehensive Plan provisions, sections of the Code and laws, and plan policies that were misapplied, misinterpreted, and violated, and that constituted procedural error.

What is the harm to you resulting from the decision?

Substantial and unavoidable, irreparable harm to Appellants' entitlement to their appropriate and vested rights of full use, enjoyment, and safety of our homes, or neighborhood, our cul-desac and our and the nearby streets, and negative impacts to our property values; See, also please, Attachment A.

What relief do you seek? What would you have the decision maker do?

Reversal and Disapproval/Denial of the Applied-For Conditional Use Permit With Prejudice.

SUBMITTED BY:

John A. Manix, for Appellants

ACKNOWLEDGEMENT

I certify that I know or have satisfactory evidence that John A. Manix signed this instrument and acknowledged it to be his/her own free and voluntary act for the uses and purposes mentioned in this instrument.

DATE: July 26, 2021

Notary Public in and for the City of Spokane,
State of Washington
My commission expires: 11/6/22



For Staff Use Only

Date appeal filed:
Was appeal timely filed?
Appeal fee?
Transcript fee?

Date appeal period ends:
Is appellant a party of record?
Fee paid?
Fee paid?

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BEFORE THE CITY OF SPOKANE HEARING EXAMINER

JESSICA HIERONYMOUS;)
KAYLEIGH McKINLEY; STEVE)
KOCHARHOOK; MARK PERRY;)
SHEILA SAMS; JOHN MANIX)
KARL SCHIMANSKI; TOD DUFIELD;)
ERIC BRADFIELD; KATHERINE)
PERRY; STEVEN WRIGHT; JACKIE)
SCHIMANSKI; MAUREEN SMITH;)
JACK McKINLEY; CARRIE CROALL;)
RICHARD (MARK) SMITH; CAROL)
MANIX; DEBBIE STANZIFER;)
JOAN KOCHARHOOK; PATRICIA)
WRIGHT; DAN HIERONYMOUS;)
JOE SAMS,)
)
Appellants,)
)
vs.)
)
BRIMFUL PROPERTIES; CITY)
OF SPOKANE, a municipality and)
corporation organized and operating under)
the laws of the State of Washington,)
)
Respondents.)
)

**NOTICE OF APPEAL OF PLANNING
DIRECTOR’S DECISION ON APPLICATION
FOR CONDITIONAL USE PERMIT**

Attachment A to “Request for Appeal or
Reconsideration Application”

Re: CUP Application No. Z21-071CUP2

This Appeal is submitted by each of the Appellants, pertinent to the subject matters and Decision identified below.

A. File Number: Z21-071CUP2 (and Planning Director Decision dated July 12, 2021).

B. Identities of Appellants and Facts Establishing Appellants’ Right To the Appeal Relief Requested:

The Appellants are each citizens of the City of Spokane and are listed in this Section B. of this Appeal, below, along with each of their respectively-corresponding residential addresses.

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2 Appellants submit this appeal on behalf themselves; and on behalf of their children and other loved
3 ones residing with them; and on behalf of motorists (including but not limited to themselves) desiring to
4 utilize south Freya Street in a safe and efficient manner, particularly, but not solely, where it intersects with
5 44th Avenue, 45th Court; 46th Court; and 47th Avenue, and those motorists (again including, but not limited
6 to themselves) desiring to utilize that street, those Courts, and that Avenue, in a safe and efficient manner.

7 Each Appellant is a homeowner residing either in 45th Court – the cul-de-sac that is situated
8 directly adjacent to the north of the property that is in development at 46th Court; or on the north side of
9 47th Avenue – the street that is situated directly adjacent, to the south, of that property-in-development.

10 More particularly, because of the proximity of each Appellant’s home to the five lots within 46th
11 Court that are most directly here at issue per the applied-for Conditional Use Permit (“CUP”), and their
12 proximity to the streets and roadways that would experience very substantially increased vehicular traffic
13 (and, likely, parking) if the applied-for CUP were granted, each Appellant would be substantially and
14 adversely affected in their vested rights to their current quiet and safe use and enjoyment of their homes,
15 and to the currently very-high and -favorable aesthetic, peaceful, and safety qualities of character,
16 condition, and lifestyle of their neighborhood, if the construction and very substantial and disruptive
17 commercial usage sought by the applied-for CUP were granted for that property, which is currently zoned
18 for construction and usage of low-density single-family homes, only.

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8 **C. Identification of Exceptions and Objections to the Decision Being Appealed, Or Of**
9 **Errors In Fact or Conclusions:**

10 Respectfully, the Hearing Officer's Decision is materially erroneous in each of the following
11 factual and/or legal respects identified below; and, each of which errors, separately and independently,
12 and/or in combination of any or all of them, warrants the relief sought by this Appeal.

- 13 1. The Decision is erroneous in that the an incorrect standard was applied – not only by the
14 Planning Director, but by City Staff and Departments, and the claimed expert report on
15 traffic trip-generation counts – as to whether the multiple, various, and substantial *non-*
16 daycare business usages Applicant would, by her own evidence, conduct at the site, could
17 even, by controlling ordinance, qualify for CUP consideration under Spokane Municipal
Code provisions defining what a “Daycare” is (not to mention the ordinary and common
sense meaning of the term) in order to qualify for CUP consideration at the threshold.

18 No substantial evidence was presented to support assessing impact likelihoods and
19 trajectories of the Applicant's proposed usages, by the assumption made by the Planning
20 Director and City Staff and Departments, and the claimed expert who submitted a purported
21 increased vehicular trip analysis), that the Applicant's proposed usage of the property would
22 be limited to Daycare operations. The Applicant's very own evidence unequivocally
23 established the direct opposite.

- 24 2. To properly adjudicate this matter, the Planning Directo was required to assess the potential
impacts of the Applicant's intended usages on the current character, attributes, and
conditions of Appellants' properties and neighborhood.

25 That necessary inquiry therefore required the Planning Direct, in order to make a proper
26 adjudication of this matter, to consider all evidence offered to him to gain an accurate
27 understanding of the current character, attributes, and conditions of Appellants' properties
and neighborhood.

1 The Appellants made an Offer of Proof to the Planning Director of the very best, most
2 probative evidence conceivable, on that point: on offer and request that he make a site visit
3 and inspection, of our cul-de-sac, our homes, our backyards, and the interior second stories
4 of our homes, all as directly pertinent and probative of the issues entrusted to him for
5 decision.

6 The Planning Director inexplicably rejected that Offer of Proof. His refusal to consider that
7 direct, relevant, and highly probative evidence offered to him, on fundamental and critical
8 impact issues necessary to his ruling on the merits of the applied-for CUP, constitutes
9 reversible error.

- 10 3. The foregoing exceptions, objections, and reasons stated in Subsection C.2. of this Notice of
11 Appeal immediately above apply equally, but separately and independently, to the Planning
12 Director's refusal of the Appellant's Offer of Proof that he make a site visit to inspect the
13 unique roadway configurations, sightlines, and conditions, at the stretches and intersections
14 of south Freya Street, 44th Avenue, 45th Court; 46th Court; and 47th Avenue, to assess the
15 likely safety and transportation-system-efficiency issues implicated by the usages proposed by
16 the Applicant.

17 The Planning Director's denial of that Offer of Proof of direct, relevant, and highly probative
18 evidence offered to him, on fundamental and critical impact issues necessary to his ruling on
19 the merits of the applied-for CUP, constitutes reversible error.

- 20 4. By the requisite Substantial Evidence standard, that quantum and quality of evidence
21 bearing on the following points, within the record, could only have supported the following
22 Findings of Fact by the Planning Director:

23 A. The Applicant's proposed usages would, inevitably, produce substantial adverse and
24 unavoidable noise impacts, including:

- 25 i. The triggering of incessant dog-barking in at least two of the four backyards of
26 the Appellants whose homes would be directly adjacent to the north of the
27 proposed facility, by the presence of a single adult or child on the Applicant's
28 property on the other side of those backyard fences.
- 29 ii. From the loud laughing, screaming, screeching, and yelling of children's voices
30 playing in groups outdoors

The Planning Director did not even address the uncontradicted dog-barking evidence
that was submitted.

As to the noise of children playing, the Planning Director simply stated: 1) Less than all of
the 132 children would be outside at one time (a meaningless statement without further
elucidation of whether he found that means 131 children will be playing outside at one

1 time, or 120, or 100, or 80, or 50, or 10, or 5, or 3 children at one time); 2) that the
2 Applicant had said the noise created by playing children will be “typical” (“typical” of
3 what? – the noise of a rock concert? a feather falling to the ground? 131, or 80, or 50,
4 etc., children playing on the other side of one’s fence, while one is trying to take an
5 afternoon nap just feet away?) and 3) noting that a “playground” with a play structure is
6 set to be constructed on 46th Court, not directly behind Appellant’s backyard fences
7 (ignoring that grass areas will exist directly behind Appellant’s backyard fences, and
8 that these will be play areas for groups of children every bit as much as the play
9 structure area on 47th Court, based on more than two dozen observations by Appellants
of such, over the last several months, of groups of children playing not on the
“Playground”/play structure area at the Applicant’s 57th Avenue business, but instead o
the grass areas of that facility that are distinct different and away from the
“Playground”/play structure area).

10 B. The Applicant’s proposed usages will, inevitably, produce substantial adverse and
11 unavoidable aesthetic impacts, including:

- 12 i. For a number of the Appellants, under Applicant’s proposed usages, they will not
13 be looking over their backyard fences, and from their upstairs master bedrooms,
14 at the backyard of a neighboring home; instead, they will be looking at an asphalt
15 driveway, and an asphalt striped parking lot, and at dozens and dozens of
vehicles coming to and from the facility;
- 16 ii. For one or more of the Appellants, under the Applicant’s proposed usages, they
17 will not be looking, over their backyard fences from their upstairs rooms’ south-
18 facing windows, including the windows of all of their master bedrooms, at the
19 backyard of a neighboring home; instead, they will be looking down on at least
20 two industrial-sized garbage containers (which the planned-for screening, which
21 the Planning Director specifically favorably noted, would do nothing to obscure).
22 iii. Noxious weeds and neglected and unkempt grass areas and landscaping, and
unsightly piles of garbage and refuse accumulated on the property, with such
evidence being the Applicant’s actual current business practices.

23 C. The Applicant’s proposed usages will, inevitably, produce substantial adverse and
24 unavoidable safety, traffic, and parking impacts, including:

- 25 i. Materially increasing traffic on Freya, and thereby commensurately increasing
26 the likelihood of vehicle accidents due to the dangerous sightline condition that
27 exists for motorists attempting to detect oncoming southbound traffic to their
28 left, when they are attempting to make a right-hand turn from 44th Avenue onto
29 southbound Freya;

- 1 ii. Motorists coming to the Applicant's property approaching it northbound from
2 Freya will assess they cannot lawfully make a left-hand turn into the facility,
3 because of the double-yellow unbroken centerline at that location. So, instead,
4 they will proceed on to the next left-hand turn that is indeed lawful, to then
5 reverse course, and track back to Appellant's facility via lawful turns; with that
6 next left-hand turn being onto 45th Court, turning that quiet cul-de-sac into a
7 raceway for dozens and dozens of vehicles that otherwise would never enter
8 the cul-de-sac.
- 9 iii. Motorists coming to Applicant's facility not parking in the facility's designated
10 lot, but instead on Freya Street and/or 45th Court and/or 47th Avenue, because
11 of the obviously grossly insufficient number of parking spaces planned for the
12 Applicant's facility.
- 13 iv. Dangerous and inefficient backing up of traffic on northbound Freya, when
14 cars will necessarily need to stop to await other vehicles ahead of them,
15 stopped for oncoming southbound Freya traffic to clear so that they can turn
16 left into the Applicant's proposed facility.

- 17 5. In derogation of law, the Planning Director failed to even address, much less make any
18 required Findings of Fact, much less Findings based on substantial evidence in the record,
19 that the Applicant's proposed usages are consistent with the City of Spokane's
20 Comprehensive Plan's designation and goals, objectives, and policies for the subject
21 property, as set forth in the Plan at LU 1.3 Single-Family Residential Areas, as to the
22 following:

23 [P]rotecting the character of single-family residential
24 neighborhoods by focusing higher intensity land uses in designated
25 Centers and Corridors.

26 **Discussion:** The city's residential neighborhoods are one of its
27 most valuable assets. They are worthy of protection from the
28 intrusion of incompatible land uses. Centers and Corridors
29 [instead] provide opportunities for complementary types of
30 development and a greater diversity of residential densities.
Complementary types of development may include places for
neighborhood residents to work, shop, eat, and recreate.
Development of these uses in a manner that avoids negative
impacts to surroundings is essential.

This failure requires reversal of the Decision.

6. The Planning Director was required, by law, to make affirmative, written Findings of Fact
that the Applicant had fulfilled her burden of evidentiary proof to establish, by substantial

1 evidence, the Decision Criteria of SMC 16C.320.080 listed at Items 1, 2, 3, and 5 of the
2 Decision at pp. 3-4 of the Decision.

3 No required Findings of Fact were made as to any of those Criteria. Rather the Planning
4 Director simply quoted each separate Criterion, and wrote as to each, in bare, conclusory
5 fashion, "Staff finds this criterion is met."

6 Those are not Findings of Fact. The absence of such, as to each separate Criterion, in and of
7 itself requires reversal of the Decision.

8 Moreover, even if the Decision had made the required Findings of Fact purporting to
9 support a determination that the Applicant had met her burden of proof as to each or any of
10 those Criterion, no substantial evidence existed in the record to support such a
11 determination. Indeed, the only quality and quantum of substantial evidence that exists in
12 the record of this matter, as to each of those Criterion, could solely support a Finding of Fact
13 that each of those Criterion was not met. For that reason, reversal of the Decision is not
14 only appropriate, but further, denial of the CUP Application, with prejudice, on this appeal,
15 is required as a matter of law.

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7. The Planning Director was required, by law, to make affirmative, written Findings of Fact that the Applicant had fulfilled her burden of evidentiary proof to establish, by substantial evidence, the Decision Criteria of SMC 16C.320.080 which the Planning Director listed at Items 1, 2, 3, and 5 of the Decision, at pp. 3-4 of the Decision.

No required Findings of Fact were made as to any of those Criteria. Rather the Planning Director simply quoted each separate Criterion, and wrote as to each, in bare, conclusory fashion, "Staff finds this criterion is met."

Those statements of bare conclusion are not Findings of Fact. The absence of such, as to each separate Criterion, in and of itself, requires reversal of the Decision.

Moreover, even if, for the sake of argument, the Decision had made required Findings of Fact purporting to support a determination that the Applicant had met her burden of proof as to each or any of the four Criteria of RCW 16.C.320.080 identified by Appellants above, no substantial evidence existed in the record to support such a determination, regardless, as to any one of those four Criteria.

Indeed, the only quality and quantum of substantial evidence that exists in the record of this matter, as to each such Criterion, could solely support a Finding of Fact that each of those Criterion had not been established. For that reason, reversal of the Decision is not only appropriate, but further, denial of the CUP Application, with prejudice, is required as a matter of law on this appeal.

1 8. The same exceptions, objections, and reasons stated above, in the immediately preceding
2 subsection C.3 of this Appeal, apply to the Decision's reference and impermissibly bare
3 conclusions concerning the following required Criteria of SMC 17C.320.080(F) – none of
4 which are supported by substantial evidence in the record:

5 3. Livability.

6 The Proposal will not have significant adverse impacts on the livability of
7 residential zoned lands due to:

- 8 a. Noise, glare from lights, late night operations, odors, and litter; and
- 9 b. Privacy and safety issue.

10 – and –

11 9. Public Services

- 12 b. The transportation system is capable of supporting the proposed use in
13 addition to the existing uses in the area. Evaluation factors include:
 - 14 a) street capacity, level of service, and other performance measures;
 - 15 c) connectivity
 - 16 d) transit availability;
 - 17 e) on-street parking impacts
 - 18 f) access restrictions
 - 19 g) neighborhood impacts;
 - 20 i) safety for all modes; and
 - 21 j) adequate transportation demand and management strategies.

22 **D. Relief Requested:**

23 Appellants request that Hearing Examiner REVERSE the Decision being appealed from, and DENY,
24 with prejudice, the applied-for Conditional Use Permit.

25 **E. Information Reasonably Necessary To Make A Decision On the Appeal:**

26 As and since it is reasonably necessary to make a decision on the appeal, Appellants intend to rely on
27 all factual submissions made by the Applicant, herself (including by her representative Architect), in
28 support of her Application for CUP; and all factual submissions that were set forth in public comments that
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1 the Appellants, and/or the Southgate Neighborhood Council, submitted for the Planning Director's
2 consideration of the merits of the CUP Application.

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4 Additionally, as and since it is necessary to make a decision on the appeal, Appellants intend to rely
5 upon submissions they intend to make at the hearing of this Appeal, by way of their own oral testimony
6 and arguments and presentation, and their submission of additional documentary materials, in proof of the
7 substantial and unavoidable negative effects the Applicant's proposed commercial usage would cause to
8 Appellants and their neighborhood, in derogation of controlling CUP-issuance legal standards.

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10 Additionally, as and since it is necessary to make a decision on the appeal, Appellants request and
11 intend to rely upon the Hearing Examiner's findings upon the Examiner's own site visit to their
12 neighborhood, and their backyards, and from the second-story windows of their homes; and to request and
13 rely upon the Examiner's findings upon the Examiner's own site visit to view and assess the unique
14 characteristics, conditions, and layouts, of the roadway stretches, intersections, streets, and cul-de-sacs at
15 issue, as those findings would be directly percipient to a proper determination of the claimed errors of the
16 Planning Director and to the merits of the CUP under the controlling legal standards.

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19 Additionally, as and since it is necessary to make a decision on the appeal, Appellants intend to
20 present evidence of the aforementioned substantial and unavoidable negative effects, by way of answers
21 given in response to their, and the Hearing Examiner's, questioning of appropriate witnesses at the hearing
22 of this Appeal, including questions of the Appellants themselves, and/or the Applicant herself, and/or the
23 Applicant's Architect representative, and/or Mr. Joe Whipple, who submitted a purported increased traffic
24 count analysis for consideration on the merits of the applied-for CUP by the Planning Director.

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27 Additionally, as and since it is necessary to make a decision on the appeal, Appellants intend to rely
28 upon submissions they intend to make at the hearing of this Appeal, by way of expert testimony, that the
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1 Applicant's proposed vast and extensive commercial business operations on the site would result in the
2 monetary value of Appellants' homes, particularly those that would be immediately adjacent to the subject
3 property.
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5 Further as and since it is reasonably necessary to make a decision on the appeal, Appellants intend to
6 rely on all factual submissions necessary to rebut and disprove the contents of any recommendation
7 generated and made by City Staff, to the Hearing Examiner in advance of the Hearing, that this appeal
8 lacks merit and should be denied.
9

10 RESPECTFULLY SUBMITTED this 26th day of July, 2021

11 By Each and All of the Above-Identified Appellants.
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