

TO: HISTORIC LANDMARKS COMMISSION

THROUGH: Lisa Anderson-Ogilvie, AICP, Deputy Community Development Director and Planning Administrator

FROM: JAKE MORRIS, HISTORIC PRESERVATION PLANNER

SUBJECT: APPEAL OF ADMINISTRATIVE DECISION ON HISTORIC DESIGN REVIEW CASE NO. HIS24-05 FOR INSTALLATION OF FENCE AND GATE ON SOUTH END OF BUILDING AND WEST SIDE OF ALLEY OF THE ELECTRIC BUILDING (1917).

ISSUE:

Should the Historic Landmarks Commission affirm or reverse the June 5, 2024 decision for Historic Design Review case No. HIS24-05, a proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917), a historic contributing resource within the Downtown Salem National Register Historic District on property zoned CB (Central Business District) and located at 249 Liberty Street NE (aka 241-249 Liberty Street NE-Marion County Assessors Map and Tax Lot number: 073W22DC07301).

RECOMMENDATION:

Staff recommends that the Historic Landmarks Commission AFFIRM the June 5, 2024 decision, approving the Historic Design Review Case No. HIS24-05, a proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917), a historic contributing building to the Downtown Historic District.

SUMMARY AND BACKGROUND:

The applicant submitted Historic Design Review application materials on March 6, 2024. The application was deemed complete on April 4, 2024.

A Request for Comments was sent to the neighborhood association, and surrounding property owners and tenants within 250 feet of the property pursuant to Salem Revised Code (SRC) requirements on April 4, 2024, and a revised Request for Comments was issued on May 15, 2024 with corrected ownership information.

The Historic Preservation Officer, a Planning Administrator designee, issued a Type II Notice of Decision approving the proposal to install the fence and gate on June 5, 2024 per SRC 300.520 to the applicant, property owner, the CANDO neighborhood association and all property owners of record within 250 feet of the proposed work area (**Attachment A**).

An appeal of the decision was filed by Carole Smith and Eric Kittleson on June 21, 2024 (**Attachment B**). The subject property is located within the Central Area Neighborhood Association (CANDO). Notice of public hearing was sent to the neighborhood association, and surrounding property owners within 250 feet of the property pursuant to Salem Revised Code (SRC) requirements on June 28, 2024. Notice of public hearing was also posted on the subject

property. As of the date of this staff report no testimony has been received in response to this Notice.

The applicant provided an email containing additional information related to the appeal on July 10, 2024, stating that the evidence submitted demonstrates that they own the alley, and the appellant has access as authorized by the existing easement. Further, the applicant states that the gate will be freestanding and not attached to any buildings, with a frame covered in stretched steel that prevents anyone from climbing it, (**Attachment C**).

FACTS AND FINDINGS:

Staff has summarized the appeal issues identified in the appeal and provided responses below. For the full statement, please refer to Attachment B.

Appeal Issues

1. *The placement of the proposed improvement fails to meet SRC 230.040(f)(2)(C) requirement that the alteration “be limited in size and scale such that a harmonious relationship is created in relationship to the original building ” for two reasons:*
 - a. *The proposed improvement, if climbed, would allow access to the second-floor deck of the residential tenant directly above, “creating a security risk which is not harmonious with my Client’s original building.”*

Staff Response: SRC 230 does not regulate use, but compatibility of size and scale with both the existing historic resource and the surrounding historic district. The size and scale of the proposed gate assembly is compatible with the existing historic resource and comparable in size and scale to previously approved gate assemblies adjacent to similarly sized buildings in commercial alleys in the City of Salem, such as the gate assembly located at 494 State Street NE (approved in case no. HIS 19-08). The appellants’ concerns are related to security, use and functionality and beyond the scope of the applicable criteria in SRC 230.040.

- b. *The location of the proposed improvements will limit access to the back entrance for commercial tenants, removing “the ability to use the back entrance abutting the alley, inhibiting access to an original feature of my Client’s Property and demonstrating that the proposed improvements are not of a size and scale that creates a harmonious relationship with the original buildings.”*

Staff Response: While SRC 230 does not regulate access, Historic Preservation staff coordinates with other City staff to ensure that the proposal meets applicable Building and Fire codes. On April 8, 2024, the Fire Marshall stated that: “The gates across egress path shall comply with exit door requirements” and staff added Condition #3 to HIS24-05 to ensure that this concern is addressed prior to issuance of the building permit and construction of the fence.

2. *While it is acknowledged that the City is not responsible for considering private, legally enforceable interests, including easements under SRC 110.060, this does not excuse the applicant from demonstrating that the Applicant has consent from the owner of the property on which they are developing. The applicant has not provided sufficient evidence to*

demonstrate that they are the rightful owner of the entirety of the alleyway. The applicant claims that they own all but a few inches of the alleyway. The property boundary actually extends 12.5 inches into the southern portion of the alleyway. Since the applicant misrepresented the extent of ownership interest in the alley, the Application should be denied. In alternative, Condition 1 of the decision should be amended to require that the Applicant have the property surveyed.

Staff Response: Staff concurs with the appellant that SRC 110.060 (a) and (b) clearly state that the City does not enforce any easement, covenant, condition, restriction, or other agreement between private parties.

The HLC does not have the regulatory authority under SRC 230 to require a resurvey. Staff requested that the City Surveyor evaluate the existing surveys and provide feedback regarding whether the applicant has demonstrated ownership of the alley. At the time of issuance of this staff report, the City Surveyor has not provided this information, but it will be provided by the time of public hearing.

ALTERNATIVES

The Historic Landmarks Commission may take one of the following actions for Case No. HIS24-05.

I. AFFIRM the June 5, 2024 decision.

Should the HLC choose to affirm the June 5, 2024 decision for HIS24-05, the current approval to construct the fence and gate assembly will remain and the applicant will still be required to comply with all remaining permitting requirements.

II. MODIFY the June 5, 2024 decision.

The Historic Landmarks Commission could modify the decision, approving the application and adding, removing, or editing conditions of approval.

III. REVERSE the June 5, 2024 decision and DENY HIS24-05.

The Historic Landmarks Commission could reverse the June 5, 2024 decision and deny the applicant's request to construct the fence and gate assembly.

Prepared by Jacob Morris, Historic Preservation Planner III

Attachment: A. Decision for Case HIS24-05
B. Carole Smith and Eric Kittleson Appeal
C. Applicant Testimony July 10, 2024

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

DECISION OF THE HISTORIC PRESERVATION OFFICER

CLASS 2 MINOR HISTORIC DESIGN REVIEW CASE NO.: HIS24-05

APPLICATION NO.: 24-105732-PLN

NOTICE OF DECISION DATE: June 6, 2024

SUMMARY: A proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917).

REQUEST: Class 2 Minor Historic Design Review of a proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917), a historic contributing resource within the Downtown Salem National Register Historic District on property zoned CB (Central Business District) and located at 249 Liberty Street NE (aka 241-249 Liberty Street NE-Marion County Assessors Map and Tax Lot number: 073W22DC07301).

APPLICANT: Innovative Contractor Solutions LLC (Nicole Milton)

LOCATION: 249 Liberty St NE, Salem OR 97301

CRITERIA: Salem Revised Code (SRC) Chapters 230.065 – Guidelines for Contributing Historic Buildings

FINDINGS: The findings are in the attached Decision dated June 6, 2024.

DECISION: The **Historic Preservation Officer (a Planning Administrator designee)** **APPROVED** Class 2 Minor Historic Design Review - Commercial Case No. HIS24-05 subject to the following conditions of approval:

- Condition 1:** The entirety of the gate assembly and any associated work shall occur solely on the applicant's property, and shall not encroach on any adjoining property.
- Condition 2:** The applicant must obtain required building permits to ensure the proposed gate assembly is compliant with egress, Fire access, and all other code requirements.
- Condition 3:** The gate assembly must comply with the exit requirements of the OSSC (Oregon Structural Specialty Code).

The rights granted by the attached decision must be exercised, or an extension granted, by June 22, 2026, or this approval shall be null and void.

Application Deemed Complete:	<u>April 4, 2024</u>
Notice of Decision Mailing Date:	<u>June 6, 2024</u>
Decision Effective Date:	<u>June 22, 2024</u>
State Mandate Date:	<u>August 2, 2024</u>

NOTICE OF DECISION

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



Case Manager: Jake Morris, jjmorris@cityofsalem.net, 503-540-2417

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, no later than 5:00 p.m. Friday, June 21, 2024. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 230. 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 Historic Landmarks Commission will review the appeal at a public hearing. After the hearing, the Historic Landmarks 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>

BEFORE THE PLANNING ADMINISTRATOR OF THE CITY OF SALEM

DECISION

IN THE MATTER OF APPROVAL OF HISTORIC DESIGN REVIEW CASE NO. HIS24-05 249 LIBERTY STREET NE))))	MINOR HISTORIC DESIGN REVIEW JUNE 6, 2024
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In the matter of the application for a Minor Historic Design Review submitted by Nicole Milton (Innovative Contractor Solutions LLC) on Behalf of Kerley Commercial LLC, the Historic Preservation Officer (a Planning Administrator Designee), having received and reviewed evidence and the application materials, makes the following findings and adopts the following order as set forth herein.

REQUEST

SUMMARY: A proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917).

REQUEST: Class 2 Minor Historic Design Review of a proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917), a historic contributing resource within the Downtown Salem National Register Historic District on property zoned CB (Central Business District) and located at 249 Liberty Street NE (aka 241-249 Liberty Street NE-Marion County Assessors Map and Tax Lot number: 073W22DC07301).

A vicinity map illustrating the location of the property is attached hereto, and made a part of this decision (**Attachment A**).

FINDINGS

1. Minor Historic Design Review Applicability

SRC230.020(f) requires Historic Design Review approval for any alterations to historic resources as those terms and procedures are defined in SRC 230. The Planning Administrator shall render a decision supported by findings that explain conformance or lack thereof with relevant design standards, state the facts relied upon in rendering the decision, and explain justification for the decision.

BACKGROUND & PROPOSAL

The applicant is proposing to install a fence with gate on south end of building and west side of alley of the Electric Building (1917). The new fence assembly will be black metal extending approximately 12' across the alleyway and 96" in height. The fence will be composed of black metal. End posts will terminate near each building, but not be affixed to either. Each end post will be 4"X6" rectangular metal connected by upper and lower horizontal supports of 1 3/4" square metal. This frame assembly will be filled with vertical 3/4" square tube pickets and black expanded metal mesh. The gate will have a standard keypad lock from the outside, and non-locking handle from the inside (**Attachment B**). Staff determined that the following standards from SRC 230.040(f) *Standards for Contributing Resources in Commercial Historic Districts, Alterations and Additions* are applicable to this project.

SUMMARY OF RECORD

The following items are submitted to the record and are available: 1) all materials and testimony submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, stormwater reports, and; 2) materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public. All application materials are available on the City's online Permit Application Center at <https://permits.cityofsalem.net>. You may use the search function without registering and enter the permit number listed here: 24 105732.

APPLICANT'S STATEMENT

A request for historic design review must be supported by proof that it conforms to all applicable criteria imposed by the Salem Revised Code. The applicants submitted a written statement, which is included in its entirety as **Attachment B** in this staff report.

Staff utilized the information from the applicant's statements to evaluate the applicant's proposal and to compose the facts and findings within the staff report. Salem Revised Code (SRC) 230.040(f) *Standards for Contributing Resources in Commercial Historic Districts, Alterations and Additions* are the applicable criteria for evaluation of this proposal.

FACTS & FINDINGS

1. Historic Designation

Under Salem Revised Code (SRC) Chapter 230, no exterior portion of a local historic resource, contributing, non-contributing building or new construction in a historic district shall be erected, altered, restored, moved or demolished until historic design review approval has been granted on the basis of the project's conformity with the applicable criteria in SRC 230. Conditions of approval, if any, shall be limited to project modifications required to meet the applicable criteria.

According to SRC 230.020(f), historic design review approval shall be granted if the application satisfies the applicable standards set forth in Chapter 230. For Class 1 and Class 2 Minor Historic Design Review decisions HLC staff, the Historic Preservation Officer (a designee of the Planning Administrator), shall render their decision supported by findings that explain conformance or lack thereof with relevant design standards, state the facts relied upon in rendering the decision, and explain justification for the decision.

2. Historic Significance

The Electric Building (aka. PGE/Yeater buildings) were originally evaluated as 'historic non-contributing' to the Downtown Historic District. At the time of the establishment of the Salem Downtown Historic District in 2001, the building was occupied by Anderson's Sporting Goods and the upper portion of the original historic façade of both buildings was covered with a blue rectangular synthetic material added in the 1950s to make it appear as one building. The owner completed a restoration of the front façade in 2007-2008 and the status of the buildings

was changed to 'historic contributing' by the Oregon Historic Preservation Office on January 14, 2013.

3. Neighborhood and Citizen Comments

- A. The subject property is located within the Central Area Neighborhood Development Organization (CANDO). A Request for Comments was sent to the neighborhood association pursuant to Salem Revised Code (SRC) requirements on April 4, 2024, and a revised Request for Comments was issued on May, 15, 2024 with corrected ownership information.

Comments were received from Michael Livingston, CANDO Vice Chair indicating that CANDO does not oppose the proposal. He indicated that the historic characteristics would not be diminished by this proposal (**Attachment C**).

- B. A Request for Comments was sent to the neighborhood association, and surrounding property owners and tenants within 250 feet of the property pursuant to Salem Revised Code (SRC) requirements on April 4, 2024, and a revised Request for Comments was issued on May, 15, 2024 with corrected ownership information. Letters of support were received from three surrounding property owners, and letters of objection were received from two surrounding property owners. **Attachment D** consists of comments received within the required Request for Comment deadlines. Staff responses to comments appear below:

1. Eric Kittleston; Carole Smith

These parties noted that the initial Request for Comments contained obsolete owner information.

Staff Response: A corrected notice was issued in response to this concern.

2. Eric Kittleston; Carole Smith

These parties stated that a private use easement exists for property owners adjoining the alley.

Staff Response: Under SRC Sec. 110.060 the UDC is applied independently of any private easement or covenant:

Sec. 110.060. - Relationship to private regulations and restrictions.

(a)The UDC shall be applied independently of, and without regard to, any private easement, covenant, condition, restriction, or other legally enforceable interest in, or obligation imposed on, the use or development of land.

(b)The City does not enforce any easement, covenant, condition, restriction, or other agreement between private parties, nor is the UDC generally intended to abrogate, annul, or impair such easements, covenants, conditions, restrictions, or agreements. In those instances where the UDC imposes a greater restriction or higher standards

than required by an easement, covenant, condition, restriction, or other agreement between private parties, or where the UDC otherwise conflicts with those private party agreements, the UDC shall control.

3. Eric Kittleston; Carole Smith

These parties proposed an alternative location for the project that is located farther inside the alley.

Staff Response: Either location would be consistent with the historic design review criteria.

4. Carole Smith

This party stated that the proposed gate assembly will obscure the historic skybridge.

Staff Response: As the gate assembly is see-through, no features of either resource will be obscured, damaged or destroyed by the proposal.

5. Carole Smith

This party stated that the applicant does not own the southern 1 foot of the alleyway.

Staff response: In response to this concern, staff contacted the applicant, and the applicant provided a survey that supported their assertion that they own all but the southernmost 3 inches of the alleyway (**Attachment E**). In response to the initial objection, staff is issuing the condition that the proposed project not encroach on any adjoining property.

4. City Department and Public Agency Comments

The Building and Safety Division indicates that the applicant must obtain required building permits as egress and Fire access may be affected by the proposed gate assembly.

The Fire Department has stated that gate assembly must comply with the exit requirements of the OSSC (Oregon Structural Specialty Code).

Historic Preservation issued the following statements: The entirety of the gate assembly must be located solely on the applicant's property, and shall not encroach on any adjoining property.

5. Historic Design Review

SRC Chapter SRC 230.040(f) *Standards for Contributing Resources in Commercial Historic Districts, Alterations and Additions* are applicable to this project. Table 230-1 defines this activity as a Class 2 Minor Historic Design Review. Historic Preservation staff reviewed the project proposal and has the following findings for the applicable criterion:

FINDINGS:

Criteria: 230.040(f) Alterations and Additions.

(1) Materials.

(A) Building materials shall be of traditional dimensions.

Finding: The proposed new metal gate is of traditional dimensions. Staff finds that this standard has been met.

(B) Material shall be of the same type, quality and finish as original material in the building.

Finding: The proposed new gate will be of metal, a material found throughout the Downtown Historic District. Staff finds that this standard has been met.

(C) New masonry added to a building shall, to the greatest degree possible, match the color, texture and bonding pattern of the original masonry.

Finding: The applicant is not proposing to install new masonry as a part of this proposal. Staff finds that this standard is not applicable to the evaluation of this proposal.

(D) For those areas where original material must be disturbed, original material shall be retained to the maximum extent possible.

Finding: The applicant is not proposing to disturb any original material as a result of the installation of the new security gate. Staff finds that this standard has been met.

(2) Design.

(A) Additions shall be located at the rear, or on an inconspicuous side, of the building.

Finding: The proposed new security gate will be installed near the rear of the building, spanning the alley behind this resource and the building to the south. Staff finds that this standard has been met.

(B) Be designed and constructed to minimize changes to the building.

Finding: The applicant is proposing to install the new security gate by attaching it between two freestanding metal columns which will not be attached to either adjacent buildings. This method of installation ensures that there will be no alterations to the buildings resulting from this proposal. Staff finds that this standard has been met.

(C) Be limited in size and scale such that a harmonious relationship is created in relationship to the original building.

Finding: The proposed security gate is the minimum size necessary to ensure that the area behind the buildings is secure. The gate will be freestanding between these two resources and its scale is compatible with the resource and the surrounding district. Staff finds that this standard has been met.

(D) Be designed and constructed in a manner that significant historical, architectural or cultural features of the building are not obscured, damaged, or destroyed.

Finding: The proposed security gate will be freestanding and will not be attached to either the building to the north or south. As the gate is see-through, no features of either resource will be obscured, damaged or destroyed by the proposal. Staff finds that this standard has been met.

(E) Be designed to be compatible with the size, scale, material, and character of the building, and the district generally.

Finding: The proposed security gate is overall 86” in height and spans most of the extent of the alley to the south. The gate is compatible in design and scale with the resource and the surrounding historic district. Staff finds that this standard has been met.

(F) Not destroy or adversely impact existing distinctive materials, features, finishes and construction techniques or examples of craftsmanship that are part of the building.

Finding: The applicant has not proposed to attach the security gate to any building, therefore no distinctive materials, features, or significant examples of craftsmanship will be adversely affected by the proposal. Staff finds that this standard has been met.

(G) Be constructed with the least possible loss of historic materials.

Finding: The proposed new security gate will not be attached to the resource, therefore no historic materials will be lost. Staff finds that this standard has been met.

(H) Not create a false sense of historical development by including features that would appear to have been part of the building during the period of significance but whose existence is not supported by historical evidence.

Finding: The applicant’s proposed new security gate is freestanding and not attached to the building, therefore it cannot appear to have been part of the original structure historically. Staff finds that this standard has been met.

(I) Be designed in a manner that makes it clear what is original to the building and what is new.

Finding: The applicant’s proposed security gate is of modern metal materials which are clearly new. Since the security gate is not attached to the building, but freestanding at the rear, across the alley, it is clear that it was not constructed as part of the building. Staff finds that this standard has been met.

(J) Be designed to reflect, but not replicate, the architectural styles of the period of significance.

Finding: The applicant is proposing to install a metal security gate comprised of a metal frame with metal pickets . This design is compatible with the commercial style buildings within the Downtown Historic District. Staff finds that this standard has been met.

(K) Preserve features of the building that has occurred over time and has attained significance in its own right.

Finding: The applicant is not proposing to alter any features that have acquired significance over time. Staff finds that this standard has been met.

(L) Preserve distinguishing original qualities of the building and its site.

Finding: The applicant is not proposing to alter the resource through the installation of the gate at the rear of the building. The gate will be attached on freestanding posts adjacent to the rear of the building, but will not be attached to the structure, or the building to the south. Staff finds that this standard has been met.

DECISION

Based upon the application materials deemed complete on April 4, 2024 and the findings as presented in this report, the application for HIS24-05 is **APPROVED** with the following **Conditions of Approval**.

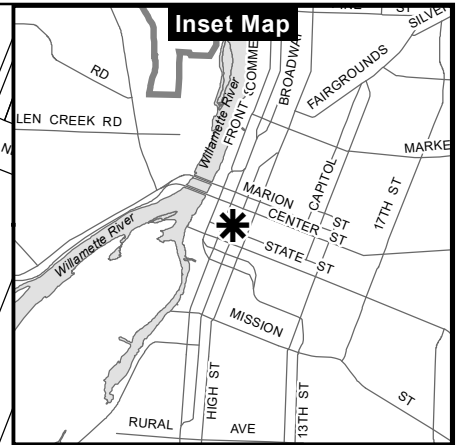
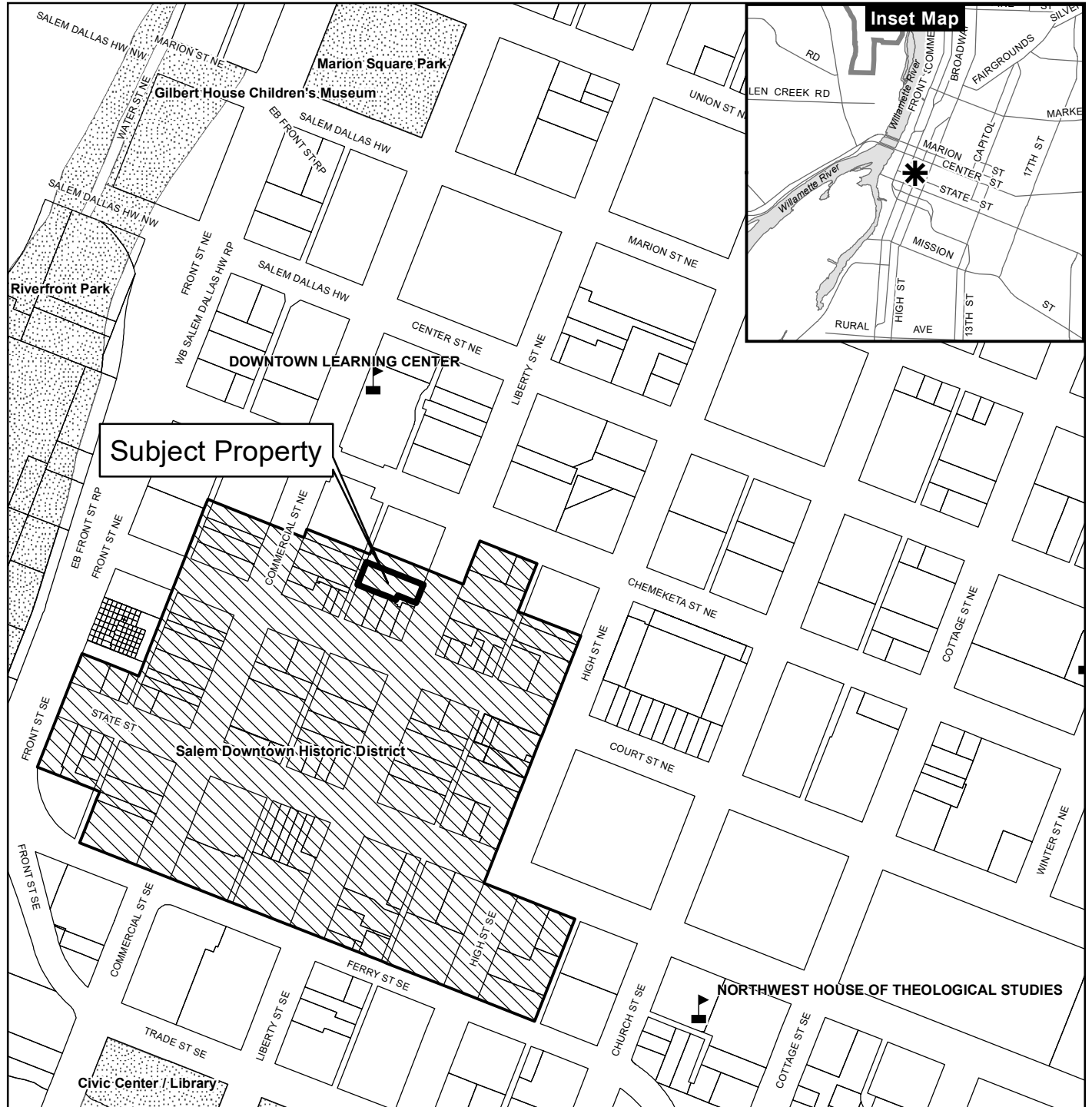
- Condition 1:** The entirety of the gate assembly and any associated work shall occur solely on the applicant's property, and shall not encroach on any adjoining property.
- Condition 2:** The applicant must obtain required building permits to ensure the proposed gate assembly is compliant with egress, Fire access, and all other code requirements.
- Condition 3:** The gate assembly must comply with the exit requirements of the OSSC (Oregon Structural Specialty Code).










Jacob Morris, PhD
Historic Preservation Planner
Planning Administrator Designee

- Attachments: A. Vicinity Map
B. Applicant's Submittal Materials
C. Neighborhood Association Comments: CANDO
D. Citizen Comments
E. Documentation Regarding Property Boundary

Vicinity Map 249 Liberty Street NE



Legend

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

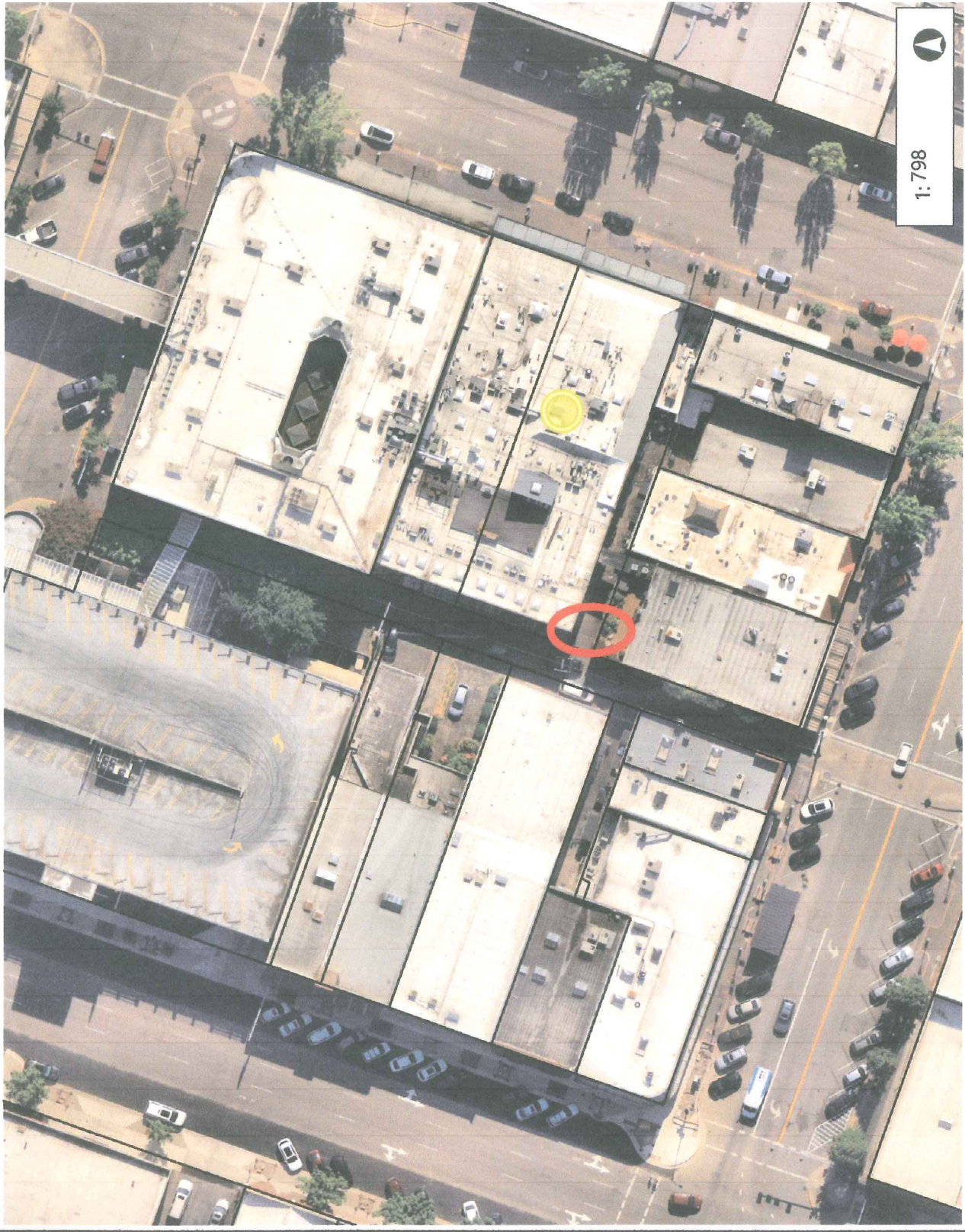


0 100 200 400 Feet



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249 Liberty St NE- fence/gate location



Legend

- Taxlots
- City Limit

Notes

Enter notes here...

1: 798

0.03 Miles

0.01

0

0.03



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

WGS_1984_Web_Mercator_Auxiliary_Sphere
City of Salem, Oregon

Summary of work to be done

Job Location: 249 Liberty St Ne in the alley (electric alley) due west behind the building

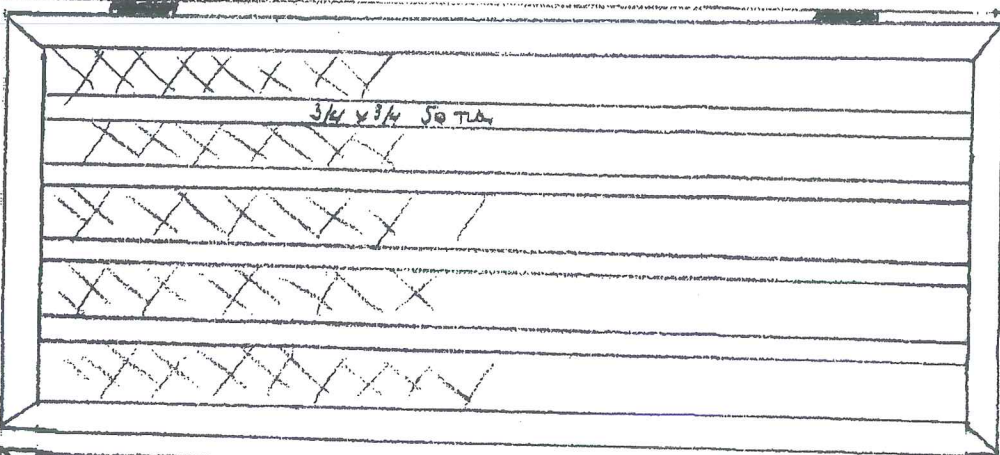
Job Description: Installation of a steel security gate in the alcove between bldg. 249 and bldg. 363 as seen in attachment "A". The gate will be constructed from steel tubing both rectangular and square with expanded metal backer to prevent climbing. The height of the gate will be within the city ordinance of 8ft or 96" tall overall height and will swing inward away from the alley. The gate will have a standard keypad lock to enter from the outside (alley side) and handle only on the inside to exit. Gate will powder coated textured black (BK109) to match surrounding materials in the alley. As noted in attachment "B" it may go from a double gate as drawn to one single gate if the posts have to be placed so close together that a double gate wouldn't be practical. Post locations are dependent upon the underground electrical and natural gas lines and will be placed according to clear those utilities. As you can see in attachment "A" the gate structure is COMPLETELY self-supporting via two posts in the ground and is NOT and will NOT be attached to either building for any reason.

Building 249 North

24" 9'6"

2x250 Tube
3/4" Expansion w/ 3/4"x24 pickets on concrete

4x6 Rec Tube



Both Hinges 2x2

* GATES + FRAME WILL NOT BE CONCRETE IN ANY WAY TO EITHER BUILDING. ONLY (2) HOLES IN THE CONCRETE

Deck 1 3/4 x 1 3/4 50 Tube

EXISTING 3" x 4" DI POSTS

12'5"

Locking East into the Alley from Ethern alley

NOTE:
POST LOCATIONS
MAY VARY
DEPENDENT ON EXISTING
UNDERGROUND UTILITY
LOC.
SIZES MAY BE REDUCED TO
1" LARGE SINGLE GATE

NOTE: GATES
EAST SIDE ONLY
TO AVOID ALLEY
RIGHT OF WAY

THIS GATE
SHOULD BE
LEFT SIDE
←

Building 303

South

Attachment B

Vicinity Map For

Attachment A

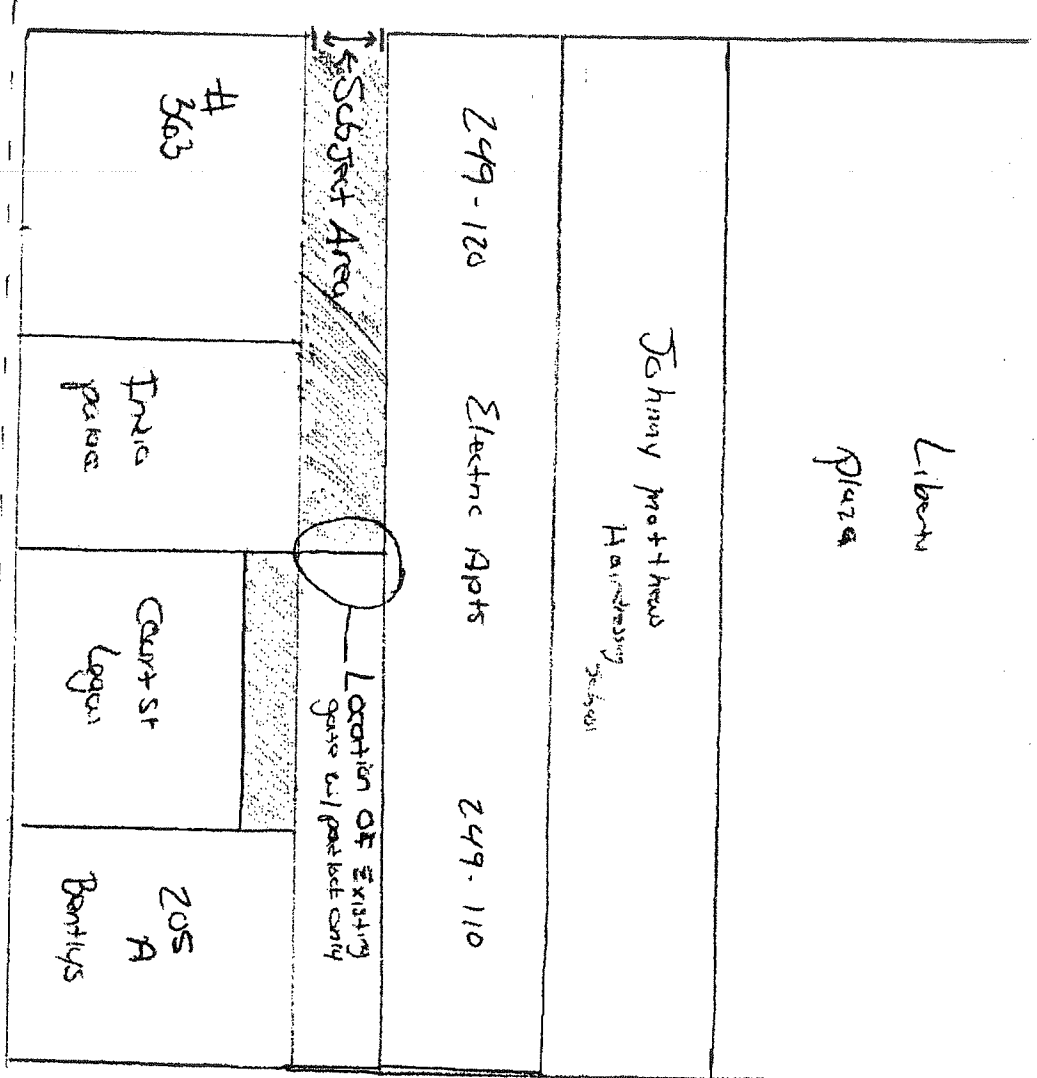
249 Liberty St
Electric Alley Gate Location

← West

Electric Alley

Count St NE

East →



Subject Area

Location of Existing Gate w/ post box only

363

Inria parka

Count St Logan

205 A Benthys

249-120

Electric Apts

249-110

Johnny proffers

Hairdressing Services

Plaza

Liberty

Liberty St NE

← South

North →

249

Existing Building

Material GCS Meters

Dumpsters

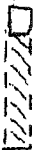
Existing

Alley

SEE USE Electric Alley

See Attached Photo (C)

Electric Alley

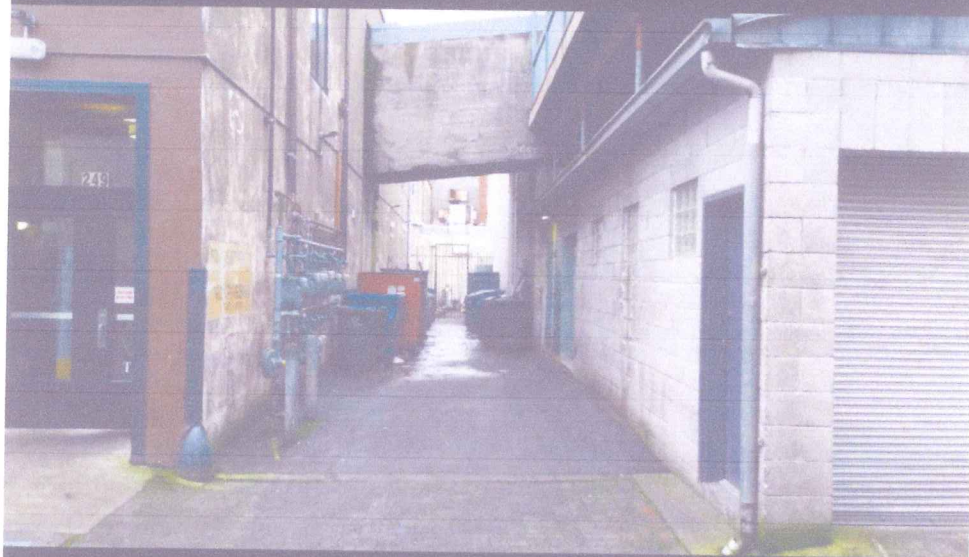


Power Bank

363

Existing Building





From: MICHAEL LIVINGSTON <michaellivingston1@msn.com>
Sent: Thursday, April 4, 2024 4:27 PM
To: Zachery Cardoso
Cc: Jake Morris; Kimberli Fitzgerald; Owens, Sarah; Irma Coleman; M Baird
Subject: Re: Notice of Filing / Request for Comments - Case No. HIS24-05 for 249 Liberty St NE

ZACHERY,

On behalf of CANDO, I am submitting this comment in response to your request below in Historic Design Review Case No. HIS24-05 for 249 Liberty St NE:

CANDO supports the proposal to install a fence with gate on the south end of the building and the west side of alley of the Electric Building (1917). The proposed fence and gate will preserve, rather than detract from, the historic qualities of the building.

Michael Livingston
CANDO Chair

From: Zachery Cardoso <ZCardoso@cityofsalem.net>
Sent: Thursday, April 4, 2024 2:42 PM
To: Zachery Cardoso <ZCardoso@cityofsalem.net>
Cc: Jake Morris <jjmorris@cityofsalem.net>; Kimberli Fitzgerald <KFitzgerald@cityofsalem.net>
Subject: Notice of Filing / Request for Comments - Case No. HIS24-05 for 249 Liberty St NE

Hello,

The Notice of Filing / Request for Comments for Historic Design Review Case No. HIS24-05 for 249 Liberty St NE is attached for your information. Comments are due **April 18, 2024 by 5:00 p.m.** Hard copies go out in the mail today for those of you who are to receive one.

Application Summary: A proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917).

Please direct questions or comments to the **CASE MANAGER:**

Jake Morris

jjmorris@cityofsalem.net

503-540-2417

Thank you,

Zachery Cardoso

[he/they](#)

Admin Analyst I

City of Salem | Community Planning and Development Department | Planning

555 Liberty St SE, Suite 305

Salem OR 97301

zcardoso@cityofsalem.net | 503-540-2304

[Facebook](#) | [Twitter](#) | [YouTube](#) | [CityofSalem.net](#)

REQUEST FOR COMMENTS

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

REGARDING: Class 2 Minor Historic Design Review Case No. HIS24-05

PROJECT ADDRESS: 249 Liberty St NE, Salem OR 97301

AMANDA Application No.: 24-105732-PLN

COMMENT PERIOD ENDS: April 18, 2024 at 5:00 p.m.

SUMMARY: A proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917).

REQUEST: Class 2 Minor Historic Design Review of a proposal to install a fence with gate on south end of building and west side of alley of the Electric Building (1917), a historic contributing resource within the Downtown Salem National Register Historic District on property zoned CB (Central Business District) and located at 249 Liberty Street NE (aka 241-249 Liberty Street NE-Marion County Assessors Map and Tax Lot number: 073W22DC07301).

The Planning Division is interested in hearing from you about the attached proposal. Staff will prepare a Decision that includes consideration of comments received during this comment period. We are interested in receiving pertinent, factual information such as neighborhood association recommendations and comments of affected property owners or residents. The complete case file, including all materials submitted by the applicant and any applicable professional studies such as traffic impact analysis, geologic assessments, and stormwater reports, are available upon request.

Comments received by 5:00 p.m. Thursday, April 18, 2024, will be considered in the decision process. Comments received after this date will be not considered. *Comments submitted are public record. This includes any personal information provided in your comment such as name, email, physical address and phone number. Mailed comments can take up to 7 calendar days to arrive at our office. To ensure that your comments are received by the deadline, we recommend that you e-mail your comments to the Case Manager listed below.*

CASE MANAGER: Jake Morris, Historic Preservation Planner, City of Salem, Planning Division; 555 Liberty St SE, Room 305, Salem, OR 97301; Phone: 503-540-2417; E-Mail: jjmorris@cityofsalem.net.

For information about Planning in Salem, please visit: <http://www.cityofsalem.net/planning>

PLEASE CHECK THE FOLLOWING THAT APPLY:

- 1. I have reviewed the proposal and have no objections to it.
- 2. I have reviewed the proposal and have the following comments: _____

Name/Agency: Ralph C Jackson Rep of RJ Liberty LLC
 Address: 225 Liberty St NE, Salem OR 97301
 Phone: 503 931-0678
 Email: jjrj54513@ComCast.net
 Date: 4-7-2024

IMPORTANT: IF YOU MAIL COMMENTS, PLEASE FOLD AND RETURN THIS POSTAGE-PAID FORM

REVISED REQUEST FOR COMMENTS

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

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PROJECT ADDRESS: 249 Liberty St NE, Salem OR 97301

AMANDA Application No.: 24-105732-PLN

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- 2. I have reviewed the proposal and have the following comments: _____

Name/Agency: RJ Liberty LLC, Ralph Jackson
 Address: 225 Liberty St N
 Phone: 503-931-0678
 Email: jjrj54513@ComCast.net
 Date: 5-22-2024

IMPORTANT: IF YOU MAIL COMMENTS, PLEASE FOLD AND RETURN THIS POSTAGE-PAID FORM

JAKE! This is A great Gate and Fence to install in Location as planned, It's been a Long time coming, Glad it's In The Works RAIPH

REVISED REQUEST FOR COMMENTS

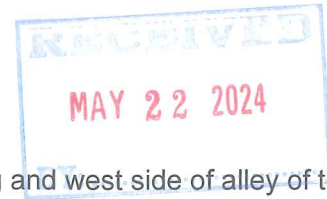
Si necesita ayuda para comprender esta información, por favor llame 503-588-6173

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CASE MANAGER: Jake Morris, Historic Preservation Planner, City of Salem, Planning Division; 555 Liberty St SE, Room 305, Salem, OR 97301; Phone: 503-540-2417; E-Mail: jjmorris@cityofsalem.net.

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PLEASE CHECK THE FOLLOWING THAT APPLY:

- 1. I have reviewed the proposal and have no objections to it.
- 2. I have reviewed the proposal and have the following comments: _____

Name/Agency: Rod Jones - Court Street Legal
 Address: 387 Court St NE Salem, OR 97301
 Phone: 503-365-2855
 Email: Rod Rod@Courtstreetlegal.com
 Date: 5/17/24

IMPORTANT: IF YOU MAIL COMMENTS, PLEASE FOLD AND RETURN THIS POSTAGE-PAID FORM

Jake Morris

From: Eric Kittleson <1954ejk@gmail.com>
Sent: Thursday, April 18, 2024 4:49 PM
To: Jake Morris
Subject: Case No. HIS24-05

Jake Morris, Historic Preservation Planner
City of Salem, Oregon

Dear Mr. Morris,

Regarding the above case number, I have reviewed the proposal and object for the following reasons:

1. The listed property owner is false. Newberry LLC (Roy Carmen) has not owned that property since January, 2023. The property is owned by Kerley Commercial LLC.
2. The applicant, Mr Carmen, knows we (Eric Kittleson and Carole Smith, 363 Court St NE, Salem) have an easement in the alley of concern, which requires our permission for the installation of the requested fence/gate. Neither Mr. Carmen nor Mr. Kerley has spoken to us about their plans, therefore they don't have our permission.
3. If the owner of the alley will simply contact us, we will allow placement of the fence/gate is a specific location in said alley.

Kindest Regards,
Eric Kittleson
363 Court St NE
Salem, OR. 97301

503-884-4763

Jake Morris

From: Carole Smith <carole@smithkittleon.com>
Sent: Thursday, April 18, 2024 4:36 PM
To: Jake Morris
Subject: Re: Historic Design Review case #HIS24-05

On Apr 7, 2024, at 3:51 PM, Carole Smith <carole@smithkittleon.com> wrote:

I am writing to formally object to the placement of a fence/gate in the private alley behind 249 Liberty Street NE. We own a portion of this alley and do not agree to placement of a gate or fence on our property. If our property is not included, there will be a 1 foot gap where people can just slip through the gate, providing no security and this will not provide protection against homeless folks from pawing through the dumpsters. In addition, we have an easement for "any legal purpose" on the whole alley. Placing a fence/gate in this alley will impede our easement and is not allowed.

Our garbage can, and those of our tenants, are placed in the alley only on Monday night and are taken inside on Tuesday morning. We are not contributing to the trash problem in the private alley.

We have always agreed to a gate/fence under the skybridge connecting our building to the neighboring property. This would allow all dumpsters, recycling bins and grease buckets to remain in the easterly portion of the private alley-and on property that our neighbor owns. If they agree to place the fence/gate under the skybridge, we will approve it partially on our property only in that area.

I contacted Mr Kurley when he purchased the neighboring building but he never returned my email to discuss this. I also contacted his property manager, who also failed to return my call. If they had returned my call/email they would have been aware of this situation and not wasted his, and your time, on this illegal installation. Or they could have asked Roy Carmen why this was halted the last time he tried. I do not believe you can get a historic review approval on property you do not fully own. Also, I suggest the owner check the easements on his portion of the alley- here are many. We will fight to protect our easement in court.

Also, I thought Roy Carmen sold the building to Mr Kurley. How can Roy Carmen be the applicant if he is no longer the owner? I believe Mr Carman had a legal obligation to disclose this situation to the buyer at the time of sale.

Please let me know if you have questions.

Sincerely,

Carole Smith

Jake Morris

From: Carole Smith <carole@smithkittleson.com>
Sent: Thursday, April 18, 2024 4:36 PM
To: Jake Morris
Subject: Re: Further testimony

> On Apr 18, 2024, at 12:33 PM, Carole Smith <carole@smithkittleson.com> wrote:

>

> I assume you received my previous testimony regarding Minor Historic Review Case No JIS24-05. This is in addition:

>

> The height of the gate/fence will detract from the historic view of the alley buildings. It will obscure the skybridge connecting our building to Mr Kurley's building. The back entrances will be obscured and make deliveries more difficult.

>

> If Mr Kurley wants to solve his garbage problem there are several way he could do that without impinging the pulbic's historic view by:

>

> 1. Requiring all dumpsters/recycling bins be LOCKED at all times.

>

> 2. Start combining dumpsters (so there are fewer of them) and order pickups more frequently

>

> 3. Assign clean up duties on a rotating schedule for all garbage user in the private alley.

>

> Thank you,

>

> Carole Smith

>

>

They have attached the correct one and it shows Carole owns 3.6 inches of the alley. We will leave 3.6 inches between the post her wall.

From: Corbey Boatwright <corbey@boatwrightengr.com>

Sent: Thursday, May 9, 2024 6:11 PM

To: Paul <Paul@cproregon.com>

Cc: Jeanne Boatwright <jeanne@boatwrightengr.com>

Subject: 249 Liberty St NE

Paul,

The copy of the Marion County Surveyor's Office record, MCSR 2105 is at the north end of your property and not the south end. Your north property line falls at about the center of the red ellipse.

Your entire property is shown on MCSR 12964. In this survey your building is over the north edge of the E-W alley on the west end by 0.45' or 5.4". The building to the south appears to be south of the south edge of the E-W alley by 0.3' or 3.6". This would indicate that the distance between the buildings, in 1951, measured 11.25' or 11'-3". In this survey, the south building was not picked up other than the north line on the west end.

This would describe where the property lines would be, but it does not address any easement that might exist in this area.

Corbey Boatwright, PE, LS, CWRE

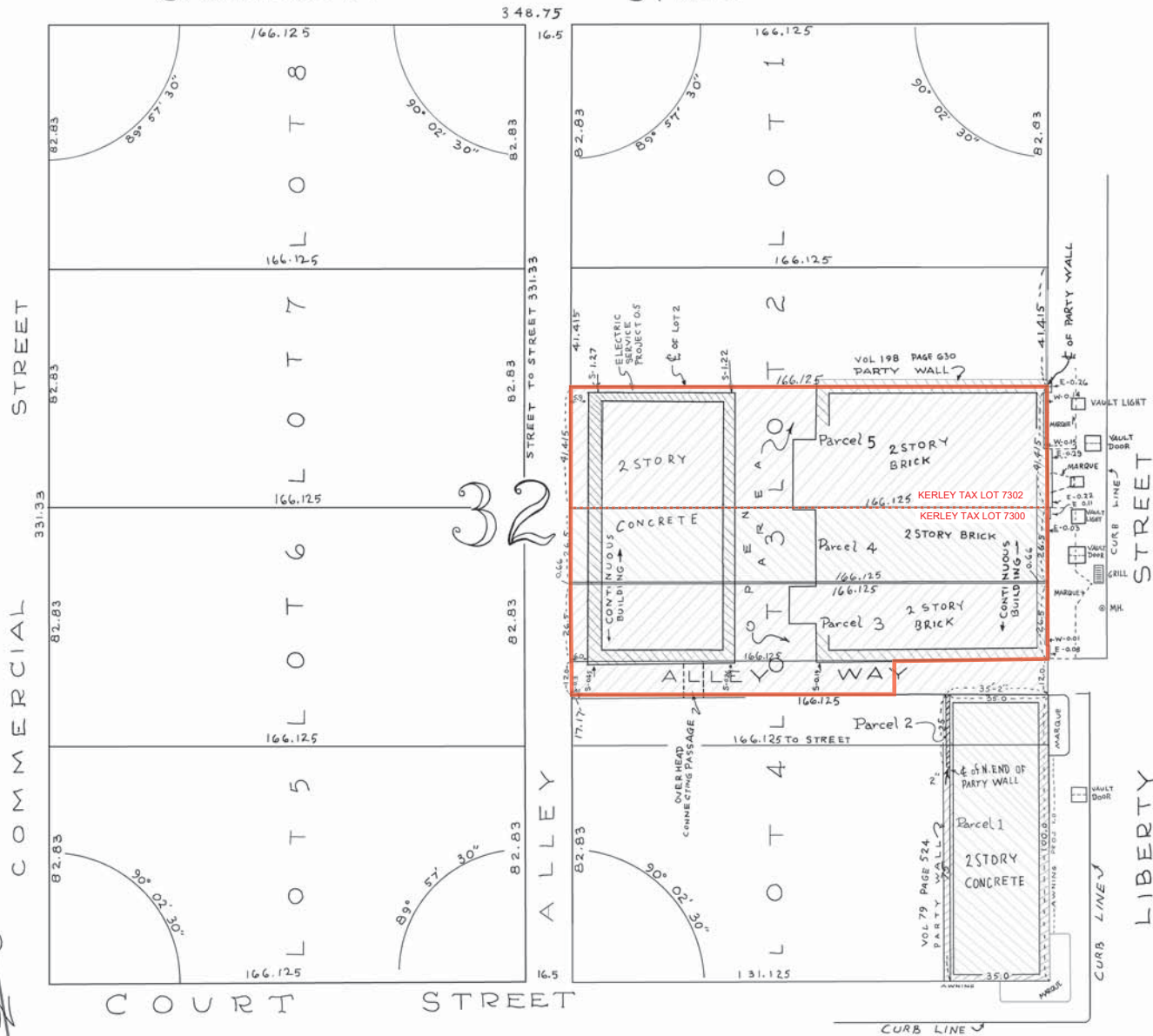
Boatwright Engineering, Inc.

2613 12th Street SE

Salem, Oregon 97302

Ph: 503.363.9225

CHEMEKETA STREET



SURVEYOR'S CERTIFICATE

I, Melvin G. Propp, of Salem, Oregon, do hereby certify that I surveyed the following described property on February 9, 1951 and that I find the improvements situated thereon to be on the premises in question and that they do not overlap or encroach on the property lying adjacent thereto, except as indicated by the attached drawing. This certificate is made at the request and for the exclusive use of The Equitable Life Assurance Society of the United States.

PROPERTY DESCRIPTION

Parcel 1
Commencing at the Southeast corner of Lot Four (4), in Block 32 in the City of Salem, Oregon, as shown by the recorded plat thereof; thence Northerly along the West line of Liberty Street, 100.00 feet; thence Westerly and parallel with Court Street, 35.00 feet; thence Southerly and parallel with the West line of Liberty Street, 100.00 feet to the North line of Court Street; thence Easterly along the North line of Court Street, 35.00 feet to the place of beginning.

Parcel 2
Beginning at a point in the West line of the property heretofore sold and conveyed by D. F. Wagner and wife to Fred W. Steunhoff on May 22, 1902 by Deed which is recorded at page 531, volume 79 of the Records of Deeds for Marion County, Oregon, said point being distant 75.00 feet Northerly from the Southwest corner of said property, being part of Lot Three (3), and Four (4), of Block 32 in the City of Salem, Marion County, Oregon, said point also being the center of the North end of the party wall (now standing) upon the dividing line between said property so conveyed and the premises still owned by D. F. Wagner on the West thereof; thence running Westerly 2 inches, parallel with the North line of Court Street in said City; thence Northerly 25.00 feet, parallel with the West line of Liberty Street in said City; thence Easterly 2 inches, parallel with said Court Street; thence Southerly 25.00 feet, parallel with said Liberty Street to the place of beginning.

Parcel 3
Beginning at a point in the West line of Liberty Street, 100.00 feet Northerly from the North line of Court Street and from the Southeast corner of Lot 3 in Block 32 in the City of Salem, Marion County, Oregon; thence Westerly parallel with Court Street, 165.00 feet, more or less to the alley through said Block 32; thence furtherly along the West line of Lot Three (3) in Block 32 a distance of 36.5 feet; thence Easterly parallel with Court Street, 165.00 feet, more or less to Liberty Street; thence Southerly along the West line of Liberty Street, 36.5 feet to the place of beginning.

Parcel 4
Beginning at the Northeast corner of Lot Three (3), Block 32 in the City of Salem, Marion County, Oregon; thence Southerly along the West line of Liberty Street, 24.5 feet; thence Westerly parallel with Court Street, 165.00 feet, more or less to the alley; thence Northerly along the East line of the alley, 26.5 feet to the Northeast corner of said Lot Three (3); thence Easterly along the division line between Lot Two (2) and Three (3) in said Block 32, a distance of 165.00 feet, more or less, to the place of beginning.

Parcel 5
The South one half (1/2) of Lot Two (2) in Block 32 in the City of Salem, Marion County, Oregon.

REGISTERED OREGON LAND SURVEYOR
Melvin G. Propp
 JULY 7, 1944
 MELVIN G. PROPP
 34

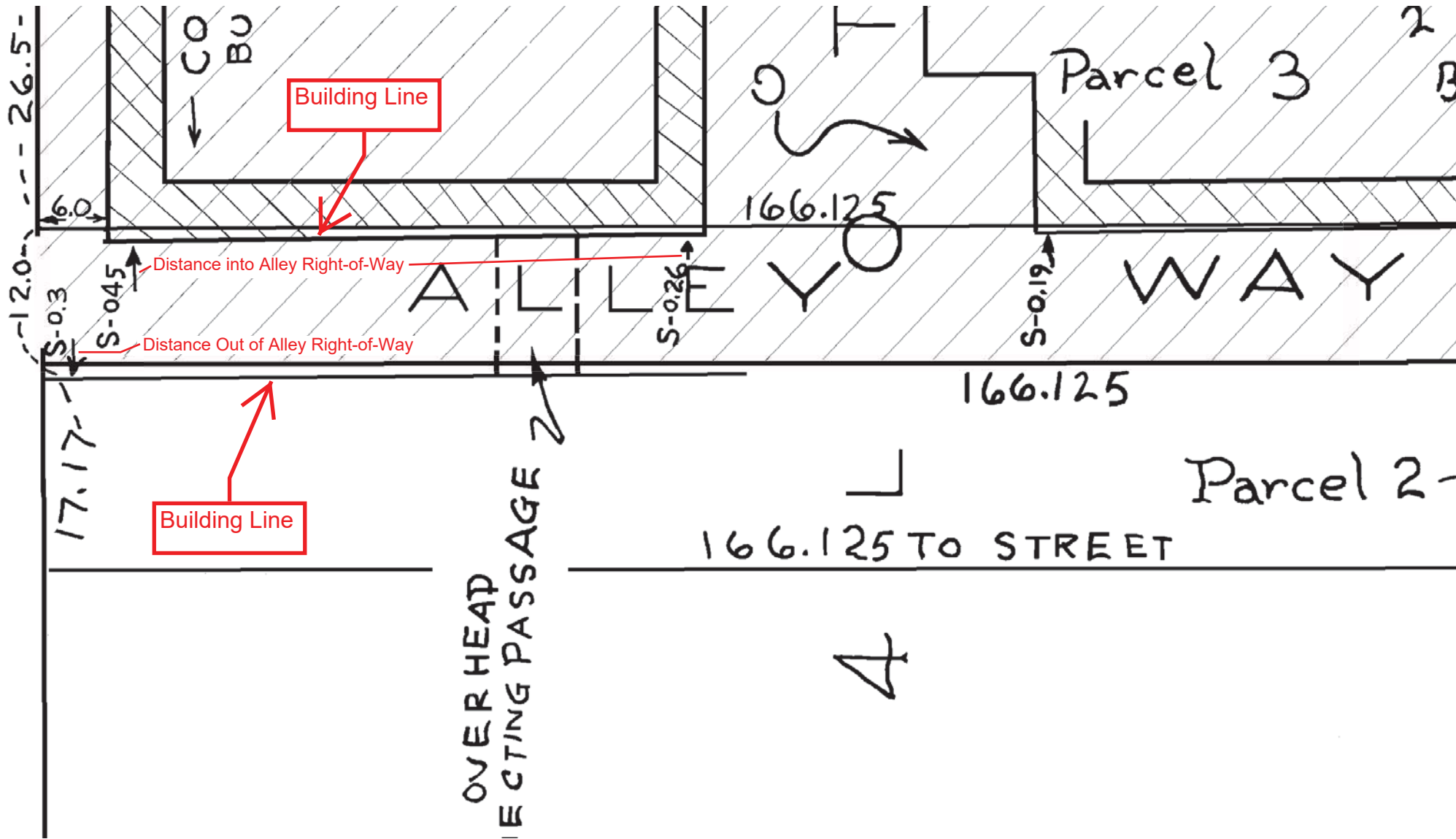
REGISTERED OREGON LAND SURVEYOR
Melvin G. Propp
 JULY 7, 1944
 MELVIN G. PROPP
 34

SURVEY FOR
 SOL SCHLESINGER and LEE SCHLESINGER and SAUL BLOOMBERG and RAE C. BLOOMBERG and SIDNEY SCHLESINGER and RALPH SCHLESINGER
 FRACTIONS OF LOTS 2, 3, and 4, BLOCK 32, CITY OF SALEM MARION COUNTY, OREGON

● Points Found
 ○ Points Set
 Surveyed by T-26 3/1951
 Scale = 1/2" = 20'
 Instrument E. Althoff

SCALE 20 feet per inch







June 21, 2024

VIA ELECTRONIC MAIL: planning@cityofsalem.net; jjmorris@cityofsalem.net,

City of Salem Planning Division
Attn: Jake Morris
555 Liberty Street SE
Room 320
Salem OR 97301

RE: Appeal of Historic Design Review Case No. HIS24-05
Our File No: 44248-00001

Dear Mr. Morris

This office represents Carole Smith and Eric Kittleson (collectively, my "**Client**"). My Client is appealing the Historic Design Review decision issued on June 6, 2024 and designated by the City of Salem (the "**City**") as HIS24-05 (the "**Decision**") approving the application designated by the City as Application No. 24-105732-PLN (the "**Application**") for a minor historic design review for the installation of a fence with gate on the south end of an alley (the "**Proposed Improvements**") that runs between the property located at 249 Liberty Street NE and my Client's property located at 363 Court Street NE in the City of Salem and designated by the Marion County Tax Assessor as Tax Lot 7700 of Tax Map T7S R3W S22DC (my "**Client's Property**"). The Application shows that the fence and gate proposed will be located on my Client's Property.

SALEM
Park Place, Suite 200
250 Church Street SE
Salem, Oregon 97301

Post Office Box 470
Salem, Oregon 97308

tel 503.399.1070
fax 503.371.2927

BEND
Vision Plaza
404 SW Columbia St
Suite 150
Bend, Oregon 97702
tel 541.693.1070

I. Standing

On April 18, 2024, Eric Kittleson sent Jake Morris an email in response to the Request for Comment sent to my Client, objecting to the placement of the Proposed Improvements. On May 31, 2024, Carole Smith sent Jake Morris an email in response to the Request for Comment sent to my Client, further objecting to the placement of the Proposed Improvements. Both of these emails are included in Attachment D of the Decision and are part of the record. As my Client provided written testimony during the duly noticed public comment period my Client has standing to appeal the Decision.

II. Approval Criteria

a. SRC 110.060

My Client's objected to the Application in part because the proposed location of the gate and fence encroach onto my client's Property. In response to this objection the Planner cited to SRC 110.060 stating that my Client's easement rights in the alleyway were not relevant because the City's uniform development code (the "**UDC**"). Under Salem Revised Code (the "**Code**" or "**SRC**") 110.060 the UDC is applied without regard to private easements. SRC 110.060. My Client acknowledges that the City is not responsible for considering private, legally enforceable interests, including easements, however, this does not excuse the Kerley Commercial, LLC by and through Innovative Contractor Solutions LLC (Nicole Milton) (the "**Applicant**") from demonstrating that the Applicant has consent from the owner of the property on which they are developing.

The Applicant in a land use application bears the burden of proof in demonstrating that they are either the rightful owner of the property they are submitting an application to develop or that they have the consent of the owners of the land they are proposing to develop. There is not sufficient evidence in the record to determine that the Applicant has met this burden. The only proof of ownership the Applicant provided as part of this Application are a deed and a survey completed in 1951. The Applicant's reading of the survey, which shows a shed that has been removed, is that the Applicant owns all but a few inches of the alleyway which is incorrect. As indicated on the Applicant's survey and as reflected in the Marion County Plat Map of the area, the southwest corner of the Applicant's Property is located within the alleyway. Measuring from a point .45 feet north of the corner of the Applicant's Building you arrive at the northern line of the private easement and measuring 12 feet from that point is the northern property line of my Client's Property. The northern face of my Client's building is located twelve and one-half (12.5)

inches from its northern property line. The Applicant appears to be incorrectly measuring the location of the easement, possibly due to the removal of the shed shown in the survey, and Condition 1 of the Decision does not adequately address the risk that the Applicant will move forward with construction of the Proposed Improvements on my Client's Property. The Applicant has failed to provide adequate evidence in the record that it has the consent of all of the applicable property owners for the Proposed Improvements. As the Applicant misrepresented the extent of its ownership interest in the alley, the Application should be denied. In the alternative, my Client requests that in addition to the language in Condition 1, the City require that the Applicant have its property surveyed to ensure that there is not an encroachment on my Client's Property.

b. SRC 230.040(f)(2)(c)

SRC 230.040(f)(2)(C) requires that the alteration "Be limited in size and scale such that a harmonious relationship is created in relationship to the original building." In this instance, because the buildings on either side of the Proposed Improvements are historically significant, the Applicant has the burden of proving that the Proposed Improvements will be limited in size and scale that they will create a harmonious relationship to both buildings. My Client's position is that the placement of the Proposed Improvement in the current location fails to meet this standard for two reasons.

First, while the Applicant's building has an enclosed southern face above the Proposed Improvements, my Client's building has a second story deck that is located immediately above the Proposed Improvements, as shown in Attachment A of the Decision. This deck has a door that provides access my Client's home and by allowing the construction of the Proposed Improvements in the Proposed Location, there will be a way to access my Client's residence from an alleyway, creating a security risk which is not harmonious with my Clients' original building. As the Proposed Improvements are purportedly designed to provide security for the Applicant's property, the creation of a security risk for my Client means that the location of the Proposed Improvements cannot be determined to be harmonious with my Client's building.

Second, the location of the Proposed Improvements will limit the access of my Client's commercial tenant to its back entrance. My Client's tenant is Lullu's Tutto Cucina which offers cooking classes, often late in the evening, after dark. The Tenant uses the alleyway access for deliveries as well as for staff parking for late night events, allowing the proprietor to safely and quickly access her vehicle. The location of the

Proposed Improvements will remove the ability to use the back entrance abutting the alley, inhibiting access to an original feature of my Client's Property and demonstrating that the Proposed Improvements are not of a size and scale that creates a harmonious relationship with the original buildings.

As indicated in my Client's previous testimony, my Clients do not object to the construction of the Proposed Improvements further up the alley, under the existing skybridge. In that location, the Proposed Improvements are not discordant with my Client's Property and likely satisfy this criterion, however, in the Proposed Location they do not. The Applicant has failed to provide sufficient evidence in the record demonstrating that the Proposed Improvements satisfy the applicable approval criteria, as this criterion has not been satisfied.

III. Easement Rights

While the UDC may be applied without regard to private easement rights, the Applicant should be aware that the construction of the fence and gate as proposed violates my Client's property rights. My Client is successor in interest to Fred H. Paulus which is identified as the "first party" in the Deed and Easement enclosed in this letter (the "**Granting Document**") and which runs over the western one hundred and fifteen (115) foot portion of the twelve (12) foot alley ("**Alley A**") abutting their northern property line (the "**Easement**"). It is our understanding that Kerley Commercial, LLC is the fee owner of a portion of the real property subject to the Easement (the "**Serviant Estate**"), with the exception of the southernly twelve and one half (12.5) inches of Alley A, which belongs to my Client. My Client objects to the placement of a gate within the Easement in a way that inhibits my Client's and its tenant's use of the Easement.

As indicated in the Granting Document, the Easement was intended to be perpetual in nature, binding upon the owners of the Servient Estate, its successors, heirs, assigns, and parties associated therewith. Further, the Easement was granted to the Dominant Estate for "the loading or unloading of goods, wares and merchandise, and for any other lawful purpose" as well as for the existing skybridge connecting to the Dominant Estate to the Servient Estate (the "**Purpose**").

The general rule regarding easements is that an easement holder has the right to use an easement to the extent it is reasonably necessary to accomplish the purpose of the easement. *See Sander v. Nicholson, 306 Or. App. 167, (2020)*. While we are aware that the rights of an easement holder and an easement

grantor are mutually limiting, a determination regarding whether either party's use of an easement is unreasonable is a fact dependent analysis. *Id.*, *Farrar v. City of Newberg*, 316 Or. App. 698 (2021).

In this instance, it is my Client's position that the addition of either a fence or a gate across Alley A will interfere with their ability to have deliveries made to the business that leases its lower level and interfere with their and their Tenant's ability to have goods delivered via Alley A, which is the specific Purpose listed in the Granting Document. Fencing-off or gating Alley A will unreasonably interfere with my Clients and their tenant's use of the alley for deliveries and limit my Clients' tenant's use of the alley to access their commercial space. Further, the addition of the gate in the proposed location would provide better access to my Client's second story deck by providing a way to scale the gap between the ground and the lower edge of the deck. Finally, as indicated above, my Client owns the southerly twelve and one half (12.5) inches of Alley A and will not authorize the Applicant to place any portion of the gate or fence within their property, meaning that there will be a gap between the fence and the wall, undermining the security of the fence.

IV. Conclusion

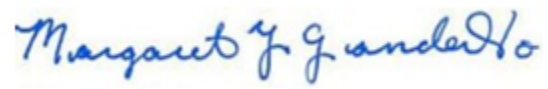
My Client would like to reiterate that they are not opposed to the Proposed Improvements further down the Alley, under the skybridge, provided all garbage and recycling is located behind the fence or gate. They are willing to work with the Applicant to find a solution and would be willing to set up a time to discuss this further. However, the Applicant has failed to provide adequate evidence into the record to establish that they have met their burden of proof.

My Clients respectfully request that the City deny the Application showing the current location of the gate, or, in the alternative require the Applicant to obtain a survey showing the location of its property line and provide an updated plan showing the Proposed Improvements solely on the Applicant's property.

Please do not hesitate to reach out regarding any questions you may have regarding this letter.

June 21, 2024
City of Salem
Page 6

Sincerely,

A handwritten signature in blue ink that reads "Margaret Y. Gander-Vo". The signature is written in a cursive style with a blue ink color.

MARGARET Y. GANDER-VO
margaret@sglaw.com
Voice Message #374

MYG:
Enclosures: Easement Agreement
cc: Client

Jake Morris

Subject: 249 Liberty St NE
Attachments: MCSR 2105 - Annotated.pdf; MCSR 12964 - Annotated.pdf; MCSR 12964 Alley close-up - Annotated.pdf; carole & eric easement We own.pdf

From: Paul
Sent: Wednesday, July 10, 2024 12:25 PM
To: Jake Morris <jjmorris@cityofsalem.net>
Cc: Valentina <Valentina@cproregon.com>
Subject: FW: 249 Liberty St NE

Jake

This matter is quite simple. I want to install a gate across an alley that is littered with filth and garbage. Having a gate at the head of the alley will prevent the homeless from camping out. For whatever reason, a neighbor wants to keep the entrance open.

First and foremost, I own the alley. Survey MCSR 12964 shows ownership to within 3.6" of the complaining neighbors building, see attached surveyor's comments and map. The point is, the gate will only be located on my property.

Second the complaining neighbor has only an access easement, no more. See attached Deed & Easement whereby Fred Paulus granted to former owners of my building ownership, reserving for himself this limited access, attached. Access will be available to everybody with a key code on the man door and if necessary, the whole thing will open allowing deliveries and garbage collection.

There is a gate right, directly across the alley that we are modeling after. This gate is beautiful, fitting into the neighborhood beautifully and safe. The frame is covered with stretched steel which prevents anyone from climbing it. There is no room for fingers or toes to fit.

Finally, the gate will be free standing and not attached to any buildings.

Thanks again for your time.

Paul Kerley

paul@cproregon.com

Commercial Property Resources, Inc.

PO Box 5517 Salem, OR 97304

503-585-0800

From: Corbey Boatwright <corbey@boatwrightengr.com>

Sent: Thursday, May 9, 2024 6:11 PM

To: Paul <Paul@cproregon.com>

Cc: Jeanne Boatwright <jeanne@boatwrightengr.com>

Subject: 249 Liberty St NE

Paul,

The copy of the Marion County Surveyor's Office record, MCSR 2105 is at the north end of your property and not the south end. Your north property line falls at about the center of the red ellipse.

Your entire property is shown on MCSR 12964. In this survey your building is over the north edge of the E-W alley on the west end by 0.45' or 5.4". The building to the south appears to be south of the south edge of the E-W alley by 0.3' or 3.6". This would indicate that the distance between the buildings, in 1951, measured 11.25' or 11'-3". In this survey, the south building was not picked up other than the north line on the west end.

This would describe where the property lines would be, but it does not address any easement that might exist in this area.

Corbey Boatwright, PE, LS, CWRE

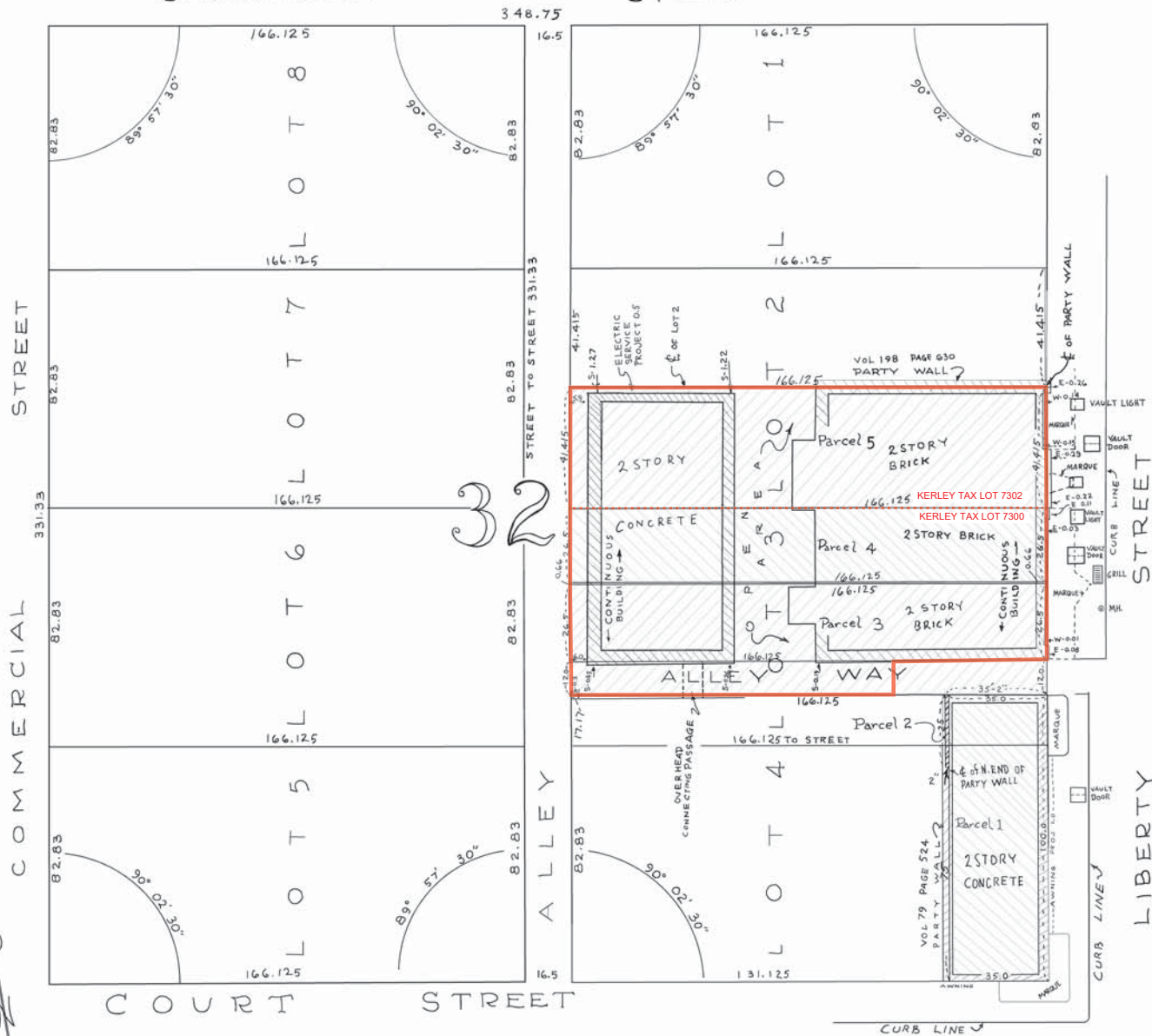
Boatwright Engineering, Inc.

2613 12th Street SE

Salem, Oregon 97302

Ph: 503.363.9225

CHEMEKETA STREET



SURVEYOR'S CERTIFICATE

I, Melvin G. Propp, of Salem, Oregon, do hereby certify that I surveyed the following described property on February 9, 1951 and that I find the improvements situated thereon to be on the premises in question and that they do not overlap or encroach on the property lying adjacent thereto, except as indicated by the attached drawing. This certificate is made at the request and for the exclusive use of The Equitable Life Assurance Society of the United States.

PROPERTY DESCRIPTION

Parcel 1
Commencing at the Southeast corner of Lot Four (4), in Block 32 in the City of Salem, Oregon, as shown by the recorded plat thereof; thence Northerly along the West line of Liberty Street, 100.00 feet; thence Westerly and parallel with Court Street, 35.00 feet; thence Southerly and parallel with the West line of Liberty Street, 100.00 feet to the North line of Court Street; thence Easterly along the North line of Court Street, 35.00 feet to the place of beginning.

Parcel 2
Beginning at a point in the West line of the property heretofore sold and conveyed by D. F. Wagner and wife to Fred W. Steunhoff on May 22, 1902 by Deed which is recorded at page 531, volume 79 of the Records of Deeds for Marion County, Oregon, said point being distant 75.00 feet Northerly from the Southwest corner of said property, being part of Lot Three (3), and Four (4), of Block 32 in the City of Salem, Marion County, Oregon, said point also being the center of the North end of the party wall (now standing) upon the dividing line between said property so conveyed and the premises still owned by D. F. Wagner on the West thereof; thence running Westerly 2 inches, parallel with the North line of Court Street in said City; thence Northerly 25.00 feet, parallel with the West line of Liberty Street in said City; thence Easterly 2 inches, parallel with said Court Street; thence Southerly 25.00 feet, parallel with said Liberty Street to the place of beginning.

Parcel 3
Beginning at a point in the West line of Liberty Street, 100.00 feet Northerly from the North line of Court Street and from the Southeast corner of Lot 5, in Block 32 in the City of Salem, Marion County, Oregon; thence Westerly parallel with Court Street, 165.00 feet, more or less to the alley through said Block 32; thence furtherly along the West line of Lot Three (3) in Block 32 a distance of 36.5 feet; thence Easterly parallel with Court Street, 165.00 feet, more or less to Liberty Street; thence Southerly along the West line of Liberty Street, 36.5 feet to the place of beginning.

Parcel 4
Beginning at the Northeast corner of Lot Three (3), Block 32 in the City of Salem, Marion County, Oregon; thence Southerly along the West line of Liberty Street, 24.5 feet; thence Westerly parallel with Court Street, 165.00 feet, more or less to the alley; thence Northerly along the East line of the alley, 26.5 feet to the Northeast corner of said Lot Three (3); thence Easterly along the division line between Lot Two (2) and Three (3) in said Block 32, a distance of 165.00 feet, more or less, to the place of beginning.

Parcel 5
The South one half (1/2) of Lot Two (2) in Block 32 in the City of Salem, Marion County, Oregon.

REGISTERED
OREGON
LAND SURVEYOR
Melvin G. Propp
JULY 7, 1944
MELVIN G. PROPP
34

REGISTERED
OREGON
LAND SURVEYOR
Melvin G. Propp
JULY 7, 1944
MELVIN G. PROPP
34

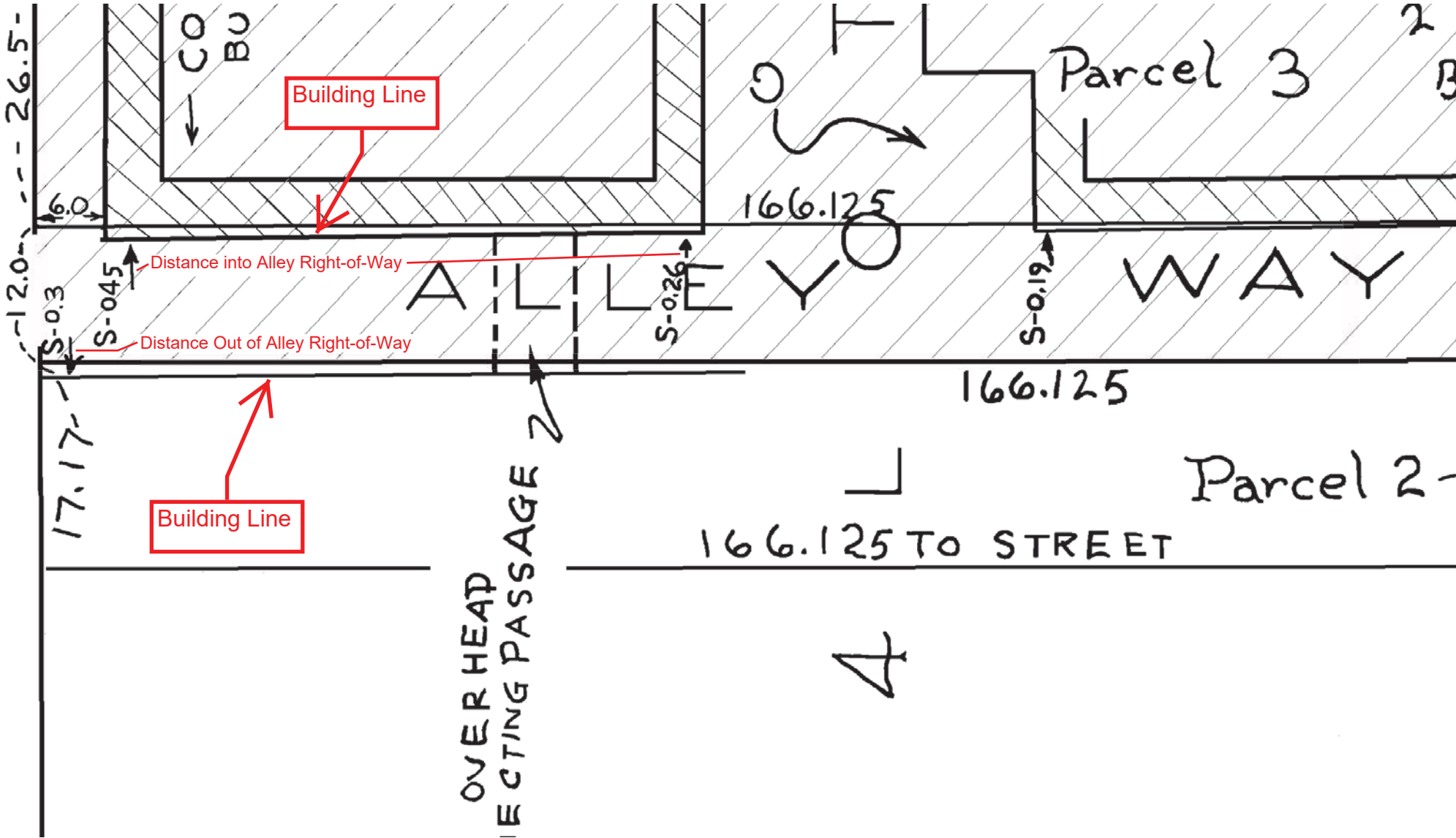
SURVEY FOR

SOL SCHLESINGER and LEE SCHLESINGER and
SAUL BLOOMBERG and RAE C. BLOOMBERG and
SIDNEY SCHLESINGER and RALPH SCHLESINGER
FRACTIONS OF LOTS 2, 3, and 4, BLOCK 32, CITY OF SALEM
MARION COUNTY, OREGON

● Points Found
○ Points Set
Surveyed & Plotted 3/1951
Scale = 1/2" = 20'
Instrument E. Althoff

SCALE 20 feet per inch













Electric
Alley

Electric Alley

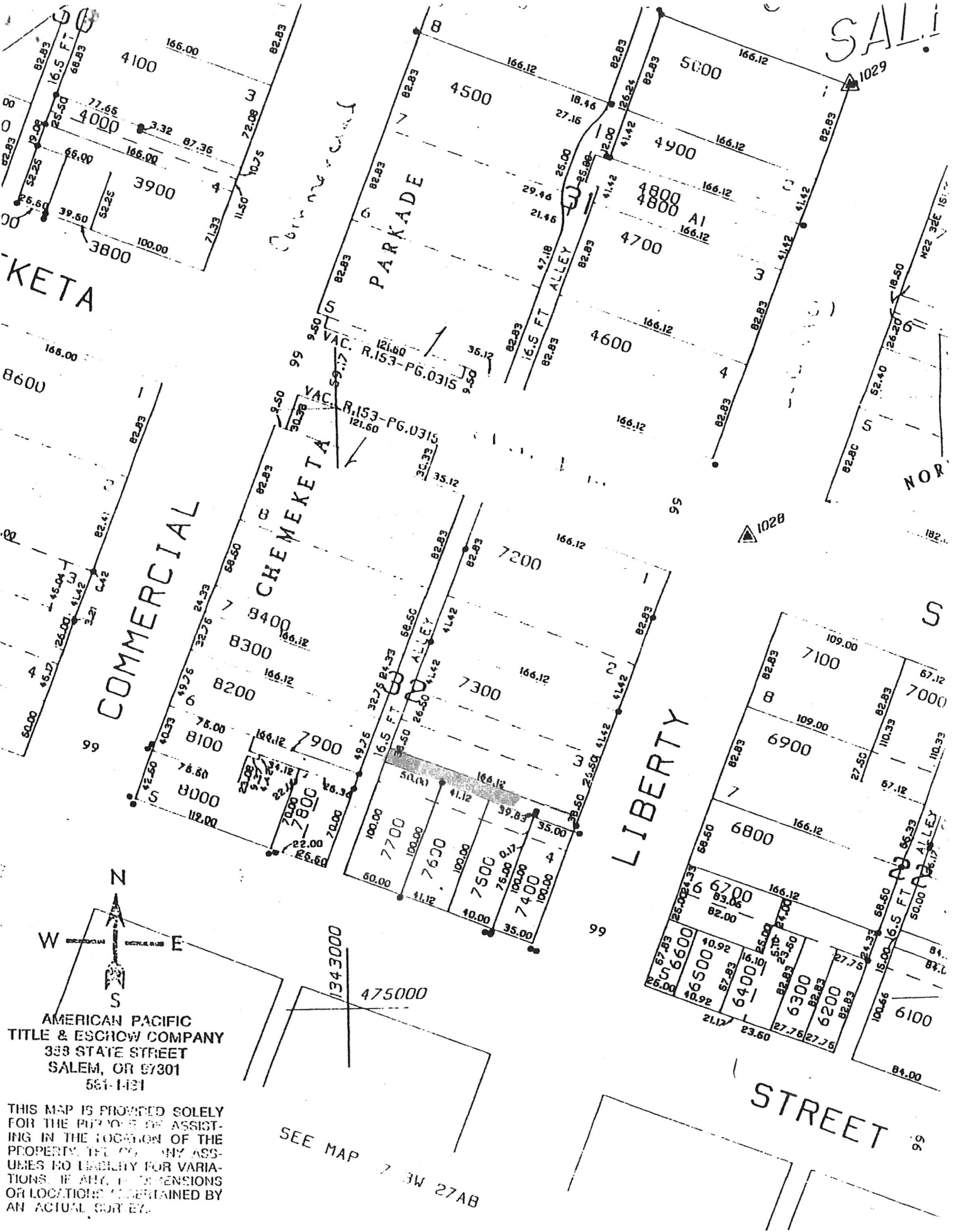
EATV





SAL!

KETA



AMERICAN PACIFIC
 TITLE & ESCROW COMPANY
 383 STATE STREET
 SALEM, OR 97301
 561-1131

THIS MAP IS PROVIDED SOLELY
 FOR THE PURPOSE OF ASSISTING
 IN THE LOCATION OF THE
 PROPERTY. THE COMPANY ASSUMES
 NO LIABILITY FOR VARIATIONS,
 IF ANY, IN DIMENSIONS
 OR LOCATIONS DETERMINED BY
 AN ACTUAL SURVEY.

SEE MAP 73W 27AB

ORDER NO.

COURTESY OF
AMERICAN PACIFIC TITLE

DEED AND EASEMENT

THIS AGREEMENT, made October 22, 1965, by and between
FRED H. PAULUS, a single person, as first party,
and

SOL SCHLESINGER, LEE SCHLESINGER, RAE BLOOMBERG,
SAUL BLOOMBERG, SIDNEY W. SCHLESINGER and RALPH
D. SCHLESINGER, partners, dba LIBERTY INVESTMENT
CO., ALYNE SCHLESINGER, wife of Sidney W.
Schlesinger, and BERNICE SCHLESINGER, wife of
Ralph D. Schlesinger, as second parties,

WITNESSETH, That:

(1) The first party is the owner in fee simple of
the following described property:

Commencing at the Southwest corner of Lot 4,
Block 32, as shown on the recorded plat of
the City of Salem, in Marion County, Oregon;
thence Easterly along the North line of Court
Street, a distance of 50 feet; thence North-
erly parallel with Liberty Street, a distance
of 100 feet; thence Westerly parallel with
Court Street, a distance of 50 feet to the
alley in said Block 32; thence Southerly
along the East side of said alley, a distance
of 100 feet to the place of beginning, and
being parts of Lot No. 3 and Lot No. 4 in said
Block No. 32, Salem, Marion County, Oregon.

(2) Abutting the northerly side of first party's
said property is an alley (herein referred to as "Alley
A"), which is 12 feet wide and runs easterly and westerly,
extending from Liberty Street on the east to another
alley on the west, which runs northerly and southerly
through the center of said Block 32.

(3) The second parties are owners of all the prop-
erty except the hereinabove described property of first
party, abutting upon said Alley A.

(4) For and in consideration of the sum of \$1.00 and
other valuable considerations and particularly of an ease-
ment from second parties to first party, his heirs, execu-
tors, administrators, successors and assigns, of perpetual
use of the westerly 115 feet of said Alley A, with the
right of said heirs, executors, administrators, succes-
sors and assigns and of the tenants and lessees of first
party, and of the tenants and lessees of his said heirs,
executors, administrators, successors and assigns, to use
said alley for the loading or unloading of goods, wares
and merchandise, and for any other lawful purposes, and of
a perpetual easement from second parties to first party,
his heirs, executors, administrators, successors and
assigns, of a second-story tram or covered runway of concrete
construction extending northerly from the above described
property of first party to property of second parties on

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the north side of said alley, first party, for himself, his heirs, executors, administrators, successors and assigns, grants, bargains, sells, conveys and quitclaims to second parties any and all interest that first party has, or claims to have, in said Alley A, and by these presents agrees to the closing, using, leasing, renting and letting for any lawful purpose of the easterly 50 feet, only, of said Alley A, measured from the westerly edge of the sidewalk at the easterly end of said alley.

(5) In consideration of the aforesaid conveyance by first party to second parties, second parties grant, bargain, sell and convey to first party the aforesaid perpetual easements and rights, to be maintained at their cost.

(6) It is expressly understood that second parties, their heirs, executors, administrators, successors, assigns, and tenants and lessees of the aforesaid properties of second parties abutting upon said alley, including tenants of second parties occupying the easterly 50 feet of said alley, shall have the use of said alley for any lawful purpose.

Duly executed in duplicate.

Fred H. Paulus (SEAL)

First Party

LIBERTY INVESTMENT CO.

By Wm C. Blomberg
Partner

By Sam J. Blomberg
Partner

By Arthur W. Schlesinger
Partner

By Bernice Schlesinger
Partner

By Art Schlesinger
Partner

By Allyne Schlesinger
Partner

Allyne Schlesinger (SEAL)
Allyne Schlesinger

Bernice Schlesinger (SEAL)
Bernice Schlesinger

Second Parties

Marion County, Oregon - ss.

On this 22nd day of October, 1965, personally appeared the above named FRED H. PAULUS, a single person, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:
(SEAL)

John Hettzel
Notary Public for Oregon

My commission expires Oct 1 - 1967

Marion County, Oregon - ss.

On this 25th day of October, 1965, personally appeared SOL SCHLESINGER, who, being duly sworn, did say that he is a partner of LIBERTY INVESTMENT CO., a partnership, and that he executed the foregoing instrument by authority of and on behalf of said partnership, and he acknowledged said instrument to be the voluntary act and deed of said partnership.



Before me:

(SEAL)

John A. Helzel
Notary Public for Oregon

My commission expires Feb. 1 - 1969

Marion County, Oregon - ss.

On this 25th day of October, 1965, personally appeared LEE SCHLESINGER, who, being duly sworn, did say that she is a partner of LIBERTY INVESTMENT CO., a partnership, and that she executed the foregoing instrument by authority of and on behalf of said partnership, and she acknowledged said instrument to be the voluntary act and deed of said partnership.



Before me:

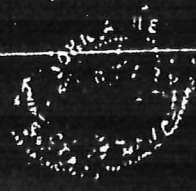
(SEAL)

John A. Helzel
Notary Public for Oregon

My commission expires Feb. 1 - 1969

Marion County, Oregon - ss.

On this 25th day of October, 1965, personally appeared RAE BLOOMBERG, who, being duly sworn, did say that she is a partner of LIBERTY INVESTMENT CO., a partnership, and that she executed the foregoing instrument by authority of and on behalf of said partnership, and she acknowledged said instrument to be the voluntary act and deed of said partnership.



Before me:

(SEAL)

John A. Helzel
Notary Public for Oregon

My commission expires Feb. 1 - 1969

600 475

Marion County, Oregon - ss.



On this 25th day of October, 1965, personally appeared SAUL BLOOMBERG, who, being duly sworn, did say that he is a partner of LIBERTY INVESTMENT CO., a partnership, and that he executed the foregoing instrument by authority of and on behalf of said partnership, and he acknowledged said instrument to be the voluntary act and deed of said partnership.

Before me:
(SEAL)

John A. Kellard
Notary Public for Oregon

My commission expires Feb 1 - 1969

Marion County, Oregon - ss.



On this 25th day of October, 1965, personally appeared SIDNEY W. SCHLESINGER, who, being duly sworn, did say that he is a partner of LIBERTY INVESTMENT CO., a partnership, and that he executed the foregoing instrument by authority of and on behalf of said partnership, and he acknowledged said instrument to be the voluntary act and deed of said partnership.

Before me:
(SEAL)

John A. Kellard
Notary Public for Oregon

My commission expires Feb 1 - 1969

Multnomah County, Oregon - ss.



On this 27th day of October, 1965, personally appeared RALPH D. SCHLESINGER, who, being duly sworn, did say that he is a partner of LIBERTY INVESTMENT CO., a partnership, and that he executed the foregoing instrument by authority of and on behalf of said partnership, and he acknowledged said instrument to be the voluntary act and deed of said partnership.

Before me:
(SEAL)

Bert M. Stubb
Notary Public for Oregon

My commission expires By Commission Expires Feb. 16, 1968

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Marion County, Oregon - ss.

On this 25th day of October, 1965, personally appeared the above named ALYNE SCHLESINGER, wife of Sidney W. Schlesinger, and acknowledged the foregoing instrument to be her voluntary act and deed.



Before me:
(SEAL)

John A. Steele
Notary Public for Oregon

My commission expires Feb. 1, 1969.

Millinocket County, Oregon - ss.

On this 27th day of October, 1965, personally appeared the above named BERNICE SCHLESINGER, wife of Ralph D. Schlesinger, and acknowledged the foregoing instrument to be her voluntary act and deed.



Before me:
(SEAL)

Betty H. Steele
Notary Public for Oregon

My commission expires My Commission Expires Feb. 16, 1968

766946

STATE OF OREGON
County of Marion, ss.

I Certify that the within copy received and duly recorded by me in MARION COUNTY RECORDS

Book of DEEDS Vol. 629
Page 472 on the

day of NOV 16 1965

at 2:00 o'clock P M

Shirley W. Steele

Recorder

Deputy

mail to:
Liberty Investment Co.
229 W. Liberty St. Jk
Selma 950