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SPOKANE COUNTY HEARING EXAMINER

CONDITIONAL USE PERMIT FOR A
DETACHED ACCESSORY DWELLING
UNIT IN THE LOW DENSITY
RESIDENTIAL (LDR) ZONE

APPLICANT: ROBERT AIREY &
SANDRA AIREY

FILE NO. CUN-0001-2021

**CORRECTED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

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I. SUMMARY OF DECISION

Hearing Matter: Conditional Use Permit for a detached accessory dwelling unit in the Low Density Residential (LDR) zone pursuant to Section 14.606.240(1) of the Spokane County Zoning Code

Summary of Decision: Approve application for Conditional Use Permit, subject to *revised* conditions.

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II. FINDINGS OF FACT

A. Procedural Matters:

An application for a Conditional Use Permit to allow a detached accessory dwelling unit in the Low Density Residential (LDR) zone pursuant to SCZC 14.606.240(1) was received by the Building and Planning Department from Robert Airey and Sandra Airey on December 21, 2020. The application was deemed complete by the Department on February 2, 2021.

The property to which the permit would apply is located at 14703 N. McKinnon Ct., Mead, Washington 99021 and identified by Spokane County Assessor's Tax Parcel No. 37354.0112.

Pursuant to Spokane County Code (SCC) Sections 13.500 and 13.700, the following notices were properly prepared, mailed, and posted as noted:

Notice of Application – mailed by the Department on February 4, 2021.
Certification of Mailing signed by Martha Thornton dated February 4, 2021, and posted on the site on February 4th, 2021, by Sandra Airey. Affidavit of Posting for Notice of Application signed by Sandra Airey dated February 5, 2021.

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Notice of Public Hearing – mailed on March 20, 2021, 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, who are identified as owning property within a four hundred foot (400) perimeter of the property owned by, controlled by, or under option of applicant. Affidavit of Mailing signed by Sandra Airey dated March 20, 2021.

Notice of Public Hearing – Posted on March 21, 2021, at 14703 N. McKinnon Ct., Mead, Washington 99021. Affidavit of Posting signed by Sandra Airey dated March 23, 2021.

Notice of Hearing – published in the Spokesman-Review, a recognized legal newspaper for the publication of notices, on March 23, 2021. Affidavit of Publication dated March 24, 2021, signed by E. Jean Robinson.

A Determination of Nonsignificance (DNS) was issued on March 23, 2021, with a comment and appeal period ending on April 6, 2021. The DNS was not appealed.

The Hearing Examiner visited and viewed the site and the surrounding area on April 5, 2021.

The Hearing Examiner heard the matter as scheduled at 1:30 p.m. on April 7, 2021, via Zoom internet conferencing platform pursuant to the Spokane County Hearing Examiner Ordinance, codified in SCZC Chapter 1.46; the County Hearing Examiner Rules of Procedure, Spokane County Code Chapter 14.404 (Conditional Use Permit), and SCZC Section 14.606.240(1).

The following persons participated in and/or testified at the hearing under an oath administered by the Hearing Examiner:

- | | |
|------------------------------------------------------------|------------------------------------------------------------|
| Robert Brock | Robert Airey |
| Building and Planning Department | 14703 N. McKinnon Ct |
| 1026 W. Broadway Avenue | Mead, WA 99021 |
| Spokane WA 99260 | Ssairey2@gmail.com |
| Sandra Airey | Fran Airey |
| 14703 N. McKinnon Ct. | PO Box 505 |
| Mead, WA 99021 | Nordman, Idaho 83848 |
| Ssairey1@gmail.com | Franni1a@gmail.com |
| Bob Airey | |
| PO Box 505 | |

1 Nordman, Idaho 83848
2 Frannila@gmail.com

3 The following exhibits were submitted at the hearing:

- 4 • Exhibit 1 – B&P_Exhibit_DOC01_Staff Report CUN-0001-2021 submitted
5 by Robert Brock (5 pp.)
- 6 • Exhibit 2 – B&P_Exhibit_DOC02_CUN-0001-2021 Zoning and Air Photo
7 Maps submitted by Robert Brock (2 pp.)
- 8 • Exhibit 3 – B&P_Exhibit_DOC03_CUN-01-21 Site Plan submitted by
9 Robert Brock (1 page)
- 10 • Exhibit 4 – B&P_Exhibit_DOC04_CUN-01-21 Building Plan submitted by
11 Robert Brock (3 pp.)

12 The Hearing Examiner takes notice of the Spokane County Comprehensive
13 Land Use Plan (“Comprehensive Plan”), Spokane County Zoning Code (SCZC),
14 Spokane County Code (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.

15 The record includes the documents in the Building and Planning File No.
16 CUN-0001-2021 at the time of the hearing, the electronic recording of the hearing by
17 Hearing Examiner staff, the roster of attendees at the hearing, and the items taken
notice of by the Hearing Examiner in this decision and at the hearing.

18 Having heard testimony from the Department staff, applicant, and members of
19 the public in attendance at the hearing and interested in testifying on the application
20 the record was closed and the hearing was adjourned at approximately 2:07 p.m. on
Wednesday, April 7, 2021.

21 **B. Description of Site:**

22 The subject property is Lot 12, Block 1 Summer Sun 1st Addition Plat,
23 approximately 1.91 acres in size and is located at the terminus of McKinnon Court, a
24 public road. The site is relatively flat across the site and contains a single-family
25 residence and a detached garage in the western portion of the parcel, near to the cul-
26 de-sac. The eastern side of the site is traversed by several sets of power lines that run
north-south.

27 The subject site is located within a Critical Aquifer Recharge Area (CARA)
28 identified as having Moderate Susceptibility. Potable water is provided to the site by
Whitworth Water District. The proposed detached accessory dwelling unit will be

1 served by a private onsite septic system. There are no noted geo-hazardous areas or
2 wetlands on the subject site or within the vicinity of the site. There is no noted
3 mapped floodplain located on the subject site. There are no noted wetlands identified
4 on or near the subject property.

4 **C. Description of Proposed Project:**

5 The requested Conditional Use Permit would allow a two story detached
6 accessory dwelling unit approximately 40' x 20' (800 square feet of heated living
7 space on each floor).

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

9 The subject property is designated as Low Density Residential by the Spokane
10 County Comprehensive Plan and is zoned as Low Density Residential (LDR). Staff
11 Report; Spokane County Comprehensive Plan; Spokane County Zoning Code.
12 Property to the north, east and west of the subject site are also designated as Low
13 Density Residential by the Comprehensive Plan and zoned LDR. Id.

13 Surrounding uses include single family residences to the north, south and
14 west. The single-family development on the north, south and west of the site is
15 typical sized urban lots of approximately ¼ to ½ acres in size. Land to the east is
16 rural parcels of approximately 5 acres in size, and east of the rural parcels is Mt.
17 Spokane High School. Staff Report, Department File.

17 **E. Agency and Public Comments:**

18 Response to the application was received from three of the seven agencies
19 notified. Staff Report, Department File. That agency's comments are considered and
20 included in conditions for approval of the requested Conditional Use Permit
21 hereinafter.

21 No written public comments were received prior to the hearing and there was
22 no testimony offered from the public at the hearing.

23 **F. Criteria for Approval of Conditional Use Permit:**

24 The Hearing Examiner may approve an application for a conditional use
25 permit if the special standards set forth for the conditional use in the underlying
26 zone of the Zoning Code are met, and adequate conditions and restrictions on the
27 conditional use are adopted to ensure that the conditional use will be compatible with
28 other permitted uses in the area, and will not be materially detrimental to the public
health, safety or general welfare. SCZC 14.404.100(1).

1 In approving a conditional use permit, the Hearing Examiner may require
2 restrictions and conditions, including but not limited to control of use, provision for
3 front, side, or rear setbacks greater than the minimum standards of the zone in
4 which the property is located, special landscaping, screening, fencing, signing, off-
5 street parking, public transit and/or high occupancy vehicle facilities or any other
6 general development standards, requirements for street dedications and/or roadway
7 and drainage improvements necessary as a result of the proposed use, control of
8 points of vehicular ingress and egress, control of noise, vibration, odor, glare, and
9 other environmental contaminants, control of operating hours, duration or time
10 limitations for certain activities, any other reasonable restrictions, conditions, or
11 safeguards that will uphold the purpose and intent of the Zoning Code and the
12 Comprehensive Plan and mitigate any adverse impact upon the adjacent properties
13 by reason of the use, extension, construction, or alteration allowed. SCZC
14 14.404.100(2).

15 **G. Consistency with Comprehensive Plan and Zoning Code:**

16 **Comprehensive Plan:**

17 The subject property is located within the Low Density Residential category of
18 the Spokane County Comprehensive Plan. The Low Density Residential Lands
19 category is characterized by urban sized lots typically in subdivisions. Density within
20 the Low Density Residential category is limited to between 1 and 8 dwelling units per
21 acre.

22 Goals and Policies of the Low Density Residential category and Urban Land
23 Use Chapter that are applicable to the proposed Conditional Use Permit include:

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

27 Policy UL.7.5 – Provide for bonus densities, zero lot line housing, auxiliary
28 structures, accessory dwellings or similar methods to promote infill development,
where appropriate.

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

Policy H.3.4 – Encourage the development of residential accessory dwelling
units, such as granny flats, garage apartments or elderly cottage housing units.

The proposed use at the subject site is a residential accessory dwelling unit
within a well established urban residential area. The proposed use is generally
consistent with the Goals & Policies of the Rural Traditional category of the
Comprehensive Plan.

1 **Zoning Code:**

2 Zoning of the subject site is Low Density Residential (LDR), established by
3 adoption of the Phase 2 Development Regulations on January 15, 2002. The Low
4 Density Residential (LDR) zone is primarily for single-family, duplex and row
5 housing residential development that allows a density of 1 to and including 8
6 dwelling units per acre. Multi-family development may be permitted, consistent with
7 density standards.

8 Specific development criteria for a detached accessory dwelling unit within the
9 Low Density Residential Zone are described in SCZC 14.606.240(1).

10 SCZC 14.606.240(1):

- 11 a. The accessory unit shall not be considered as a dwelling unit when
12 calculating density.
- 13 b. One off-street parking space shall be required for the dwelling unit, in
14 addition to the off-street parking required for the main residence.
- 15 c. The accessory dwelling unit shall contain no more than 2 bedrooms and
16 shall measure no more than 800 square feet on the main (ground) floor.
- 17 d. Only 1 accessory dwelling unit shall be allowed per lot with an existing
18 single-family residence. A detached accessory dwelling unit shall not be
19 allowed on lots containing a duplex, multi-family dwelling unit, or an attached
20 accessory dwelling unit.
- 21 e. Home professions shall be allowed only within the principal dwelling unit.
- 22 f. The accessory unit shall have a pitched roof with a minimum slope of 4 and
23 12.
- 24 g. The ridge of the pitched roof shall not exceed 24 feet. See the conditions of
25 approval hereinafter.
- 26 h. Accessory dwelling units shall not be allowed on lots that are less than
27 10,000 square feet in size.
- 28 i. The use shall be subject to restrictions and conditions as may be imposed by
the Hearing Examiner under chapter 14.404.

 The Hearing Examiner finds that the proposed use is consistent with the
zoning code and requirements of SCZC 14.606.240(1) when conditioned as hereafter
stated.

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

 Based on the above findings of fact, the Hearing Examiner enters the
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III. CONCLUSIONS OF LAW

1. The application is subject to review under the Comprehensive Plan policies, zoning and other development regulations in place at the time it was submitted as complete on February 2, 2021. SCC 13.300.110.
2. In the event of any conflict between the policies of the Comprehensive Plan and the applicable zoning and other development regulations, the zoning and development regulations shall control.
3. The approval, as conditioned hereby, of the proposed conditional use, for a detached accessory dwelling unit, is appropriate under SCC 1.46.110 and SCZC 14.606.240.
4. The special standards set forth for the conditional use in the underlying zone of the Zoning Code are met.
5. Adequate conditions and restrictions on the conditional use are adopted hereinafter, 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.
6. 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 for a detached accessory dwelling unit in the Low Density Residential (LDR) zone, is hereby approved, 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.

The correction made to the immediately above paragraph shall not impact or change the date of issuance of this decision or the dates for appeal etc.

Minor revisions should be made to the conditions of approval to ensure proper formatting, clarity, and consistency with the findings of fact above.

H. Conditions of Approval:

Spokane County Building and Planning Department:


- 1 1. All conditions imposed by the Hearing Examiner shall be binding on the
2 "Applicant", which term shall include the owner or owners of the property, agents,
3 heirs, assigns and successors.
- 4 2. The proposal shall comply with the Low Density Residential (LDR) zone, in
5 particular Sections 14.606.240(1) and 14.404.100, and all other applicable
6 provisions of the County Zoning Code, as amended.
- 7 3. The applicant shall develop subject property in conformance with the site plan
8 dated February 02, 2021 and the building plan, dated December 21, 2020. All
9 aspects of the concept and proposal shall be binding on the development,
10 including the proposed use.
- 11 4. Minor alterations or additions to the approved site development plan may be
12 authorized by the Director of the Department of Building and Planning/designee,
13 pursuant to Section 14.504.400 of the County Zoning Code; and are subject to
14 compliance with regulation standards and conditions of approval. Any other
15 modifications must be presented to the Hearing Examiner for review and
16 approval.
- 17 5. The applicant shall acquire a building permit from the Spokane County
18 Department of Building and Planning for the construction of the accessory
19 dwelling unit.
- 20 6. The conditional use permit may be suspended or revoked if, after a public hearing
21 that is preceded by notice as specified in Section 14.404.120 of the County Zoning
22 Code as amended, the County Hearing Examiner finds that the applicant failed to
23 comply with conditions or restrictions included in the permit.
- 24 7. The Department of Building and Planning shall prepare and record with the
25 Spokane County Auditor a Title Notice noting that the property in question is
26 subject to a variety of special conditions imposed as a result of approval of a land
27 use action. This Title Notice shall serve as public notice of the conditions of
28 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:

“Lot 12, Block 1 of Summer Sun 1st Addition is the subject of a land use action
by a Spokane County Hearing Examiner on April 27, 2021, imposing a variety
of special development conditions. File No. CUN-0001-2021 is available for
inspection and copying in the Spokane County Building and Planning
Department.”

- 1 8. *The detached accessory dwelling unit shall be connected to the public water system*
2 *available in the area with the explicit approval of the Whitworth Water District.*
- 3 9. *Any onsite septic system connected to the detached accessory dwelling unit shall be*
4 *reviewed and approved by the Spokane County Public Works Department and the*
5 *Spokane Regional Health District if applicable.*
- 6 10. *The detached accessory dwelling shall comply with all requirements of SCZC*
7 *14.606.240(1).*

8 DATED this 11th day of May, 2021

9 SPOKANE COUNTY HEARING
10 EXAMINER

11 
12 David W. Hubert, WSBA #16488
13 *by Kevin Ruiz*

14 **NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL**

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

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

23 On May 11, 2021, a copy of this decision will be mailed by first class mail to
24 the Applicant, and by e-mail to other parties of record. The date of issuance of the
25 Hearing Examiner's decision is May 14, 2021.

26 **THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT**
27 **BY LAND USE PETITION IS JUNE 4, 2021.**

28 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.

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

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