



HEARING NOTICE

LAND USE REQUEST AFFECTING THIS AREA

Audiencia Pública

Si necesita ayuda para comprender esta informacion, por favor llame 503-588-6173

CASE NUMBER:	Appeal of the Planning Administrator's decision on Modification of Conditional Use Permit: Case No.CU-ZC17-14MOD1
AMANDA APPLICATION NO:	19-104587-ZO
HEARING INFORMATION:	<u>Hearings Officer, Wednesday, June 12, 2019, 5:30 P.M., Council Chambers, Room 240, Civic Center, 555 Liberty Street SE, Salem, OR 97301</u>
PROPERTY LOCATION:	700-800 Blocks of Commercial Street NE and 253-275 Division Street NE
OWNER(S):	Union Gospel Mission of Salem
APPLICANT / AGENT(S):	Craig Chaney, of Merrick Lentz Architecture, on behalf of the Union Gospel Mission of Salem
APPELLANT(S):	Gerald Bieze; Gerald Bieze on behalf of 9 th Street LLC & Second and Center St. LLC
DESCRIPTION OF REQUEST:	<p><u>Summary:</u> Appeal of the Planning Administrator's April 26, 2019, decision approving the request for a proposed modification to the Conditional Use Permit approval granted to the Union Gospel Mission (UGM) of Salem for the proposed relocation of their men's shelter from its current downtown location at 345 Commercial Street NE to the proposed new location on property located in the 700 to 800 blocks of Commercial Street NE. The purpose of the proposed modification is to incorporate the two remaining properties located on the eastern half of the block located at 253 to 275 Division Street NE into the proposed development. No change to the maximum number of persons approved to be served at the shelter is proposed and all conditions of approval established under the original conditional use permit will continue to apply.</p> <p><u>Request:</u> Appeal of the Planning Administrator's April 26, 2019, decision approving a modification of Conditional Use Permit and Zone Change Case No. CU-ZC17-14 to modify the conditional use permit approval for the relocation of the Union Gospel Mission (UGM) of Salem's men's shelter to incorporate two additional properties located at 253 to 275 Division Street NE into the proposed development. No change to the maximum number of persons approved to be served at the shelter is proposed and all conditions of approval established under the original conditional use permit will continue to apply.</p> <p>The subject property, including the two additional properties proposed to be included in the development, totals approximately 2.54 acres in size, is zoned CB (Central Business District) and CO (Commercial Office) with Riverfront Overlay, and is located in the 700 to 800 blocks of Commercial Street NE and at 253 to 275 Division Street NE (Marion County Assessor Map and Tax Lot Numbers: 073W22AC03300 and 073W22DB01600, 1700, 1800, 1900, 2000 & 2100).</p>
BASIS OF APPEAL	See attached notice of appeal filed by appellant.
CRITERIA TO BE CONSIDERED:	<p><u>MODIFICATION OF CONDITIONAL USE PERMIT</u></p> <p>Pursuant to SRC 240.010(d), an application for <i>Modification of a Conditional Use Permit</i> approval shall be granted if all of the following criteria are met:</p> <ol style="list-style-type: none">(1) The proposed modification is not substantially inconsistent with the conditions of the original approval; and(2) When compared with the original approval, the proposed modification will not result in significant changes to the physical appearance of the development, the

use of the site, and the impacts on surrounding properties.

HOW TO PROVIDE TESTIMONY:

Any person wishing to speak either for or against the proposed request may do so in person or by representative at the Public Hearing. Written comments may also be submitted at the Public Hearing. Include case number with the written comments. Prior to the Public Hearing, written comments may be filed with the Salem Planning Division, Community Development Department, 555 Liberty Street SE, Room 305, Salem, Oregon 97301. Only those participating at the hearing, in person or by submission of written testimony, have the right to appeal the decision.

HEARING PROCEDURE:

The hearing will be conducted with the staff presentation first, followed by the Applicant, Appellant, if other than the applicant, Neighborhood Association, persons in favor or opposition, and rebuttal by the Applicant, if necessary. The applicant has the burden of proof to show that the approval criteria can be satisfied by the facts. Opponents may rebut the applicant's testimony by showing alternative facts or by showing that the evidence submitted does not satisfy the approval criteria. Any participant may request an opportunity to present additional evidence or testimony regarding the application. A ruling will then be made to either continue the Public Hearing to another date or leave the record open to receive additional written testimony.

Failure to raise an issue in person or by letter prior to the close of the Public Hearing with sufficient specificity to provide the opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals (LUBA) on this issue. A similar failure to raise constitutional issues relating to proposed conditions of approval precludes an action for damages in circuit court.

Following the close of the Public Hearing a decision will be issued and mailed to the appellant, applicant, property owner, affected neighborhood association, anyone who participated in the hearing, either in person or in writing, and anyone who requested to receive notice of the decision.

CASE MANAGER:

Bryce Bishop, Planner II, City of Salem Planning Division, 555 Liberty Street SE, Room 305, Salem, Oregon 97301. Telephone: 503-540-2399; E-mail: bbishop@cityofsalem.net.

NEIGHBORHOOD ORGANIZATION:

Central Area Neighborhood Development Organization (CAN-DO), Bruce Hoffman, Land Use Chair; Phone: 503-781-8542; Email: bruhof@gmail.com.

DOCUMENTATION AND STAFF REPORT:

Copies of the application, all documents and evidence submitted by the applicant are available for inspection at no cost at the Planning Division office, City Hall, 555 Liberty Street SE, Room 305, during regular business hours. Copies can be obtained at a reasonable cost. The Staff Report will be available seven (7) days prior to the hearing, and will thereafter be posted on the Community Development website:

<https://www.cityofsalem.net/Pages/planning-notice-decisions.aspx>

ACCESS:

The Americans with Disabilities Act (ADA) accommodations will be provided on request.

NOTICE MAILING DATE:

May 23, 2019

**PLEASE PROMPTLY FORWARD A COPY OF THIS NOTICE TO ANY OTHER OWNER, TENANT OR LESSEE.
For more information about Planning in Salem:**

<http://www.cityofsalem.net/planning>

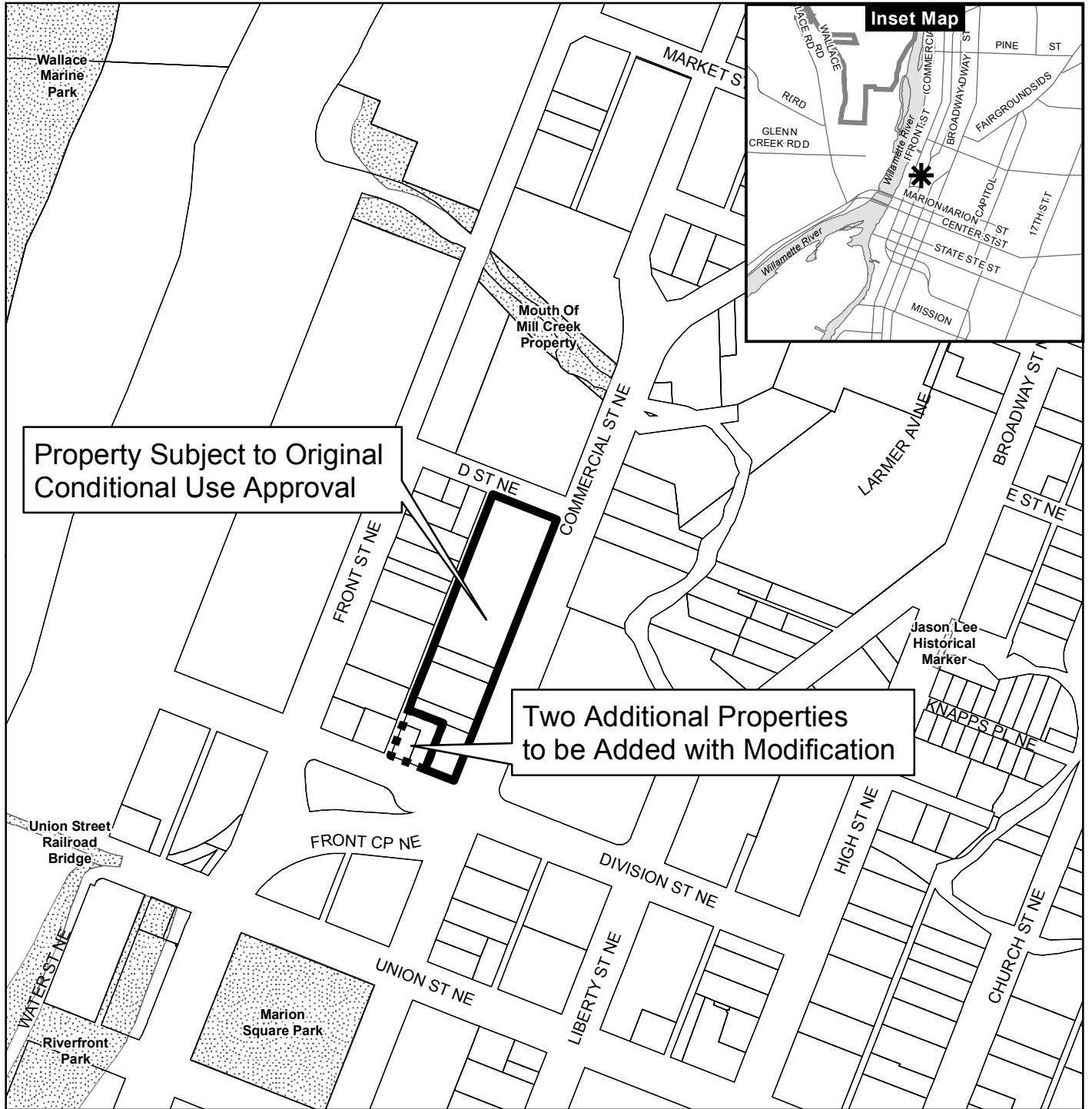
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It is the City of Salem's policy to assure that no person shall be discriminated against on the grounds of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income, as provided by Salem Revised Code Chapter 97. The City of Salem also fully complies with Title VI of the Civil Rights Act of 1964, and related statutes and regulations, in all programs and activities. Disability-related modification or accommodation, including auxiliary aids or services, in order to participate in this meeting or event, are available upon request. Sign language and interpreters for languages other than English are also available upon request. To request such an accommodation or interpretation, contact the Community Development Department at 503-588-6173 at least three business days before this meeting or event.

TTD/TTY telephone 503-588-6439 is also available 24/7

Vicinity Map

700 to 800 Blocks of Commercial Street NE; 253 to 275 Division Street NE



Legend

Taxlots	Outside Salem City Limits	Parks
Urban Growth Boundary	Historic District	CITY OF Salem AT YOUR SERVICE Community Development Dept.
City Limits	Schools	<p>This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.</p>
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LANDSCAPING NOTES

PROPOSED PERIMETER LANDSCAPING: 5388 SF
 PROPOSED TOTAL LANDSCAPING AREA: 8731 SF
 TOTAL SITE AREA: 104,712 SF
 PERCENTAGE OF SITE AREA LANDSCAPED: 8.34 %

PARKING LOT LANDSCAPING NOTES

OFF STREET PARKING AREA: 41,897 SF
 INTERIOR LANDSCAPING REQUIRED (5% MIN): 2095 SF
 INTERIOR LANDSCAPING PROPOSED: 3343 SF
 REQUIRED INTERIOR TREES (1/12 STALLS): 10 Trees
 PROPOSED INTERIOR TREES: 13 Trees

PARKING NOTES

REQUIRED PARKING

USE	AREA	SF/SPACE	REQ. SPACES
SHELTER			
SHELTER USE	51,285 SF	1/350 SF*	146 SPACES*
ADMINISTRATION	6,997 SF	1/350 SF	20 SPACES
THRIFT STORE			
RETAIL	9185 SF	1/250 SF	37 SPACES
RETAIL (FURNITURE)	2797 SF	1/900 SF	4 SPACES
WAREHOUSE	2682 SF	1/1500 SF	2 SPACES
OFFICE	739 SF	1/350 SF	3 SPACES
TOTAL			212 SPACES*

PROPOSED PARKING

FULL SIZE	58 SPACES
COMPACT	55 SPACES
TOTAL	113 SPACES

BICYCLE PARKING

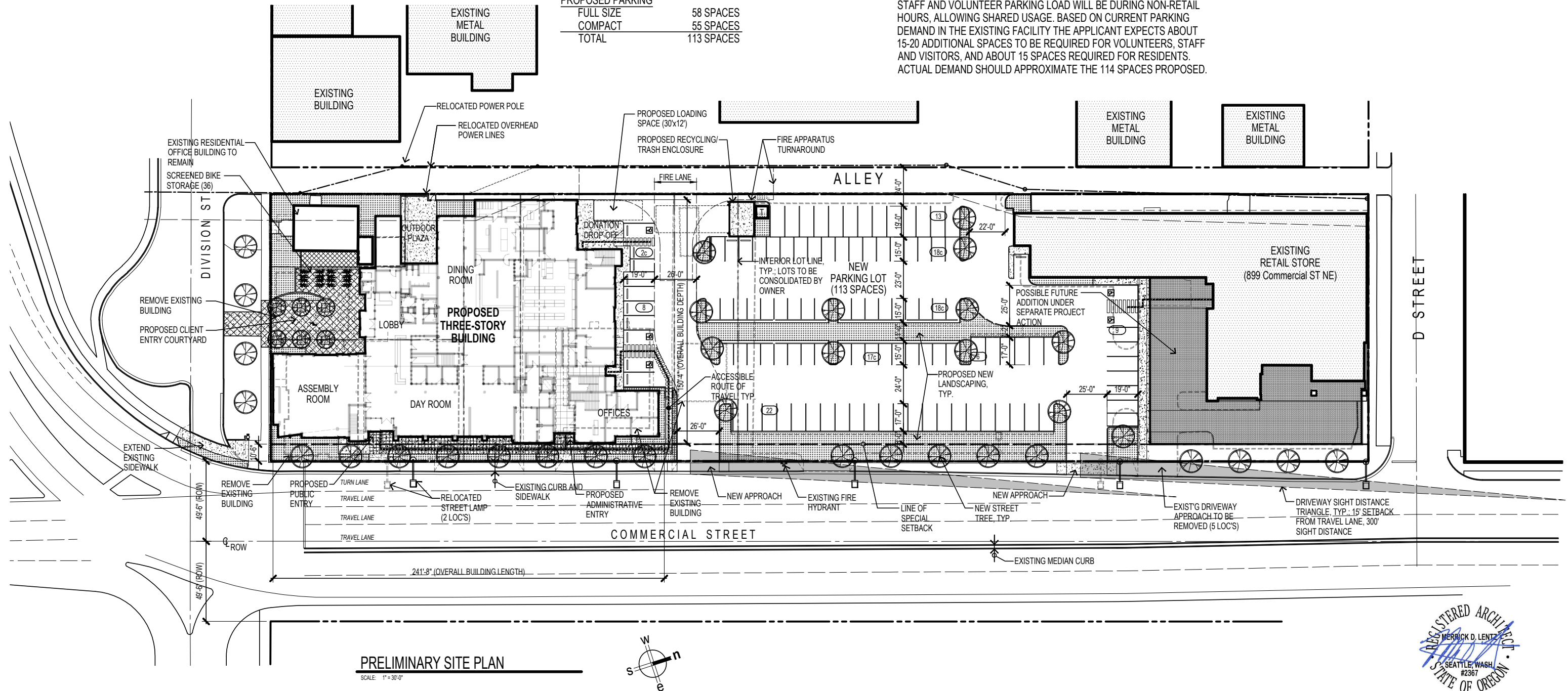
USE	AREA	SPACES	REQ. SPACES	PROPOSED
SHELTER	58,282 SF	1/3500 SF**	16 SPACES	32 SPACES
RETAIL	15,403 SF	4 MIN.	4 SPACES	4 SPACES

**FOR THE FIRST 50,000 SF. 1/7000 SF THEREAFTER.

* NOTE: APPLICANT WILL PURSUE AN ADJUSTMENT PER CHAPTER 250 TO THE REQUIRED PARKING LOAD FOR THE SHELTER USE. 1 SPACE PER 350 GROSS SF GREATLY EXCEEDS THE ACTUAL PARKING DEMAND FOR THIS USE BASED ON ESTABLISHED HISTORICAL USAGE. VERY FEW OF THE SHELTER CLIENTS WILL HAVE PERSONAL VEHICLES AND PEAK STAFF AND VOLUNTEER PARKING LOAD WILL BE DURING NON-RETAIL HOURS, ALLOWING SHARED USAGE. BASED ON CURRENT PARKING DEMAND IN THE EXISTING FACILITY THE APPLICANT EXPECTS ABOUT 15-20 ADDITIONAL SPACES TO BE REQUIRED FOR VOLUNTEERS, STAFF AND VISITORS, AND ABOUT 15 SPACES REQUIRED FOR RESIDENTS. ACTUAL DEMAND SHOULD APPROXIMATE THE 114 SPACES PROPOSED.

PROPOSED ADJUSTMENTS

1. REQUIRED PARKING.
2. SINGLE LOADING SPACE FOR THE SHELTER INSTEAD OF THE TWO REQUIRED BY THE CODE.
3. MAXIMUM SETBACK ALONG DIVISION ST. INCREASED FROM 12'-0", TO ALLOW THE CONSTRUCTION OF THE ENTRY COURTYARD, AND MEET CONDITIONS OF THE CONDITIONAL USE PERMIT.
4. PARKING SETBACK FROM DIVISION REDUCED TO 6', WITH A MAX. 36" HIGH HEDGE.
5. REMOVE THE 5' LANDSCAPE BUFFER TO ALLEY FOR LOADING SPACE.
6. FRONTAGE MODULATION REQUIREMENTS: TO BE ADDRESS IN DESIGN REVIEW.
7. DUMPSTER SETBACK?



PRELIMINARY SITE PLAN

SCALE: 1" = 30'-0"



NOTICE OF APPEAL

May 13, 2019

To: City of Salem Planning Division
Room 305
555 Liberty Street SE
Salem, OR 97301

Re: Appeal of Decision of the Planning Administrator (the "**Decision**")
Modification of Conditional Use and Zone Change
Case NO.: CU-ZC17-14MOD1 (the "**CUP Modification**")
Application No.: 19-104587-ZO
700-800 block of Commercial St. NE and 253-275 Division St. NE
Notice of Decision Date: April 26, 2019

Appellants: Mr. Gerald Bieze, an individual
9th Street LLC, an Oregon limited liability company
Second and Center St. LLC, an Oregon limited liability company

Appellants' Address: 1118 Northshore Road, Lake Oswego, OR 97034

Appellants' Standing: Appellants have standing to appeal under SRC § 300.520(f)(2) because they are property owners of record within 250 feet of the subject property that were entitled to notice of the Decision pursuant to SRC § 300.520(e)(1)(E). Appellant Gerald Bieze is a member of both 9th Street LLC, an Oregon limited liability company and Second and Center St. LLC, an Oregon limited liability company – the entities that own the property located at 250 Division St. NE, Salem, OR 97301 ("**Appellants' Property**"). Appellants' Property is located directly across Division St. NE from 253-275 Division St. NE (also known as Tax Lots 2000 and 2100), the properties at issue in the Decision (the "**Additional Properties**").

Appellants also have standing to appeal under SRC § 300.520(f)(2) because Mr. Bieze provided comment during the public comment period on behalf of himself and the entities which own the Appellants' Property. On March 25, 2019, Appellants' attorney submitted Appellants' written comments regarding the CUP Modification ("**Appellants' Comment Letter**") to Mr. Bryce Bishop, City of Salem Planner II/Planning Administrator Designee via electronic mail. A summary of Appellants' comments was provided in the Decision.

Appellants' Susan Baird
Representatives Baird Law Office, LLC
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susan@bairdlawoffices.com

Laura Westmeyer and Tommy Brooks
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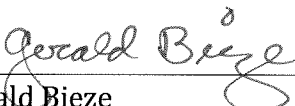
Appellants are appealing the Decision on the following grounds. Appellants reserve the right to raise additional issues and arguments and to present additional evidence at the de novo hearing.

1. The Decision failed to conform to SRC § 240.001. SRC § 240.001 provides that the very purpose of Chapter 240 is to undertake a "review" in order "to determine whether the imposition of conditions is necessary to minimize the negative impacts on uses in the surrounding area." The Decision erred in failing to consider the likely adverse impacts of the modified use on Appellants' Property, which is an adjacent surrounding property in the immediate neighborhood of the Additional Properties. These likely adverse impacts on the adjacent surrounding property could, and should, have been minimized through the imposition of reasonable additional conditions of approval.
2. The Decision failed to conform to SRC § 240.005. The proposed modification should have been reviewed as a new conditional use permit under the criteria set forth in SRC § 240.005.
3. The Decision failed to conform to SRC § 240.010. The proposed modification does not meet the criteria set forth in SRC § 240.010(d) for granting modification of a conditional use permit and therefore requires submittal of a new application for conditional use permit pursuant to SRC § 240.010(a).
4. The Decision failed to conform to SRC § 240.010(d)(1). The proposed modification is substantially inconsistent with the conditions of the original approval.
 - a. The Decision made inadequate findings to support the conclusion that the modification is consistent with Condition 1 of the original approval requiring video surveillance of the entire surface of the alleyway. The Decision erred in failing to consider the purposes and rationale for imposing Condition 1 in the original approval, which purposes and rationale should have been reconsidered in light of the reorientation of the development and incorporation of the Additional Properties that substantially changed the reasons for imposing

Condition 1 in the original approval. The Decision erred in summarily concluding that merely applying the same conditions that existed in the original approval to the modification application resulted in consistency.

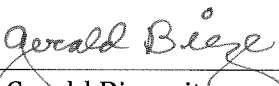
- b. The Decision made inadequate findings to support the conclusion that the modification is consistent with Condition 4 of the original approval requiring a pedestrian connection to be provided within the development to connect the main guest entrance into the proposed shelter to a public sidewalk within an abutting street or alley.
 - c. The Decision made inadequate findings to support the conclusion that the modification is consistent with Condition 8 of the original approval requiring that the “primary entrance for emergency shelter users shall not be located along Commercial Street frontage.”
 - i. In applying Condition 8 to the modification application, the Decision failed to address the applicable design standards of the Riverfront Overlay Zone.
5. The Decision failed to conform to SRC § 240.010(d)(2). The proposed modification will result in significant changes when compared with the original conditional use approval.
- a. The proposed modification will result in significant changes to the physical appearance of the development, including the size of the building, the location of the building, and the location and orientation of the primary client entry. The Decision concluded the changes were “better” without applying the proper criteria set forth in SRC § 240.010(d)(2) of “significant change.”
 - b. The proposed modification will result in significant changes to the use of the site, including how and where UGM clients access the shelter and how client activity will be monitored. The Decision concluded the intensity of use would not increase, but failed to apply the SRC § 240.010(d)(2) criteria of “significant change” to the changes in use.
 - c. The proposed modification will result in significant changes to the impacts on surrounding properties, especially those properties near Division Street NE, where client activity will be focused. The Decision concluded Division Street NE was “*arguably* the best location” (italics added) for client entry, but the Decision failed to apply the SRC § 240.010(d)(2) criteria of “significant change” to the changes in impacts on surrounding properties.

- i. The Decision failed to consider or require conditions of approval to mitigate adverse impacts to the Appellants' Property, as required by SRC § 240.001 and § 240.005(d);
- 6. The Decision entirely failed to consider or address the 114 parking spaces proposed, which exceed the number of parking spaces permitted in the original approval. SRC § 240.005(c)(3).
- 7. The Decision failed to conform to the City of Salem Unified Development Code ("UDC") Section 110.065, requiring developments and approvals to be in conformity with all applicable regulations in the UDC.
 - a. The Additional Properties are located within the Commercial Office ("CO") Zone and the Riverfront Overlay Zone ("**Overlay Zone**"). In the Overlay Zone, relocations of an existing nonprofit shelter serving more than 75 persons may be allowed as a conditional use; however, SRC § 617.015 provides that any use that is prohibited in the underlying zone is prohibited in the Overlay Zone. In the underlying CO Zone, the development of room and board serving more than 75 persons is specifically prohibited under SRC §521.005, Table 521-1; therefore, it is also prohibited in the Overlay Zone. Under the applicable provisions of the UDC, a rezone changing the zoning of the Additional Properties from CO to CB would be required before the modification of the original approval could even be considered.




Gerald Bieze

9th Street LLC,
an Oregon limited liability company

By: 

Gerald Bieze, its member

Second and Center St. LLC,
an Oregon limited liability company

By: 

Gerald Bieze, its member