

BRAND *Land Use*

May 28, 2025

Bryce Bishop, Planner III
City of Salem Community Planning & Development Department
555 Liberty Street SE, Room 305
Salem, OR 97301

Re: MWIC Grove, LLC Public Comment for Application No. SPR-ADJ25-11

Dear Bryce,

The applicant appreciates the opportunity to respond to the concerns raised by MWIC Grove and wishes to emphasize that the proposal conforms to the applicable provisions of the Salem Revised Code (SRC), including all relevant approval criteria for the requested Class 3 Site Plan Review and Class 2 Adjustments. Below is a detailed response to the issues raised.

1. Adjustments – Findings and Evidence

MWIC Grove asserts that the applicant failed to meet the standards of SRC 250.005(d)(1), which require the applicant to demonstrate that the standard is “clearly inapplicable” or “equally or better met.” This assertion overlooks the extensive findings provided in the application narrative. Each requested adjustment is accompanied by mitigation strategies, including enhanced pedestrian amenities, larger sidewalks, and improved landscaping, which are specifically crafted to fulfill the intent of the development standards. The applicant does not rely on mere impracticality but instead demonstrates how the adjusted design fulfills or exceeds the goals of the underlying standards, including promoting pedestrian access, visual appeal, and urban design consistency in the FMU zone.

The comment suggests that the applicant relies solely on the assertion of “impracticality” to justify Adjustment No. 1 regarding the minimum required floor area ratio (FAR), and that this rationale fails to meet the substantial evidence standard. However, this mischaracterizes both the basis for the adjustment and the supporting findings submitted with the application.

To clarify, the applicant acknowledges that SRC 250.005(d)(1) requires either that the standard is clearly inapplicable or that the standard is equally or better met by the proposed development. In this case, the applicant demonstrates that the

standard is equally or better met because the intent behind the minimum FAR requirement, namely, to ensure urban density and discourage underutilization of land, is fulfilled through alternative means.

As outlined in the narrative, the calculated FAR for this site is disproportionately impacted by the inclusion of a significant area within a public access easement and within the right-of-way. These portions of the site, while technically part of the tax lot, are not eligible for development. This physical limitation is not a matter of mere convenience but a substantive constraint on developable area, rendering full compliance with the numerical FAR standard infeasible without constructing additional stories and eliminating onsite parking and vehicular circulation which would further intensify the development in ways that would be inconsistent with the refinement plan's emphasis on compatibility with surrounding residential uses. Rather than maximizing square footage through vertical construction, which would increase scale, massing, and visual impacts, the applicant proposes a single-story commercial building with active retail and service uses that are entirely consistent with the Village Center designation. This approach fulfills the underlying purpose of the FAR standard by promoting an active, mixed-use streetscape and discouraging low-value or low-intensity uses, while also preserving compatibility with adjacent residential development.

In sum, the FAR standard is not being disregarded; it is being applied in a manner that aligns with its intent and the character of the refinement plan. The proposal satisfies SRC 250.005(d)(1)(B) by demonstrating that the development equally or better meets the purpose of the standard while thoughtfully balancing design objectives with contextual sensitivity. This constitutes substantial evidence and supports approval of the requested adjustment.

The comment from MWIC Grove references SRC 807.001, emphasizing its purpose to "promote compatibility between land uses," and expresses concern that the proposed parking lot setback adjustment along Village Center Loop will adversely affect adjacent residential properties and compromise pedestrian safety. However, this interpretation overlooks both the context of the site and the substantial modifications made by the applicant to enhance compatibility, safety, and conformance with the code's intent.

First, it is important to clarify that the setback adjustment in question pertains solely to the internal private street, Village Center Loop, and not to any public street or directly shared property boundary with MWIC Grove. The proposed parking lot meets or exceeds the 20-foot setback requirement from Lindburg Road SE and Strong Road SE. Along Village Center Loop, a 20-foot distance is maintained between the paved travel lane and the parking area. The need for an adjustment arises only because the sidewalk is considered part of the private right-of-way, which shifts the technical starting point of the measurement. This is a nuanced interpretation of setback measurement, not a substantive reduction in buffer or compatibility.

The adjustment is justified under SRC 250.005(d)(1)(B) because the proposal equally meets the purpose of the standard. Enhanced landscaping will be provided between the sidewalk and the parking area, delivering a visually buffered and pedestrian-friendly edge. The applicant is also providing a robust internal pedestrian circulation system with clear, dedicated paths that connect building entrances to the surrounding sidewalk network. These improvements promote both compatibility and safety, consistent with the objectives of SRC 807.001.

Rather than diminishing the pedestrian experience or threatening adjacent uses, the applicant's design enhances the public realm and maintains appropriate transitions between uses. The suggestion that the application lacks sufficient information is unfounded; detailed site plans and narrative findings were submitted, demonstrating compliance with applicable criteria and addressing both vehicular and pedestrian functionality. The applicant's adjustment request not only maintains compatibility with adjacent development but also introduces improved design elements that promote pedestrian safety and support the goals of the FMU zone. The criteria for the adjustment are met, and the concerns raised have been directly addressed through thoughtful site planning and circulation design. The commenter's own development plans (FRPADR-SPR-ADJ-DAP21-02) sought class 2 adjustments to pedestrian requirements which is common practice in development. Thoughtful design occasionally requires deviation from the prescriptive standards which is acceptable if the underlying goals are still achievable which the applicant has demonstrated in this case, that they are.

2. Landscaping and Lighting Plans

The commenter raises concerns about potential light spillover and inadequate landscaping, asserting that the absence of detailed lighting and landscaping plans at the land use stage precludes proper evaluation. However, this concern is both overstated and inconsistent with standard land use practice in the City of Salem. First, it is important to note the physical context of the site. The commenter's property lies to the east and south of the subject property and is situated at a measurably higher elevation. The topography of the area, combined with existing and proposed retaining walls along the property boundary, naturally mitigates potential light trespass from the subject development. This elevation difference creates a physical buffer that limits the visibility of light fixtures and vehicle headlights from the subject property to the adjacent MWIC Grove site, particularly from the parking lot and drive aisle areas. This site condition is significant and materially reduces the potential for adverse impacts, even before formal lighting mitigation strategies are implemented. While detailed lighting and landscaping plans are not included at this stage, their deferral is in accordance with City of Salem procedures. It is common and accepted practice for design details such as lighting placement, fixture shielding, and final landscape planting plans to be reviewed and confirmed during the building permit phase, once land use entitlements are secured. This approach allows for technical refinement and utility coordination without undermining compliance with applicable code provisions.

The applicant does not seek to bypass or weaken any applicable standards. To the contrary, the applicant is prepared to accept a condition of approval that lighting and landscaping plans submitted at the time of building permit must fully comply with the requirements of SRC Chapters 800 and 807. These chapters include clear and enforceable standards designed to prevent light trespass, ensure aesthetic compatibility, and provide buffering between uses, standards which staff will be able to verify during building permit review.

In summary, the topographical separation and physical design features already mitigate many of the commenter's concerns, and the applicant's willingness to accept a compliance condition ensures that final design elements will be subject to full regulatory oversight. The proposal remains consistent with the intent of the code and with City of Salem review protocols.

3. Compatibility with Adjacent Residential Uses

MWIC Grove raises generalized concerns about compatibility, particularly with regard to aesthetics, lighting, and setbacks. However, the proposed development is consistent with the adopted Fairview Refinement Plan, which anticipates pedestrian-oriented commercial uses in this Village Center (VC) area. The site is not being developed with auto-oriented uses such as drive-throughs and includes significant buffers, screening, and building orientation strategies to reduce potential impacts on adjacent uses. There is no evidence of incompatibility beyond speculation, and the applicant has shown consistency with SRC 807.001 in promoting compatibility between land uses.

4. Traffic Impact and Master Plan Conformance

The applicant submitted a trip generation estimate prepared in accordance with the City's adopted methodologies and consistent with the original Fairview Refinement Plan assumptions. Contrary to the commenter's claim, the TIA addendum submitted by Kittelson & Associates does not attempt to amend the refinement plan or master plan. Rather, it updates trip estimates to reflect current data and confirms that development thresholds triggering off-site improvements are not exceeded. Specific off-site analysis for Strong Road SE, Lindburg Road SE, and Village Center Loop is not warranted because the proposal is consistent with anticipated land use and intensity. The suggestion that the refinement plan must be amended prior to approval is unsupported by any provision of the SRC and contradicts the City's adopted FMU procedures.

5. Questions Regarding the Use and Access

The commenter poses several questions regarding the nature of the proposed use and access:

- **Leased Use and Restrictions:** The proposed use is for retail sales and services, which is a permitted use in the Fairview Mixed-Use (FMU) zone. As with all commercial developments, any future tenants will be subject to the applicable use restrictions of the Salem Revised Code (SRC), including but not limited to those governing noise, signage, and permitted use categories. If a use such as lottery or gaming were proposed and determined to be incompatible or otherwise restricted, the City would evaluate that use during the business license review or tenant improvement permit stage. It is also important to note that the City of Salem does not impose minimum off-street parking requirements. As such, any future change of use within the building will not trigger additional off-street parking obligations. All proposed uses must comply with the accepted and adopted Traffic Impact Analysis included with each Refinement Plan.
- **Hours of Operation:** The SRC does not impose use-specific operational hour limits within the FMU zone, and the narrative does not propose any 24-hour uses. Any concerns regarding nuisance conditions would be addressed through the City's enforcement process, not land use review.
- **Access Connectivity:** The comment expresses concern that the proposed development may establish vehicular connections to MWIC Grove properties. However, this concern is misplaced and inconsistent with the facts and the recorded easement structure governing Village Center Loop. The application clearly shows no proposed vehicular access connections to MWIC Grove's private properties. The drive aisle connections depicted on the west and south boundaries of the subject site align with Village Center Loop, a private street constructed within a shared easement corridor. These connections are to the easement itself, not to the commenter's residential property, and are essential for circulation within the Fairview Mixed-Use (FMU) zone.

Importantly, Village Center Loop was constructed by MWIC Grove pursuant to Condition 8 of their own land use approval for their multifamily development. That condition required the construction of the street to serve as part of the internal circulation network contemplated under the Fairview Refinement Plan. Easements benefiting other properties within the master plan area, including the applicant's site, were established in conjunction with that requirement. Accordingly, the applicant is entitled to access Village Center Loop via the existing street easement, and the proposed connections fully conform to that legal right and the adopted refinement plan.

While the site plan illustrates access to Village Center Loop in accordance with the easement, it does not establish any physical or functional connection to MWIC Grove's private residential parcels. To further address the concern, the applicant is willing to accept a condition of approval confirming that no

vehicular connections to MWIC Grove's property will be permitted without the written consent of MWIC Grove.

Conclusion

The comment letter from MWIC Grove raises concerns that are either addressed by the application materials or stem from misunderstandings of the applicable review process. The proposal is consistent with the FMU zoning, the adopted refinement plan, and the applicable SRC provisions. The applicant respectfully requests that the City continue processing the application in accordance with its adopted procedures, and find that the criteria for approval are met or will be met at time of building permit issuance.

Additionally, we wish to thank you for the time and effort you have committed to reviewing our application materials, your thoughtful input on design, and your collaborative approach when discussing this project. If any additional information would be helpful as you process the decision in this case, please feel free to contact me.

Thank you,

A handwritten signature in black ink that reads "B. Randall". The signature is stylized with a large, looped initial "B" and a cursive "Randall".

Britany Randall

Britany@BRANDLandUse.com

503-370-8704 (Office)