

CITY OF SPOKANE VALLEY HEARING EXAMINER

RE: Rezone from the R-3 Zoning District to the R-4 Zoning District;
File No. REZ-2013-0001
Applicant: Conard & Hill Development, LLC
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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

I. SUMMARY OF DECISION

Hearing Matter: Application for a rezone from the R-3 zoning district to the R-4 zoning district, on 2.18 acres of land.

Summary of Decision: Approve application.

II. FINDINGS OF FACT

1. The application seeks approval of a site-specific zoning map amendment (rezone), to reclassify 2.18 acres of land from the Single-Family Residential (R-3) district to the Single-Family Residential Urban (R-4) district of the Spokane Valley Municipal Code (SVMC).
2. The site is located south of and adjacent to Broadway Avenue, approximately 187 feet east of the intersection of Broadway Avenue and McCabe Road; in Spokane Valley, Washington.
3. The site is referenced as County Assessor’s tax parcel no. 45154.0704; and has a site address of 13406 E. Broadway Avenue, Spokane Valley, Washington.
4. The applicant, and site owner, is Conard & Hill Development, LLC; which is addressed at 3420 N. Tschirley Road, Spokane Valley, WA 99216.
5. On January 17, 2013, a complete application was submitted for the proposed rezone. On January 22, 2013, the City Community Development Department (“Department”) determined the application to be complete, and mailed notice of the application to adjacent property owners.
6. On March 8, 2013, the City Community Development Department issued a Determination of Nonsignificance (DNS) for the proposed rezone of the site; and for the development of the site as rezoned, along with adjoining land identified as County Assessor’s tax parcel nos. 45154.0701 and 45154.0604, for a 41-unit multi-family development. The DNS was not appealed.
7. On April 11, 2013, the Hearing Examiner conducted a public hearing on the application, which was scheduled to commence at approximately 9:00 a.m. The notice of hearing requirements for the application under the SVMC were met, by the Department and the applicant. The Examiner conducted a site visit on April 11, 2013; prior to the hearing.

8. The following persons testified at the public hearing:

Martin J. Palaniuk, Planner
Spokane Valley Planning Division
11707 E. Sprague Avenue, Suite 106
Spokane Valley, WA 99206

Brian Westby
Storhaug Engineering
510 E. 3rd Avenue
Spokane, WA 99202

9. The following exhibits were submitted by the Department, and admitted into the record at the public hearing:

- Exhibit 1: Vicinity Map
- Exhibit 2: Zoning Map
- Exhibit 3: Comprehensive Plan Map
- Exhibit 4: 2012 Aerial Map
- Exhibit 5: Application Materials
- Exhibit 6: Determination of Completeness
- Exhibit 7: Notice of Application Materials
- Exhibit 8: SEPA Determination
- Exhibit 9: SEPA Checklist
- Exhibit 10: Notice of Public Hearing Materials
- Exhibit 11: Agency Comments
- Exhibit 12: Public Comments
- Exhibit 13: Power point presentation for Staff Report and Recommendations

10. The Hearing Examiner heard the application pursuant to Chapters 17.80, 18.20 and 19.30 of the Spokane Valley Municipal Code (SVMC); and Appendix B (Hearing Examiner Scheduling Rules and Rules of Conduct) of the Uniform Development Code (UDC) portion of SVMC (SVMC Titles 17-24).

11. The Hearing Examiner takes notice of the SVMC, the City Comprehensive Plan, other applicable development regulations, and prior land use decisions in the vicinity.

12. The record includes the testimony and exhibits submitted at the public hearing, the documents in the application file at the time of the public hearing, and the items taken notice of by the Hearing Examiner.

13. The site is approximately 2.18 acres in size, L-shaped, relatively flat to rolling in topography, undeveloped after the recent removal of an accessory building, and in the process of being graded. The site abuts a 15-foot wide strip of unimproved right of way for Alki Avenue on the south, which right of way connects to Alki Avenue on the west and terminates at the southeast corner of the site.

14. The 2.4-acre parcel that abuts the site on the east, and the 1.2-acre parcel that abuts the south one-half (1/2) of such parcel on the east, are owned by the current applicant, designated in the Low Density Residential category of the Comprehensive Plan, zoned R-4, and being cleared for development. Such development (“Broadway Villas Residential Community”) would include the

site, if rezoned, in a 5.75-acre, 42-unit, gated, senior adult residential, multi-family project. See preliminary conceptual site layout dated 12-31-12, and letter dated 2-15-13 from Storhaug Engineering to Inga Note, City of Spokane Senior Transportation Engineer.

15. The site; the land lying west of the site, east of the parcels lying approximately 250 feet west or southwest of the site (east of McDonald Road); the land lying southerly of the site, except for certain short-platted land zoned R-4 and lying one (1) lot southwest of the site, north of Valleyway Avenue; and the land lying easterly of the parcels that are zoned R-4 east of the site are all designated in the Low Density Residential category of the Comprehensive Plan, zoned R-3, and developed with single-family dwellings.

16. The land lying northerly of the site, along the north side of Broadway Avenue in the vicinity; the land located along the east side of McDonald Road; and the land located along the south side of Alki Avenue one (1) lot west of McCabe Road (west of the site) are all designated in the High Density Residential category of the Comprehensive Plan, and zoned Multifamily High Density Residential (MF-2). A public elementary school is located north and northwest of the site, west of the right of way for Blake Road; an apartment complex is located northeast of the site east, of such right of way; and apartment complexes are located west and southwest of the site.

17. Commercial zoning and land uses are located at the intersection of Evergreen Road and Broadway Avenue to the east, and office uses and/or multi-family uses are located along Evergreen Road north and south of such commercial uses. Commercial uses are located along Sprague Avenue to the south.

18. In 2007, the Hearing Examiner approved the rezone of .89 acres of land located one (1) lot southwest of the site, along the north side of Valleyway Avenue, from the UR-3.5 zone to the UR-7* zone of the former City Zoning Code. In October of 2007, the zoning of such land was reclassified under the SVMC to the R-4 zone; and such land was later short-platted. See Hearing Examiner decision in File No. REZ-01-07.

19. The City Arterial Street Plan designates Evergreen Road as a Principal Arterial, and Broadway Avenue and McDonald Road as Minor Arterials. Broadway Avenue is improved to a 3-lane section, and Evergreen Road is improved to a 5-lane section.

20. The only public comments submitted regarding the application were submitted by James and Jean Leinweiber, who reside a short distance southwest of the site along the south side of Alki Avenue, on tax parcel no. 45154.1015. Such owners expressed concern that the large apartment complex located approximately 250 feet west of the site has small children continuously playing on or crossing Alki Avenue, and the rezone would end up putting much more traffic along Alki Avenue and create a safety hazard for such children; and expressed opposition to the proposed rezone.

21. Brian Westby, of Storhaug Engineering, submitted testimony on behalf of the applicant at the public hearing.

22. The Staff Report sets forth relevant policies of the Comprehensive Plan for the application. The policy most relevant to the proposed rezone is Policy LUP-1.7; which states that zone changes should be allowed within the Low Density Residential category of the Comprehensive Plan when specific criteria are met. This may include substantial changes within the area, the availability of adequate facilities and public services, and consistency with residential densities in the vicinity of the rezone site.
23. SVMC 19.40.040 and SVMC 19.40.050 describe both the R-3 district and the R-4 district as low density residential development that is intended to preserve the character of existing development, subject to the dimensional standards of SVMC Chapter 19.40 that are respectively established for such districts.
24. The minimum lot size, width and depth in the R-3 district are respectively 7,500 square feet, 65 feet and 90 feet; and are respectively 6,000 square feet, 50 feet and 80 feet in the R-4 district. The maximum lot coverage in the R-3 district is 50%, and is 55% in the R-4 district. The minimum setbacks and maximum building height are the same in both districts.
25. The R-3 and R-4 districts each permit single-family and duplex dwellings. The R-4 district permits multi-family dwellings, townhouse dwellings, and certain institutional-type residential uses not permitted in the R-3 district.
26. The Staff Report recommended no conditions of approval for the rezone application, because there was no site development plan submitted with the application for approval by the Hearing Examiner. The conditions submitted by public agencies and City departments will apply to the senior housing project for the site, at the time of building permit.
27. The environmental checklist submitted by the applicant, and the DNS issued by the Community Development Department, properly addressed the environmental impacts of the application, and the multi-family development that is proposed on the site and adjoining land.
28. The Staff Report properly analyzed the consistency of the application with the Comprehensive Plan, and the rezone criteria set forth in SVMC 19.30.030. This includes noting that the property abuts existing MF-4 zoning on the east, and to the north across Broadway Avenue; multifamily housing is already located in the vicinity northeast of the site, and west of the site, respectively; and the rezone would allow only an additional three (3) dwelling units to be developed on the site, compared to the R-3 zone. Such analysis is hereby adopted as findings of fact herein.
29. As noted above, the adjoining land to the east zoned R-4 is being developed for a multi-family development; along with the site, if rezoned to the R-4 zone.
30. County Utilities, and Vera Water and Power, respectively certified public sewer and water concurrency for the application. The City Traffic Engineer certified transportation concurrency for the senior housing project for a maximum of seven (7) PM peak hour trips. The rezone application itself is not subject to transportation concurrency requirements, since it was not submitted with a

binding site plan. The proposed rezone to the R-4 district meets the direct concurrency requirements set forth in SVMC 22.20.

31. The 42-unit Broadway Villas Residential Community senior housing project proposed for the site and the adjoining land to the east intends to use the 15-foot City right of way that abuts the site on the east as a secondary, gated, one-way egress; and not for access into such project.

32. The vehicular trip distribution analysis for the multi-family project, contained in the letter from Storhaug Engineering dated February 15, 2013, estimates that the senior housing project would generate approximately seven (7) vehicle trips per day in the PM peak hour, the most intense traffic time for the project; and that only 10% of these trips, or no more than one (1) PM peak hour trip, would egress the site along Alki Avenue. On a daily trip basis, the project is estimated to generate only 14 trips per day that egress Alki Avenue.

33. There is no basis in the record for denying the proposed rezone based on the concerns expressed by the Leinwebers, regarding future vehicular egress from the senior housing project along Alki Avenue. This is because of the miniscule amount of traffic that the project would generate along Alki Avenue during peak traffic hours, or during the day; the lack of traffic engineering safety information in the record indicating any traffic safety concerns regarding access from the project onto Alki; if the site was developed for single-family housing under the existing R-3 zoning of the site, the same amount of traffic impact could be generated by traffic egressing the site along Alki; and children cannot legally play in Alki Avenue, or cross Alki without observing traffic conditions.

34. The proposed rezone is consistent with the Comprehensive Plan; bears a substantial relation to the public health, safety and welfare; is appropriate for reasonable development of the property; is adjacent and contiguous to property of a higher zone reclassification; will not be materially detrimental to uses or property in the immediate vicinity of the site; and has merit and value for the community as a whole.

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

III. CONCLUSIONS OF LAW

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

2. The proposed rezone to the R-4 zone complies with the rezone criteria set forth in SVMC 19.30.030.

3. SVMC 19.30.030 erroneously states that site-specific zoning map amendments shall be processed pursuant to SVMC 17.80.140, which section applies to Comprehensive Plan amendments and area-wide rezones processed through the Planning Commission and City Council. SVMC 18.20.030(A)(5)(h) expressly vests the Hearing Examiner with authority over site-specific rezones that are not processed at the same time as an implementing Comprehensive Plan amendment for the same site, such as the proposed rezone.

4. Washington case law requires the proponent of a rezone to establish, by a preponderance of the evidence, that the proposed rezone bears a substantial relationship to the public health, safety or general welfare; and that a substantial change of circumstances has occurred in the area. However, proof of a substantial change of circumstances is not required if the rezone implements the comprehensive plan of the local government. The applicant has carried such burden of proof.
5. The proposed rezone to the R-4 zone implements the Comprehensive Plan; and bears a substantial relationship to the public health, safety or welfare.
6. The procedural requirements of the State Environmental Policy Act and SVMC Title 21 (Environmental Controls) have been met.
7. Any conclusion of law above that is a finding of fact is hereby deemed such.
8. The approval of the rezone application, as conditioned, is appropriate under SVMC 19.30.030, and SVMC Chapter 18.20 (Hearing Examiner).

IV. DECISION

Based on the Findings of Fact and Conclusions of Law above, the application for a site-specific amendment to the City Zoning Map, to rezone 2.18 acres of land from the R-3 district to the R-4 district under the SVMC, is hereby *approved*.

The map amendment applies to the real property currently referenced as County Assessor's tax parcel no. 45154.0704, and more particularly described as follows:

SHP 04A-08 LT 2 (AFN #6044797) BEING A PTN OF BLK 117 OF VERA

The City Zoning Map shall be revised to reflect such map amendment.

DATED this 6th day of May, 2013

SPOKANE VALLEY HEARING EXAMINER



Michael C. Dempsey, WSBA #8235

NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 17.90 of the Spokane Valley Municipal Code (SVMC), the decision of the Hearing Examiner on an application for a site-specific amendment to the City of Spokane Valley zoning map (i.e. site specific rezone) is final and conclusive unless within fourteen (14) from the date the Examiner's decision was mailed, a party with standing appeals the decision to the Spokane Valley City Council pursuant to Section 17.90.070 of the SVMC.

On May 6, 2013, a copy of this decision will be mailed by regular mail to the Applicant, and to all government agencies and persons entitled to notice under Section 17.80.130(4) of the SVMC. **THE APPEAL CLOSING DATE WILL BE MAY 20, 2013.**

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 West Broadway Avenue, Spokane, Washington, 99260-0245; and may be inspected by contacting staff assistant Kristine Chase at (509) 477-7490. The file may be inspected during normal working hours, listed as Monday-Friday of each week, except holidays, between the hours of 8:00 a.m. and 4:30 p.m. After the appeal period (unless an appeal is timely filed), the file may be inspected at the City of Spokane Valley Department of Community Development-Planning Division, 11707 E. Sprague Avenue, Spokane Valley, WA, 99206; by contacting Martin Palaniuk at (509) 921-1000. Copies of the documents in the record will be made available at the cost set by the City of Spokane Valley.

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