

CITY OF SPOKANE HEARING EXAMINER

RE: Application for a Shoreline Conditional)
Use Permit;) **FINDINGS OF FACT,**
Applicant: Upper Falls LLC) **CONCLUSIONS OF LAW,**
File No. Z2005-54-SL) **AND DECISION**
_____)

I. SUMMARY OF DECISION

Hearing Matter: Application for a shoreline conditional use permit.

Summary of Decision: Approve application, subject to conditions of approval.

II. FINDINGS OF FACT

1. The application seeks approval of a shoreline conditional use permit, to allow the construction of a 32-unit residential condominium building.
2. The site is located at the southeast corner of the intersection of Mallon Avenue and Post Street, west of and adjacent to the existing "Flour Mill" building, in an existing parking lot that abuts the north bank of the Spokane River. The site is legally described in the Application for Notification Map located in the file.
3. The site is currently referenced as County Assessor tax parcel nos. 35182.4203, 35182.4205 and 35182.4206. The site is addressed at 700 W. Mallon Avenue, Spokane, Washington.
4. The applicant is Upper Falls LLC, c/o Don Barbieri, 201 W. North River Drive, Spokane, Washington 99201. The owner of the site is GVL Investors, 201 West North River Drive, Spokane, Washington 99201.
5. The Hearing Examiner heard the application on a pro tem basis, pursuant to an interlocal agreement between the City of Spokane and Spokane County.
6. The Hearing Examiner heard the proposal pursuant to Chapter 4.21 and Section 11.02.0452 of the Spokane Municipal Code (SMC).
7. The Hearing Examiner conducted a public hearing on the proposal on June 23, 2005. The requirements for public notice of hearing were met.
8. The following persons testified at the public hearing:

Leroy Eadie
City of Spokane Planning Services
808 West Spokane Falls Boulevard
Spokane, WA 99201-3329

Stan Schwartz
Witherspoon Kelley Davenport & Toole
422 W. Riverside Avenue, Suite 1100
Spokane, WA 99201-0300

Don Barbieri
Upper Falls LLC
201 W. North River Drive
Spokane, WA 99201

Mike Britton
City of Spokane Traffic Engineering Dept.
808 West Spokane Falls Boulevard
Spokane, WA 99201-3329

9. The Hearing Examiner takes notice of the Spokane Municipal Code, the City Comprehensive Plan, applicable development regulations, and previous land use decisions for the site.
10. The record includes the documents in the Hearing Examiner's file at the time of the public hearing, the testimony submitted at the public hearing, and the items taken notice of by the Hearing Examiner.
11. The City Planning Services Department issued a Determination of Nonsignificance (DNS) for the proposal on June 3, 2005.
12. The site is approximately 1.7 acres in size; and currently consists of a flat asphalt parking lot for approximately 204 parking spaces, along with an adjacent drainage swale located to the south. The parking lot serves the adjacent "Flour Mill" retail and office mall. An existing basalt wall is located in the south end of the site and parking lot, and directly east of the south end of the site and parking lot. The parking lot includes trees, sidewalks and landscaping
13. The proposed condominium project would be located in the south portion of the existing parking lot making up the site, extending south of the existing basalt wall on the site for short distances. The project would consist of a 5-story to 6-story building oriented toward the Spokane River and Riverfront Park, located to the south. The building would house 32 dwelling units, and provide sufficient parking stalls in the lowest level of the building to serve the future residents in the project. The project would reduce the number of parking spaces available for Flour Mill customers from approximately 204 to 162.
14. The environmental checklist submitted for the proposal indicates that the condominium building would be approximately 65 feet tall, with a tower not exceeding 112 feet. The project would maintain and partially relocate the existing pedestrian walkway and greenbelt located on or adjacent to the site, south and east of the proposed building location. The project is depicted in detail in the site plans attached to the environmental checklist, and a landscaping plan dated June 15, 2005.
15. The site is designated in the Downtown category by the City Comprehensive Plan, and is zoned Central Business District 6 (CBD-6). The site is designated in the Central Falls Environment by the City Shoreline Master Program.
16. The site is surrounded by a mix of retail, entertainment and recreational uses. The Spokane River and the City's Riverfront Park are located to south. The Spokane Arena is located to the north. The YWCA and an industrial/commercial building are located to the west.
17. On August 21, 2001, the City Hearing Examiner approved a shoreline conditional use permit for the site; to allow the construction of a commercial building housing office, retail and

restaurant uses, along with a separate building located along Mallon Avenue that would accommodate 460 parking spaces and other retail uses. The mixed use building would have been located partially in the shoreline setback. See decision in File No. Z2001-29-SL. The project was never developed.

18. No public opposition was expressed toward the project. Avista Utilities commented and recommended that the public trail system adjacent to the site be preserved, required setbacks be met, natural vegetation along the shoreline emphasized, and views of the upper falls on the river when viewed from the south side of the river and the Post Street Bridge be considered in the development of the project.

19. The project would be located outside the 50-foot setback required by the City Shoreline Master Program and the State Shorelines Management Act. There are no building setbacks in the CBD-6 zone applicable to the project.

20. The Staff Report, as corrected at the public hearing regarding the height of the proposed building, analyzes the consistency of the proposal with the criteria for approval of a shoreline conditional use permit under Spokane Municipal Code (SMC) Section 11.02.0452, the policies of the City Comprehensive Plan applicable to the proposal, applicable zoning regulations of the CBD-6 zone and Spokane Municipal Code, and the policies and regulations of the City Shoreline Master Program (SMP) applicable to the proposal. The Examiner agrees with such analysis and hereby adopts the same by reference as findings of fact herein. The Staff Report also recommends appropriate conditions of approval based on such policies and regulations.

21. The project, as conditioned, will not have more than a moderate effect on the quality of the environment.

Based on the above findings of fact, the Hearing Examiner enters the following:

II. CONCLUSIONS OF LAW

1. The proposed use requires issuance of a shoreline conditional use permit under SMC 11.15.273.B and SMP 13.13.023.
2. The proposed use complies with all applicable use and development standards.
3. The proposed use complies with the goals, policies and map designations of the Comprehensive Plan that apply to such use and to the area in which the use is proposed to be located.
4. The proposed use is timely considering the capacity of the transportation system, public facilities and services existing in the area, including improvements that are funded in the City's capital improvement programs.

5. Conditions can and have been placed on the proposal to avoid significant adverse effects or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use with uses existing in the area.
6. The proposed use will not interfere with the normal public use of public shorelines.
7. The cumulative impacts of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program.
8. The shoreline conditional use permit is consistent with chapter 90.58 RCW (Shorelines Management Act) and chapter 173-27 WAC (Permits for Development on the Shorelines of the State).

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the application for a shoreline conditional use permit is hereby approved, subject to the following conditions:

1. Development shall substantially adhere to the plans, drawings, illustrations and/or specifications on file in the Department of Planning Services, as approved under this permit.
2. The pedestrian pathway shall be maintained and relocated as shown on the site plan. The pathway will be open to use by the general public.
3. Development shall adhere to the conditions recommended by the Design Review Committee on June 14, 2001. Since the current project was similar in scope to the previous project in File No. Z2001-29-SL, it was not required to go through design review again (see file for staff comments regarding such decision.)
4. All City of Spokane development standards from the various departments shall be met.
5. All onsite stormwater runoff must be disposed of on site in accordance with the recommendations of the Stormwater Management Guidelines. Design shall include all hard and impervious surface calculations, including roof runoff, for all existing and proposed conditions. A grading and drainage plan with one (1)-foot contours and supporting calculations must be submitted for review and approval by Engineering Services – Developer Services, prior to issuance of a Certificate of Occupancy.
6. All public improvements, existing or proposed, must be shown on the overall site plan for building permit application. All broken, heaved or sunken sidewalk/curb adjacent to this site must be replaced to City standards whether existing or caused during construction. Any unused driveway approaches must be replaced with curb and sidewalk to City standards.
7. All SCAPCA requirements must be met. SCAPCA's comments are included in the file.

8. The proposed site involves four parcels that need to be aggregated before the issuance of a building permit. This can be accomplished with an application and approval of a Boundary Line Adjustment. Such application is made through the Planning Services.

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

10. Spokane Municipal Code 11.02.0452B states:

"B. Time Limitation

A zoning special permit or shoreline conditional use permit automatically expires and becomes void if the applicant fails to apply for a building permit within three years of the effective date of the special or conditional use permit unless the applicant has received an extension for the special permit or conditional use."

11. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to the file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office:

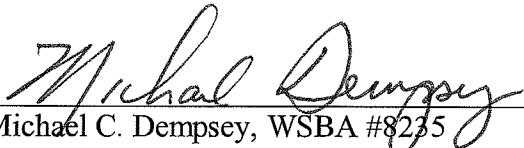
COVENANT

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 7th day of July, 2005



Michael C. Dempsey, WSBA #8235
City of Spokane Hearing Examiner Pro Tem

NOTICE OF FINAL DECISION AND RIGHT TO APPEAL

This decision was mailed to the applicant and other parties of record on July 7, 2005.

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 11.02.0730 and Chapter 90.58 RCW. Decisions of the Hearing Examiner on an application for a shoreline conditional use permit may be appealed to the Washington State Shoreline Hearings Board.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.