

September 21, 2021

Pamela Cole
City of Salem
Community Development Planning Division
555 Liberty Street SE, Room 305
Salem OR 97301-3503
(503) 588-6213

Re: **Reference Number: 21-106129-RP, 21-106130-ZO**

Below are responses to your comments in the plan review dated August 5th, 2021

Application Submittal Items Comments
Pamela Cole, Planner II
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1. **Deeds**

Some of your plans indicate that 2539 Wallace Road NW (located in the RD (Duplex Residential) zone and not developable with a multi-family use) is part of the project. The revised written statement indicates that this property is under separate ownership but under contract to purchase by 3030 Riverbend LLC. The Polk County Assessor indicates that the latest Deed is Document 1999-1853 (Source ID 372-762) and the property is owned by Julie F Mengucci-Foster, Agent. You provided a letter written to Julie Foster stating that you intend to purchase the property according to an executed sale agreement. Julie Foster electronically signed the revised application. Your response indicates that a deed has been provided for 2539 Wallace, but it is not uploaded. Please provide a copy of Document 1999-1853 (Source ID 372-762). A copy of the executed sale agreement is optional

Response: A copy of Polk County Deed 1999-1853 (Source ID 372-762) is attached to this resubmittal. See Exhibit A

2. **Lawfully Established Units of Land / Legal Description Issues**

The issues in this section also affect the existing conditions plan, site plan, and adjustments. As staff noted in the pre-application conference summary, the City Surveyor's office has indicated that at least one of the parcels may be unlawfully created. Please provide previous deeds and legal descriptions (chain of title) to confirm when the existing interior property boundaries were created so that staff may evaluate whether these are lawfully established units of land. This area became subject to the city's land division regulations upon annexation in 1967.

City Surveyor's office staff in 2015 researched documents pertaining to the 20-foot-wide so-called R.O.W. shown on the Assessor map and found that it was not a public right-of-way. Staff

recommended to Jeff Tross at that time that this was a private matter and the assistance of a title company and attorney may be needed to answer questions pertaining to chain of title, unrecorded documents, intent, and other potential issues. Staff determined that it was not the City's responsibility to conduct further research or resolve the issues.

You provided a June 2019 document indicating that the County Surveyor did not see any legal creation of an easement or right of way, public or private. That helps to confirm that the 20-foot-wide strip is not right-of-way, but it is not sufficient to confirm that the existing interior property boundaries were lawfully established or to show the location of lawful boundaries.

Lawfully established units of land / property lines must be determined before the application can be processed. The plans are still showing property lines on both sides of the 20-foot-widestrip as shown on the erroneous assessor map. The City has not received adequate documentation to determine lawfully established property lines, and the plans must show the lawfully established property lines.

Response: A full preliminary title report, Exhibit B, is included with this resubmission along with the tax lot cards, Exhibit C, for each property showing dates of creation.

The following is a summary of legal parcel creation:

2539 Wallace Rd NW. This parcel was originally described as 1.90 acres in Volume 152, Page 499. It was split to form Tax Lot 1301 (below) on 1/6/69 to remain as 0.50 acres. 0.10 acres was added to the parcel after annexation in to the City of Salem 6/2/82 and remains in this configuration.

No address, Tax lot 1301: First described in 1/6/69 on Deed Volume 214, Page 569. The parcel combined with Tax lot 201 according to V#10901 on 1/28/75 in Deed Volume 85, page 57 and remains in this configuration.

2501 Wallace Rd NW. This parcel was first described on 8/31/59 in Deed Volume 170, Page 256. There was a reserve strip noted for ROW but has never been officially dedicated that we can tell based on conversations with the Polk County Surveyor, Eric Berry. It has remained in this configuration since.

2499 Wallace RD NW. This parcel was first described in Deed Volume 155, Page 429 and has remained in this configuration since.

2519 Wallace Rd NW. This parcel was first correctly described on 5/4/59 in Deed Volume 170, Page 258 and has remained in this configuration since.

3. Existing Conditions Plan

220.005(e)(1)(B) An existing conditions plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:

- (i) The total site area, dimensions, and orientation relative to north;***
- (ii) The location of existing structures and other improvements on the site, including accessory structures, fences, walls, and driveways, noting their distance from property lines;***
- And (iii) The location of the 100-year floodplain [not applicable].***

The existing conditions plan (C2.0) must include the boundaries and dimensions of each separate lawfully established parcel (interior property lines – see discussion above) and indicate distances from existing structures and improvements to those interior property lines.

Response: No other information to be provided.

4. Site Plan

220.005(e)(1)(A) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:

- (i) The total site area, dimensions, and orientation relative to north;
- (ii) The location of all proposed primary and accessory structures and other improvements, including fences, walls, and driveways, indicating distance from the structures and improvements to all property lines and adjacent on-site structures;
- (iii) Loading areas, if included in the proposed development;
- (iv) The size and location of solid waste and recyclables storage and collection areas, and amount of overhead clearance above such enclosures, if included in the proposed development;
- (v) An indication of future phases of development on the site, if applicable;
- (vi) All proposed landscape areas on the site, with an indication of square footage and their percentage of the total site area;

(vii) The location, height, and material of fences, berms, walls, and other proposed screening as they relate to landscaping

and screening required by SRC chapter 807; (viii) The location of all trees and vegetation required to be protected pursuant to SRC chapter 808; (ix) The location of all street trees, if applicable, or proposed location of street trees required to be planted at time of development pursuant to SRC chapter 86; and

(x) Identification of vehicle, pedestrian, and bicycle parking and circulation areas, including handicapped parking stalls, disembarking areas, accessible routes of travel, and proposed ramps.

Please revise all of the plans to show the required street connections as discussed below and the related reconfigurations of buildings, off-street parking, and other features.

The site plan and other plan sheets must include the boundaries and dimensions of each separate lawfully established parcel (interior property lines – see discussion above) to indicate distances from proposed structures and improvements to those interior property lines.

Please identify Trees 1, 2, and 3 from the arborist's statement on the site plan and indicate Tree 1 for removal, Tree 2 for preservation, and Tree 3 for removal.

Please provide a pedestrian connection to Phase 1 along the driveway parallel to Wallace Road NW.

Response: No other information to be provided on this comment.

5. Connectivity

Previous comment - Staff addressed connectivity in the Pre-Application Conference 20-57 summary:

The development is subject to infrastructure requirements, including SRC Chapter 803, Streets and Right-of-Way Improvements. Requirements include such improvements as finishing off a stub street, and leaving the stub of La Jolla Drive NW as-is is not acceptable. A boundary street is required for the construction or enlargement of any building or structure located on property abutting a boundary street and that requires a building permit under SRC chapter 56. Boundary street means an existing street that abuts a unit of land. The property abuts La Jolla Drive NW, and the development will need to provide a local street connection (SRC 803.035(a)). The street should be located where it would provide a logical connection to future streets to the northwest. A 60-foot property (Polk County 073W09CD00811) between 1452 and 1492 Brush College Road NW is expected to accommodate a future north-south street; existing gravel driveways run from that property to the south across 073W09CD00801 (1482 Brush College Road NW) and 073W09CD00813, and east from 073W09CD00813 across 073W09CD00901 to the subject property. The code requires a street, but the applicant may propose an alternative. At the very least, Planning would accept pedestrian connections, but Planning would prefer the street.

Previous comment - The applicant provided a conceptual plan to Planning Commission for the comprehensive plan change / zone change CPC-ZC-ZC19-10 that indicated a cul-de-sac bulb at the end of La Jolla near the southwest corner of the property. The applicant's representative submitted a traffic circulation plan for the 2018 pre-application conference that showed the cul-de-sac bulb, as well as a shadow plat of property to the west indicating how lots could be developed along a future street extending south from Brush College Road NW and connecting to Winchester Street NW.

None of these previously discussed options for connectivity are shown on the site plan or civil plans. The only proposal for connectivity is a pedestrian connection to La Jolla. Multi-family development and mixed-use development are not exempt from connectivity. Streets through RS-zoned properties may serve multi-family and mixed-use development on adjacent properties. Streets can be constructed through multi-family complexes. I have discussed the proposed pedestrian connection to La Jolla with the Planning Manager and Assistant City Traffic Engineer. This is not sufficient to meet connectivity, street spacing, and block length requirements (SRC 803.020 through 803.035).

Staff's recommendation is a public or private local street (60 feet in width) to connect La Jolla with Wallace Road NW. The most logical location would be northward from La Jolla, then along the northwest and north property boundaries. This would separate the office / rec building / pool from the other buildings, and you may need to provide an ADA space and off-street loading space near that building or apply for an adjustment to that standard. You may provide an alternate alignment as long as it meets street spacing and block length requirements. The street would have on-street parallel parking, planter strips, and property-line sidewalks on both sides and would allow the development to meet the purpose of the MU-II zone to promote pedestrian oriented development in mixed-use districts. The local street would be a secondary street according to MU-II definitions. The buildings could be placed 0 to 10 feet from the street, depending on pedestrian amenities and horizontal separation. Please submit a revised plan with the required local street connection and reconfigured buildings and parking. You may propose other alternatives such as a public or private street reduced to 52 feet in width, but the alternatives must meet criteria for alternative street standards.

Previous comment - There is a significant tree north of the stub street. Staff addressed this in the Pre-Application Conference 20- 57 summary:

Significant trees shall be protected and preserved to the greatest extent possible. For the proposed development, removal of a significant tree from property outside of street right-of-way would

require a tree removal permit (see SRC 808.030) (if a tree meets criteria for a hazardous tree) or a variance (see SRC 808.045). Removal of a significant tree from future right-of-way may require a tree removal permit (see SRC 808.030) (if a tree meets criteria for a hazardous tree) or a variance (see SRC 808.045) and/or may require a Street Tree Removal Permit Under SRC Chapter 86. Staff is in discussion on the applicability of SRC 86 to future right-of-way. A Street Tree Removal Permit under SRC Chapter 86 would be required for removal of a significant tree or other tree from existing right-of-way.

Previous comment - If you wish to retain the tree, please provide documentation that the tree is healthy and propose an alternative that includes a pedestrian connection from La Jolla to the pedestrian network within the complex.

The arborist's report does not confirm that the tree is healthy. It states that the tree has a significant defect that requires immediate mitigation including pruning and a cabling system. SRC 808.005 definition - Hazardous tree means a tree that is cracked, split, leaning, has a dead top or a large dead limb high in the crown, or is otherwise physically damaged, to the degree that it is likely to fall and injure persons or property. The photos indicate that this tree is cracked. A tree removal permit for this tree would likely be approved. The cabling system is an extraordinary measure and would not guarantee that the tree can be saved.

Because this tree is to be removed for street construction, you would need to obtain a concurrent Street Tree Removal Permit or the land use decision would have a condition requiring a Street Tree Removal Permit prior to public construction.

Response:

1. Introduction.

The Application is on land zoned for residential uses. The Application is both a "Limited Land Use" application as defined in ORS 197.105(12) and a "Needed Housing" application as defined in ORS 197.303(1)(a). A Limited Land Use application is subject to ORS 197.195(1) regarding incorporation of comprehensive plan standards into land use regulations. A Needed Housing Application is subject to ORS 197.307(4), 197.522(1)-(3), 227.173(2) and 227.175(4).

2. Connectivity Issue.

The City's incompleteness determination included a requirement that the Application include a local public street connection between La Jolla Street, a stub street terminating at the Application's boundary, and Wallace Road NW. The incompleteness letter acknowledges that the new public street connection will divide the proposed dwelling units from the amenities proposed to serve the dwelling units.

3. Response to Street Connectivity Incompleteness Issue.

The Applicant will not include this missing information, as provided for in ORS 227.178(2)(b), because under Salem Revised Code ("SRC") 803.035(a), the adjoining properties must be "undeveloped," even if proposed to connect to an existing street. Exhibit D to the Application shows that the abutting properties to the north and west are developed. The City cannot apply a standard not incorporated into SRC 803.035(a) to justify the local street extend based on planned streets.

Additionally, the requirements in SRC 803.035(a) are subject to SRC 803.035(a)(1), which provide that the 600' spacing standard is not applied where prevented by "physical conditions" that make a street connection impracticable. The phrase "physical conditions" is not exclusive and includes a "significant tree." An existing significant tree prevents the extension of La Jolla Street. The Applicant is not required to apply for a discretionary permit subject to subjective approval criteria in order to remove the significant tree.

Finally, the application of SRC 803.035(1) to require a local street connection cannot result in the application of clear and objective standards that discourage needed housing through unreasonable cost. ORS 197.307(4)(b). Such a result occurs in this case where the Applicant is required to bear the cost of a local public street that discourages the needed housing project by dividing the amenities from the residential units they are intended to serve.

6. Adjustments

Written Statement.

Please provide a written statement demonstrating how each proposed adjustment meets the criteria:

250.005(d)(2) An application for a Class 2 adjustment shall be granted if all of the following criteria are met:

(A) The purpose underlying the specific development standard proposed for adjustment is:

(i) Clearly inapplicable to the proposed development; or

(ii) Equally or better met by the proposed development.

(B) [not applicable] If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.

(C) If more than one adjustment has been requested, the cumulative effect of all the adjustments result in a project which is still consistent with the overall purpose of the zone.

Reconfiguration of the site due to street required for connectivity may change the adjustments you will need. Please update the written statement to reflect that.

On the first page and elsewhere in the written document, the fifth adjustment should be stated as a request to reduce street (not building) frontage requirement from 16 feet to 0 feet.

On the first page of the written statement and in the findings for the written statement, please add the sixth adjustment to reduce building frontage to less than 50 percent on Wallace Road. In the findings for Adjustment 3, you did not address the correct adjustment but copied the finding for Adjustment 2. Please revise. Reconfiguration of the site due to required street connectivity may change the adjustments you will need. Please update the written statement to reflect that.

Response: The adjustments have been updated in the attached revised written statement.

7. Public Works Items

Public Works has completed a preliminary "Completeness" review of the application submitted for the above-mentioned project. The following items have been identified as required material to be provided by the applicant prior to accepting the application as "Complete":

- 1. The application does not provide sufficient details to identify how the site is compliant with SRC 71, specifically the requirements for Green Stormwater Infrastructure (GSI) pursuant to PWDS Appendix 4E. The applicant shall provide a storm drainage system that provides treatment and flow control as*

required by PWDS, by one of three means: a. Runoff from the new and replaced impervious surfaces flows into one or more locations that have been set aside for installation of Green Stormwater Infrastructure (GSI) and the locations have a total area of at least ten percent of the total new plus replaced impervious surface area; or

You responded that this is not applicable and referred to 1b.

b. GSI is used to mitigate the impacts of stormwater runoff from at least 80 percent, but less than 100 percent, of the total new plus replaced impervious surfaces; or You responded that GSI will be used to mitigate 100% of the stormwater runoff and referred to the submitted Stormwater Report. Please be advised that 3030 Riverbend LLC must purchase 2539 Wallace Rd NW before any work can be done on the stormwater facility on that property to serve the multifamily development.

c. Under a design exception from the City Engineer, GSI is used to mitigate the impacts of stormwater runoff from less than 80 percent of the total new plus replaced impervious surfaces and the factor(s) limiting implementation (SRC 71.095).

You responded that this is not applicable and referred to 1b.

The following items are not listed in SRC as specific requirements for a complete application, however the applicant should be aware that the following have been identified as items that will be considered by the Public Works Department while recommending conditions for the proposed development.

- 1. The submitted plans show a 10-foot-wide sewer easement where a 20-foot-wide easement exists. Pursuant to PWDS Section 1.8, buildings, structures, etc. shall not encroach into pipeline easements. Public Works Engineering staff has indicated that the applicant should relocate the building so no part of the structure encroaches the easement.*

You responded that Buildings have been adjusted to be outside of the 20-foot-wide sewer easement and sewer easement has been adjusted at SE (should this be NE?) corner to be within new proposed driveway connection to Wallace Rd (Sheet C4.0). Public Works has not signed off on completeness of the application. For additional information, please contact Matt Olney at 503-588-6211 x 7226 or MOlney@cityofsalem.net.

Response: The Public Works items above have been addressed in the civil site permit submission.

If you have any questions or require additional information, please call me directly at 503-399-1090.

Sincerely,



Sam Thomas
Lenity Architecture

Enclosures:

Exhibit A: Polk County Deed 1999-1853 (Source ID 372-762)

Exhibit B: Tax Lot Cards

Exhibit C: Preliminary Title Report

Exhibit D: Adjacent Properties Map

Exhibit E: Revised Written Statement