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Via Email

Jeremiah Cromie, Staff Planner
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Re: Sparks Park Variance – VA-23-00003
SEPA Checklist – SE-23-00010

Dear Mr. Cromie:

We represent a group of interested parties and provide this response to the *Re-Notice Of Application* sent with regard to (1) a Variance Application submitted by Angadjot Sandhu (Authorized Agent) (VA-23-00003) – Sparks Park Variance; and (2) anticipated issuance of Mitigated Determination of Non-Significance (MDNS) (SE-23-00010). This comment will supplement comments provided by clients with respect to both the variance and environmental applications.

Property, Zoning and Project.

Applicant proposes the development of a mixed-use truck stop on a parcel of 16.51 acres, or 719,175 square feet. The project proposal includes the integrated development of a restaurant, diesel and gas fueling facilities, convenience store and vehicle/equipment service and repair businesses. The application includes the following proposed square footage for the mixed-use facility:

Use	Proposed Square Footage (Approximate)
Restaurant	5,000
Retail sales, general	
Diesel Fueling Canopy	4,500
Gas Fueling Canopy	5,700
Convenience Store	8,325
Vehicle/equipment service and repair	7,700

The property is located within a Type 3 LAMIRD and zoned General Commercial (C-G) zoning district. The purpose and intent of the General Commercial zone "...is to provide a classification consistent with existing business districts in unincorporated towns (i.e., Vantage, Easton) where a wide range of community retail shops and services are available." KCC 17.40.010. The tables of allowable uses do not permit large mixed-use facilities such as the one proposed in this case.

The comprehensive plan is also applicable. The property is designated as Limited Areas of More Intensive Rural Development, or LAMIRDS. Kittitas County Comprehensive Plan provides the following:

The final rural lands designation is Limited Areas of More Intensive Rural Development, or LAMIRDS. These areas are often small, rural communities where rural residents and others can gather, work, shop, entertain, and reside. Commercial and industrial development compatible with rural character may continue to locate and prosper in rural areas under limited conditions.

Comprehensive Plan at 24. The proposed land use is not consistent with the intent to limit commercial use to proposals consistent with the rural character. I would note that the grant of a variance shall not "...adversely affect the realization of the comprehensive development pattern." KCC 17.84.010(4). This proposal is in direct conflict with the comprehensive development pattern established for the Type 3 LAMIRD.

The table of allowable uses and permitted and conditional land uses are set forth in KCC 17.15.070. The table of allowable land uses does not specifically categorize a mixed-use urban level commercial development as a separate and distinct land use. While individual components of the project proposal include uses that are permitted, the integrated and massive size of this project presents a separate and unique land use. We disagree with the characterization that "...[a]ll these uses are permitted outright in General Commercial Zoning in a Type 3 LAMIRD." We believe that the appropriate first step in the review of the application is for the Applicant to submit a similar use application to the Director. KCC 17.15.030(4). I would add, however, that there is no way that this proposed use is similar to any allowed use and is certainly not consistent with Growth Management Hearings Board's guidance on appropriate development within LAMIRDS.

Applicant Is Not Seeking a Zoning Variance – It is Requesting Use Authorizing a Project That is Simply Not Allowed.

The Applicant purports to seek a zoning variance. The reality is that the request is actually for an unauthorized use. Applicant's request is for an integrated facility that expands the limitation on "Retail Sales, General" from 4,000 square feet to 18,522 square feet. Impervious coverage is expanded from 239,725 square feet to 479,480 square feet. The uses are combined in an urban like facility. This is

antithetical to the contemplated and allowed uses under the zoning ordinance. This type of facility is contemplated and allowed in urban areas – not in rural LAMIRDS. The use is inconsistent with Growth Management Act (GMA) goals of promoting urban growth, reducing sprawl, preserving rural character in a protected environment.

Applicant has proposed a “use” variance rather than the traditional “area” variance. See e.g. Stoebuck & Weaver, 17 Wash. Prac., Real Estate Section 4.25 (2023). The distinction is stated as follows:

Another distinction we should make is between “use” variances and “bulk,” sometimes called “area,” variances. A use variance permits a use not among those listed as either a regularly permitted or conditionally permitted use in a given zone. A bulk variance permits a variation from area, set back, front yard, side yard, back yard, or height restrictions. The distinction can be important. Use variances are much less common than bulk variances, are tested by a tighter legal standard, and are entirely forbidden by some local zoning codes.

See e.g. *Hoberg v. City of Bellevue*, 76 Wn. App. 357, 884 P.2d 1339 (1994). The granting of a “use variance” is viewed as the grant of a “special privilege inconsistent with the limitations upon other properties in the vicinity” in violation of RCW 36.70.810(2). The requested change of use and expansion of use rights is contrary to law.

We appreciate your consideration of our comments.

Very truly yours,
MEYER, FLUEGGE & TENNEY, P.S.


James C. Carmody