

**TO: PLANNING COMMISSION**

**FROM: LISA ANDERSON-OGILVIE, AICP, DEPUTY COMMUNITY DEVELOPMENT DIRECTOR AND PLANNING ADMINISTRATOR**

**SUBJECT: APPEAL OF HEARINGS OFFICER'S DECISION DENYING VARIANCE / CLASS 2 DRIVEWAY APPROACH PERMIT CASE NO. 21-01 FOR PROPERTY LOCATED AT 1355 MILDRED LANE SE - 97306**

### **ISSUE**

Should the Planning Commission affirm, modify, or reverse the Hearings Officer's denial of a Variance and Class 2 Driveway Approach Permit for Case No. VAR-DAP21-01 to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, where a driveway is not allowed pursuant to SRC 804.035, for a single-family residential use, for property approximately 7.6 acres in size and split-zoned RA (Residential Agriculture), RS (Single-Family Residential), and IC (Industrial Commercial).

### **RECOMMENDATION**

AFFIRM the Hearings Officer's denial of a Variance and Class 2 Driveway Approach Permit for Case No. VAR-DAP21-01 to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street, where a driveway is not allowed for a single-family use pursuant to SRC 804.035.

### **SUMMARY OF RECORD**

The following items are submitted to the record and are available upon request: All materials submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, and stormwater reports; any materials and comments from public agencies, City Departments, neighborhood associations, and the public; and all documents referenced in this report.

### **BACKGROUND**

The subject property is located at 1355 Mildred Lane SE, a vicinity map showing the subject property is included as **Attachment 1**.

On March 16, 2021, the Hearings Officer issued a decision denying a request for a Variance and Class 2 Driveway Approach Permit to allow construction of a driveway approach onto Mildred Lane SE, a Minor Arterial, where a driveway is not allowed for a single-family use pursuant to SRC 804.035. An appeal of the decision was filed by the applicant. On March 22, 2021, the City Council did not elect to review the Hearings Officer's denial decision; therefore, the review authority will be the Planning Commission.

## **FACTS AND FINDINGS**

### ***Procedural Findings***

1. On January 11, 2021, a Variance and Class 2 Driveway Approach Permit application was submitted to allow the construction of a driveway approach onto Mildred Lane SE, a Minor Arterial street, where a driveway for a single-family residential use is not allowed pursuant to SRC 804.035.

On January 27, 2021, an incomplete letter was provided to the applicant requesting additional information. On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete.

The consolidated applications were deemed complete for processing on January 29, 2021. The staff report for the February 24, 2021 hearing before the Hearings Officer is included as **Attachment 2**.

2. On March 16, 2021, following the public hearing, the Hearings Officer issued a decision denying the Variance and Class 2 Driveway Approach Permit (**Attachment 3**).
3. On March 29, 2021, the applicant filed a timely appeal of the decision (**Attachment 4**). On March 31, 2021, notice of appeal hearing was sent to the appellant, applicant, property owners, the neighborhood association, individuals who submitted testimony for the record, and all others entitled to notice pursuant to Salem Revised Code (SRC) requirements. The subject property is not part of an HOA.
4. Notice of the appeal hearing was posted on the subject property on April 8, 2021. The appeal public hearing before the Planning Commission is scheduled for April 20, 2021. The state-mandated final local decision deadline for this application is May 29, 2021.
5. The procedure for the appeal is specified in SRC 300.1040. The Planning Commission may affirm or reverse the decision, or may remand the matter to the Hearings Officer for further action.

### **Appeal.**

Prior to the expiration of the March 31, 2021 appeal deadline, Brandie Dalton, on behalf of the applicant and one of the property owners, Empire Builders of Oregon LLC (James Helton), filed an appeal of the Hearings Officer's decision (**Attachment 3**). A summary and response to the issues raised in the appeal is provided below:

1. *The appellant argues that the decision was based on the fact that staff indicated that not all required information was provided.*

***Finding:***

The staff report details a series of required application submittal requirements from SRC 300.210 and SRC 245.005(c) that were not submitted with the application. The Hearings Officer's decision indicates there is no evidence in the record that these deficient materials were corrected or that application requirements are not substantive criteria.

All review authorities are required by state law and SRC 300.220 to base any decision on whether the applicant has met its burden of proof and demonstrated that the application satisfies the applicable criteria, based on substantial evidence in the record. The Hearings Officer found that the evidence in the record does not demonstrate the applicant has satisfied the substantive review criteria. *The applicant has not submitted any new evidence into the record for this appeal.*

The required application submittal requirements that have not been satisfied by the applicant are discussed below:

*SRC 300.210(a)(1) land use application*

An applicant is required to submit an application form which includes the applicant's name, subject property, brief description of the proposal and signatures of the applicant(s), owner(s) of the subject property and/or those duly authorized to represent them.

The subject property contains five tax lots (083W14CB / 2301, 2400, 2401, 2500, and 2501) as one legal unit of land. The applicant was a party to a previously approved tentative partition application, which would divide the subject property into three parcels. The applicant has not yet filed the final land division map (Plat), therefore the five tax lots are still one legal property. Since the partition has not been finalised, the land area is owned by Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The application forms submitted by the applicant listed Empire Builders of Oregon LLC as the applicant. However, the applications only contained the signature of James Helton (Empire Buildings of Oregon LLC). Signature authority was not provided by all owners of the subject property authorizing James Helton to file the application on their behalf.

Staff requested current ownership information from the applicant on January 27, 2021 to verify required property owner signatures on the land use applications. On January 29, 2021, the applicant provided written notice stating no additional information would be provided, pursuant to ORS 227.178(2)(c), and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021 without the signatures of Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The land use applications do not meet the submittal requirements of SRC 300.210(A)(G).

SRC 300.210(a)(2), recorded deed/land sales contract with legal description.

Pursuant to SRC 300.210(a)(2), a recorded deed or land sales contract with legal descriptions is required to be submitted with land use applications. The Marion County Assessor's site lists the owners of the subject property as Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The deed submitted by the applicant is not the latest deed and does not reflect current ownership.

The recorded deed submitted with the land use applications does not meet the submittal requirements of SRC 300.210(a)(2).

SRC 300.210(a)(4), pre-application conference written summary or copy of an approved pre-application conference waiver.

Pursuant to SRC 300.100, Table 300-2, a pre-application conference is required for a variance land use application. Records indicate no pre-application conference has been requested for the variance and no approved pre-application conference waiver was submitted by the applicant. Therefore; the variance land use application does not meet the submittal requirements of SRC 300.210(a)(4).

SRC 300.210(a)(5), a statement as to whether any City-recognized neighborhood associations whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact.

and

SRC 300.210(a)(6), proof that the required neighborhood association contacted has been provided

The applicant is required by SRC 300.210(a)(6) to provide a copy of an email or letter to the Neighborhood Association, meeting SRC 300.210(a)(5). The subject property is located within the South Gateway Neighborhood Association. The application form that was submitted for the variance indicates the neighborhood association has not been contacted.

The applicant did not provide, as the required materials under SRC 300.210(a)(5), that they had contacted the South Gateway Neighborhood Association in advance of filing the variance application. The Hearings Officer indicated that the requirement to contact neighborhood associations is closely tied to Statewide Planning Goal One, concerning public participation in the planning process. The Hearings Officer noted that the staff notice may have cured this particular defect.

SRC 245.005(c), submittal requirements.

In addition to the submittal requirements for a Type III application under SRC Chapter 300, an application for a variance shall include a site plan indicating future and existing development, trees, and landscaping.

The applicant's site plan indicates a driveway approach and single-family dwelling are proposed for a portion of a lot (Parcel 1) that was approved under Partition Case No. PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel and the applicant's site plan only shows a small portion of proposed Parcel 1 which is a lot configuration that is nonexistent. The applicant has not provided any details about their future plans for the remainder of proposed Parcel 1, which makes an analysis of the proposal difficult.

The applicant has been advised to submit a subdivision application for proposed Parcel 1, which will allow staff to determine if this portion of the lot can be served by an access from the west side of the creek. The applicant has also been advised that another route open to them would be to request Comprehensive Plan Map and Zone Change to a zone that can be accessed in conformance with the code, as well as a Conditional Use approval to allow access for a single-family dwelling across the IC zone. The development, as submitted, is not allowed.

Staff notified the applicant on January 27, 2021 that the site plan does not reflect the total site area and dimensions as required under SRC 245.005(c)(1) and requested a revised site plan. On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021. The site plan submitted with the variance application does not meet the additional submittal requirements of SRC 245.005(c)(1).

SRC 804.035(d) submittal requirement

SRC 804.035(d) provides that the spacing of a driveway approach providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline. The proposed driveway approach is less than 370 feet from the intersection of Mildred Lane SE and Woodside Drive SE. Additionally, land use case number DR-CU-SPR-ADJ-DAP20-02 approved a driveway for the legal unit of land (subject property), for a multiple family development, that will provide approximately 150 feet of spacing from the proposed driveway. This equates to a 60% adjustment to the standard and requires a Class 2 Zoning Adjustment application with findings of how the proposal meets the criteria of SRC 250.005(d)(2).

Staff notified the applicant on January 27, 2021 that SRC 804.035(d) could not be justified under a variance that that a Class 2 Adjustment application was required with findings of how the proposal meets the criteria of SRC 250.005(d)(2). On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021. The applicant did not provide an application nor findings for a Class 2 Adjustment; therefore, this standard is not met.

2. *The applicant further argues that the denial was also based on the fact that staff indicated that the lot does not exist. The applicant states the lot is part of Parcel 1 of PAR18-11 approval and the partition is in the process of been reviewed and will be recorded soon.*

**Finding:**

The subject property includes five tax lots with an area of approximately 7.6 acres and has approximately 248 feet of frontage on Woodside Drive SE, approximately 50 feet of frontage on Flairstone Drive SE, approximately 630 feet of frontage on the north side of Mildred Lane SE, and approximately 539 feet of frontage on the south side of Mildred Lane SE. Mildred Lane SE is designated as a Minor Arterial street in the Salem Transportation System Plan and Flairstone Drive SE and Woodside Drive SE are designated as Local streets. Because Mildred Lane SE is designated as a Minor Arterial street, the proposed driveway approach onto Mildred Street SE for the single-family use is not allowed pursuant to SRC 804.035.

The subject property was approved for a three-lot partition in August of 2019; Partition Case PAR19-11. The proposed driveway approach is intended to provide access for a new single-family dwelling which the applicant submitted for development with the Building and Safety Division (20- 113775-DW). The applicant's site plan indicates the driveway approach and single-family dwelling are proposed for what is currently an undivided portion of proposed Parcel 1 of PAR19-11.

The Hearings Officer indicated that there is no evidence in the record that the Final Plat for the partition has been recorded, therefore, there is no evidence in the record demonstrating that Parcel 1 is a separate legal parcel, rather than an undivided area on the 7.6-acre site. The Hearings Officer also indicated that partition tentative plans are valid for a period of two years. The approval granted by PAR19-11 must be exercised or an extension granted by September 14, 2021, or the approval of the partition will be null and void. Pursuant to SRC 300.850, Table 300- 3, a partition tentative plan is allowed a maximum of four extensions with a maximum approval period of two years per each extension granted. Consequently, a number of years could pass before the Final Plat is recorded and Parcel 1 is a separate unit of land, or the approval of PAR19-11 could expire, leaving the 7.6 acres undivided.

Along the same lines, just as there is no evidence in the record that a Final Plat has been recorded, the Hearings Officer notes that there is no evidence in the record of an approved final plat or other instrument that further divides tentative plan Parcel 1 so that the proposed driveway approach would serve a separate lot. Nor did the application for the variance seem to be part of a consolidated application.

In summary, the appellant's letter assigns error to the Hearings Officer determination regarding compliance with submittal requirements of SRC 300.210, SRC 245.005(c), and SRC 804.035(d). However, the appellant states they provided all information required by Code. The appellant further assigns error to the Hearings Officer determination regarding the existence of the lot and states that the lot is part of Parcel 1 of PAR18-11 approval and the partition is in the process of been reviewed and will be recorded soon.

The Hearings Officer found that the applicant has not satisfied the submittal requirements of SRC 300.210, SRC 245.005(c), and SRC 804.035(d), and that the development, as submitted, is not allowed as the lot configuration has not been approved. For these reasons, the Variance and Class 2 Driveway Approach Permit requests are not justified.

### ***Substantive Findings***

As provided in the March 16, 2021 Hearings Officer decision denying the Variance and Class 2 Driveway Approach Permit (**Attachment 3**), the proposed development does not satisfy the submittal requirements of SRC 300.210, SRC 245.005(c), and SRC 804.035(d). Findings establishing the development's conformance with the submittal requirements are included in Section 6 on pages 5-8 of the variance and driveway approach permit decision.

Additionally, the development, as submitted, is not allowed as the lot configuration has not been approved. Findings establishing the developments conformance with lot legality are included in Section 7 on pages 8-10 of the variance and driveway approach permit decision. Further, the proposed development did not meet Variance criterion 245.005(d)(2), and Class 2 Driveway Approach Permit criterion 804.025(a)(1), (2), (3), (4) and (6).

### ***Conclusion.***

Based on the facts and findings presented above and included with the February 24, 2021 staff report to the Hearings Officer and the March 16, 2021 decision, staff recommends that the Planning Commission **AFFIRM** the Hearings Officer's decision to **DENY** the Variance and Class 2 Driveway Approach Permit requests.

### **ALTERNATIVES**

The Planning Commission may take one of the following actions:

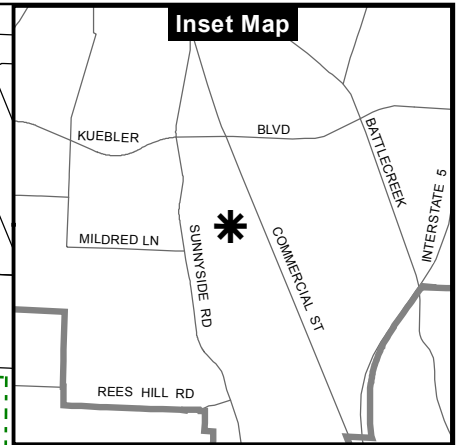
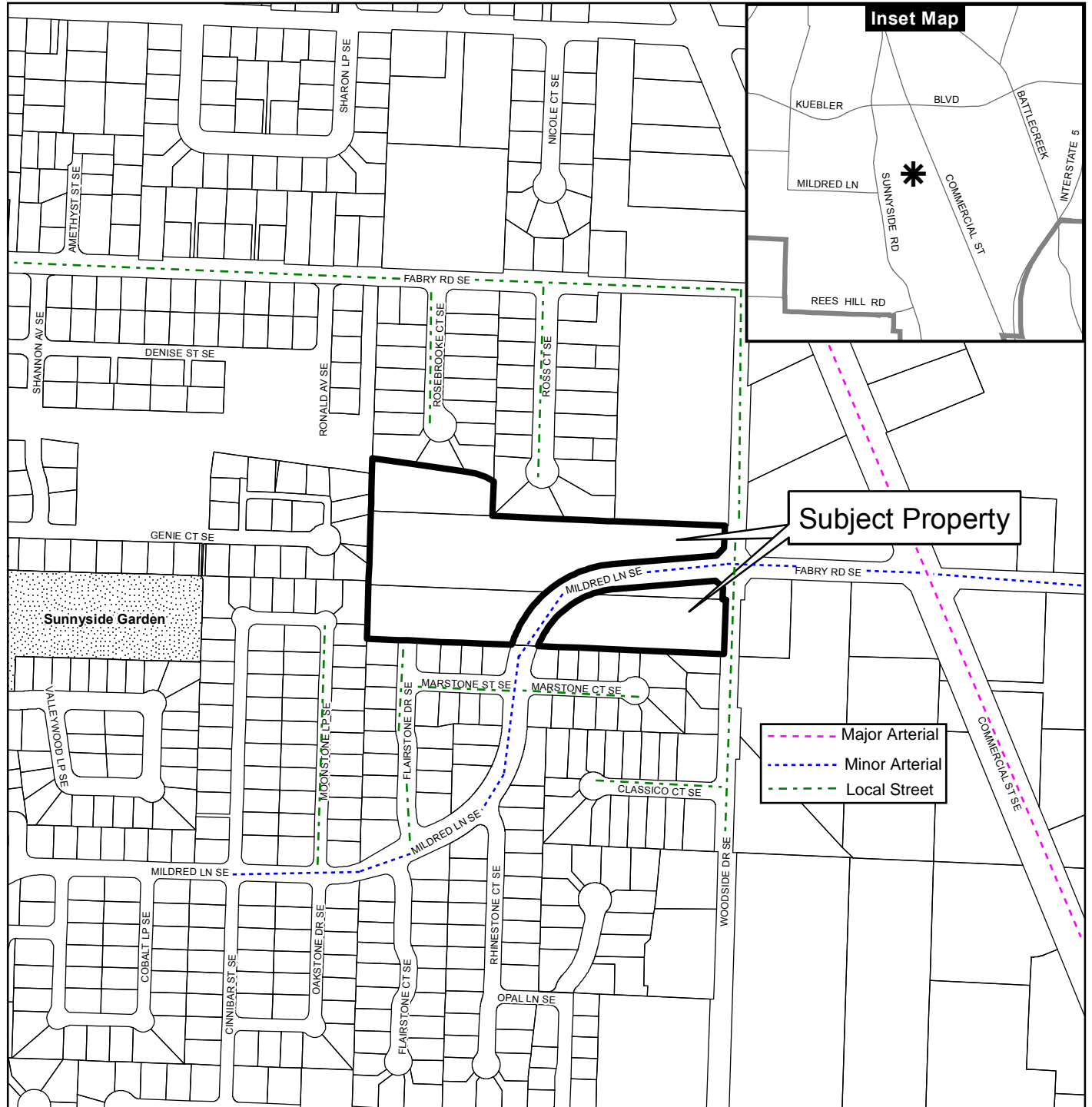
- I. **AFFIRM** the March 16, 2021 decision denying VAR-DAP21-01.
- II. **REMAND** the March 16, 2021 decision denying VAR-DAP21-01 to the Hearings Officer for further action.
- III. **REVERSE** the March 16, 2021 denial, and grant approval for VAR-DAP21-01.

Attachments: 1. Vicinity Map  
2. Staff Report for the February 24, 2021 Public Hearing  
3. Hearing's Officer Decision on Case No. VAR-DAP21-01, dated March 16, 2021  
4. Notice of Appeal filed by Applicant

Prepared by: Sally Long, Planner I



# Vicinity Map 1355 Mildred Lane SE



Subject Property

- Major Arterial
- Minor Arterial
- Local Street

**Legend**

Taxlots	Outside Salem City Limits	Parks	 Community Development Dept.
Urban Growth Boundary	Historic District		
City Limits	Schools	<div style="border: 1px solid black; padding: 5px;">                     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.                 </div>	

**FOR MEETING OF: FEBRUARY 24, 2021**

**CASE NO.: VAR-DAP21-01**

**TO: HEARINGS OFFICER**

**FROM: LISA ANDERSON-OGILVIE, AICP, DEPUTY COMMUNITY DEVELOPMENT DIRECTOR AND PLANNING ADMINISTRATOR**

**SUBJECT: VARIANCE / CLASS 2 DRIVEWAY APPROACH CASE NO. 21-01; 1355 MILDRED LANE SE- 97306; AMANDA NO.: 21-101587-ZO, 21-101590-ZO**

**REQUEST**

Summary: A request for a Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, a Minor Arterial Street, where a driveway is not allowed for a single-family residential use.

Request: A Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, where a driveway is not allowed pursuant to SRC 804.035, for a single-family residential use, for property approximately 7.6 acres in size, split-zoned RA (Residential Agriculture), RS (Single-Family Residential) and IC (Industrial Commercial) and located at 1355 Mildred Lane SE - 97306 (Marion County Assessor Map and Tax Lot Numbers: 083W14CB / 2301, 2400, 2401, 2500, and 2501).

**APPLICANT:** Empire Builders of Oregon LLC (James Helton)

**OWNER(S):** Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain)

**AGENT:** Brandie Dalton, Multi-Tech Engineering, Inc.

**RECOMMENDATION**

Based on the Facts and Findings presented in this staff report, staff recommends the Hearings Officer **DENY** the request for a variance and driveway approach permit to allow a driveway approach onto Mildred Lane SE, a Minor Arterial Street, where a driveway is not allowed for a single-family residential use.

**BACKGROUND**

On January 11, 2021, Brandie Dalton, Multi-Tech Engineering, Inc., filed Variance and Class 2 Driveway Approach Permits on behalf of one of the property owners, Empire Builders of Oregon LLC (James Helton).

On January 27, 2021, an incomplete letter was provided to the applicant requesting additional information. On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete.

The consolidated applications were deemed complete for processing on January 29, 2021.

The public hearing before the City of Salem Hearings Officer is scheduled for February 24, 2021, at 5:30 p.m. Notice of public hearing was sent by mail to surrounding property owners and tenants pursuant to Salem Revised Code (SRC) requirements on February 4, 2021. Public hearing notice was also posted on the property pursuant to SRC requirements.

## **PROPOSAL**

The applicant is requesting a Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, for a single-family residential use. The Variance is requested because driveway access onto a minor arterial for a single-family use is prohibited pursuant to SRC 804.035. The Class 2 Driveway Approach Permit is required for a driveway approach onto a parkway, major arterial, or minor arterial pursuant to SRC 804.025(a)(1). A vicinity map illustrating the location of the legal property is attached hereto and made a part of this staff report (**Attachment A**).

## **SUMMARY OF RECORD**

The following items are submitted to the record and are available upon request: All materials submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, and stormwater reports; any materials and comments from public agencies, City departments, neighborhood associations, and the public; and all documents referenced in this report.

## **APPLICANT'S STATEMENT**

The applicant's site plan is included as **Attachment B** to illustrate the location of the proposed driveway on Mildred Lane SE. The site plan indicates the driveway approach for a single-family use is proposed for a portion of proposed Parcel 1 of PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. The applicant's statement addressing the applicable approval criteria for the consolidated Variance and Class 2 Driveway Approach applications is included as **Attachment C**.

## **FACTS AND FINDINGS**

### **1. Salem Area Comprehensive Plan (SACP) designation**

*Urban Growth Policies:* The subject property is located within the Salem Urban Growth Boundary and the Urban Service Area.

*Comprehensive Plan Map:* The subject property is designated "Single Family Residential (SF)" and "Industrial Commercial (IC)" on the Salem Area

Comprehensive Plan (SACP) Map. The surrounding properties are designated as follows:

North: Single Family Residential (SF) and Multi-Family Residential (MF)  
South: Single Family Residential (SF)  
East: Across Woodside Drive SE; Industrial Commercial (IC)  
West: Single Family Residential (SF)

## 2. Zoning and Surrounding Land Uses

The subject property is split-zoned RA (Residential Agriculture), RS (Single Family Residential), and IC (Industrial Commercial), and is currently undeveloped. The surrounding properties are zoned and used as follows:

North: RS (Single Family Residential) and RM-II (Multiple Family Residential) – Single-family residential subdivision and an apartment complex  
South: RS (Single Family Residential) – Single-family residential subdivision  
East: IC (Industrial Commercial) – Self-service storage development and single-family residence  
West: RS (Single Family Residential) – Single-family residential subdivision

## 3. Site Analysis

The subject property includes five tax lots with an area of approximately 7.6 acres and has approximately 248 feet of frontage on Woodside Drive SE, approximately 50 feet of frontage on Flairstone Drive SE, approximately 630 feet of frontage on the north side of Mildred Lane SE, and approximately 539 feet of frontage on the south side of Mildred Lane SE.

Mildred Lane SE is designated as a Minor Arterial street in the Salem Transportation System Plan and Flairstone Drive SE and Woodside Drive SE are designated as Local streets. The proposed driveway approach onto Mildred Street SE for the single-family use is not allowed pursuant to SRC 804.035.

The subject property was approved for a three-lot partition in August of 2019; Partition Case PAR19-11 (**Attachment D**). The proposed driveway approach is to provide access for a new single-family dwelling submitted for development under permit 20-113775-DW. The applicant's site plan indicates the driveway approach and single-family dwelling are proposed for a portion of proposed Parcel 1 of PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. Partition tentative plans are valid for a period of two years. The approval granted by PAR19-11 must be exercised or an extension granted by September 14, 2021, or the approval will be null and void. Pursuant to SRC 300.850, Table 300-3, a partition tentative

plan is allowed a maximum of four extensions with a maximum approval period of two years per each extension granted.

As well, the lot configuration illustrated on the the applicant's site plan for the proposed single-family dwelling is nonexistent and therefore, also not a legal unit of land.

#### **4. Neighborhood and Citizen Comments**

The subject property is located within the South Gateway Neighborhood Association. The applicant is required by SRC 300.210(a)(6) to provide a copy of an email or letter to the Neighborhood Association, meeting SRC 300.210(a)(5). As discussed below in Section 6 of this report, the applicant has not provided proof that they contacted the South Gateway Neighborhood Association.

Notice was provided by staff to South Gateway Neighborhood Association and to surrounding addresses, property owners, and tenants within 250 feet of the subject property. At the time of this staff report, no comments were received from the neighborhood association or surrounding property owner's or tenants.

#### **5. City Department and Public Agency Comments**

The City of Salem Building and Safety Division reviewed the Variance and Class 2 Driveway Approach Permit proposals and commented the Building and Safety Department has no zoning jurisdiction.

The City of Salem Fire Department reviewed the Variance and Class 2 Driveway Approach Permit proposals and stated that they have no concerns.

The City of Salem Public Works Department, Development Services Section, reviewed the proposal and has provided comments. Their memorandum is included as **Attachment E**.

#### **6. Analysis of Land Use Application Submittal – SRC Chapters 300, 245 and 804**

SRC 300.210(a) outlines application submittal requirements for land use applications and SRC 245.005(c) outlines additional submittal requirements for a variance.

SRC Chapter 300.210(a) provides that land use applications shall be submitted on forms prescribed by the Planning Administrator, shall not be accepted in partial submittals, and of the following must be submitted to initiate completeness review under SRC 300.220. All information supplied on the application form and accompanying the application shall be complete and correct as to the applicable facts.

The following items submitted by the applicant were found to be either partial submittals or missing, pursuant to SRC 300.210(a).

*SRC 300.210(a)(1) land use application*

An applicant is required to submit an application form which includes applicant's name, subject property, brief description of the proposal and signatures of the applicant(s), owner(s) of the subject property and/or those duly authorized to represent them.

The subject property contains five tax lots (083W14CB / 2301, 2400, 2401, 2500, and 2501) as one legal unit of land. The applicant was a party to a previously approved tentative partition application, which would divide the subject property into three parcels. The applicant has not yet filed the final land division map (Plat), therefore the five tax lot are still one legal property. Since the partition has not been finalised, the land area is owned by Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The application forms submitted by the applicant listed Empire Builders of Oregon LLC as the applicant. However, the applications only contained the signature of James Helton (Empire Buildings of Oregon LLC). Signature authority was not provided by all owners of the subject property authorizing James Helton to file the application on their behalf.

Staff requested current ownership information from the applicant on January 27, 2021 to verify required property owner signatures on the land use applications. On January 29, 2021, the applicant provided written notice stating no additional information would be provided, pursuant to ORS 227.178(2)(c), and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021 without the signatures of Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The land use applications do not meet the submittal requirements of SRC 300.210(A)(G).

*SRC 300.210(a)(2), recorded deed/land sales contract with legal description.*

Pursuant to SRC 300.210(a)(2), a recorded deed or land sales contract with legal descriptions is required to be submitted with land use applications. The Marion County Assessor's site lists the owners of the subject property as Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The deed submitted by the applicant is not the latest deed and does not reflect current ownership.

The recorded deed submitted with the land use applications does not meet the submittal requirements of SRC 300.210(a)(2).

SRC 300.210(a)(4), pre-application conference written summary or copy of an approved pre-application conference waiver.

Pursuant to SRC 300.100, Table 300-2, a pre-application conference is required for a variance land use application. Records indicate no pre-application conference has been requested for the variance and no approved pre-application conference waiver was submitted by the applicant. Therefore; the variance land use application does not meet the submittal requirements of SRC 300.210(a)(4).

SRC 300.210(a)(5), a statement as to whether any City-recognized neighborhood associations whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact.

and

SRC 300.210(a)(6), proof that the required neighborhood association contacted has been provided

The applicant is required by SRC 300.210(a)(6) to provide a copy of an email or letter to the Neighborhood Association, meeting SRC 300.210(a)(5). The subject property is located within the South Gateway Neighborhood Association. The application form that was submitted for the variance indicates the neighborhood association has not been contacted (**Attachment F**).

The applicant did not provide, as the required materials under SRC 300.210(a)(5), that they had contacted the South Gateway Neighborhood Association in advance of filing the variance application.

Therefore; the variance land use application, as submitted, does not meet the requirements of SRC 300.210(a)(5) and (6).

SRC 245.005(c), submittal requirements.

In addition to the submittal requirements for a Type III application under SRC Chapter 300, an application for a variance shall include a site plan indicating future and existing development, trees, and landscaping.

The applicant's site plan indicates a driveway approach and single-family dwelling are proposed for a portion of a lot (Parcel 1) that was approved under Partition Case No. PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel and the applicant's site plan only shows a small portion of proposed Parcel 1 which is a lot configuration that is nonexistent. The applicant has not provided any details about their future plans for the remainder of proposed Parcel 1, which makes an analysis of the proposal difficult.

The applicant has been advised to submit a subdivision application for proposed Parcel 1, which will allow staff to determine if this portion of the lot can be served by an access from the west side of the creek. The applicant has also been advised that another route open to them would be to request Comprehensive Plan Map and Zone Change to a zone that can be accessed in conformance with the code. As well as, a Conditional Use approval to allow access for a single-family dwelling across the IC zone. The development, as submitted, is not allowed.

Staff notified the applicant on January 27, 2021 that the site plan does not reflect the total site area and dimensions as required under SRC 245.005(c)(1) and requested a revised site plan. On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021. The site plan submitted with the variance application does not meet the additional submittal requirements of SRC 245.005(c)(1).

#### *SRC 804.035(d) submittal requirement*

SRC 804.035(d) provides that the spacing of a driveway approach providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline. The proposed driveway approach is less than 370 feet from the intersection of Mildred Lane SE and Woodside Drive SE. Additionally, land use case number DR-CU-SPR-ADJ-DAP20-02 approved a driveway for the legal unit of land (subject property), for a multiple family development, that will provide approximately 150 feet of spacing from the proposed driveway. This equates to a 60% adjustment to the standard and requires a Class 2 Zoning Adjustment application with findings of how the proposal meets the criteria of SRC 250.005(d)(2). Staff notified the applicant on January 27, 2021 that SRC 804.035(d) could not be justified under a variance that that a Class 2 Adjustment application was required with findings of how the proposal meets the criteria of SRC 250.005(d)(2). On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021. The applicant did not provide an application nor findings for a Class 2 Adjustment. This standard is not met.

## **7. Analysis of Criteria for Variances**

SRC Chapter 245.005(a) provides that, unless otherwise provided in the UDC, buildings, structures, or land shall not be developed contrary to the applicable development standards of the UDC unless a variance has been granted pursuant to this Chapter.

The applicant has requested a variance to SRC 804.035, access onto major and minor arterials.



SRC Chapter 245.005(d) establishes the following approval criteria for a variance:

**SRC 245.005(d)(1): There is an unreasonable hardship or practical difficulty created by the physical characteristics of the land.**

**Applicant's Finding:** The complete written statement provided by the applicant is included in this report as **Attachment C**. In summary, the hardship or practical difficulties identified by the applicant relate to the location of the proposal within the eastern portion of Parcel 1 of approved Partition 19-11 and the location of Waln Creek on the subject property. The applicant argues that access to a local street will not be feasible due to the creek and the cost of impacts on the riparian corridor that include removal of trees and required fill and grading. The applicant also argues that access onto Mildred Lane SE, designated a Minor Arterial street on the Salem Transportation System Plan, is necessary due to the shape of the site, the developed surrounding properties, the location of Waln Creek, and the subject property not having access to a local or collector street. The applicant has requested a variance to SRC 804.035(a) and (c).

**Staff Finding:** The subject property is approximately 7.6 acres in size and is currently vacant. Partition Case No. PAR19-11 approved subdividing the 7.6-acre parcel into three smaller parcels, however, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. Additionally, the applicant's site plan illustrates a lot configuration that is nonexistent and therefore, not a legal lot. The development, as submitted, is not allowed. SRC 804.035(a)(2)(B) and (C) provides that no driveway approach is allowed onto a major or minor arterial unless the development does not abut a local or collector street; or the development cannot be feasibly served by access onto a local or collector street.

The applicant's findings are incorrect. In its current legal property configuration, the subject property has direct street frontage onto Flairstone Drive SE, designated a Local street on the Salem Transportation System Plan and can feasibly be served by access onto Flairstone Drive SE. The site layout is under the control of the applicant when developing the site, any hardship resulting from the layout of the site would be a result of the actions of the applicant. Therefore, no unreasonable hardship or practical difficulty created by the physical characteristic of the land prevent the subject property from taking access onto Flairstone Drive SE.

Pursuant to SRC 804.035(c)(3), no access shall be provided onto a major or minor arterial from a single family or two-family use constructed as part of a subdivision or partition. Partition Case No. PAR19-11 approved subdividing the 7.6-acre parcel into three smaller parcels. The applicant is proposing to take access onto Mildred Lane SE, a minor arterial, from a single-family use constructed as part of partition PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. Additionally, the

applicant's site plan illustrates a lot configuration that is nonexistent and therefore, not a legal lot. The development, as submitted, is not allowed and therefore, access onto Mildred Lane SE for the proposed single-family use is not allowed pursuant to SRC 804.035(c)(3).

In summary, the applicant has not adequately addressed how the subject property has an unreasonable hardship or practical difficulty created by the physical characteristics of the land, therefore; this criterion is not met.

**SRC 245.005(d)(2): The variance will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity.**

**Applicant's Finding:** The complete written statement provided by the applicant is included in this report as **Attachment C**. In summary, the applicant argues that granting the variance will not affect the public health, safety, and welfare, or the comfort and convenience of owners in the vicinity. The applicant also argues that the proposed single-family dwelling does not have direct access to a local or collector street and cannot share access and that the proposed driveway is necessary for development of the home and that the driveway will meet Public Works Design Standards.

**Staff Finding:** The criteria for driveways in SRC 804.025(d) requires that a proposed driveway approach does not create traffic hazards and provides for safe turning movements and access. Table 3-1 of the Salem Transportation System Plan classifies a minor arterial street as a high capacity street that primarily serves regional and intracity travel with an Average Daily Traffic (ADT) count of 7,000 to 20,000 vehicles. The proposed driveway access for the single-family use onto Mildred Lane SE, a high capacity street, is not allowed pursuant to SRC 804.035, as it would not provide for safe turning movements and access and could potentially create traffic hazards.

The applicant's findings are incorrect. In its current configuration, the subject property has direct street frontage onto Flairstone Drive SE, designated a Local street on the Salem Transportation System Plan, therefore, direct access to a local street is available.

In summary, the applicant has not adequately addressed how the variance to SRC 804.035 will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity. The proposal does not meet this criterion.

## **8. Analysis of Class 2 Driveway Approach Permit Approval Criteria**

Pursuant to SRC 804.025(a), a Class 2 driveway approach permit is required for:

- (1) A driveway approach onto a parkway, major arterial, or minor arterial;

- (2) A driveway approach onto a local or collector street providing access to a use other than single family or two family;
- (3) A driveway approach providing access to a corner lot that abuts only local or collector streets, where the driveway approach will provide access onto the street with the higher street classification; or
- (4) Maintenance, repair, or replacement of an existing permitted driveway approach, which is part of, or needed for, redevelopment of commercial or industrially zoned property.

A Class 2 Driveway Approach Permit is required for this proposal pursuant to SRC 804.025(a)(1) because the proposed driveway approach for a single-family residential use will provide access on to Mildred Lane SE, classified a Minor Arterial street on the Salem Transportation System Plan (TSP).

The approval criteria for a Class 2 Driveway Approach Permit are found in SRC 804.025(d); findings for the proposed driveway accesses onto Mildred Lane SE are included below.

Criterion 1:

The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards.

**Applicant's Finding:** The complete written statement provided by the applicant is included in this report as **Attachment C**. In summary, the applicant states the subject property is located on the north side of Mildred Lane SE and is the eastern portion of Parcel 1 of approved Partition 19-11. There is currently a building permit in for the subject property, Permit No. 20-113775 (1355 Mildred Lane SE) and the proposed single-family dwelling will have direct access onto Mildred Lane that runs along the south property line of the site. Mildred Lane is designated as a minor arterial street on the Salem Transportation System Plan. The applicant argues the subject property does not have access to a Local street and that approval of a driveway onto Mildred Lane is necessary for development of this home, and the proposed driveway will meet Public Works Design Standards.

**Staff Finding:** The applicant's findings are incorrect. The proposed driveway onto Mildred Lane SE does not meet the standards for SRC 804 and the Public Works Design Standards. SRC 804.035(a)(2)(B) prohibits access onto a minor arterial if the development abuts a Local street. The applicant is proposing to take access onto Mildred Lane SE from the eastern portion of Parcel 1 of approved Partition 19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. Additionally, the applicant's site plan for the proposed single-family dwelling illustrates a lot configuration that is nonexistent and therefore, not a legal lot. In its current configuration, the subject property has direct street frontage onto Flairstone Drive SE, designated a Local street on the Salem Transportation System Plan, therefore; direct access to a local street is available. In its current configuration, the subject property has

direct street frontage onto Flairstone Drive SE, designated a Local street on the Salem Transportation System Plan, therefore; direct access to a local street is available.

The proposed driveway approach is to a Minor Arterial street and therefore shall meet the standards found in SRC 804.035. The proposed development is not part of a complex; therefore, SRC 804.035(a)(1) is not met. The current legal parcel abuts Woodside Drive SE (a Local street). The applicant's findings fail to show there is an unreasonable hardship or practical difficulty created by the physical characteristics of the land that would preclude accessing the Local street; therefore SRC 804.035(a)(2) is not met.

Pursuant to SRC 804.035(b), the driveway approach shall meet the Traffic Volume Threshold for a Minor Arterial street. A single-family home will generate less than 10 vehicle trips per day according to the Institute of Traffic Engineers (ITE) "Trip Generation Manual" 10<sup>th</sup> Edition. The proposed use of a single-family dwelling does not meet the threshold of generating 30 or more vehicle trips per day and the driveway approach does not provide access to a city park. This standard is not met.

Pursuant to SRC 804.035(c)(2), the driveway approach shall take access from the lowest classification of street abutting the property for corner lot. This standard is not met.

Pursuant to SRC 804.035(c)(3), "No access shall be provided onto a major or minor arterial from a single-family or two-family use constructed as part of a subdivision or partition." This standard is not met.

Pursuant to SRC 804.035(c)(4), a Minor Arterial access shall allow only forward-in/forward-out movements. The proposed site plan shows a driveway that requires vehicles to back out into Mildred Lane SE. This standard is not met.

Pursuant to SRC 804.035(d), "Driveway approaches providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline." The proposed driveway approach is less than 370 feet from the intersection of Mildred Lane SE and Woodside Drive SE. Additionally, land use case number DR-CU-SPR-ADJ-DAP20-02 approved a driveway, for a multiple family development, that will provide approximately 150 feet of spacing from the proposed driveway. This equates to a 60% adjustment to the standard and requires a Class 2 Zoning Adjustment application with findings of how the proposal meets the criteria of SRC 250.005(d)(2). The applicant did not provide an application nor findings for the Class 2 Adjustment. This standard is not met.

The proposal does not meet this criterion.

Criterion 2:

No site conditions prevent placing the driveway approach in the required location.

**Applicant's Finding:** The location of the dwelling and driveway was taken into consideration prior to laying the site out. Access onto surrounding streets is not feasible due to the location of Wain Creek to the west and the apartments to the east. The location of the proposed driveway takes into consideration the location of existing uses and existing streets adjacent to the site. Therefore, all factors were taken into consideration and there are no conditions on the site that prevent the driveway approach from being approved.

**Staff Finding:** The proposed development is bordered on the west by Wain Creek and the proposed driveway approach is placed close to the eastern boundary. SRC 804.035(a)(2)(B) does not allow a driveway approach onto a major or minor arterial if the development is not a complex and abuts a local or collector street. The proposed driveway approach for a single-family use is for access onto a Minor Arterial street when Local street frontage is available. Therefore, there are no site conditions prohibiting placing the location of the proposed driveway along Local street frontage, as required by code. The proposal does not meet this criterion.

Criterion 3:

The number of driveway approaches onto an arterial are minimized.

**Applicant's Finding:** The applicant states there is only one driveway proposed onto an arterial meeting this criterion.

**Staff Finding:** The existing property has an approved driveway approach to the Minor Arterial under CU-SPR-DAP-DR20-06. The proposed driveway adds a second access to an arterial street. However, the subject property has direct frontage onto Flairstone Drive SE, a Local street. The Local street frontage allows the driveway approach to be located on the Flairstone Drive SE frontage instead of onto a Minor Arterial street. The proposal does not meet this criterion.

Criterion 4:

The proposed driveway approach, where possible:

- a) Is shared with an adjacent property; or
- b) Takes access from the lowest classification of street abutting the property.

**Applicant's Finding:** The complete written statement provided by the applicant is included in this report as **Attachment C**. In summary, the applicant states the subject property is located on Mildred Lane (arterial) to the south and that access to adjacent streets is not available and/or feasible. The applicant argues that the possibility of sharing an accessway with the apartments to the east is not

possible due to zoning differences. Therefore, there are no lower classified streets adjacent to the site.

**Staff Finding:** The property, as existing, abuts Woodside Drive SE, a Local street. The proposed driveway approach does not propose to take access to Woodside Drive SE due to future plans for a multi-family development previously approved under CU-SPR-DAP-DR20-06. The driveway access is proposed to be taken from Mildred Lane SE, a Minor Arterial street. The subject property has direct street frontage off Flairstone Drive SE, a Local street. Therefore, the driveway approach access is not being proposed from the lowest classification of street abutting the subject property. This criterion is not met.

Criterion 5:

The proposed driveway approach meets vision clearance standards.

**Applicant's Finding:** The applicant states that as shown on the site plan, the proposed driveway does not create any vision clearance issues and is in the most feasible location and meets vision clearance standards, meeting this criterion.

**Staff Finding:** The proposed driveway approach will meet the PWDS vision clearance standards set forth in SRC Chapter 805.

Criterion 6:

The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access.

**Applicant's Findings:** The applicant states that the driveway approach does not create traffic hazards as shown on the site plan, meeting this criterion.

**Staff Finding:** The proposed site plan shows a driveway that requires vehicles to back out onto Mildred Lane SE (a Minor Arterial). Table 3-1 of the Salem Transportation System Plan classifies a minor arterial street as a high capacity street that primarily serves regional and intracity travel with an Average Daily Traffic (ADT) count of 7,000 to 20,000 vehicles. The proposed driveway access for the single-family use onto Mildred Lane SE, a high capacity street, is not allowed pursuant to SRC 804.035. Further, the applicant's site plan does not show adequate turnaround onsite which would result in vehicles having to back out onto Mildred Lane SE. Backing out onto a high capacity street would not provide for safe turning movements and access and could potentially create traffic hazards. This criterion is not met.

Criterion 7:

The proposed driveway approach does not result in significant adverse impacts to the vicinity.

**Applicant's Finding:** The applicant argues that no adverse impacts to the vicinity have been identified. As shown on the site plan, the location of the driveway will not have any impacts on the subject property or adjacent properties and that this criterion has been met.

**Staff Finding:** Staff analysis of the proposed driveway indicate that impacts will be limited to the approach location and the proposal does not result in significant adverse impacts to the vicinity.

Criterion 8:

The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections.

**Applicant's Finding:** The applicant states the driveway approach is in the required location to minimize impacts to adjacent streets and intersection and as shown on the site plan, meets this criterion.

**Staff Finding:** The proposed driveway approach will have minimal impact to adjacent streets and intersections.

Criterion 9:

The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

**Applicant's Finding:** The complete written statement provided by the applicant is included in this report as **Attachment C**. In summary, the applicant states the driveway approach is in the required location to help balance the adverse impacts to residentially zoned property and takes into consideration the location of the streets adjacent to the site, the riparian corridor, the location of Waln Creek, adjacent uses, and access onto Mildred Lane, therefore, meeting this criterion.

**Staff Finding:** The proposed development is surrounded by residentially zoned property. The driveway balances the adverse impacts to residentially zoned property and will not have an adverse effect on the functionality of the adjacent streets.

## **RECOMMENDATION**

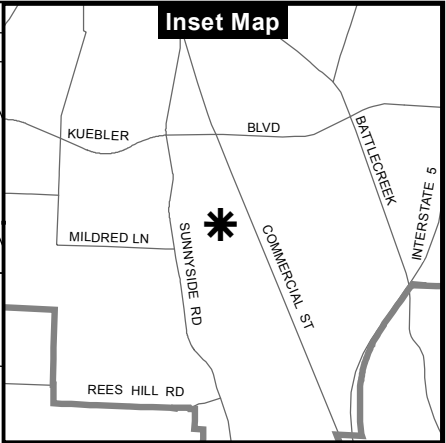
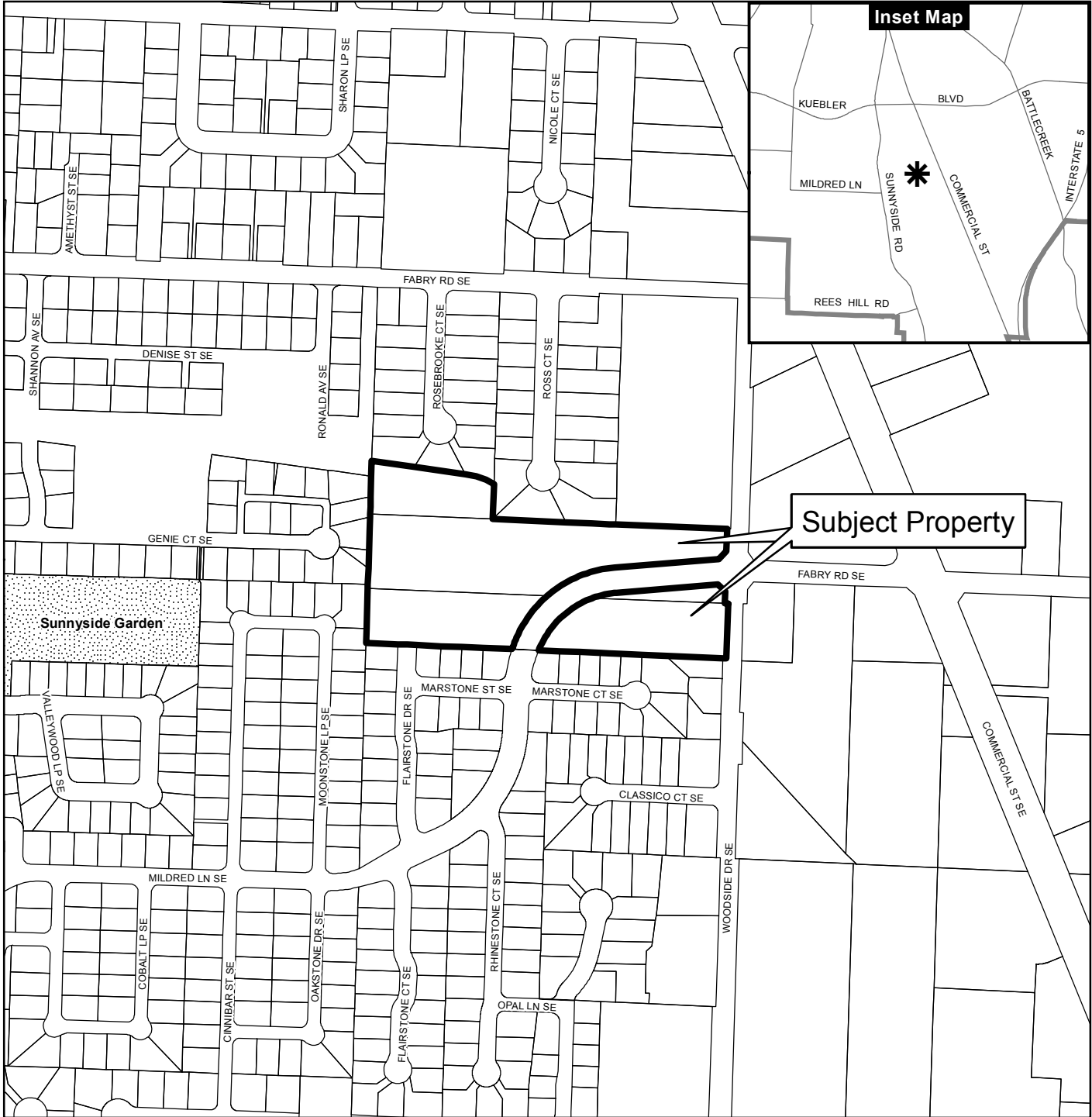
Based on the Facts and Findings presented in this staff report, staff recommends the Hearings Officer **DENY** the request for a variance and driveway approach permit to allow a driveway approach onto Mildred Lane SE, a Minor Arterial Street, where a driveway is not allowed for a single-family residential use, for property approximately 7.6 acres in size, split-zoned RA (Residential Agriculture), RS (Single-Family Residential) and IC (Industrial Commercial) and located at 1355 Mildred Lane SE - 97306 (Marion County Assessor Map and Tax Lot Numbers: 083W14CB / 2301, 2400, 2401, 2500, and 2501).

- Attachments:
- A. Vicinity Map
  - B. Applicant's Site Plan
  - C. Applicant's Written Statement
  - D. PAR19-11 Tentative Plan
  - E. Public Works Memo
  - F. Variance Application

Prepared by: Sally Long, Planner I










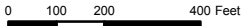
# Vicinity Map 1355 Mildred Lane SE



Subject Property

**Legend**

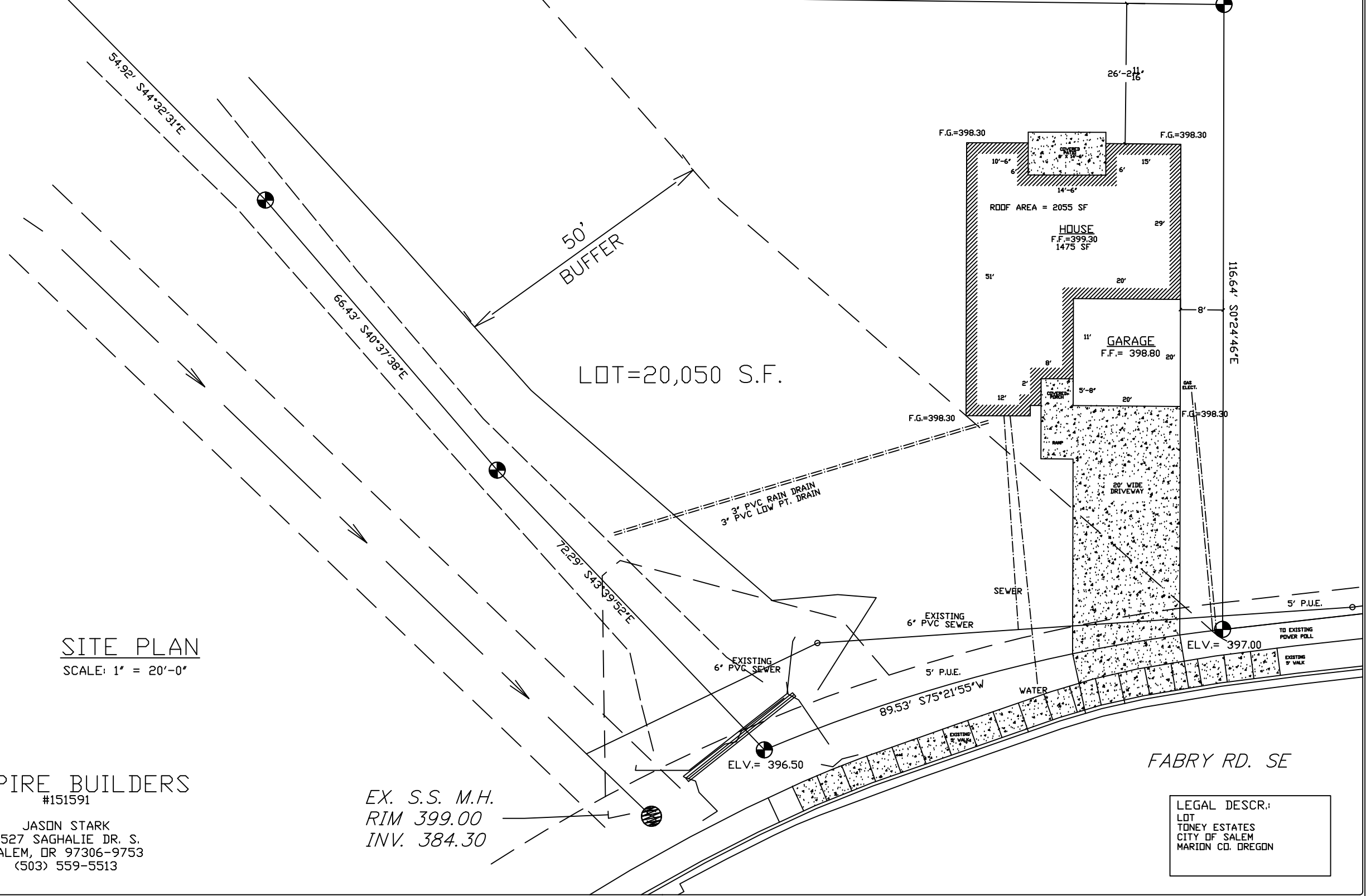
-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks



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ELV.= 396.90 217.58' S89°18'52"E ELV.= 397.90



SITE PLAN  
SCALE: 1" = 20'-0"

EMPIRE BUILDERS  
#151591  
JASON STARK  
8527 SAGHALIE DR. S.  
SALEM, OR 97306-9753  
(503) 559-5513

EX. S.S. M.H.  
RIM 399.00  
INV. 384.30

FABRY RD. SE

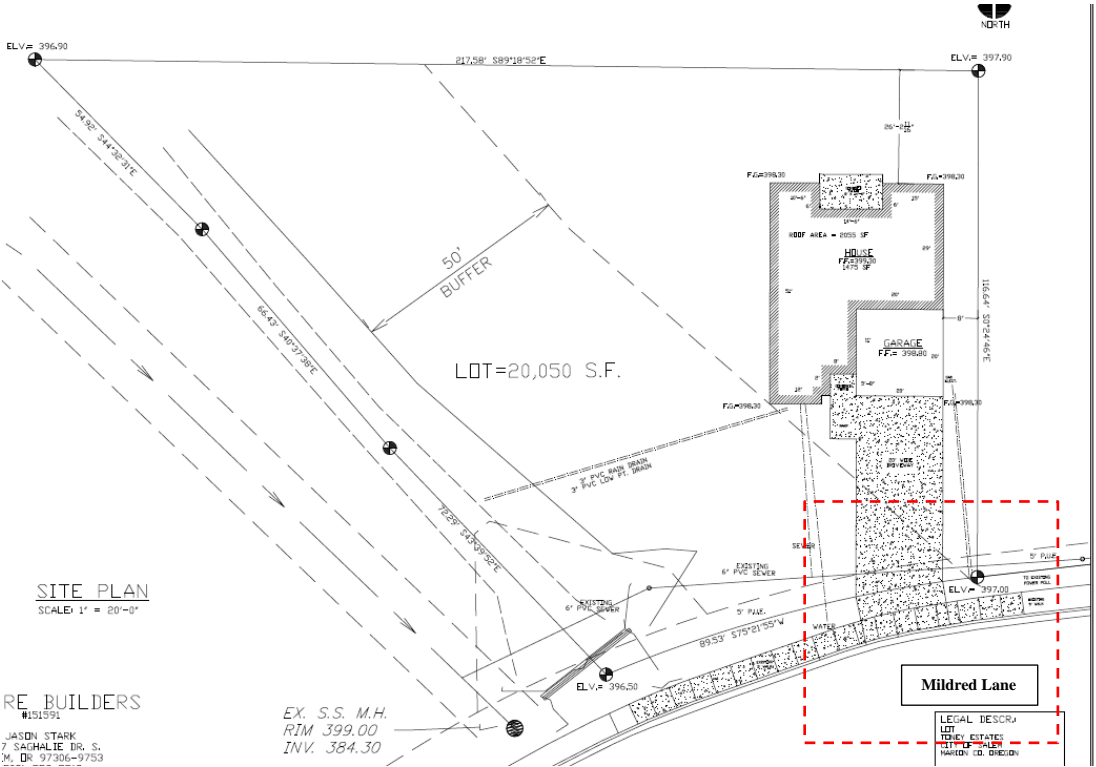
LEGAL DESCR.:  
LOT  
TONEY ESTATES  
CITY OF SALEM  
MARION CO. OREGON

# Mildred Lane Variance

**Proposal:**

The subject property is located on the north side of Mildred Lane SE and identified as 083W14CB/Tax Lot 2400. The subject property is the eastern portion of Parcel 1 of approved Partition 19-11. There is currently a building permit in for the subject property, Permit No. 20-113775 (1355 Mildred Lane SE).

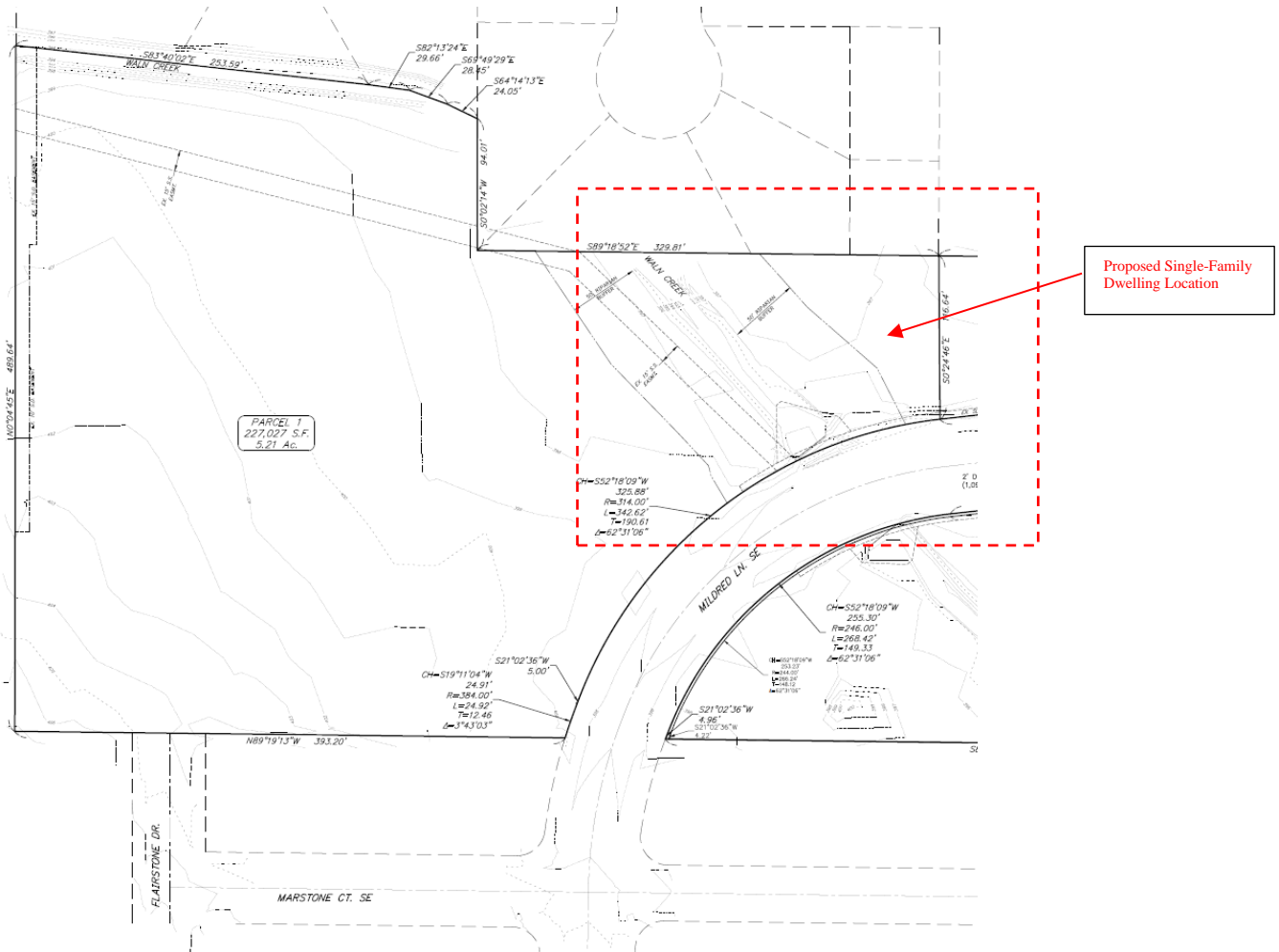
The proposed single-family dwelling will have direct access onto Mildred Lane that runs along the south property line of the site. Mildred Lane is designated as a 'minor arterial' street on the Salem Transportation System Plan. Therefore, a variance to SRC 804.035(a) and (c)3 have been requested.



**Variance Criteria Section 245.005(d):**

**(1) There is an unreasonable hardship or practical difficulty created by the physical characteristics of the land.**

**Findings:** The subject property is part of a larger parcel that has Waln Creek dividing it. The subject property is the eastern portion of Parcel 1 of approved Partition 19-11.



The western portion of the site may be further developed at a future time, but even when that happens access to a local street will not be feasible because of the location of Waln Creek. Crossing Waln Creek for future access is not feasible due to cost and the impacts on the riparian corridor it would create (removal of trees and required fill/grading). Therefore, access to a local or collector street is not feasible or available.

The applicant did look at the possibility of sharing an accessway with the apartments to the east. But due to zoning differences, was not able to make this happen in compliance with code.

The location of the dwelling and driveway was taken into consideration prior to laying the site out. Access onto surrounding streets is not feasible due to the location Waln Creek to the west and the apartments to the east. The location of the proposed driveways take into consideration the location of existing uses and existing streets adjacent to the site. Therefore, all factors were taken into consideration and there are no conditions on the site that prevent the driveway approach from being approved.

Due to the shape of the site, the developed surrounding properties, and the location of Waln Creek, the subject property does not have access to a local or collector street. Therefore, creating a hardship for proving access in compliance with this code section.

The applicant has met applicable Code sections. The applicant is requesting a variance to SRC 804.035.

**Sec. 804.035. - Access onto major and minor arterials.**

**(a) Number of driveway approaches.**

**(1) Except as otherwise provided in this chapter, a complex shall be entitled to one driveway approach onto a major or minor arterial. Additional driveway approaches for a complex may be allowed where:**

- (A) A complex has more than 370 feet of frontage abutting a major or minor arterial;**
- (B) There is a shared access agreement between two or more complexes;**
- or**
- (C) It is impracticable to serve the complex with only one driveway approach.**

Findings: SRC 804.035(a) is not applicable to this development.

**(2) No driveway approach is allowed onto a major or minor arterial for development that is not a complex, unless:**

- (A) The driveway approach provides shared access;**
- (B) The development does not abut a local or collector street; or**
- (C) The development cannot be feasibly served by access onto a local or collector street.**

Findings: The subject property does not have access to a local or collector street. The western portion of the site may be further developed at a future time, but even when that happens access to a local street will not be feasible because of the location of Waln Creek. Crossing Waln Creek for future access is not feasible due to cost and the impacts on the riparian corridor it would create. Therefore, access to a local or collector street is not feasible or available. The applicant did look at the possibility of sharing an access with the apartments to the east. But due to zoning difference, was not able to make this happen in compliance with code. Therefore, sharing an accessway is not feasible as well.

Therefore, since the proposed single-family dwelling does not have access to a local or collector street and cannot share access, the approval of a driveway onto Mildred Lane is necessary for the development of this home. A home that is being built for a disabled family and is needed now. The proposal is in compliance with SRC 804.035(a)(2) and has shown how the location of the location of Waln Creek and the shape of the lot create a hardship in providing access onto a local or collector street.

**(c) Permitted access.**

**(3) No access shall be provided onto a major or minor arterial from a single family or two-family use constructed as part of a subdivision or partition.**

Findings: The subject property is part of a larger parcel that has Waln Creek dividing it. The subject property is the eastern portion of Parcel 1 of approved Partition 19-11. The partitioning the property did not impact access to the property. Even if the property remained as one large parcel, the proposed single-family dwelling would still have difficulty in providing access to a local or collector street. Therefore, this criteria is not applicable to the subject property.

**(2) The variance will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity.**

Findings: The granting of the variance will not affect the public health, safety, and welfare, or the comfort and convenience of owners in the vicinity of the proposed subdivision. All resident vehicles and emergency vehicles will continue to have safe and efficient access through the neighborhood.

The proposal provides the site with adequate improved vehicle, pedestrian, and bike access to Mildred Lane. The major street system is in place due to prior development. Several existing single-family dwellings in the neighborhood already access directly onto Mildred Lane.

Since the proposed single-family dwelling does not have direct access to a local or collect street and cannot share access, the approval of a driveway onto Mildred Lane is necessary for the development of this home. A home that is being built for a disabled family and is needed housing.

The proposed driveway will meet Public Works design standards.

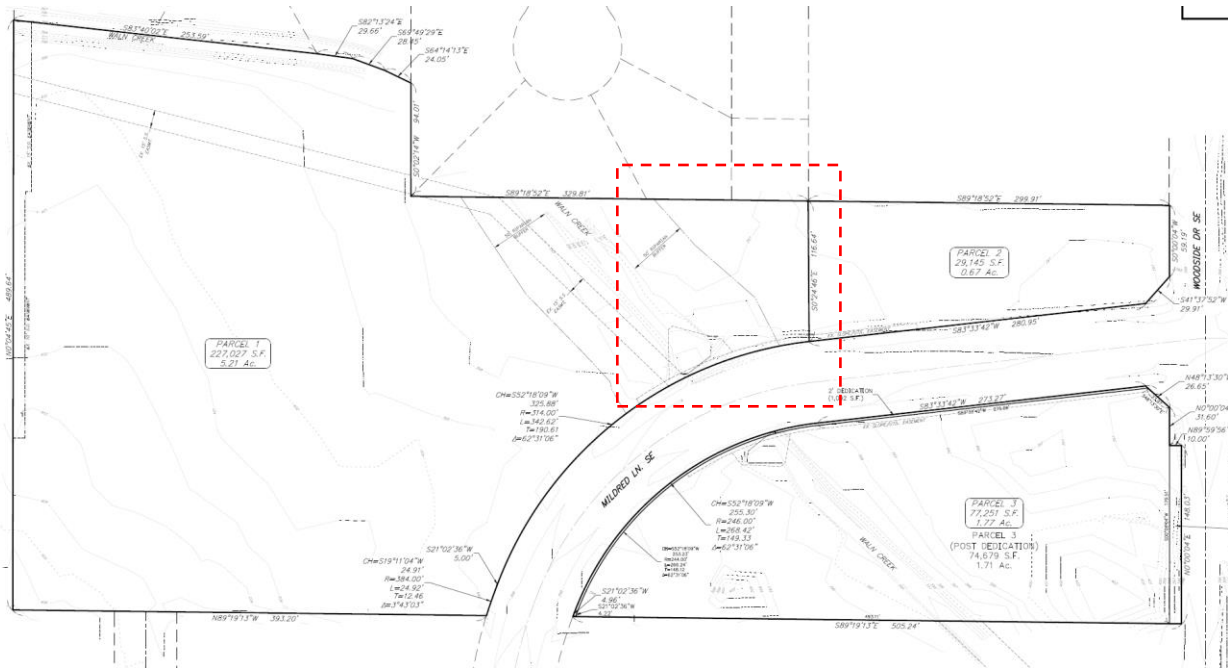
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**Class 2-Driveway Approach Permit**  
**December 3, 2020**

**SRC 804.025 (d) Criteria. A Class 2 Driveway Approach Permit shall be granted if:**

***(1) The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards;***

Applicant Findings: The subject property is located on the north side of Mildred Lane SE and identified as 083W14CB/Tax Lot 2400. The subject property is the eastern portion of Parcel 1 of approved Partition 19-11. There is currently a building permit in for the subject property, Permit No. 20-113775 (1355 Mildred Lane SE).



The proposed single-family dwelling will have direct access onto Mildred Lane that runs along the south property line of the site. Mildred Lane is designated as a 'minor arterial' street on the Salem Transportation System Plan.

SRC Section 804.035(a)(2) states:

- (2) No driveway approach is allowed onto a major or minor arterial for development that is not a complex, unless:**
- (A) The driveway approach provides shared access;***
  - (B) The development does not abut a local or collector street; or***
  - (C) The development cannot be feasibly served by access onto a local or collector street.***

The subject property does not have access to a local or collector street. The western portion of the site may be further developed at a future time, but even when that happens access to a local street will not be feasible because of the location of Waln Creek. Crossing Waln Creek for future access is not feasible due to cost and the impacts on the riparian corridor it would create. Therefore, access to a local or collector street is not feasible or available.

The applicant did look at the possibility of sharing an access with the apartments to the east. But due to zoning difference, was not able to make this happen in compliance with code. Therefore, sharing an accessway is not feasible as well.

Therefore, since the proposed single-family dwelling does not have access to a local or collector street and can not share access, the approval of a driveway onto Mildred Lane is necessary for the development of this home. A home that is being built for a disabled family and is needed now.

The proposed driveway will meet Public Works design standards.

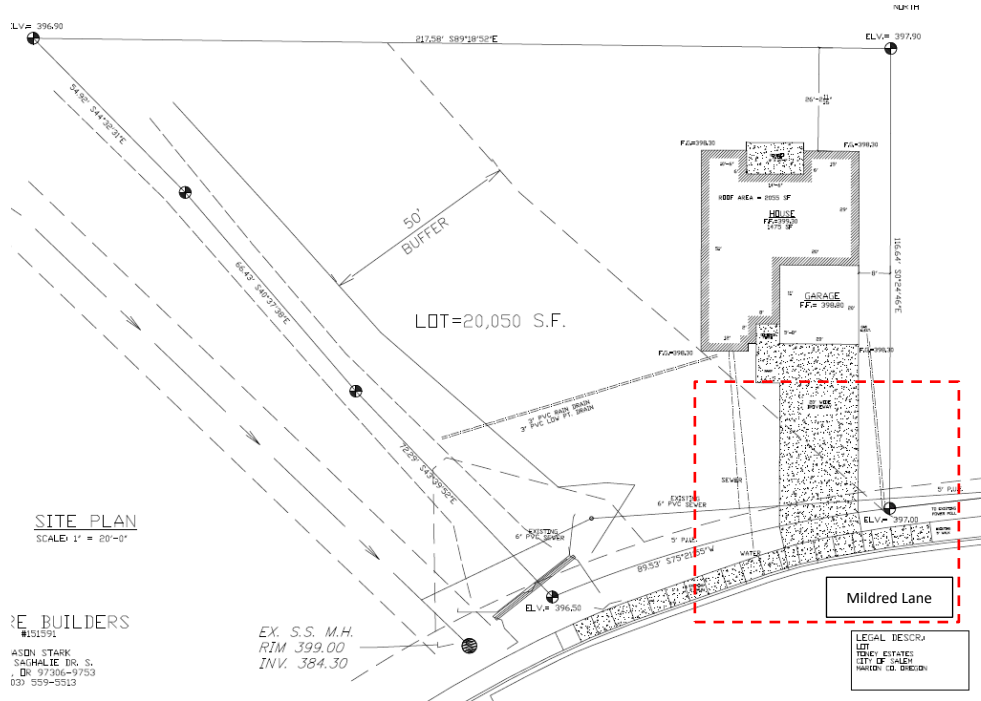
***(2) No site conditions prevent placing the driveway approach in the required location;***

Applicant Response: The location of the dwelling and driveway was taken into consideration prior to laying the site out. Access onto surrounding streets is not feasible due to the location Waln Creek to the west and the apartments to the east. The location of the proposed driveways take into consideration the location of existing uses and existing streets adjacent to the site. Therefore, all factors were taken into consideration and there are no conditions on the site that prevent the driveway approach from being approved.

***(3) The number of driveway approaches onto an arterial are minimized;***

Applicant Response: There is only one driveway proposed onto an arterial. Therefore, this criteria has been met.





- (4) The proposed driveway approach, where possible:**  
**(A) Is shared with an adjacent property; or**  
**(B) Takes access from the lowest classification of street abutting the property;**

Applicant Response to (4): The subject property is located on Mildred Lane (arterial) to the south. Access to adjacent streets is not available and/or feasible. Therefore, there are no lower classified streets adjacent to the site.

The applicant did look at the possibility of sharing an accessway with the apartments to the east. But due to zoning difference, was not able to make this happen in compliance with code. Therefore, sharing an accessway is not feasible as well.

Since there are no other streets available to provide feasible access to the site and shared access cannot be accomplished, access onto Mildred Lane for the proposed single-family dwelling is warranted. Therefore, this criterion has been met.

- (5) The proposed driveway approach meets vision clearance standards;**

Applicant Response: As shown on the site plan, the proposed driveway does not create any vision clearance issues. The driveway approach is in the most feasible location and meets vision clearance standards. As shown on the site plan, this criterion has been met.

- (6) The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access;**

Applicant Response: The driveway approach does not create traffic hazards. As shown on the site plan, this criterion has been met.

***(7) The proposed driveway approach does not result in significant adverse impacts to the vicinity;***

Applicant Response: No adverse impacts to the vicinity have been identified. As shown on the site plan, the location of the driveway will not have any impacts on the subject property or adjacent properties. This criterion has been met.

***(8) The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections; and***

Applicant Response: The driveway approach is in the required location to minimize impacts to adjacent streets and intersections. As shown on the site plan, this criterion has been met.

***(9) The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.***

Applicant Response: The driveway approach is in the required location to help balance the adverse impacts to residentially zoned property. The location of the proposed driveway takes into consideration the location of the streets adjacent to the site, the riparian corridor, the location of Waln Creek, adjacent uses, and access onto Mildred Lane. As shown on the site plan, this criterion has been met.

The driveway is clearly identifiable, safe, and interconnected. Improved access to the proposed single-family dwelling is required by code. Approval does not adversely affect the safe and healthful development of any adjoining land or access thereto.

Owner / Developer:

**EMPIRE BUILDERS OF OREGON, L.L.C.**

8527 SAGHALIE DR. S.  
SALEM, OREGON 97306

Owner / Developer:

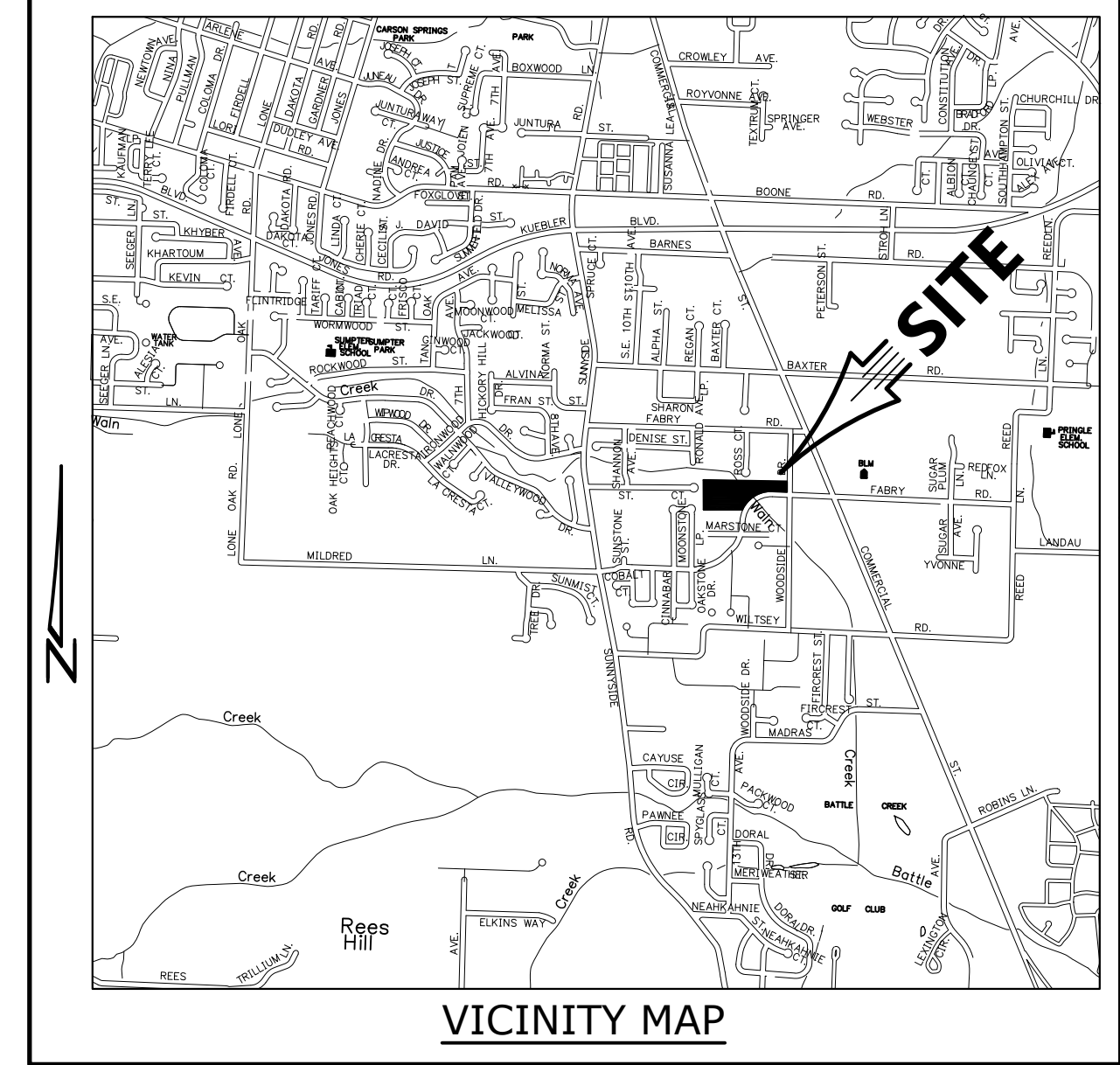
**JCT CONSTRUCTION GROUP, L.L.C.**

201 FERRY ST. S.E., SUITE 400  
SALEM, OREGON 97301

**TONEY ESTATES**

SEC. 14, T. 8 S., R. 3 W., W.M.  
CITY OF SALEM  
MARION COUNTY, OREGON  
TAX MAP: 08W14CB  
LOTS: 2301, 2400, 2500  
5.88 ACRES

**TENTATIVE PARTITION - PAR19-11**



**MULTI/TECH**  
ENGINEERING SERVICES, INC.  
1155 13th St. S.E. Salem, OR 97302  
PH: (503) 363-9227 FAX: (503) 364-1260  
www.mtechengineering.net office@mtechengineering.net

**PROPOSED  
PARTITION PLAN**

**TONEY ESTATES**

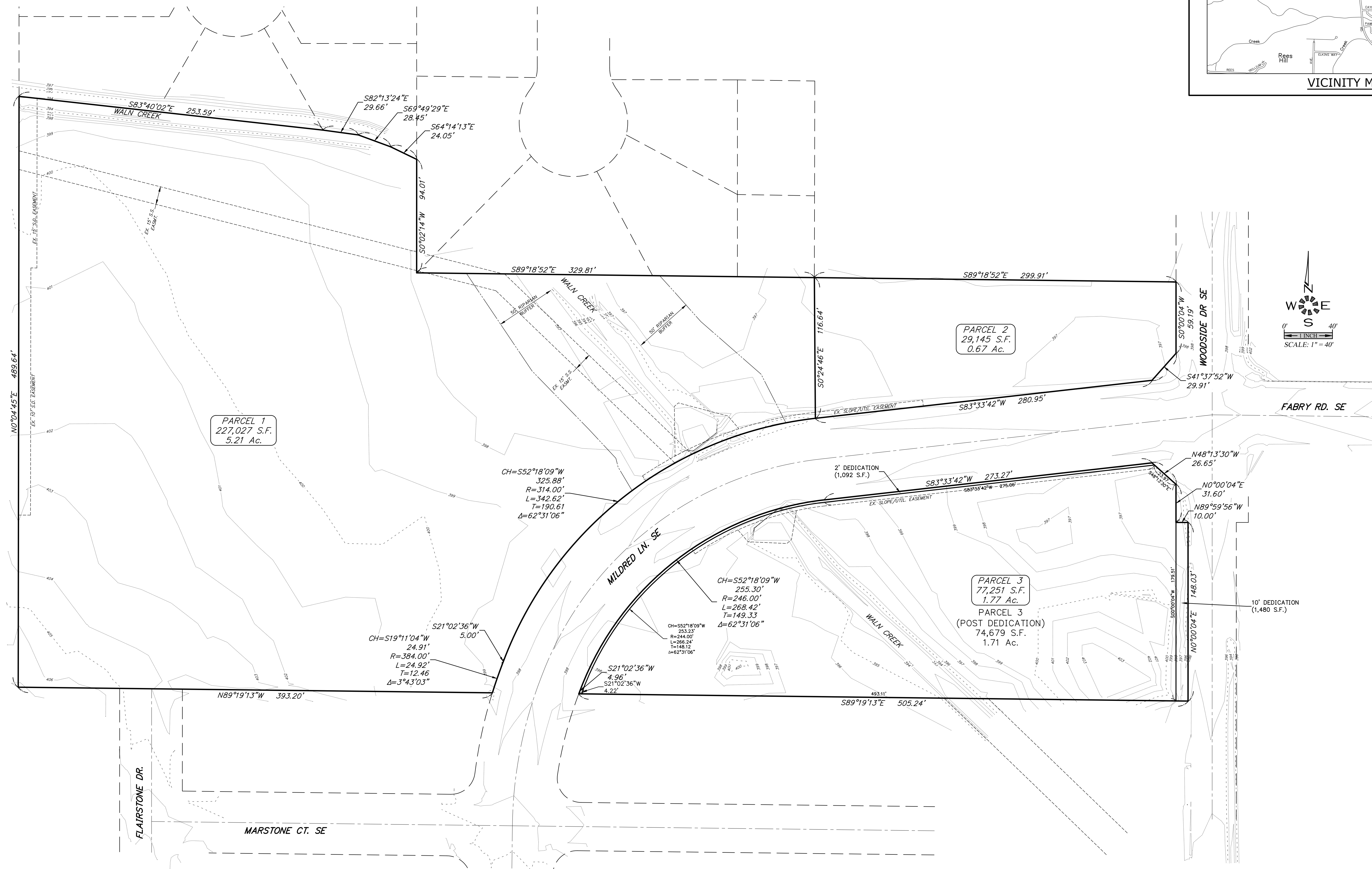
MULTITECH ENGINEERING EXEMPT FROM  
LIABILITY IF NOT STAMPED APPROVED  
**NOT FOR  
CONSTRUCTION  
UNLESS STAMPED  
APPROVED HERE**

NO CHANGES, MODIFICATIONS  
OR REPRODUCTIONS TO BE  
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DESIGN ENGINEER.  
DIMENSIONS & NOTES TAKE  
PRECEDENCE OVER  
GRAPHICAL REPRESENTATION.

66069-001 11  
Design: M.D.G.  
Drawn: P.M.S.  
Checked: M.D.G.  
Date: FEB. 2019  
Scale: AS SHOWN  
As-Built: \_\_\_\_\_



EXPIRES: 06-30-2019  
JOB # 6606




J:\1800-66069\180066-001\08W14CB-Par19-11.dwg, Pt., 4/15/2019 11:44:12 AM, 0/0/0/0/0



# MEMO

**TO:** Sally Long, Planner I  
Community Development Department

**FROM:** Glenn J. Davis, PE, CFM, Chief Development Engineer   
Public Works Department

**DATE:** February 16, 2021

**SUBJECT: PUBLIC WORKS RECOMMENDATION OF DENIAL  
VAR-DAP21-01 (21-101587 AND 21-101590)  
1355 MILDRED LANE SE  
CLASS 2 DRIVEWAY APPROACH WITH VARIANCE**

## PROPOSAL

A Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem TSP, where a driveway is not allowed pursuant to SRC 804.035, for a single-family residential use, for property approximately 7.56 acres in size, split-zoned RA (Residential Agriculture), RS (Single-Family Residential) and IC (Industrial Commercial) and located at 1355 Mildred Lane SE - 97306 (Marion County Assessor Map and Tax Lot Numbers: 083W14CB / 2301, 2400, 2401, 2500, and 2501).

## RECOMMENDATION

Public Works staff recommends denial of the proposed driveway.

## SUMMARY OF FINDINGS

1. The proposed driveway approach does not meet all the standards of SRC Chapter 804 as described below and therefore does not meet criterion (1) of SRC 804.025(d).
  - a. This includes a failure to apply for a Class 2 Zoning Adjustment that is required to address spacing under SRC 804.035(d).
2. The proposed driveway does not provide access to the abutting Local street and therefore does not meet criteria (2), (3), and (4) of SRC 804.025(d).
3. The proposed driveway does not provide for forward-in/forward-out movements and therefore does not meet criterion (6) of SRC 804.025(d).

Code authority references are abbreviated in this document as follows: *Salem Revised Code* (SRC); *Public Works Design Standards* (PWDS); *Salem Transportation System Plan* (Salem TSP); and *Stormwater Management Plan* (SMP).

## **FACTS**

### **Streets**

#### 1. Mildred Lane SE

- a. Standard—This street is designated as a Minor Arterial street in the Salem TSP. The standard for this street classification is a 46-foot-wide improvement within a 72-foot-wide right-of-way.
- b. Existing Conditions—This street has an approximate 46-foot improvement within a 68-foot-wide right-of-way abutting the subject property.

#### 2. Woodside Drive SE

- a. Standard—This street is designated as a Local street in the Salem TSP. The standard for this street classification is a 30-foot-wide improvement within a 60-foot-wide right-of-way.
- b. Existing Conditions—This street has an approximate 30-foot improvement within a 60-foot-wide right-of-way abutting the subject property.

#### 3. Flairstone Avenue SE

- a. Standard—This street is designated as a Local street in the Salem TSP. The standard for this street classification is a 30-foot-wide improvement within a 60-foot-wide right-of-way.
- b. Existing Conditions—This street has an approximate 30-foot improvement within a 50-foot-wide right-of-way abutting proposed Parcel 1 of PAR19-11.

## **CRITERIA AND FINDINGS**

Analysis of the development based on relevant criteria in SRC 804.025(d) is as follows:

**Criteria—A Class 2 Driveway Approach Permit shall be granted if:**

- (1) The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards;**

**Finding**—The proposed driveway approach is to a Minor Arterial street and therefore shall meet the standards found in SRC 804.035. The proposed development is not part of a complex; therefore, SRC 804.035(a)(1) is not met.

The current legal parcel abuts Woodside Drive SE (a Local street). The applicant's findings fail to show there is an unreasonable hardship or practical difficulty created by the physical characteristics of the land that would preclude accessing the Local street; therefore SRC 804.035(a)(2) is not met.

Pursuant to SRC 804.035(b), the driveway approach shall meet the Traffic Volume Threshold for a Minor Arterial street. A single-family home will generate less than 10 vehicle trips per day according to the Institute of Traffic Engineers (ITE) "Trip Generation Manual" 10<sup>th</sup> Edition. The proposed use of a single-family dwelling does not meet the threshold of generating 30 or more vehicle trips per day and the driveway approach does not provide access to a city park. This standard is not met.

Pursuant to SRC 804.035(c)(2), the driveway approach shall take access from the lowest classification of street abutting the property for corner lot. This standard is not met.

Pursuant to SRC 804.035(c)(3), "No access shall be provided onto a major or minor arterial from a single-family or two-family use constructed as part of a subdivision or partition." This standard is not met.

Pursuant to SRC 804.035(c)(4), a Minor Arterial access shall allow only forward-in/forward-out movements. The proposed site plan shows a driveway that requires vehicles to back out into Mildred Lane SE. This standard is not met.

Pursuant to SRC 804.035(d), "Driveway approaches providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline." The proposed driveway approach is less than 370 feet from the intersection of Mildred Lane SE and Woodside Drive SE. Additionally, land use case number DR-CU-SPR-ADJ-DAP20-02 approved a driveway, for a multiple family development, that will provide approximately 150 feet of spacing from the proposed driveway. This equates to a 60% adjustment to the standard and requires a Class 2 Zoning Adjustment application with findings of how the proposal meets the criteria of SRC 250.005(d)(2). The applicant did not provide an application nor findings for the Class 2 Adjustment. This standard is not met.

**(2) No site conditions prevent placing the driveway approach in the required location;**

**Finding**—The proposed development is bordered on the west by Waln Creek. Therefore, the proposed driveway approach is placed close to the eastern boundary. This standard is not met.

**(3) The number of driveway approaches onto an arterial are minimized;**

**Finding**—The existing property has an approved driveway approach to the Minor Arterial under CU-SPR-DAP-DR20-06. The proposed driveway adds a second access to an arterial street. This standard is not met.

**(4) The proposed driveway approach, where possible:**

- i. Is shared with an adjacent property; or**
- ii. Takes access from the lowest classification of street abutting the property;**

**Finding**—The property as existing abuts Woodside Drive SE, a Local street. The proposed driveway approach does not propose to take access to Woodside Drive SE due to future plans for a multi-family development previously approved under CU-SPR-DAP-DR20-06. This standard is not met.

**(5) Proposed driveway approach meets vision clearance standards;**

**Finding**—The proposed driveway approach will meet the PWDS vision clearance standards set forth in SRC Chapter 805.

**(6) The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access;**

**Finding**—The proposed site plan shows a driveway that requires vehicles to back out onto Mildred Lane SE (a Minor Arterial). This standard is not met.

**(7) The proposed driveway approach does not result in significant adverse impacts to the vicinity;**

**Finding**—Staff analysis of the proposed driveway indicate that impacts will be limited to the approach location and the proposal does not result in significant adverse impacts to the vicinity.

**(8) The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections; and**

**Finding**— The proposed driveway approach will have minimal impact to adjacent streets and intersections.

**(9) The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.**

**Finding**—The proposed development is surrounded by residentially zoned property. The driveway balances the adverse impacts to residentially zoned property and will not have an adverse effect on the functionality of the adjacent streets.

Prepared by: Jennifer Scott, Program Manager  
cc: File





**Land Use Application**

**Planning/Permit Application Center**  
 City Hall / 555 Liberty St. SE / Room 320 / Salem, OR 97301-3513  
 503-588-6173 \* [planning@cityofsalem.net](mailto:planning@cityofsalem.net)

(For office use only)  
 Permit #:

If you need the following translated in Spanish, please call 503-588-6256.  
 Si usted necesita lo siguiente traducido en español, por favor llame 503-588-6256.

**Application type**

Please describe the type of land use action requested:

Variance

**Work site location and information**

<b>Street address or location of subject property</b>	1355 Mildred Lane
<b>Total size of subject property</b>	
<b>Assessor tax lot numbers</b>	083W14CB/Tax Lot 2400
<b>Existing use structures and/or other improvements on site</b>	Vacant
<b>Zoning</b>	RA
<b>Comprehensive Plan Designation</b>	Developing Residential
<b>Project description</b>	<u>Variance</u> for a Single Family Dwelling (Permit No. 20-113775) onto Mildred Lane

**People information**

	Name	Full Mailing Address	Phone Number and Email address
<b>Applicant</b>	Empire Builders	8527 Saghale Drive S Salem, Oregon 97306	
<b>Agent</b>	Brandie Dalton Land-Use Consultant	Multi/Tech Engineering 1155 SE 13th Street, Salem, OR 97302	503-363-9227

**Project information**

<b>Project Valuation for Site Plan Review</b>	
<b>Neighborhood Association</b>	
<b>Have you contacted the Neighborhood Association?</b>	<input type="radio"/> Yes <input checked="" type="radio"/> No
<b>Date Neighborhood Association contacted</b>	
<b>Describe contact with the affected Neighborhood Association</b> <small>(The City of Salem recognizes, values, and supports the involvement of residents in land use decisions affecting neighborhoods across the city and strongly encourages anyone requesting approval for any land use proposal to contact the affected neighborhood association(s) as early in the process as possible.)</small>	
<b>Have you contacted Salem-Keizer Transit?</b>	<input type="radio"/> Yes <input checked="" type="radio"/> No
<b>Date Salem-Keizer Transit contacted</b>	
<b>Describe contact with Salem-Keizer Transit</b>	

**Authorization by property owner(s)/applicant**

**\*If the applicant and/or property owner is a Limited Liability Company (LLC), please also provide a list of all members of the LLC with your application.**

**Copyright release for government entities:** I hereby grant permission to the City of Salem to copy, in whole or part, drawings and all other materials submitted by me, my agents, or representatives. This grant of permission extends to all copies needed for administration of the City's regulatory, administrative, and legal functions, including sharing of information with other governmental entities.

**Authorizations: Property owners and contract purchasers are required to authorize the filing of this application and must sign below.**

- All signatures represent that they have full legal capacity to and hereby do authorize the filing of this application and certify that the information and exhibits herewith submitted are true and correct.
- I (we) hereby grant consent to the City of Salem and its officers, agents, employees, and/or independent contractors to enter the property identified above to conduct any and all inspections that are considered appropriate by the City to process this application.
- I (we) hereby give notice of the following concealed or unconcealed dangerous conditions on the property:

**Electronic signature certification:** By attaching an electronic signature (whether typed, graphical or free form) I certify herein that I have read, understood and confirm all the statements listed above and throughout the application form.

Authorized Signature: James A Helton

Print Name: James A Helton Date: 12-04-2020

Address (include ZIP): 8527 Saghalie Dr. S Salem, OR 97306-9753

Authorized Signature: James A Helton

Print Name: James A Helton Date: 12-04-2020

Address (include ZIP): 8527 Saghalie Dr. S Salem, OR 97306-9753

(For office use only)		
Received by	Date:	Receipt Number:

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Save the file to your computer and email to [planning@cityofsalem.net](mailto:planning@cityofsalem.net).

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

DECISION OF THE HEARINGS OFFICER

VARIANCE / CLASS 2 DRIVEWAY APPROACH PERMIT CASE NO.: VAR-DAP21-01

APPLICATION NO.: 21-101587-ZO, 21-101590-ZO

NOTICE OF DECISION DATE: March 16, 2021

**SUMMARY:** A request for a Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, a Minor Arterial Street, where a driveway is not allowed for a single-family residential use.

**REQUEST:** A Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, where a driveway is not allowed pursuant to SRC 804.035, for a single-family residential use, for property approximately 7.56 acres in size, split-zoned RA (Residential Agriculture), RS (Single-Family Residential) and IC (Industrial Commercial) and located at 1355 Mildred Lane SE - 97306 (Marion County Assessor Map and Tax Lot Numbers: 083W14CB / 2301, 2400, 2401, 2500, and 2501).

**APPLICANT:** Brandie Dalton on behalf of Empire Builders of Oregon LLC (James Helton)

**LOCATION:** 1355 Mildred Ln SE, Salem OR 97306

**CRITERIA:** Salem Revised Code (SRC) Chapters 245.005(d) – Variance; 804.025(d) – Driveway Approach Permits

**FINDINGS:** The findings are in the attached Decision dated March 12, 2021

**DECISION:** The **Hearings Officer DENIED** Variance / Class 2 Driveway Approach Permit Case No. VAR-DAP21-01

Application Deemed Complete:	January 29, 2021
Public Hearing Date:	February 24, 2021
Notice of Decision Mailing Date:	March 16, 2021
Decision Effective Date:	April 1, 2021
State Mandate Date:	May 29, 2021

Case Manager: Sally Long, [sjlong@cityofsalem.net](mailto:sjlong@cityofsalem.net), 503-540-2311

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at [planning@cityofsalem.net](mailto:planning@cityofsalem.net), no later than 5:00 p.m. Wednesday, March 31, 2021. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the

NOTICE OF DECISION

PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
SALEM, OREGON 97301  
PHONE: 503-588-6173  
FAX: 503-588-6005



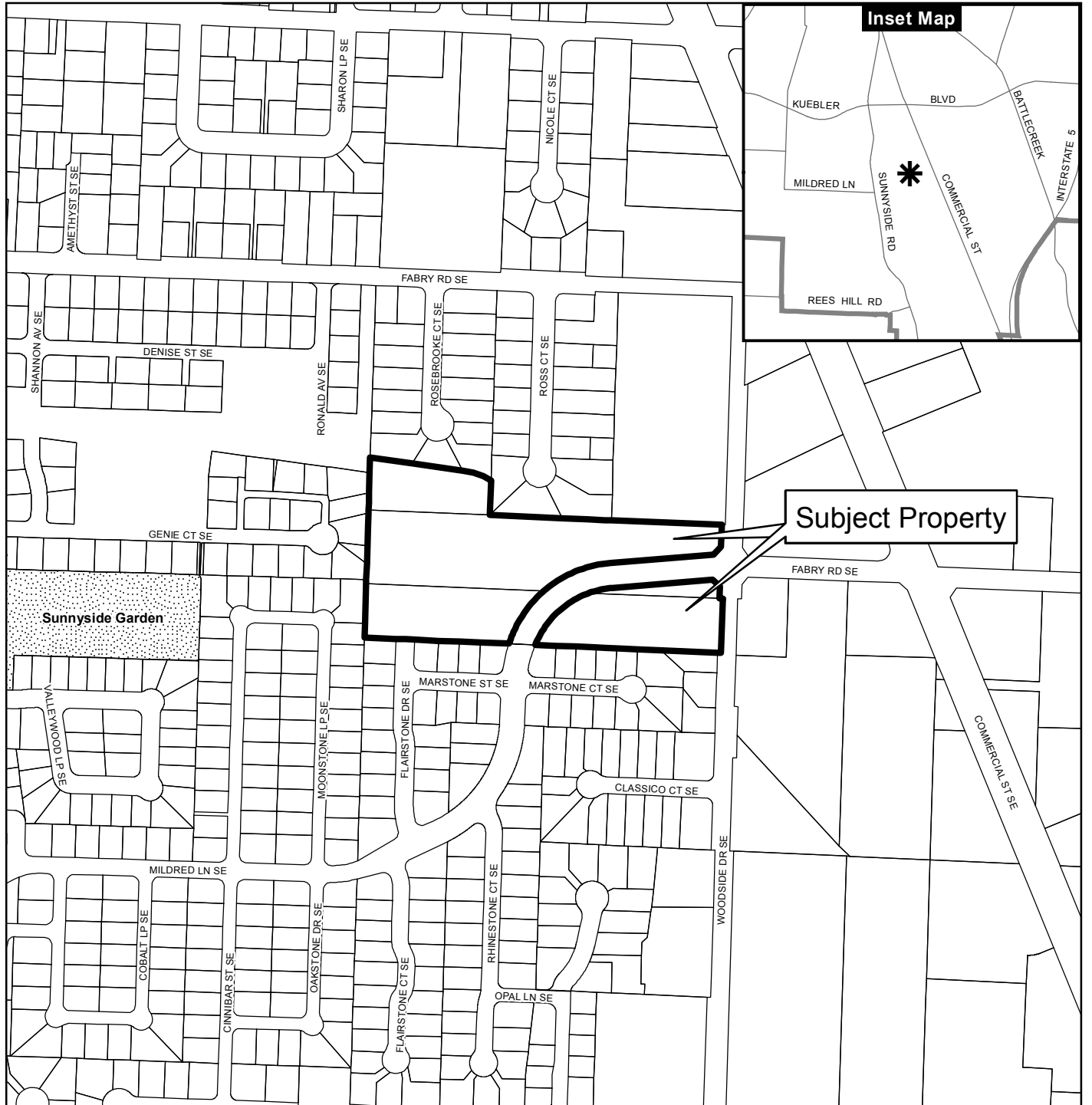
decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 245, 804. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

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

# Vicinity Map

## 1355 Mildred Lane SE










**Subject Property**

**Inset Map**

**Sunnyside Garden**

**Legend**

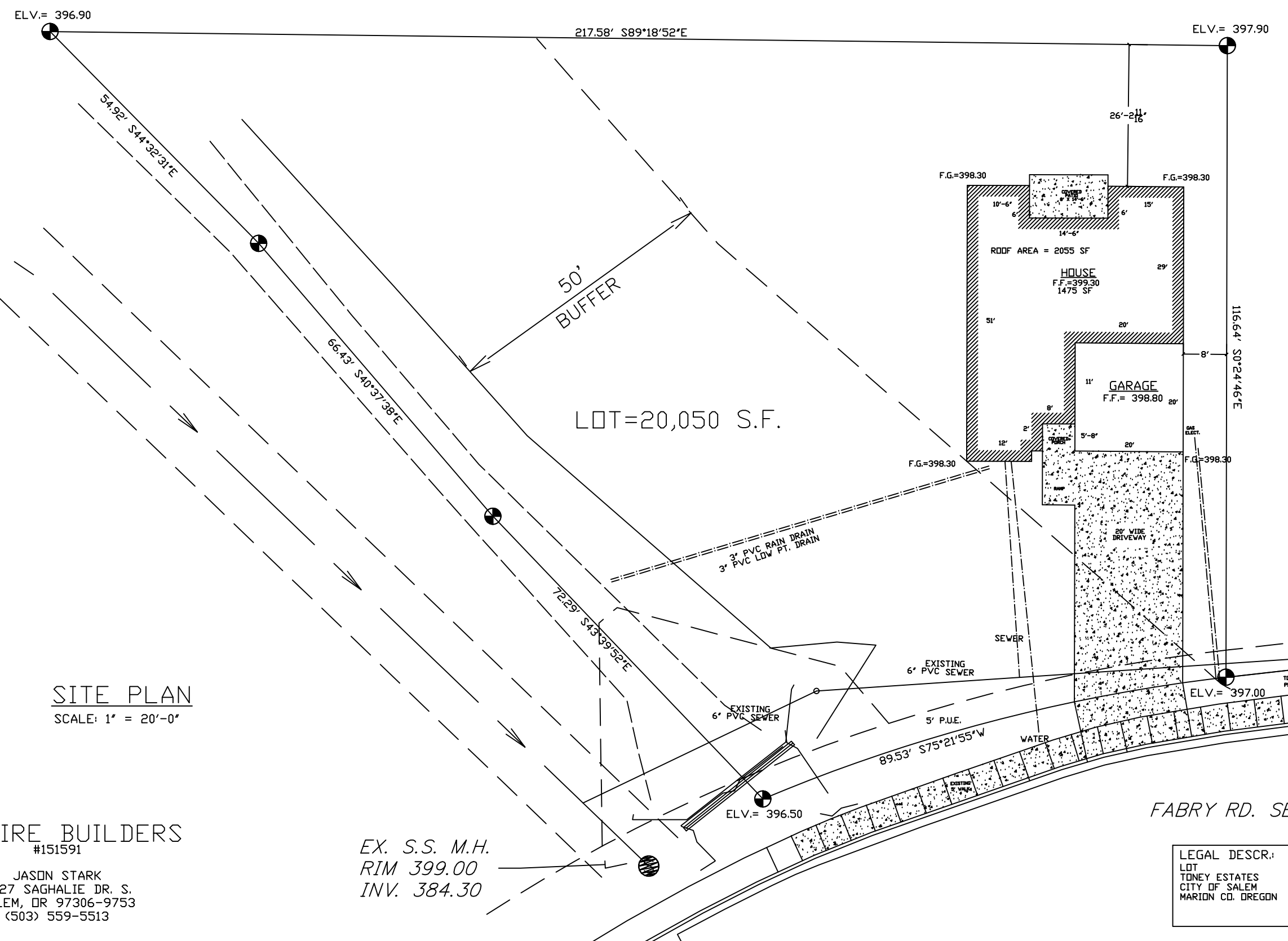
-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks

**CITY OF Salem**  
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 Community Development Dept.

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LOT=20,050 S.F.

HOUSE  
F.F.=399.30  
1475 SF

GARAGE  
F.F.= 398.80

SITE PLAN  
SCALE: 1" = 20'-0"

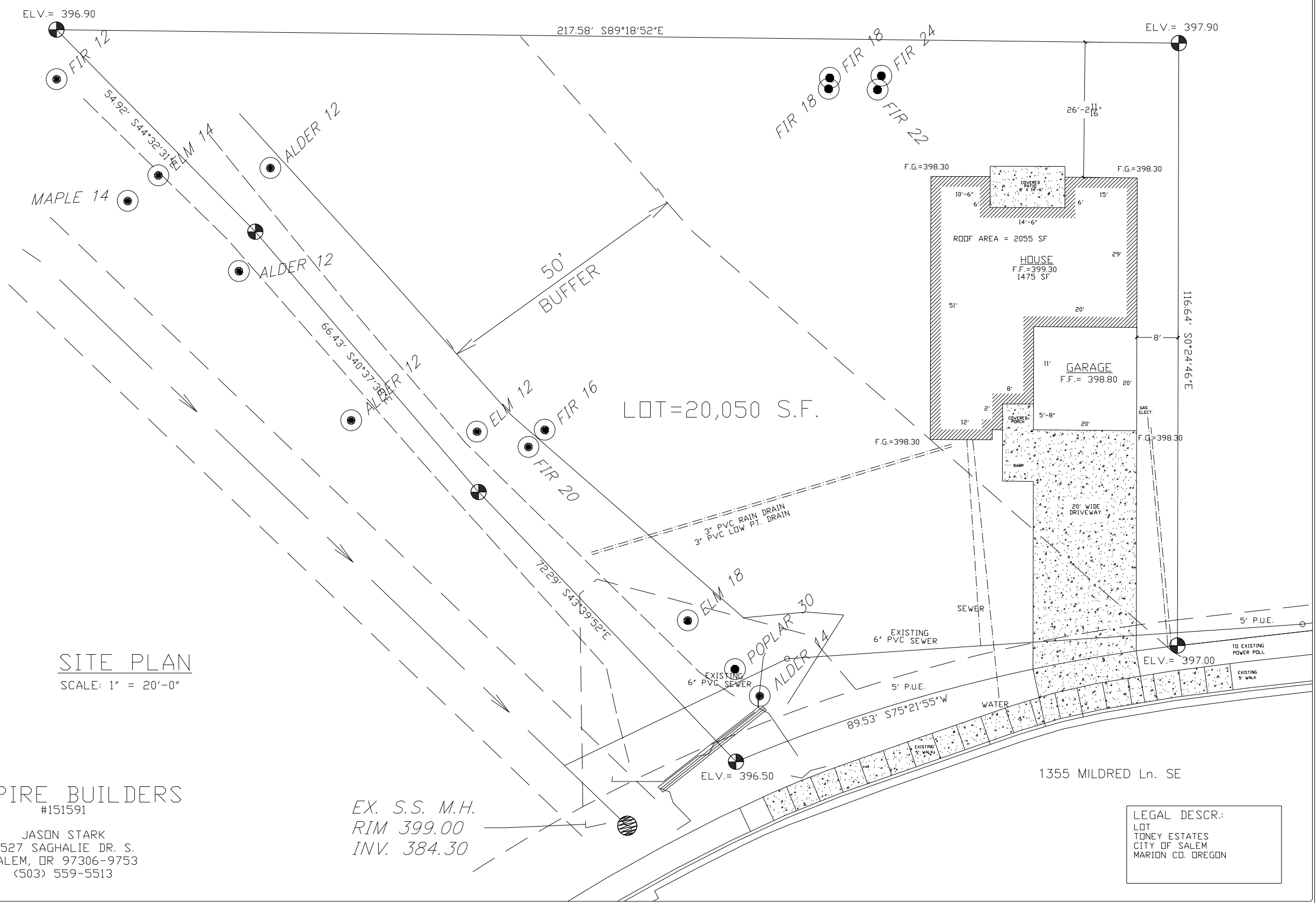
EMPIRE BUILDERS  
#151591  
JASON STARK  
8527 SAGHALIE DR. S.  
SALEM, OR 97306-9753  
(503) 559-5513

EX. S.S. M.H.  
RIM 399.00  
INV. 384.30

FABRY RD. SE

LEGAL DESCR.:  
LOT  
TONEY ESTATES  
CITY OF SALEM  
MARION CO. OREGON

# Tree Plan



SITE PLAN  
SCALE: 1" = 20'-0"

EMPIRE BUILDERS  
#151591  
JASON STARK  
8527 SAGHALIE DR. S.  
SALEM, OR 97306-9753  
(503) 559-5513

EX. S.S. M.H.  
RIM 399.00  
INV. 384.30

LEGAL DESCR.:  
LOT  
TONEY ESTATES  
CITY OF SALEM  
MARION CO. OREGON

**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

A REQUEST FOR A VARIANCE AND CLASS 2 )  
DRIVEWAY APPROACH PERMIT TO ALLOW )  
A DRIVEWAY ONTO MILDRED LANE SE, A )  
MINOR ARTERIAL STREET FOR PROPERTY )  
APPROXIMATELY 7.6 ACRES IN SIZE, SPLIT )  
ZONED RA (RESIDENTIAL AGRICULTURE), )  
RS (SINGLE-FAMILY RESIDENTIAL) and IC )  
(INDUSTRIAL COMMERCIAL) AND )  
LOCATED AT 1355 MILDRED LANE SE, )  
SALEM OREGON )

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VAR-DAP21-01

FINDINGS OF FACT, CONCLUSIONS AND  
DECISION

**DATE AND PLACE OF HEARING:**

February 24, 2021; due to social distancing measures in place to help stop the spread of the Covid-19 virus, the hearing was held virtually.

**APPEARANCES:**

Staff: Sally Long, Planner I

Applicant: Empire Builders of Oregon LLC (James Helton), owner;  
Brandie Dalton, Multi-Tech Engineering, Inc., Mark  
Grenz, on behalf of applicant.

Neighborhood Association: South Gateway Neighborhood Association. No  
appearance.

Proponents: None.

Opponents: Maureen and Thomas Burd

**SUMMARY OF THE APPLICATION AND HEARING  
BACKGROUND**

On January 11, 2021, Brandie Dalton, Multi-Tech Engineering, Inc., filed Variance and Class 2 Driveway Approach Permits on behalf of one of the property owners, Empire Builders of



Oregon LLC (James Helton) for a driveway approach permit to allow a driveway approach onto Mildred Lane SE to serve a single-family residential use. On January 27, 2021, an incomplete letter was provided to the applicant requesting additional information. On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete. The consolidated applications were deemed complete for processing on January 29, 2021.

The City of Salem Hearings Officer held a virtual public hearing over Zoom on February 24, 2021, at 5:30 p.m. As required by the Salem Revised Code (SRC), the public hearing notice was sent by mail to surrounding property owners and tenants, on February 4, 2021; and the public hearing notice was posted on the property.

### **SUMMARY OF THE APPLICATION**

A request for a Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, for a single-family residential use. The Variance is requested because driveway access onto a minor arterial for a single-family use is prohibited pursuant to SRC 804.035. The Class 2 Driveway Approach Permit is required for a driveway approach onto a parkway, major arterial, or minor arterial pursuant to SRC 804.025(a)(1)

### **PROPOSAL**

The applicant is requesting a Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, for a single-family residential use. The Variance is requested because driveway access onto a minor arterial for a single-family use is prohibited pursuant to SRC 804.035. The Class 2 Driveway Approach Permit is required for a driveway approach onto a parkway, major arterial, or minor arterial pursuant to SRC 804.025(a)(1). A vicinity map illustrating the location of the property and the location of the proposed driveway approach is Attachment A to the staff report.

### **SUMMARY OF RECORD**

The following items are accepted into the record and are available upon request: All materials submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, and stormwater reports; any materials and comments from public agencies, City departments, neighborhood associations, and the public; the written staff report; the recording of the public hearing and the PowerPoint used for the staff report at the public hearing; written comments, including emails,

provided by the public before and after the public hearing; the applicant’s final written argument; and all documents referenced in this decision.

## **FINDINGS OF FACT AND CONCLUSIONS**

The Hearings Officer adopts the following facts from the application, staff report and testimony:

### **FACTS AND FINDINGS**

#### **1. Salem Area Comprehensive Plan (SACP) designation**

*Urban Growth Policies:* The subject property is located within the Salem Urban Growth Boundary and the Urban Service Area.

*Comprehensive Plan Map:* The subject property is designated “Single Family Residential (SF)” and “Industrial Commercial (IC)” on the Salem Area Comprehensive Plan (SACP) Map. The surrounding properties are designated as follows:

North: Single Family Residential (SF) and Multi-Family Residential (MF)

South: Single Family Residential (SF)

East: Across Woodside Drive SE; Industrial Commercial (IC)

West: Single Family Residential (SF)

#### **2. Zoning and Surrounding Land Uses**

The subject property is split-zoned RA (Residential Agriculture), RS (Single Family Residential), and IC (Industrial Commercial), and is currently undeveloped. The surrounding properties are zoned and used as follows:

North: RS (Single Family Residential) and RM-II (Multiple Family Residential) – Single-family residential subdivision and an apartment complex

South: RS (Single Family Residential) – Single-family residential subdivision

East: IC (Industrial Commercial) – Self-service storage development and single-family residence

West: RS (Single Family Residential) – Single-family residential subdivision

#### **3. Site Analysis**

The subject property includes five tax lots with an area of approximately 7.6 acres and has approximately 248 feet of frontage on Woodside Drive SE, approximately 50 feet of frontage on Flairstone Drive SE, approximately 630 feet of frontage on the north side of Mildred Lane SE, and approximately 539 feet of frontage on the south side of Mildred Lane SE.

Mildred Lane SE is designated as a Minor Arterial street in the Salem Transportation System Plan and Flairstone Drive SE and Woodside Drive SE are designated as Local streets. Because Mildred Lane SE is designated as a Minor Arterial street, the proposed driveway approach onto Mildred Street SE for the single-family use is not allowed pursuant to SRC 804.035.

The subject property was approved for a three-lot partition in August of 2019; Partition Case PAR19-11 (staff report Attachment D is the Tentative Partition Plan). The proposed driveway approach is intended to provide access for a new single-family dwelling which the applicant submitted for development under permit 20-113775-DW. The applicant's site plan indicates the driveway approach and single-family dwelling are proposed for what is currently an undivided portion of proposed Parcel 1 of PAR19-11. The Hearings Officer note that there is no evidence in the record that the Final Plat for the partition has been recorded, therefore, there is no evidence in the record demonstrating that Parcel 1 is a separate legal parcel, rather than an undivided area on the 7.6 acre site. The Hearings Officer notes that partition tentative plans are valid for a period of two years. The approval granted by PAR19-11 must be exercised or an extension granted by September 14, 2021, or the approval of the partition will be null and void. Pursuant to SRC 300.850, Table 300-3, a partition tentative plan is allowed a maximum of four extensions with a maximum approval period of two years per each extension granted. Consequently, a number of years could pass before the Final Plat is recorded and Parcel 1 is a separate unit of land, or the approval of PAR19-11 could expire, leaving the 7.6 acres undivided.

Along the same lines, just as there is no evidence in the record that a Final Plat has been recorded, the Hearings Officer notes that there is no evidence in the record of an approved final plat or other instrument that further divides tentative plan Parcel 1 so that the proposed driveway approach would serve a separate lot. Nor does the application for this variance seem to be part of a consolidated application.

#### **4. Neighborhood and Citizen Comments**

The subject property is located within the South Gateway Neighborhood Association. The applicant is required by SRC 300.210(a)(6) to provide a copy of an email or letter to the Neighborhood Association, meeting SRC 300.210(a)(5). The record does not include evidence that the applicant contacted the South Gateway Neighborhood Association.

Notice was provided by staff to South Gateway Neighborhood Association and to surrounding addresses, property owners, and tenants within 250 feet of the subject property. At the time of this decision, no comments were received from the neighborhood association, but two neighboring property owners appeared at the public hearing to express concerns about the driveway access related to traffic and safety on Mildred Lane SE.

## 5. City Department and Public Agency Comments

The City of Salem Building and Safety Division reviewed the Variance and Class 2 Driveway Approach Permit proposals and commented the Building and Safety Department has no zoning jurisdiction.

The City of Salem Fire Department reviewed the Variance and Class 2 Driveway Approach Permit proposals and stated that they have no concerns.

The City of Salem Public Works Department, Development Services Section, reviewed the proposal and has provided comments. Their memorandum is included with the staff report as Attachment E.

## 6. Analysis of Land Use Application Submittal – SRC Chapters 300, 245 and 804

The Hearings Officer notes that the staff report sets out a series of application submittal requirements from SRC 300.210 and the additional submittal requirements for a variance from SRC 245.005(c). The Hearings Officer notes that the staff report sets out specific deficiencies in the application, and notes that there is no evidence in the record that these deficiencies materials were corrected. The Hearings Officer notes that application requirements are not substantive criteria, and, once an application is deemed complete as required by state law and SRC 300.220, the Hearings Officer is required to base any decision on whether the applicant has met its burden of proof and demonstrated that the application satisfies the applicable criteria, based on substantial evidence in the record. The Hearings Officer views the discussion of these application deficiencies in the staff report as a useful explanation and guide for why the staff report does not provide a thorough evaluation of facts presented by the applicant and leads the Hearings Officer to a concern that the evidence in the record in this case does not demonstrate the application satisfies the substantive review criteria.

The staff report notes the following items that were required to be submitted by the applicant by SRC 300.210(a) and were either partially submitted or were not submitted:

### *SRC 300.210(a)(1) land use application*

An applicant is required to submit an application form which includes applicant's name, subject property, brief description of the proposal and signatures of the applicant(s), owner(s) of the subject property and/or those duly authorized to represent them.

The subject property contains five tax lots (083W14CB / 2301, 2400, 2401, 2500, and 2501) as one legal unit of land. The applicant was a party to a previously approved tentative partition application, which would divide the subject property into three parcels. The applicant has not yet filed the final land division map (Plat), therefore the five tax lots are still one legal property. Since the partition has not

been finalized, the land area is owned by Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The application forms submitted by the applicant listed Empire Builders of Oregon LLC as the applicant. However, the applications only contained the signature of James Helton (Empire Buildings of Oregon LLC). Signature authority was not provided by all owners of the subject property authorizing James Helton to file the application on their behalf.

Staff requested current ownership information from the applicant on January 27, 2021 to verify required property owner signatures on the land use applications. On January 29, 2021, the applicant provided written notice stating no additional information would be provided, pursuant to ORS 227.178(2)(c), and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021 without the signatures of Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The land use applications do not meet the submittal requirements of SRC 300.210(A)(G).

*SRC 300.210(a)(2), recorded deed/land sales contract with legal description.*

Pursuant to SRC 300.210(a)(2), a recorded deed or land sales contract with legal descriptions is required to be submitted with land use applications. The Marion County Assessor's site lists the owners of the subject property as Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The deed submitted by the applicant is not the latest deed and does not reflect current ownership.

The recorded deed submitted with the land use applications does not meet the submittal requirements of SRC 300.210(a)(2).

*SRC 300.210(a)(4), pre-application conference written summary or copy of an approved pre-application conference waiver.*

Pursuant to SRC 300.100, Table 300-2, a pre-application conference is required for a variance land use application. Records indicate no pre-application conference has been requested for the variance and no approved pre-application conference waiver was submitted by the applicant. Therefore, the variance land use application does not meet the submittal requirements of SRC 300.210(a)(4).

*SRC 300.210(a)(5), a statement as to whether any City-recognized neighborhood associations whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact.*

and

SRC 300.210(a)(6), proof that the required neighborhood association contacted has been provided.

The applicant is required by SRC 300.210(a)(6) to provide a copy of an email or letter to the Neighborhood Association, meeting SRC 300.210(a)(5). The subject property is located within the South Gateway Neighborhood Association. The application form that was submitted for the variance indicates the neighborhood association has not been contacted (**Attachment F**).

The applicant did not provide, as the required materials under SRC 300.210(a)(5), that they had contacted the South Gateway Neighborhood Association in advance of filing the variance application.

The Hearings Officer notes that the requirement to contact neighborhood associations is closely tied to Statewide Planning Goal One, concerning public participation in the planning process. The Hearings Officer notes that the staff notice may have cured this particular defect.

SRC 245.005(c), submittal requirements.

In addition to the submittal requirements for a Type III application under SRC Chapter 300, an application for a variance shall include a site plan indicating future and existing development, trees, and landscaping.

The applicant's site plan indicates a driveway approach and a single-family dwelling are proposed for a portion of a lot (Parcel 1) that was approved under Partition Case No. PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. The applicant's site plan only shows a small portion of proposed Parcel 1. This small portion is not a separate or approved lot configuration. The applicant has not provided any details about future plans for the remainder of proposed Parcel 1, which makes an analysis of the proposal difficult.

Staff advised the applicant to submit a subdivision application for proposed Parcel 1, which will allow staff to determine if this portion of the lot can be served by an access from the west side of the creek. Staff also advised the applicant that another route open to them would be to request Comprehensive Plan Map and Zone Changes to implement a zone that can have a driveway access that conforms to the code, in addition to a Conditional Use approval to allow access for a single-family dwelling across from the IC zone. The Hearings Officer notes that the proposed development, as submitted, is not allowed.

Staff notified the applicant on January 27, 2021 that the site plan does not reflect the total site area and dimensions as required under SRC 245.005(c)(1) and requested a revised site plan. On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021. The Staff analysis is that

the site plan submitted with the variance application does not meet the additional submittal requirements of SRC 245.005(c)(1).

*SRC 804.035(d) submittal requirement*

SRC 804.035(d) provides that the spacing of a driveway approach providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline. The proposed driveway approach is less than 370 feet from the intersection of Mildred Lane SE and Woodside Drive SE. Additionally, land use case number DR-CU-SPR-ADJ-DAP20-02 approved a driveway for the legal unit of land (subject property), for a multiple family development, that will provide approximately 150 feet of spacing from the proposed driveway. As staff informed the applicant, this equates to a 60% adjustment to the standard and requires a Class 2 Zoning Adjustment application with proposed findings of how the proposal meets the criteria of SRC 250.005(d)(2). On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021. The applicant did not provide an application nor findings for a Class 2 Adjustment. This standard is not met.

## **7. Analysis of Criteria for Variances**

The Hearings Officer notes that SRC Chapter 245.005(a) provides that, unless otherwise provided in the UDC, buildings, structures, or land shall not be developed contrary to the applicable development standards of the UDC unless a variance has been granted pursuant to this Chapter. Accordingly, the applicant has requested a variance to SRC 804.035, to allow access onto major and minor arterials.

SRC Chapter 245.005(d) establishes the following approval criteria for a variance:

**SRC 245.005(d)(1): There is an unreasonable hardship or practical difficulty created by the physical characteristics of the land.**

The Hearings Officer notes that the applicant points to hardship or practical difficulties related to the location of the proposal within the eastern portion of Parcel 1 of approved Partition 19-11 and the relative location of Waln Creek (and its related riparian buffer) on the subject property. The applicant argues that access to a local street will not be feasible due to the creek and the cost of impacts on the riparian corridor that would include removal of trees and required fill and grading. The applicant also argues that access onto Mildred Lane SE, which is designated a Minor Arterial street on the Salem Transportation System Plan, is necessary due to the shape of the site, the established developed surrounding properties, the location of Waln Creek, and the subject property not having access to a local or collector street. Based on this, the applicant requests a variance to SRC 804.035(a) and (c).

The Hearings Officer sees some disconnect between the timing of the applicant's request in this case and the current status of the subject property. The subject property is approximately 7.6 acres in size and is currently vacant. The Hearings Officer notes that Partition Case No. PAR19-11 approved dividing the 7.6-acre parcel into three smaller parcels, but the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. Additionally, the applicant's site plan shows a lot configuration for the single family home that has not been approved and is not part of this application (or possibly shows what is intended to remain a part of Parcel 1). The development, as submitted, is not allowed. The Hearings Officer has considered whether a condition of approval requiring recording of the partition plat approved by Partition Case No. PAR19-11 would address this concern. The Hearings Officer notes that such a condition would still leave the Hearings Officer with a need to determine whether an application for the driveway access to serve a single family residence on Parcel 1 can be allowed. The Hearings Officer sees no evidence in the record that demonstrates that under the current zoning for Parcel 1 the site configuration proposed by the applicant must be approved. Accordingly, the Hearings Officer declines to impose a condition to address the timing of the proposal.

SRC 804.035(a)(2)(B) and (C) provide that no driveway approach is allowed onto a major or minor arterial unless the development does not abut a local or collector street; or the development cannot be feasibly served by access onto a local or collector street. The Hearings Officer agrees with staff that in its current legal configuration, the subject property has direct street frontage on Flairstone Drive SE, which is designated a Local street on the Salem Transportation System Plan and can feasibly be served by access onto Flairstone Drive SE. The Hearings Officer agrees with staff that site layout is under the control of the applicant when developing the site, and concludes that any hardship resulting from the ultimate layout or internal organization of the site or future partitions or subdivisions would be a result of the actions of the applicant. Therefore, the Hearings Officer finds that there is no unreasonable hardship or practical difficulty created by the physical characteristic of the land that prevents the subject property from taking access onto Flairstone Drive SE.

The Hearings Officer notes that according to SRC 804.035(c)(3), no access shall be provided onto a major or minor arterial from a single family or two-family use constructed as part of a subdivision or partition. Partition Case No. PAR19-11 approved subdividing the 7.6-acre parcel into three smaller parcels. The applicant is proposing to take access onto Mildred Lane SE, a minor arterial, from a single-family use constructed as part of partition PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. Additionally, the applicant's site plan illustrates a lot configuration that has not been approved and therefore, is not a legal lot. The development, as submitted, is not allowed and therefore, access onto Mildred Lane SE for the proposed single-family use is not allowed, pursuant to SRC 804.035(c)(3).



In summary, the applicant has not adequately addressed how the subject property has an unreasonable hardship or practical difficulty created by the physical characteristics of the land. The Hearings Officer finds that the applicant has not met its burden of proof, as there is not substantial evidence in the record to support a decision that the application satisfies this criterion.

**SRC 245.005(d)(2): The variance will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity.**

The Hearings Officer notes that the applicant's complete written statement is included with the staff report as Attachment C. The Hearings Officer notes that the criteria for driveways in SRC 804.025(d) requires that a proposed driveway approach does not create traffic hazards and provides for safe turning movements and access. Table 3-1 of the Salem Transportation System Plan classifies a minor arterial street as a high capacity street that primarily serves regional and intracity travel with an Average Daily Traffic (ADT) count of 7,000 to 20,000 vehicles. The proposed driveway access for the single-family use onto Mildred Lane SE, a high capacity street, is not allowed pursuant to SRC 804.035, as it would not provide for safe turning movements and access and could potentially create traffic hazards. Testimony from Maureen and Thomas Burd raised concerns about the safety of this driveway approach entering traffic travelling at speed on Mildred Lane SE. The Hearings Officer finds that as the the subject property has direct street frontage onto Flairstone Drive SE, which is designated a Local street on the Salem Transportation System Plan, direct access to a local street is available. This direct access to a local street would avoid any concern about traffic hazards and safe turning movements related to the driveway access. As the applicant has not adequately addressed how the variance to SRC 804.035 will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity, the Hearings Officer finds that the proposal does not satisfy this criterion.

**8. Analysis of Class 2 Driveway Approach Permit Approval Criteria**

Pursuant to SRC 804.025(a), a Class 2 driveway approach permit is required for:

- (1) A driveway approach onto a parkway, major arterial, or minor arterial;
- (2) A driveway approach onto a local or collector street providing access to a use other than single family or two family;
- (3) A driveway approach providing access to a corner lot that abuts only local or collector streets, where the driveway approach will provide access onto the street with the higher street classification; or
- (4) Maintenance, repair, or replacement of an existing permitted driveway approach, which is part of, or needed for, redevelopment of commercial or industrially zoned property.

The Hearings Officer notes that a Class 2 Driveway Approach Permit is required for this proposal pursuant to SRC 804.025(a)(1) because the proposed driveway approach for a single-family residential use will provide access on to Mildred Lane SE, classified a Minor Arterial street on the Salem Transportation System Plan (TSP).

The approval criteria for a Class 2 Driveway Approach Permit are found in SRC 804.025(d); findings for the proposed driveway accesses onto Mildred Lane SE are included below.

Criterion 1:

The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards.

The Hearings Officer notes that the proposed driveway onto Mildred Lane SE does not meet the standards for SRC 804 and the Public Works Design Standards. SRC 804.035(a)(2)(B) prohibits access onto a minor arterial if the development abuts a Local street. The applicant is proposing to take access onto Mildred Lane SE from the eastern portion of Parcel 1 of approved Partition 19-11. As the partition plat has not yet been recorded, Parcel 1 is currently not a separate legal parcel. The Hearings Officer also notes that the applicant's site plan for the proposed single-family dwelling illustrates a lot configuration that has not been approved and shows a portion of the property which is not currently a legal lot. In its current configuration, the subject property has direct street frontage onto Flairstone Drive SE, which is designated a Local street on the Salem Transportation System Plan, so the Parcel has direct access to a local street.

The proposed driveway approach is to a Minor Arterial street and therefore must meet the standards found in SRC 804.035. The proposed development is not part of a complex; therefore, the application does not satisfy SRC 804.035(a)(1). The current legal parcel also abuts Woodside Drive SE (a Local street). The applicant's proposal fails to show that there is an unreasonable hardship or practical difficulty created by the physical characteristics of the land that would preclude accessing the Local streets; the Hearings officer finds the application does not satisfy SRC 804.035(a)(2).

Pursuant to SRC 804.035(b), the driveway approach shall meet the Traffic Volume Threshold for a Minor Arterial street. A single-family home will generate less than 10 vehicle trips per day according to the Institute of Traffic Engineers (ITE) "Trip Generation Manual" 10<sup>th</sup> Edition. The proposed use of a single-family dwelling does not meet the threshold of generating 30 or more vehicle trips per day and the driveway approach does not provide access to a city park. The Hearings Officer finds that the application does not meet this standard.

Pursuant to SRC 804.035(c)(2), the driveway approach shall take access from the lowest classification of street abutting the property for corner lot. As two local streets are available, the Hearings Officer finds that this standard is not met.

Pursuant to SRC 804.035(c)(3), "No access shall be provided onto a major or minor arterial from a single-family or two-family use constructed as part of a subdivision or partition." The Hearings Officer finds that this is the plan set out in the application, so this standard is not met.

Pursuant to SRC 804.035(c)(4), a Minor Arterial access shall allow only forward-in/forward-out movements. The proposed site plan shows a driveway that requires vehicles to back out into Mildred Lane SE. This standard is not met. The Applicant stated that a turn around or other method to avoid needing to back into Mildred Land SE would be an acceptable condition of approval, but the Hearings Officer declines to impose a condition without sufficient evidence in the record to demonstrate that it is plausible to put a hammerhead or circular drive on whatever the ultimate configuration of the internal lots of Parcel 1 might be.

Pursuant to SRC 804.035(d), "Driveway approaches providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline." The proposed driveway approach is less than 370 feet from the intersection of Mildred Lane SE and Woodside Drive SE. Additionally, land use case number DR-CU-SPR-ADJ-DAP20-02 approved a driveway, for a multiple family development, that will provide approximately 150 feet of spacing from the proposed driveway. This equates to a 60% adjustment to the standard and requires a Class 2 Zoning Adjustment application with findings of how the proposal meets the criteria of SRC 250.005(d)(2). The Hearings Officer notes that the applicant did not provide an application nor propose findings for a Class 2 Adjustment. The Hearings Officer finds that this standard is not met.

The proposal does not satisfy this criterion.

Criterion 2:

No site conditions prevent placing the driveway approach in the required location.

The Hearings Officer notes that the proposed development is bordered on the west by Waln Creek and the proposed driveway approach is placed close to the eastern boundary. SRC 804.035(a)(2)(B) does not allow a driveway approach onto a major or minor arterial if the development is not a complex and also abuts a local or collector street. The proposed driveway approach for a single-family use is for access onto a Minor Arterial street when Local street frontage is available. The Hearings Officer finds that there are no site conditions that prohibit placing the location of the proposed driveway along the property's Local street frontage, as required by code. The Hearings Officer finds that this proposal does not meet this criterion.

Criterion 3:

The number of driveway approaches onto an arterial are minimized.

The Hearings Officer notes that the applicant states there is only one driveway proposed onto an arterial, so the proposal meets this criterion. The Hearings Officer notes that staff points out that as it currently exists, the property has an approved driveway approach to the Minor Arterial under CU-SPR-DAP-DR20-06. The proposed driveway adds a second access to an arterial street. The Hearings Officer notes that the subject property also has direct frontage onto Flairstone Drive SE, which is a Local street. The driveway approach for the property could be located on the Flairstone Drive SE frontage instead of onto a Minor Arterial street, minimizing the number of approaches onto the arterial. The Hearings Officer finds that the proposal does not meet this criterion.

Criterion 4:

The proposed driveway approach, where possible:

- a) Is shared with an adjacent property; or
- b) Takes access from the lowest classification of street abutting the property.

The Hearings Officer notes the applicant states the subject property is located on Mildred Lane (arterial) to the south and that access to adjacent streets is not available and/or feasible. The applicant argues that the possibility of sharing an accessway with the apartments to the east is not possible due to zoning differences. Therefore, from the applicant's point of view, there are no lower classified streets adjacent to the property.

The Hearings Officer notes the staff points out that the property, as existing, abuts Woodside Drive SE, a Local street. The proposed driveway approach does not propose to take access to Woodside Drive SE due to future plans for a multi-family development previously approved under CU-SPR-DAP-DR20-06. The driveway access is proposed to be taken from Mildred Lane SE, a Minor Arterial street. The Hearings Officer notes that the subject property has direct street frontage off Flairstone Drive SE, a Local street. The Hearings Officer finds that the proposed driveway approach access would not be from the lowest classification of street abutting the subject property. The Hearings Officer finds that this criterion is not met.

Criterion 5:

The proposed driveway approach meets vision clearance standards.

The Hearings Officer notes that the applicant states that as shown on the site plan, the proposed driveway does not create any vision clearance issues and is in the most feasible location and meets vision clearance standards, meeting this criterion. The Hearings Officer finds that the proposed driveway approach will meet the

PWDS vision clearance standards set forth in SRC Chapter 805. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 6:

The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access.

The Hearings Officer notes that the applicant states that as shown on the street plan, the driveway approach does not create traffic hazards. The Hearings Officer notes that the proposed site plan shows a driveway that requires vehicles to back out onto Mildred Lane SE (a Minor Arterial). Table 3-1 of the Salem Transportation System Plan classifies a minor arterial street as a high capacity street that primarily serves regional and intracity travel with an Average Daily Traffic (ADT) count of 7,000 to 20,000 vehicles. The proposed driveway access for the single-family use onto Mildred Lane SE, a high capacity street, is not allowed pursuant to SRC 804.035. Further, the applicant's site plan does not show adequate turnaround onsite which would result in vehicles having to back out onto Mildred Lane SE. Backing out onto a high capacity street would not provide for safe turning movements and access and could potentially create traffic hazards. The Hearings Officer finds that there is not sufficient evidence in the record to demonstrate that the proposed driveway approach does not create traffic hazards, accordingly the proposal does not satisfy this criterion.

Criterion 7:

The proposed driveway approach does not result in significant adverse impacts to the vicinity.

The Hearings Officer notes that the applicant argues that no adverse impacts to the vicinity have been identified. As shown on the site plan, the location of the driveway will not have any impacts on the subject property or adjacent properties and that this criterion has been met. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 8:

The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections.

The Hearings Officer notes that the applicant states the driveway approach is in the required location to minimize impacts to adjacent streets and intersection and as shown on the site plan, meets this criterion. The Hearings Officer notes that the staff agrees that the proposed driveway approach will have minimal impact to adjacent streets and intersections. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 9:

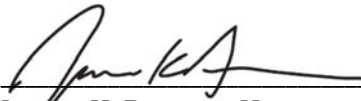
The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

The Hearings Officer notes that the applicant states the driveway approach is in the required location to help balance the adverse impacts to residentially zoned property and takes into consideration the location of the streets adjacent to the site, the riparian corridor, the location of Waln Creek, adjacent uses, and access onto Mildred Lane, therefore, meeting this criterion. The Hearings Officer notes that the staff agreed that because the proposed development is surrounded by residentially zoned property, the driveway balances the adverse impacts to residentially zoned property and would not have an adverse effect on the functionality of the adjacent streets. The Hearings Officer notes that there is not sufficient evidence in the record to determine whether the proposed driveway approach would or would not have an adverse impact on the functionality of Mildred Lane. Accordingly, the Hearings Officer finds that the proposal does not satisfy this criterion.

**DECISION**

Based on the evidence in the record and the findings and conclusions set out above, the Hearings Officer **DENIES** the request for a variance and driveway approach permit to allow a driveway approach onto Mildred Lane SE, a Minor Arterial Street, for property approximately 7.6 acres in size, split-zoned RA (Residential Agriculture), RS (Single-Family Residential) and IC (Industrial Commercial) and located at 1355 Mildred Lane SE - 97306 (Marion County Assessor Map and Tax Lot Numbers: 083W14CB / 2301, 2400, 2401, 2500, and 2501).

DATED: March 12, 2021

  
James K. Brewer, Hearings Officer

## **Mildred Lane VAR-DAP21-01 Appeal**

### **BACKGROUND:**

On March 16, 2021, the decision for VAR-DAP21-01 was denied by the Hearings Officer

The applicant was Empire Builders and the applicant's representing agents were Mark Grenz and Brandie Dalton with Multi/Tech Engineering. Therefore, the applicant and the applicant's representative have standing to appeal the VAR-DAP21-01 decision.

### **APPEAL ISSUES:**

The applicant is appealing the Hearings Officers denial of the VAR-DAP21-01. The decision was based on the fact that staff indicated that not all required information was not provided. However, the applicant provided all information required by Code.

The denial was also based on the fact that staff indicated that the lot does not exist. The lot is part of Parcel 1 of PAR18-11 approval. The partition is in the process of been reviewed and will be recorded soon.