SPOKANE COUNTY HEARING EXAMINER

CONDITIONAL USE PERMIT TO ALLOW A MULTI-FAMILY DEVELOPMENT OF A DENSITY GREATER THAN 30 UNITS PER ACRE PER ACRE IN THE HIGH DENSITY RESIDENTIAL (HDR) ZONE, WITH A VARIANCE REGARDING BUILDING HEIGHT, BICYCLE RACKS, AND LANDSCAPING. APPLICANT: WHIPPLE CONSULTING ENGINEERS FILE NO. CUN-05-18/VN-03-18	**REVISED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

I. SUMMARY OF DECISION

Hearing Matter: Conditional Use Permit to allow a multi-family development with a density of greater than 30 units per acre in the High Density Residential (HDR) zone, pursuant to Section 14.606.240(9) of the Zoning Code, with a Variance to increase the maximum building height from 50 to 65 feet, to allow no or less bicycle racks than required by regulation, and alternate landscaping along Dakota Street.

Summary of Decision: Approval of Conditional Use Permit as described herein, subject to *revised* conditions. Approval of the Variance in part and denied in part as described herein below subject to revised conditions.

II. FINDINGS OF FACT

A. Procedural Matters:

An application for a conditional use permit to allow a multi-family development with a density of greater than 30 units per acre per acre in the High Density Residential (HDR) zone, pursuant to Section 14.606.240(9) of the Spokane County Zoning Code, and a Variance to increase the maximum building height from 50 to 65 feet, to remove the requirement of bicycle racks as required by regulation, and to alter the required landscaping along Dakota Street, was accepted by the Spokane County Building and Planning Department ("Department") on October 4, 2018, in the above-referenced file.

The subject property is generally located west of and adjacent to Dakota Street and east of Wandermere Road, in the SE ¼ of Section 5, Township 26 North, Range 43 EWM, Spokane County, Washington ("site). This site is currently referenced as Spokane County Assessor's Tax Parcel No. 36054.9017.

The applicant is Whipple Consulting Engineers, 21 S. Pines Rd. Spokane Valley, Washington 99206.

Pursuant to Spokane County Code (SCC) Section 13.500, Notice of Application, and SCC Section 13.700, Notice of Hearing, the following notices were properly prepared, mailed, and posted as noted:

Notice of Application – mailed by the Department on June 13, 2019 mailed to Friends of the Little Spokane River and Garden City/Mead Neighborhood Coalition. Certification of Mailing signed by Martha Thornton dated June 13, 2019.

Notice of Application – three signs were posted along N. Dakota St. Affidavit of Posting signed by Craig Penfield P.E., dated June 14, 2019.

Notice of Public Hearing – mailed on December 16, 2019 to Friends of the Little Spokane River and Garden City/Mead Neighborhood Coalition. Declaration of Mailing signed by Martha Thornton on December 16, 2019.

Notice of Public Hearing – mailed on December 16, 2019, deposited in the United States Post Office to the recorded real property owners and/or taxpayers as shown on the Spokane County Treasurer's records, dated December 13, 2019, who have been found to own property within a four hundred foot (400') periphery of the applicant's owned, controlled or under option property. Affidavit of Mailing signed by Kandace Landry dated December 27, 2019.

Notice of Public Hearing – Posted on December 21, 2019 at the Intersection of N. Dakota Street and E. Saddleback Lane, also at the Intersection of N. Dakota Street and E. Buckskin Lane. Affidavit of Posting Signed by Elliott Whipple dated December 23, 2019.

Notice of Hearing – published in the Spokesman Review, a recognized legal newspaper for the publication of notices, on December 24, 2019. Affidavit of Publication by E. Jean Robinson dated December 24, 2019.

A Determination of Nonsignificance (DNS) was issued on December 24, 2019, with a comment and appeal period ending on January 7, 2020. The DNS was not appealed.

The Hearing Examiner visited the site and the surrounding area on January 6, 2020.

The Hearing Examiner heard the matter as scheduled at 1:30 p.m. on January 8, 2020, in the Commissioner's Hearing Room, 1026 East Broadway, Spokane, Washington. pursuant to the Spokane County Hearing Examiner Ordinance, codified in SCC Chapter 1.46; the County Hearing Examiner Rules of Procedure, adopted by County Resolution No. 1996-0294; Chapter 14.406 (Variance) Chapter 14.404 (Conditional Use Permits) and SCZC Section 14.606.240(1).

The following persons testified at the hearing, under an oath administered by the Hearing Examiner:

Tom Vandervert
Building and Planning Department
1026 W. Broadway Avenue
Spokane WA 99260

Ben Goodmansen
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Camelia Scheidegger
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Todd Holdridge
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The following exhibits were submitted at the hearing:

Exhibit 1 – Letter to the Hearing Examiner submitted by Todd R. Whipple dated January 8, 2020 (17 pp.)

Exhibit 2 – Dakota CUP/VN Power Point submitted by Todd Whipple (59 pp.)

The Hearing Examiner takes notice of the Spokane County Comprehensive Plan ("Comprehensive Plan"), the SMP, the SCZC, the SCC, and other applicable development regulations; recent land use decisions for the site and area, including those listed in the Staff Report submitted by the Department.

The record includes the documents in the Building and Planning File No. CUN-0005-201/VN-0003-18 at the time of the hearing, the electronic recording of the hearing, exhibits 1 and 2 referenced above, the sign-in sheet for the hearing, and the items taken notice of by the Hearing Examiner.

Having heard testimony from the Department staff, and the applicant on the matter, the record remained open until 12:00 p.m., January 9, 2020 to ensure that the traffic information was complete in the file, and the hearing adjourned at approximately 3:15 p.m. on Wednesday, January 8, 2020.

B. Description of Site:

The subject site is generally located west of and adjacent to Dakota Street and east of Wandermere Road, in the SE ¼ of Section 5, Township 26 North, Ranae 43 EWM, Spokane County, Washington, Spokane County Parcel # 36054.9017; which is generally at the north end of Dakota Road. The subject property is approximately 5 acres in size and is sparsely developed with a single-family residence and several related outbuildings. The property is accessed via a private driveway from Dakota Street near the southeast corner of the property. The topography of the site ranges from generally flat near Dakota Street to sloping to the west and southwest, with an area of 30% slopes being located at the southwest corner of the site. There are mature trees throughout the property with natural undergrowth of grasses etc.

The subject property is located within a Critical Aquifer Recharge Area (CARA) identified as having high susceptibility. Spokane County Critical Areas Maps identify an Open Space Corridor on the subject site. The property is served by the Spokane County Public Sewer System and potable water is provided to the site by Spokane County Water District No. 3.

The property is within the boundaries of the Friends of the Little Spokane River, Garden City- Mead Neighborhood Association (NBHD).

C. Description of Proposed Project:

The Conditional Use Permit being sought would allow the development of greater than 30 units per acres, for a total of 192 dwelling units in 6 buildings; three along the easterly boundary of the site and three buildings facing the first from across the property to the west, with a parking lot and garages located between the two lines of buildings. The proposed density is 38.79 units/acre. The total proposed parking is 325 parking stalls. The parking areas will include an open parking lot between the two rows of buildings, with a row of two-story garages located in the center of the open parking lot between the rows of buildings, and a three-story parking structure along the south boundary of the property. See the proposed site plans in the Department File.

The requested Variance would allow an increase in the maximum building height from 50 to between 58 and 65 feet along the western boundary of the subject site, relieve the applicant of the requirement of, or reduce the number of required

bicycle racks within the developed complex, waive the requirement of raised walkways within the parking areas, and allow the revision of the configuration of landscaping along Dakota Street.

Site Plan:

The proposed site plan is a very ambitious design for the subject site. Memo from the Spokane County Public Works Department, dated November 6, 2019. The proposed layout of the residential buildings, parking lots, garages and parking structure will cover the vast majority of the site with buildings and parking facilities. See the site plan in the Department file.

The Site Plan of Record identifies the boundaries of the subject site and illustrates the location of six (6) buildings for a total of 192 multi-family units (38.79 units/acre), 2-story parking garage structures between the buildings, and a three-level parking garage on the south boundary of the property. Buildings 1, 2 and 3, are illustrated adjacent to Dakota with a maximum building height of 50 feet. Buildings 4, 5 and 6, illustrated near the west property line of the site with a proposed maximum building height between 58 feet and 65 feet. All proposed parking structures will have a maximum building height of 35 feet.

The site is shown with three (3) access points on Dakota Street and a fourth access via the property to the north of the subject site which is the subject of a pending Comprehensive Plan Amendment. Dakota Street is a two (2)-lane local access roadway with no curbing or sidewalks located along the subject site. The site plan indicates access on and to the property to the north of the subject site which extends to a roundabout from which access is proposed to North Dakota Street and to Wandermere Road immediately north and west of the subject site. The site plan also indicates a roadway that is located off of the subject site but that follows the north and then west boundary of the subject site extending to the north eastern corner of the commercial property that is developed to the south and west of the subject site. It is unclear exactly how the roadway leading to the south and west of the subject property is accessed from the subject site. See the site plan in the Department file.

It is important to note that although the property to the north of the site is undeveloped and is not a part of the proposed Conditional Use Permit application, the owner of the adjacent property on the north and the site of the proposed conditional use permit and variance are the same person or entity. And, although it is not part of the conditional use permit application or variance request in this matter, the owner of the northern property intends to develop that property with a similar multi-family residential structure and a clubhouse that will serve the proposed development that is the subject of this application, as a single integrated

complex with internal driveways and parking that will extend between the two properties.

D. Land Use Designations and Surrounding Conditions for Site and Neighboring Land:

Surrounding uses include single family and duplex residences along Dakota Street to the south, a large duplex community to the east of the site the development of which is almost complete, commercial business and retail development to the southwest, and undeveloped land to the west, northwest and north.

Zoning to the North, South, and East of the site is Low Density Residential and is developed primarily as single-family residences and duplexes. Zoning west of the subject site is Regional Commercial (RC) and is built out as commercial and retail businesses, adjacent to the SR 395 corridor. Zoning surrounding the proposed project site was established June 1, 2005, as a result of adoption of the Phase 2 Development Regulations.

E. Agency/Public Comments

Comments regarding the proposed Conditional Use Permit application and Variance application were received from the Spokane County Division of Engineering, Spokane Regional Health District, Washington Department of Transportation, Spokane County Water District #3, and Spokane County Fire Protection District #9. Comments received from agencies are in the form of recommended conditions of approval and instructions for acquiring necessary permits.

Comments from the Spokane County Division of Engineering (County Engineering) and the Washington State Department of Transportation (WSDOT) are remarkable.

County Engineering states that the proposed layout at the subject site, indicating the extension of the parking area and driveway through the site to and continuing through the property to the north of the subject site and to Wandermere Road, is understood to be the alternative access to and from the subject site in addition to the access to and from Dakota Street, which alternate access point is required to meet the Road Standards and connectivity requirements. Spokane County Public Works Department Memo, dated November 6, 2019.

The comments from WSDOT, however, assert that access to Wandermere Road from the property to the north of the subject site (known as the "Lafferty property") is limited, by the deed by which WSDOT acquired the property further north from

Lafferty in 1992, to " 'right of reasonable access to FR 6 Line' for the benefit of the remainder of the Lafferty parcel" (FR 6 now known as Wandermere Road). E-mail from Greg Figg, WSDOT, dated August 30, 2019.

The WSDOT comment argues that a second, alternative, access to and from the proposed site of the Conditional Use Permit and the Variance required by the Road Standards and connectivity requirements, in addition to the proposed access to Dakota Street, is not available to the proposed multifamily residential development proposed on the subject site. WSDOT implies that the only reasonable access to (now) Wandermere Road from the "Lafferty parcel" is use by the occupants of a single family dwelling that would exist on the "Lafferty parcel". The Hearing Examiner hereby takes notice of the 1992 Warranty Deed, that is found in the public record; a copy of the deed is attached hereto as Appendix A.

By letter dated January 2, 2020, the Washington State Department of Archaeology & Historic Preservation reports that a desktop review of the Statewide Predictive Model has identified the proposed project are as having high potential for archaeological resources; due in part to the landform type. The finding by the DAHP is also based upon the significant scale of the proposed ground disturbing action that would destroy any archaeological resources present at the site.

Written public comment and testimony at the hearing focused on the nature of Dakota Street, having no curb, gutter or sidewalks, and being narrow such that when residents along Dakota Street park on the street there is not enough room for two cars to pass each other. It was testified that several school age and younger children live along Dakota Street and that the increase in traffic from the duplex development at the north end of Dakota Street has already posed a danger to the children walking to and from school and to the younger children to live and play along Dakota Street. Comments also referred to the difficulty with seeing traffic coming from the east along Hastings Road at the intersection of Hastings Road and Dakota Street.

It was noted that, even though the roads in the duplex development are private roads and that access through the duplex development to the east and then south to Hastings Road is available, that access slopes up from the west to the east, is difficult to maneuver during the winter, and that the majority of the traffic from the duplexes appears to use North Dakota Street.

Finally, objection was made to the construction of a three story parking structure on the boundary between the low density single family residential development south of the subject site and the proposed high density development on the subject site.

F. Consistency with Comprehensive Plan and Zoning Regulations:

Comprehensive Plan:

The subject site is located within the High Density Residential category of the Spokane County Comprehensive Plan. The High Density Residential category is for the development of single family and multi-family residential units with a density of over 15 units per acres. Densities above 30 units per acre require a conditional use permit. The proposed density is 38.79 units per acre.

The following goals and policies are related to the proposed Conditional Use Permit to allow the development of multi-family residences with densities to exceed 30 units per acre:

Goal UL.2 - Maintain and enhance the quality of life in Spokane County through urban design standards.

> Policy UL.2.16 - Encourage the location of medium and high density residential categories near commercial areas and public open spaces and on sites with good access to major arterials. A determination that a particular property has access to major arterials may be based on a condition of approval or development agreement requiring construction of new roads and/or access to particular major arterials.

The development of the subject site as proposed is near commercial areas and open spaces, however the site lacks good access to major arterials as the policy suggests. The Road Standards and connectivity requirements are designed to ensure compliance with the policy as stated above. As conditioned the development will have the necessary access to major arterials.

> Policy UL.2.17 - Site multifamily homes throughout the Urban Growth Area as follows: a) Integrated into or next to neighborhood, community or urban activity centers. b) Integrated into small, scattered parcels throughout existing residential areas. New multi-family homes should be built to the scale and design of the community or neighborhood, while contributing to an area-wide density that supports transit and allows for a range of housing choices.

As proposed the development is integrated into an urban commercial center and forms a buffer between the commercial development and the duplex development on the opposite side of the subject site. The scale of the proposed development (with the requested Conditional Use Permit and Variance) is significantly larger than the adjoining single family residential development to the south of the site, however as conditioned hereby the high density development will be shielded from the direct view of the low density development by the parking structure and landscaping

required to be maintained near the parking structure on the south boundary of the site as a condition of approval.

Policy UL.2.18 - Establish development requirements that encourage quality design within multifamily development areas.

Spokane County has adopted zoning and development regulations that are consistent with and that implement the Comprehensive Plan.

Policy UL.2.19 - Develop standards that prescribe maximum building heights and other building design features to give a residential scale and identity to multifamily developments.

Spokane County has adopted zoning and development regulations that are consistent with and that implement the Comprehensive Plan.

Goal UL.5 - Provide for an aesthetically pleasing urban environment and encourage the maintenance and enhancement of natural and cultural views.

Policy UL.5.7 - Encourage placing power and telecommunication lines underground, at the rear of the properties or in alleyways.

The proposed development will be connecting to existing utilities that cross through or are located near the subject site.

Goal UL.7 - Guide efficient development patterns by locating residential development in areas where facilities and services can be provided in a cost effective and timely fashion.

Policy UL.7.1 - Identify and designate land areas for residential use, including categories for low- medium-and high-density areas.

The subject site is located within the Urban Growth Area (UGA), and within the High Density Residential (HDR) category of the Comprehensive Plan.

Policy UL.7.3 - New urban development must be located within the Urban Growth Area (UGA) boundary.

The subject site is located within the boundaries of the UGA.

Policy UL.7.11 - Establish zoning and subdivision regulations that require residential developments to provide the following improvements:

a. Paved streets (and alleys if appropriate), curbs and sidewalks, paths and internal walkways, when appropriate;

b. Adequate parking consistent with local transit levels;

c. Street lighting;

d. Storm water control;

e. Public water supply;

f. Public sewers.

Spokane County has adopted zoning and development regulations that are consistent with and that implement the Comprehensive Plan.

Policy UL.7.12 - New development within the UGA shall be connected to public sewer, consistent with the requirements for concurrency. Developer-financed extensions of public sewer may be allowed within any area of the UGA provided capacity and infrastructure needs are adequately addressed.

The proposal will extend public sewer to the site.

Goal UL.9b - Create efficient use of land and resources by reducing the conversion of land to sprawling, low density development.

Policy UL.9.2 - Spokane County shall seek to achieve an average residential density in new development of at least 4 dwelling units per net acre in the Urban Growth Area through a mix of densities and housing types.

The density of the proposal is 38.79 units per acre, which is considerably higher than the exiting density of the surrounding neighborhood, but may be allowed through an approved Conditional Use Permit in the High Density Residential (HDR) zone.

Transportation:

Goal T.2 - Provide transportation system improvements concurrent with new development and consistent with adopted land use and transportation plans.

Policy T.2.3 - Transportation improvements shall be consistent with land use plans, capital funding and other planning elements.

Policy T.2.5 - Coordinate planning with appropriate jurisdictions and utility companies for utility corridors that may affect the transportation system.

The application for the proposed development has been circulated for review and comment to all affected reviewing agencies.

Goal T.4a - Ensure that urban roadway systems are designed to preserve and be consistent with community character.

Policy T.4a.1 - Utilize best available engineering practices to ensure a safe and efficient roadway system.

Policy T.4a.16 - Reduce right-of-way width dedications to the minimum necessary to provide for transportation needs.

a. Use border easements to accommodate drainage and pedestrian facilities.
b. Building set back requirements should be established from centerline of right-of-way maintaining public safety and aesthetic values.

Spokane County is not requesting dedication along Dakota Street.

Housing:

The Housing chapter is intended to serve as a framework for long-term planning and daily decision-making on housing related projects and programs.

Goal H.3a - Develop a variety of housing options for all economic groups.

Policy H.3.2 - Ensure that the design of infill development preserves the character of the neighborhood.

As conditioned hereby, the proposed development will provide a transition between the single-family residential development to the south and the high density development allowed by the HDR zoning.

Capital Facilities and Utilities:

Policy CF.6.3 - Spokane County should prohibit the extension of water service to new development that will decrease the level of service of the existing water system below the adopted minimum level of service standards.

A public water system is currently in place and available for new development, and the proposal is consistent with the concurrency provisions of the Phase 2 Development Regulations.

Goal CF.7 - Coordinate private and public sanitary sewer planning to promote efficient service, protect the natural resources and ensure the orderly physical development of Spokane County consistent with adopted plans and policies.

Policy CF.7.2 - Prohibit the extension of any sewer system that will degrade the existing system below the adopted level of service.

A public sewer system is available to serve the proposed development.

Parks and Open Space:

Policy PO.2.8 - New development shall mitigate a portion of its direct impacts on the availability of parks, open spaces and recreation facilities. Methods may include, but are not limited to, dedication of land, donated labor, equipment

and materials and/or an agreement with Spokane County to provide for the payment of a fee.

The proposed land use action was circulated to Spokane County Parks & Recreation for review and comments, without a response.

As proposed, the requested Conditional Use Permit may be generally consistent with the Goals and Policies of the High Density Residential category of the Comprehensive Plan.

Zoning:

The zoning of the subject site is High Density Residential (HDR). The High Density Residential (HDR) zone is primarily for multi-family development at densities greater than 15 units per acre. Section 14.606.240(9) requires an approved Conditional Use Permit to allow densities of greater than 30 units per acre.

G. Conditional Use Permit:

Pursuant to SCZC 14.404.100, The Hearing Examiner may approve an application for a conditional use permit if all the following criteria are met.

a. The special standards set forth for the conditional use in the underlying zone of the Zoning Code are met.

b. Adequate conditions and restrictions on the conditional use are adopted to ensure that the conditional use will be compatible with other permitted uses in the area, and will not be materially detrimental to the public health, safety or general welfare.

The special standards for a conditional use permit regarding multi-family residential structures in the HDR zone require that density greater than 30 dwellings units per acre must be approved by a conditional use permit; and the use shall be subject to restrictions and conditions as may be imposed by the Hearing Examiner under chapter 14.404. SCZC 14.606.240(9).

Due to the location and size of the proposed parking structure on the south boundary of the subject site, the residential structures on the site will be mostly if not completely obscured by the parking structure. Looking to the west from North Dakota Street, the development will have the same appearance as many apartment complexes throughout the Spokane area. Limiting the density of the development to 30 dwelling units per acre would not alter the appearance of the development to any appreciable degree and would not make the development any more compatible with the surrounding development. As conditioned hereby, the proposed density of the

development will not be materially detrimental to the public health, safety or general welfare.

The Expanded Trip Generation & Distribution Letter, dated November 7, 2019, from Whipple Consulting Engineers, Inc., indicates that the impact of the proposed apartment complex, when developed will reduce to the level of service at the intersection of Dakota Street and Hastings Road, during PM peak hour to "D", the lowest allowed level of service. See Expanded Trip Generation & Distribution Letter, p. 4 of 5. Although that is still an acceptable level of service for that intersection, it indicates the tremendous burden that the proposed development will put on Dakota Street and the intersection with Hastings Road. When considered with the fact that school children walk along Dakota Street to and from school and that Dakota Street has no sidewalks north of Hastings Road, the inevitable increase of traffic on Dakota Street can be considered materially detrimental to the public health, safety and general welfare, unless relief from the traffic congestion due to the proposed development can be provided.

H. Variance:

If the strict application of the provisions of the Zoning Code would cause practical difficulties regarding the use of a property, the Hearing Examiner may grant a variance from those requirements. The applicant must demonstrate to the Hearing Examiner what circumstances which create the required practical difficulties.

Pursuant to SCZC 14.406.100 the Hearing Examiner may approve an application for a variance if all the following criteria are met:

a. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the Zoning Code deprives the property of rights and privileges enjoyed by other properties in the vicinity and under the same zone classification.

b. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated.

c. The granting of the variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.

d. The granting of the variance is consistent with the Comprehensive Plan.

SCZC 14.406.100(2) reads:

2. Approval of a variance should not:

a. Be based upon the precedent established by illegal or nonconforming circumstances.

b. Establish a precedent that will adversely affect the zoning concept for the land in the area of the County as a whole.

c. Be based upon a lack of reasonable economic return or a claim that the existing structure is too small.

d. Result in a de facto zone reclassification.

e. Permit the establishment of a use otherwise prohibited in the zone in which the property is located.

Finally, the Hearing Examiner may attach conditions to the variance necessary to carry out the intent and purpose of the Zoning Code and Comprehensive Plan, and that the variance will be compatible with other permitted uses in the area, and will not be materially detrimental to the public health, safety and welfare. SCZC 14.406.100(3).

The request for variance from the regulations and code applicable to the proposed development is broken into 5 separate parts or requests.

1. A variance from the maximum allowed building height of 50 feet.

2. A variance from the number of bicycle racks required relative to the number of parking places that will be provided within the apartment complex.

3. A variance from the limitation on street parking allowed at North Dakota Street adjacent to the apartment buildings.

4. A variance to waive the requirement of "raised internal walkways" within the parking areas at the apartment complex.

5. A variance from the required 20 landscaping requirement between the apartment buildings and North Dakota Street, to a maximum of 10 foot of landscaping.

Relative to the variance for building height, the applicant asserts that the variance is necessary due to the topography and the slope of the site, that the increased building height is necessary in order develop the land to its highest and best use. The Building and Planning Department reports that it has no record of any other similar variance requests approved in the general vicinity of the subject site or within the similar zone classification within Spokane County. The applicant refers to

a development on Hastings Road, near the subject site with similar challenges due to slope of the property. In that instance however density above 30 units per acre was not necessary to complete the intended development. The applicant goes on to argue that the height variance would not impact the neighboring properties because the parking garage along the south boundary of the property will obscure the view of the buildings that exceed the height limitation.

The buildings that would exceed the height limitation, if the variance is granted, will be located along the west boundary of the property and would be most easily seen by the commercial development to the south and west of the site. From North Dakota Street the view of the west most buildings will minimize the actual height of the buildings on the west side of the buildings. Special circumstances do exist regarding the topography of the property such as to deprive the highest and best use of the property is the variance were not granted.

As conditioned hereafter by this decision, granting the variance for building height will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated.

Granting of the height variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity.

Granting the variance for building height is consistent with the Comprehensive Plan.

The limitations to approval of the height variance in SCZC 14.406.100(2) do not apply, as the application is conditioned hereby.

Upon granting the height variance and the Conditional Use Permit for density greater than 30 units per acre, the variance requested for additional street parking at North Dakota Street and the reduction in the required landscaping from 20 feet to 10 feet is appropriate and meets the criteria for approval of said variances.

The applicant has failed to provide sufficient evidence to establish the elements that would allow the Hearing Examiner to grant the requested variances regarding the reduction of the number of bicycle racks or regarding waiver of the requirement of internal raised walkways within the parking areas at the proposed development. Said variances should not be granted.

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

III. CONCLUSIONS OF LAW

1. Any finding of fact above that is a conclusion of law is deemed a conclusion of law.

2. Minor revisions should be made to the conditions of approval to ensure proper formatting, clarity, and consistency with the findings of fact above.
3. Approval of the Conditional Use Permit, as conditioned hereinbelow, is appropriate under SCC 1.46.110 (Hearing Examiner Ordinance) and Chapter 14.404 of the Spokane County Zoning Code.
4. A condition of approval requiring an aesthetic design of the parking structure wall or landscape screening of the parking structure wall that faces the development to the south of the site is appropriate pursuant to SCZC 14.406.100(3) and Comprehensive Plan Goal UL.5.
5. Approval of the requested variances identified above as numbers 1, 3, and 5, as conditioned hereinbelow, is appropriate under SCC 1.46.110 and Chapter 14.406 of the Spokane County Zoning Code.
6. Approval of the requested variances identified above as numbers 2 and 4, is not appropriate under SCC 1.46.110 and Chapter 14.406 of the Spokane County Zoning Code, and thus should not be granted.
7. Any conclusion of law above that is a finding of fact is deemed a finding of fact.

IV. DECISION

Based on the Findings of Fact and Conclusions of Law above, the application for a Conditional Use Permit to allow a density of the up to 38.79 units per acre, for a total of 192 units in the proposed apartment complex on the subject site is hereby approved, subject to compliance with the conditions of the various agencies specified below.

The request a variance from the maximum allowed building height of 50 feet is hereby granted, subject to compliance with the conditions of the various agencies specified below.

The request for a variance from the number of bicycle racks required relative to the number of parking places that will be provided within the apartment complex is denied.

The request for a variance from the limitation on street parking allowed at North Dakota Street adjacent to the apartment buildings, is hereby granted, subject to compliance with the conditions of the various agencies specified below.

The request for a variance to waive the requirement of "raised internal walkways" within the parking areas at the apartment complex is denied.

The request for a variance from the required 20 landscaping requirement between the apartment buildings and North Dakota Street, to a maximum of 10 foot of landscaping is hereby granted, subject to compliance with the conditions of the various agencies specified below.

Any conditions of approval of public agencies that have been added or significantly altered by the Examiner are *italicized*. This approval does not waive the applicant's obligation to comply with all other requirements of other public agencies with jurisdiction over land development.

H. Conditions of Approval:

Spokane County Building and Planning Department:

1. All conditions imposed by the Hearing Examiner shall be binding on the "Applicant", which term shall include the owner or owners of the property, their agents, heirs, assigns and/or successors.
2. *Except as specifically stated hereinabove in the granting of requested variances,* the proposal shall comply with the High Density Residential zone, parking, landscaping and all other applicable provisions of the Spokane County Zoning Code, as amended.
3. *Subject to the variances granted hereinabove,* the applicant shall develop subject property in strict conformance with the site plan presented to the Hearing Examiner on January 8, 2020. All aspects of the concept and proposal shall be binding on the development, including the proposed use.
4. The Building and Planning Department shall prepare and record with the Spokane County Auditor a Title Notice noting that the property in question is subject to a variety of special conditions imposed as a result of approval of a land use action. This Title Notice shall serve as public notice of the conditions of approval affecting the property in question. The Title Notice should be recorded within the same time frame as allowed for an appeal and shall only be released, in full or in part, by the Building and Planning Department. The Title Notice shall generally provide as follows:

   "_____is the subject of a land use action by a Spokane County Hearing Examiner on _____, imposing a variety of special development conditions. File No. CUN-05-18/VN-03-18 is available for inspection and copying in the Spokane County Building and Planning Department."

5. The Conditional Use Permit shall comply with the Spokane County Critical Areas Ordinance, as amended.
6. A Geo-hazard Evaluation shall be submitted by the applicant prior to the approval of any development of the site.
7. *The design of the south wall of the parking structure, located at the south boundary of the subject site shall include features similar to the standards and guidelines in SCZC 14.900.850; including either landscaping and trees to screen the parking structure wall, architectural features, or both.*

Spokane County Public Works:

Prior to release of a building permit or use of property as proposed:

1. *Pursuant to the Conditional Use Permit, the project may include 192 residential dwelling units as proposed, subject to the requirement that a second access for ingress and egress be constructed and open for use if more than 99 residential dwelling units are to be constructed on the site. The second access for ingress and egress shall be acceptable to the Spokane County Public Works Department, and if necessary approved by WSDOT as noted hereinbelow.*
2. "The applicant is advised that there may exist utilities either underground or overhead affecting the applicant's property, including property to be dedicated or set aside for future acquisition. Spokane County will assume no financial obligation for adjustments or relocations regarding these utilities." "The applicant should contact the applicable utilities regarding responsibility for adjustment or relocation costs and make arrangements for any necessary work."
3. A Professional Engineer, licensed in the State of Washington, shall submit final road and drainage plans, a drainage report and calculations that conform to the 2018 Spokane County Road Standards, the 2008 Spokane Regional Storm Water Manual, and all standards and laws that are applicable to this project. Any final road and drainage plans and a drainage report shall receive the County Engineer's acceptance prior to release of a construction or building permit or approval of the final plat.
4. Roadway standards, typical roadway sections and drainage plan requirements are found in Spokane Board of County Commissioners resolution 17-1076 as amended and are applicable to this proposal.
5. The County Engineers reserve the right to review the proposal and the existing site at the time of any grading permit, land use change, commercial building permit, or building change of use permit for compliance with the current storm

water regulations. New or modified drainage improvements may be required where phased site development or expansion of site facilities occur.

6. The applicant shall submit for acceptance by the Spokane County Engineer and the Spokane Regional Health District a detailed combined on-site sewage system plan and surface water disposal plan for the entire project or portion thereof if the development is phased.

7. *Prior to the issuance of a building permit for the proposed project*, a parking plan and traffic circulation plan shall be submitted and accepted by the Spokane County Engineer. The design, location and arrangement of parking stalls shall be in accordance with standard engineering practices. Paving or surfacing as approved by the County Engineer will be required for any portion of the project which is to be occupied or traveled by vehicles.

8. No construction work is to be performed within the existing or proposed public right-of-way until a permit has been issued by the County Engineer. All work is subject to inspection and approval by the County Engineer.

9. All required construction within the existing or proposed public right of way is to be completed prior to the release of a building permit or a bond in an amount estimated by the County Engineer to cover the cost of construction or improvements shall be filed with the County Engineer.

10. The proposal is located within a Critical Aquifer Recharge Areas (CARA) of (High) susceptibility to groundwater contamination under the Spokane County Critical Areas Ordinance (as amended by BOCC Resolution No. 8-0609). The Critical Areas Ordinance protects aquifers used for potable water and requires compliance with the Spokane Regional Storm Water Manual (SRSM).

    The SRSM requires development to treat storm water runoff from pollutant-generating impervious surfaces (PGIS) including vehicular traveled ways, parking areas, equipment storage areas, and certain roofs. Basic treatment is required for the affected runoff from any commercial/industrial use with a CARA of moderate or high susceptibility including a well-head protection "circle", or at any location whenever underground injection such as from drywells is involved. High-traffic and high-oil source pavement areas require staged treatment. Most current commercial roofing material and rooftop HVAC and electro-mechanical equipment are considered non-PGIS, but there are exceptions. Where critical materials handling is involved, additional spill-control and containment methods are needed to keep these hazardous materials isolated from the storm water disposal and potential discharge into the ground.

11. The applicant shall acknowledge receipt of notice from Spokane County that prior to use, all drywells and other infiltration devices regulated under WAC 173-218-070 serving the proposed project shall be registered with the Washington State Department of Ecology.

12. The applicant is being given notice by Spokane County that site disturbances of greater than 1- acre with a discharge to "waters of the state" regulated by the National Pollutant Discharge Elimination System (NPDES) under WAC 171-220 must apply with the Washington State Department of Ecology.

State of Washington Department of Archaeology and Historical Preservation:

1. Professional archaeological survey of the project area shall be conducted prior to ground disturbing activities at the site.
2. *The survey as described hereinabove shall be submitted to the Spokane County Building and Planning Department prior to any grading activity. The Department shall forward a copy of the survey to the Washington State Department of Archaeology & Historic Preservation and to the concerned Tribes for a two-week review and comment period.*
3. *An Inadvertent Discovery Plan (IDP) shall be provided to the Spokane County Building and Planning Department by a qualified professional. The IDP shall be kept on site during all land disturbance activity.*

Spokane County Water District No. 3:

According to SCWD #3's Comprehensive Water System Plan, a hydraulic analysis was performed showing fire flow deficiencies for any significant development in the area of the proposed project. In order to correct the fire flow deficiencies, the proposed project will have on this area and nearby Wandermere Mall the following improvements will need to be performed at the expense of the developer:

1. Install 12-inch ductile iron loop between Dakota Street and Wandermere Malt across the southern property line of the proposed development along with pertaining easement.
2. Upsize existing 8-lnch water main to 12-inch ductile iron from existing 12-inch valve cluster located at 12720 N. Dakota St. to the southern portion of the proposed development.

Spokane County Fire District 9:

1. *Prior to issuance of a building permit, the applicant shall provide sufficient information to the Fire District for the District* to determine what the fire flow will be for this project. Fire hydrants will be required to provide whatever that fire

flow will be. *The location and operation of the fire hydrants shall comply with the applicable fire codes and requirements identified by the Fire District.*

2. A fire sprinkler system is required. Fire sprinkler system plans and specs and proposed FDC locations need to be submitted for review and approval prior to installation.
3. A fire alarm system is required in accordance with IFC 907.
4. A Knox key box will be required for the site. Order forms are available at the Fire District office. Mounting location must be approved by the Fire District.
5. Fire department access must be provided to within 150' of any exterior wall of any building in accordance with IFC 503.1.1. The traveled portions of the parking lot will be considered fire lanes. Fire department access roads to buildings longer than 150' require an approved turnaround per IFC 503.2.5.
6. Aerial fire apparatus access shall be provided to all buildings. Aerial access shall be 26' in width and located within a minimum of 15' and a maximum of 30' from the building and shall be positioned parallel to one entire side of the building. We require a 20' inside and a 47' outside radius around corners for access. These need to be indicated on the site plan.
7. Addressing for the property must be posted in a location visible from the road. Characters shall be a minimum 4" in height with½" stroke on a contrasting background per IFC 505.1.
8. Portable fire extinguishers are required per IFC Section 906.
9. Fire Emergency Guides shall be provided for each tenant prior to initial occupancy per IFC 200.

<u>WSDOT</u>:

1. *Automobile traffic from the subject site shall not be allowed to* access Wandermere Road *from the property known as* "the Lafferty property", *which property is located immediately north of the subject site. This is due to WSDOT's interpretation of that certain Warranty Deed, dated August 4, 1992, attached to this decision as Appendix A.*
2. *If the applicant provides the second access for the project onto Wandermere Road via the "Lafferty property", which second access for ingress and egress is required under Public Works Department Condition number 1, that access must be approved by WSDOT and must be constructed and open for use if more than 99 residential dwelling units are to be constructed on the site.*

DATED this 2nd day of March, 2020

SPOKANE COUNTY HEARING EXAMINER

David W. Hubert, WSBA #16488

NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 1.46 (Hearing Examiner) of the Spokane County Code, the decision of the Hearing Examiner on an application for a Conditional Use Permit and Variances is final and conclusive unless within twenty-one (21) calendar days from the issuance of the Examiner's decision, a party with standing files a land use petition in Superior Court pursuant to Chapter 36.70C of the Revised Code of Washington (RCW).

Pursuant to RCW Chapter 36.70C, the date of issuance of the Hearing Examiner's decision is three (3) days after it is mailed, counting to the next business day when the last day for mailing falls on a weekend or holiday.

On March 2, 2020, a copy of this decision will be mailed by first class mail to the Applicant, and by e-mail to other parties of record. The date of issuance of the Hearing Examiner's decision is March 5, 2020.

THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT BY LAND USE PETITION IS March 26, 2020.

The complete record in this matter, including this decision, is on file during the appeal period with the Office of the Hearing Examiner, Third Floor, Public Works Building, 1026 W. Broadway Avenue, Spokane, Washington, 99260-0245, (509) 477-7490. The file may be inspected Monday through Friday of each week, except holidays, between the hours of 8:00 a.m. and 4:30 p.m. Copies of the documents in the record will be made available at the cost set by Spokane County.

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