

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
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*Si necesita ayuda para comprender esta informacion, por favor llame
503-588-6173*

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE PERMIT CASE NO.: CU20-08

APPLICATION NO.: 20-113625-ZO

NOTICE OF DECISION DATE: December 7, 2020

SUMMARY: A proposal for the development of a new mixed-use building at an existing commercial development.

REQUEST: A conditional use permit application to allow the development of a new mixed-use building, including approximately 15,000 square feet of commercial space and 71 apartment units, at an existing commercial development site. The subject property is zoned CR (Retail Commercial), within the South Gateway Overlay Zone, and located at 5775 Commercial Street SE (Marion County Assessor map and tax lot number(s): 083W14CD / 300, 400, 700, and 1000).

APPLICANT: Brandie Dalton on behalf of Rushing Commercial Crossing LLC and Rushing Wiltsey Crossing LLC (Bonita Rushing)

LOCATION: 5775 Commercial St SE, Salem OR 97306

CRITERIA: Salem Revised Code (SRC) Chapters 240.005(d) – Conditional Use

FINDINGS: The findings are in the attached Decision dated December 4, 2020

DECISION: The **Hearings Officer APPROVED** Conditional Use CU20-08 subject to the following conditions of approval:

- Condition 1:** The multiple family use shall contain no more than 71 dwelling units.
- Condition 2:** Open space of 3,408 square feet, or 48 square feet times the number of dwelling units proposed, shall be provided in the following form(s):
- a. Private balconies;
 - b. Common open space within the building;
 - c. Roof top garden; or
 - d. Any combination of the above listed forms that equals 3,408 square feet, or 48 square feet times the number of dwelling units proposed.
- Condition 3:** Windows shall be provided in all habitable rooms of the dwellings, other than bathrooms, on each wall that faces common open space, parking areas, and pedestrian paths.
- Condition 4:** An offset of at least 4 feet in depth shall be provided along all exterior walls greater than 75 feet in length or width at 40-foot intervals, but shall not be required on the first floor.

Condition 5: Weather protection in the form of awnings or canopies shall be provided along the ground floor building façade for a minimum of 75 percent of the length of the building façade for any wall which includes entrances for non-residential uses. Awnings or canopies shall have a minimum clearance height above the sidewalk or ground surface of 8 feet.

The rights granted by the attached decision must be exercised, or an extension granted, by December 23, 2022, or this approval shall be null and void.

Application Deemed Complete:	<u>October 27, 2020</u>
Public Hearing Date:	<u>November 18, 2020</u>
Notice of Decision Mailing Date:	<u>December 7, 2020</u>
Decision Effective Date:	<u>December 23, 2020</u>
State Mandate Date:	<u>February 24, 2021</u>

Case Manager: Brandon Pike, bpik@cityofsalem.net, 503-540-2326

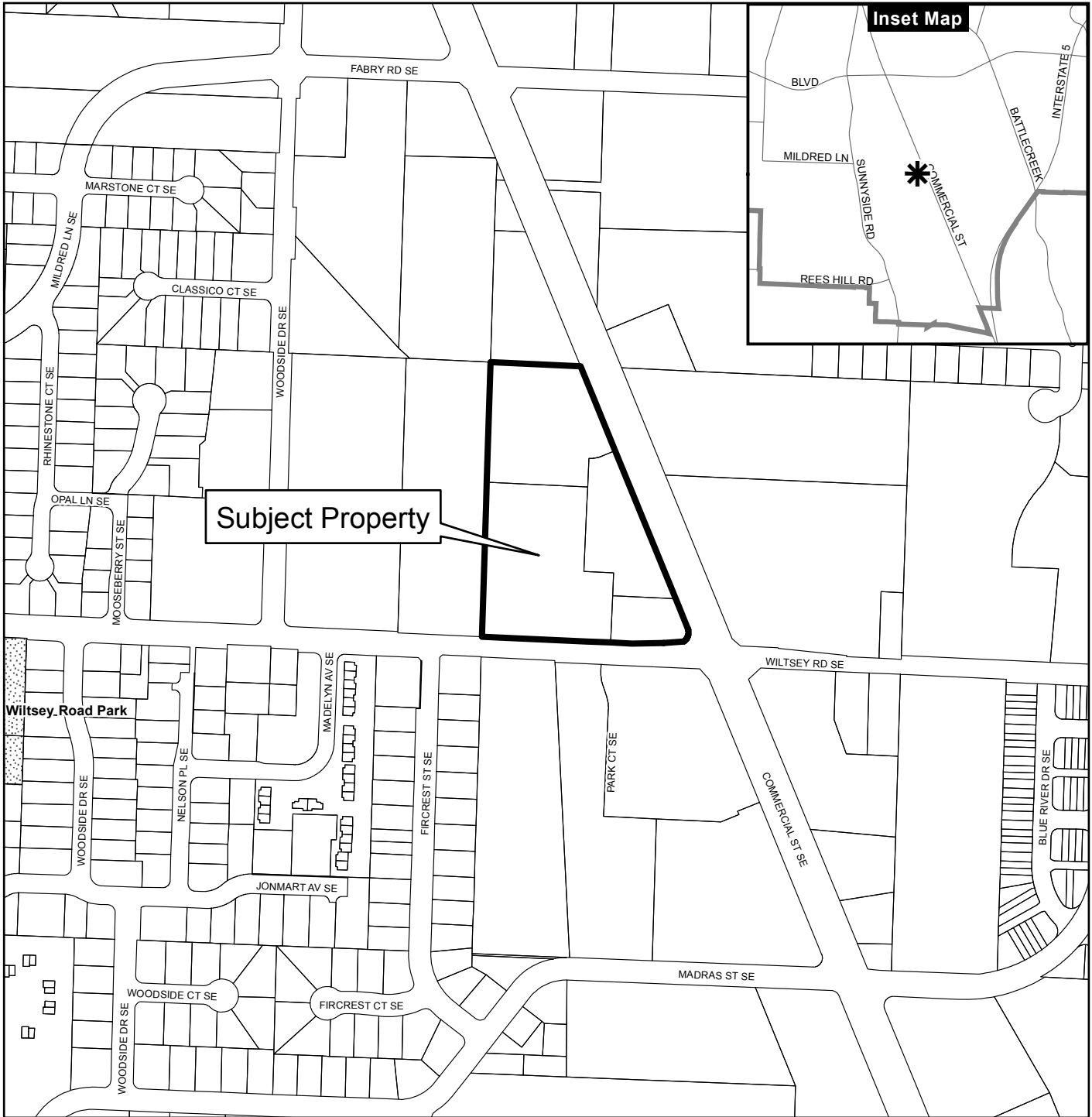
This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m Tuesday, December 22, 2020. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

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

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

Vicinity Map

5775 Commercial Street SE



Legend

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

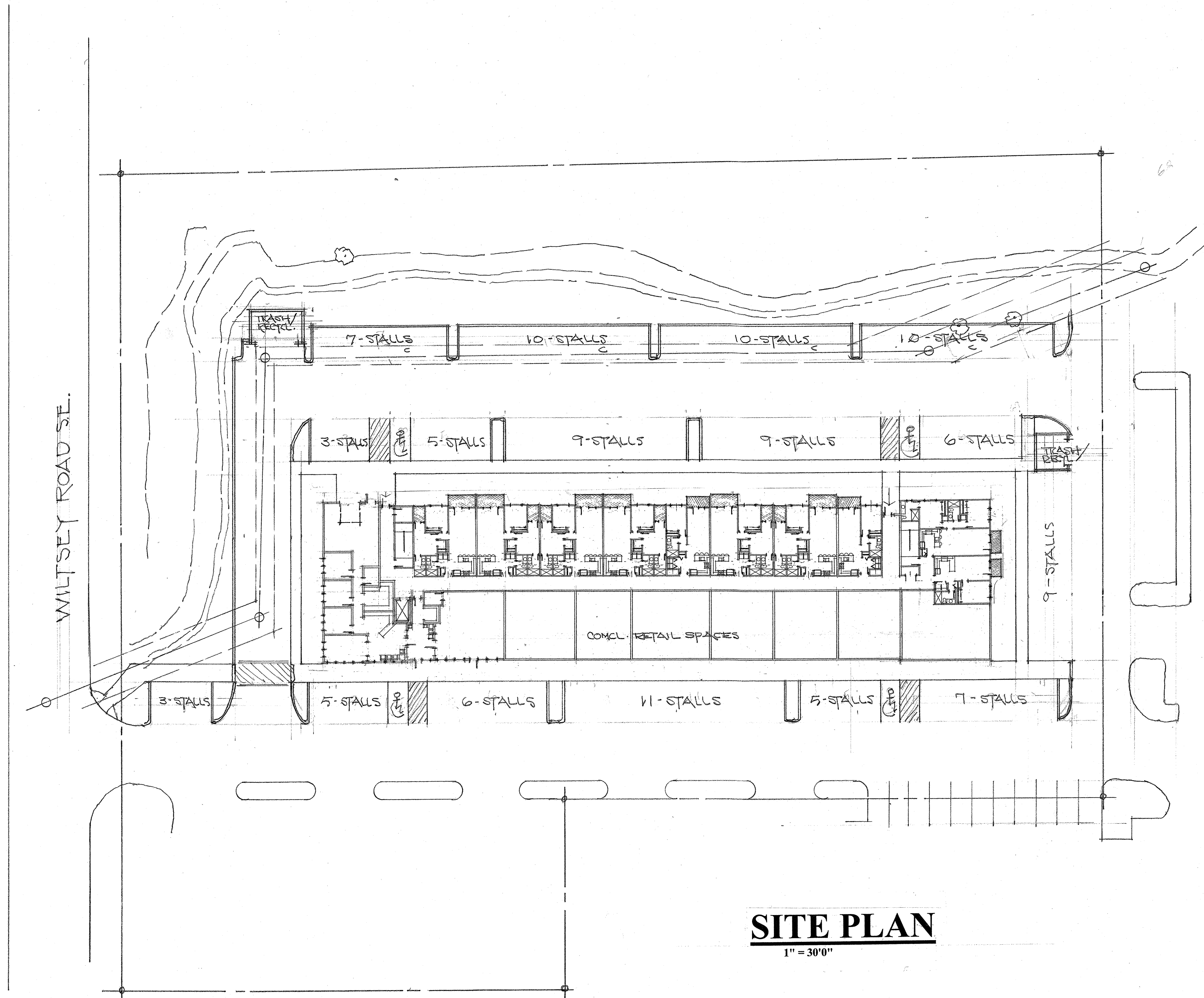
Parks

CITY OF Salem
 AT YOUR SERVICE
 Community Development Dept.

0 100 200 400 Feet



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PROPOSED: "Anthony's Corner"
RESIDENTIAL & COMMERCIAL
DEVELOPMENT
by: Bo Rushing Group

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**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A CONDITIONAL USE PERMIT	}	
APPLICATION TO ALLOW THE	}	<u>CU20-08</u>
DEVELOPMENT OF A NEW MIXED-USE	}	
BUILDING, INCLUDING APPROXIMATELY	}	FINDINGS OF FACT, CONCLUSIONS, AND
15,000 SQUARE FEET OF COMMERCIAL	}	DECISION
SPACE AND 71 APARTMENT UNITS, AT AN	}	
EXISTING COMMERCIAL DEVELOPMENT	}	
SITE. THE SUBJECT PROPERTY IS ZONED	}	
CR (RETAIL COMMERCIAL), WITHIN THE	}	
SOUTH GATEWAY OVERLAY ZONE, AND	}	
LOCATED AT 5775 COMMERCIAL STREET	}	
SE (MARION COUNTY ASSESSOR MAP AND	}	
TAX LOT NUMBER(S): 083W14CD / 300,	}	
<u>400, 700, AND 1000).</u>	}	

DATE AND PLACE OF HEARING:

The public hearing before the City of Salem Hearings Officer was scheduled for November 18, 2020, at 5:30 p.m., and was held remotely due to social distancing measures put in place to slow the spread of the COVID-19 virus.

APPEARANCES:

Staff: Brandon Pike, Planner I

Applicant: Bo Rushing, Rushing Commercial Crossing LLC (Bonita Rushing), also appearing via email November 17 2020, Rushing Wiltsey Crossing LLC (Bonita Rushing); Lori Souza, Rushing Group; Brandie Dalton and Mark Grenz, PE, Multi/Tech Engineering Services, Inc.

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

On August 19, 2020, the applicant submitted a conditional use permit application for the development of a new mixed-use building and associated site improvements at an existing commercial development located 5775 Commercial Street SE. The City staff deemed the application complete for processing on October 27, 2020. Notice of public

hearing was sent by mail to surrounding property owners and tenants pursuant to Salem Revised Code (SRC) requirements on October 29, 2020. Public hearing notice was also posted on the property pursuant to SRC requirements.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

The Salem Area Comprehensive Plan (SACP) map designation for the subject property is "Commercial". The subject property is within the Urban Growth Boundary and the Urban Service Area.

2. Zoning and Surrounding Land Uses

The subject property is zoned CR (Retail Commercial). The proposal involves a mixed-use building which includes approximately 71 *multiple family* dwelling units. Pursuant to SRC 522.005, *multiple family* uses are allowed in the CR zone as a conditional use. The subject property is also within the South Gateway Overlay Zone. Pursuant to SRC 630.010, except as otherwise provided in this section, any use that is a permitted, special, conditional, or prohibited use in the underlying zone is a permitted, special, conditional, or prohibited use in the South Gateway Overlay Zone. The proposed mixed-use building does not include any of the additional prohibited uses set forth in this section under SRC Table 630-2.

The zoning and uses of surrounding properties include:

North:	CG (General Commercial): undeveloped property and <i>motor vehicle services</i>
South:	Across Wiltsey Road SE, RM-II (Multiple Family Residential): manufactured dwelling park and <i>multiple family</i> apartment complexes
East:	Across Commercial Street SE, CR (Retail Commercial) and CG (General Commercial): Undeveloped property and <i>nursery stock wholesaler</i>
West:	Across Waln Creek, IC (Industrial Commercial): <i>self-service storage</i>

3. Site Analysis

The subject property is part of an existing development site which is approximately 6.9 acres in size. The portion of the development site subject to the requested conditional use permit is currently vacant land, while the rest of the development site is developed as a retail shopping center.

The subject property abuts Commercial Street NE to the east and Wiltsey Road SE to the south. Commercial Street SE is designated as a Major Arterial and Wiltsey Road SE is designated as a Collector within the Salem Transportation System Plan (TSP). The property abuts Waln Creek on the west and southwest.

4. Neighborhood and Citizen Comments

The subject property is located within the South Gateway Neighborhood Association. Notice was provided to the neighborhood association and surrounding property owners and tenants within 250 feet of the subject property. No comments were received from surrounding property owners, tenants, or the neighborhood association, and other than the representatives of the applicant, there were no appearances at the hearing.

The Hearings Officer received email comments from Bo Rushing on 11/17/2020, and Brandie Dalton also on 11/17/2020.

5. City Department and Public Agency Comments

The Hearings Officer notes the following from the staff report:

The Fire Department has reviewed the proposal and provided the following comment: *items including fire department access and water supply will be required to be provided per the Oregon Fire Code.*

The Building and Safety Division has reviewed the proposal and indicated they have no concerns.

The Public Works Department has reviewed the proposal and indicated that the proposal will be reviewed for conformance with their standards at the time of development / site plan review.

The Salem-Keizer School District (SKSD) has reviewed the proposal and provided a letter which is included as **Attachment E**. They indicated that the applicable elementary, middle, and high schools had sufficient school capacity to serve the proposed development. They noted that adequate pedestrian and bicycle infrastructure should be provided, and that a bus pullout should be included with the development if located more than one mile from any school. They also stated that the proposed development is eligible for school transportation for the elementary, middle, and high schools.

Hearings Officer's Response: At time of development / site plan review, the adjacent transportation infrastructure will be reviewed for conformance with the TSP, including consideration of pedestrian and bicycle facilities. The subject

property is located less than one mile from Battle Creek Elementary School, so no bus pullout should be required for the proposed conditional use permit.

6. Findings Regarding Conditional Use Criteria

SRC Chapter 240.005(a)(1) provides that:

No building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter.

SRC Chapter 240.005(d) establishes the following approval criteria for a conditional use permit:

Criterion 1:

The proposed use is allowed as a conditional use in the zone.

Finding:

The Hearings Officer notes that SRC Chapter 522, Table 522-1 provides that *multiple family* uses are allowed in the CR zone as a conditional use. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 2:

The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

Finding:

The Hearings Officer notes that the staff report includes a complete written statement from the applicant addressing the conditional use approval criteria. As there is no contrary testimony, the Hearings Officer adopts the applicant's statement, except as may be expressly set out in this decision.

The Hearings Officer notes that the subject development site is currently developed with three commercial buildings predominantly occupied by retail tenants. The zoning of properties in the immediate area includes RM-II (Multiple Family Residential), IC (Industrial Commercial), CR (Retail Commercial), and CG (General Commercial). Uses in the area are a mix of residential, commercial, and industrial, including *multiple family, retail sales, and self-service storage*.

The Hearings Officer notes that the zoning of the site allows the development of a 50-foot tall retail or office building with no limit on the square footage of the use.

The Hearings Officer notes the staff analysis and conclusion that allowing a residential use on the site, which generates fewer vehicle trips than most commercial uses, in a building that meets or exceeds the setback and parking requirements of the zone, will not have an adverse impact on the immediate neighborhood. The Hearings Officer notes that staff and the applicant base this analysis on the assumption that no more than 71 dwelling units would be allowed, and staff proposes a condition of approval to ensure this is the case. At the time of development, impacts on traffic and the adjacent transportation infrastructure will be reviewed and required to be mitigated. To ensure the reasonably likely adverse impacts of the proposed *multiple family* use on the immediate neighborhood are minimized, the Hearings Officer imposes the following condition of approval:

Condition 1: The *multiple family* use shall contain no more than 71 dwelling units.

Criterion 3:

The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

Finding:

The Hearings Officer notes that the staff report included a complete written statement from the applicant addressing the conditional use approval criteria. As there is no contrary testimony, the Hearings Officer adopts the applicant's statement, except as may be expressly set out in this decision.

The Hearings Officer notes that the proposal is for a mixed-use building with both retail/office and multiple-family residential dwellings. The development site has three other buildings with a mix of predominantly retail uses.

The proposed mixed-use building is not subject to design review under the SRC. This is because the proposed *multiple family* use is within a mixed-use building (pursuant to SRC 702.005(b)(A)) and the building is not downtown or in an overlay zone which would require design review. However, the conditional use process allows for the consideration of livability and compatibility when determining if a use should be allowed, or if conditions should be placed on the approval in order to address livability and compatibility. Therefore, the staff reviewed the requirements for multi-family development and mixed-use buildings that are required in other zones and situations, and therefore has proposed five conditions related to livability and compatibility. Specifically, the staff addressed open space and windows for the residential units, and building offsets, weather protection, and greater consideration of Waln Creek for the overall building design. This latter consideration is a matter of some dispute between the staff and the applicant. The Hearings Officer notes that staff has appropriately raised concerns about development features that are required for mixed use buildings either downtown or in the City's mixed-use overlay

zones and for stand-alone multi-family developments. Additionally, as staff points out, similar development features can be found in the adjacent multi-family and commercial developments. Accordingly, the Hearings Officer generally agrees with staff and finds that most of these features should be provided in the subject development to ensure livability and compatibility with the surrounding area.

The Hearings Officer notes that staff references the City's multiple-family residential goals for open space which provides amenities that promote livability by having active and passive uses, encouraging preservation of natural open qualities, and ensuring open space is accessible and available to all residents. The Hearings Officer agrees with staff that while residents will have access to the area's public parks and open spaces, providing adequate open space for the proposed development ensures that residents will be able to access recreational opportunities in or near their homes. This can help reduce impact on the surrounding area's public places and neighboring residents.

The Hearings Officer notes that the private open space standard for multiple family residential developments with 13 or more units is 48 square feet of open space for each dwelling unit located more than 5 feet above finished grade. The Hearings Officer finds that requiring this development to provide the same amount of open space as would be required for private open space within a usual multi-family development is appropriate, because this site is not located within downtown or a more urban area of town which would have more open space facilities available to the public. Staff has proposed a condition which allows flexibility in providing the required open space by allowing the applicant to choose one option or a combination of options that meet the minimum square footage. For example, the applicant may choose to provide balconies for half the units and a rooftop garden to meet the condition. Therefore, to ensure compatibility and livability with other properties in the area, the Hearings Officer imposes the following condition of approval:

Condition 2: Open space of 3,408 square feet, or 48 square feet times the number of dwelling units proposed, shall be provided in the following form(s):

- a. Private balconies;
- b. Common open space within the building;
- c. Roof top garden; or
- d. Any combination of the above listed forms that equals 3,408 square feet, or 48 square feet times the number of dwelling units proposed.

The Hearings Officer notes that multiple family residential development design standards provide for crime prevention and resident safety measures, which are incorporated into the design of the development. The Hearings Officer finds it appropriate to consider the same crime prevention techniques for this development.

To incorporate crime prevention into site design, the multi-family design standards require windows be provided in all habitable rooms, other than bathrooms, on each wall that faces common open space, parking areas, and pedestrian paths to encourage visual surveillance of such areas and minimize the appearance of building bulk. The Hearings Officer finds that providing crime prevention and resident safety measures on the subject property, will reduce the potential for crime in the area and will ensure that the proposed *multiple family* use will have minimal impact on the livability of surrounding property. To ensure that this is the case, the Hearings Officer imposes the following condition of approval:

Condition 3: Windows shall be provided in all habitable rooms of the dwellings, other than bathrooms, on each wall that faces common open space, parking areas, and pedestrian paths.

The Hearings Officer notes that offsets in building facades break up long, monotonous structures and provide a more visibly pleasing building. In the case of this property, the Hearings Officer finds that building offsets are needed to ensure compatibility with the surrounding residential uses. Many of the nearby multi-family developments are designed with building offsets; providing offsets on this development will ensure compatibility with these existing residential developments and any new multi-family residential development that occurs in the surrounding area. To meet the approval criterion, the Hearings Officer imposes the following condition of approval:

Condition 4: An offset of at least 4 feet in depth shall be provided along all exterior walls greater than 75 feet in length or width at 40-foot intervals, but this offset shall not be required on the first floor.

The Hearings Officer notes that the design review standards set forth in SRC Chapter 702 encourage all newly constructed multiple family developments with 13 or more units to preserve natural open qualities that may exist on a site and to provide opportunities for active and passive recreation. As the staff report points out, if this development were to be subject to the design review standards of SRC Chapter 702, a minimum of 30 percent of the gross site area would be required to be designated and permanently reserved for open space. The Hearings Officer notes that the subject property contains a segment of Waln Creek along the southwestern and western portions of the property. The Hearings Officer notes that the proposed development is not subject to the design review standards of SRC Chapter 702, but the Hearings Officer is reminded by staff that the conditional use process allows for the consideration of livability and compatibility when determining if a use should be allowed, or if conditions should be placed on the approval in order to address livability and compatibility. Staff proposes a condition which would revise the final site plan to remove or relocate the off-street parking between the proposed mixed-use building and Waln Creek. The Hearings Officer notes the applicant's concerns related to the safety and security of the residents. The Hearings Officer notes that to

some extent, moving the location of the off-street parking could help to provide an amenity for the building's residents, and could ensure preservation of an open area along Waln Creek. In making this decision, the Hearings Officer balances the value of the amenity against the value of the secure parking. In doing so, the Hearings Officer reviewed the photographs and maps in the staff presentation and staff report, and is persuaded, in this case, that Waln Creek and the surrounding open space in this location is both highly disturbed and highly degraded. The Hearings Officer appreciates and understands that if the creek and a portion of the subject property along with a portion of the adjoining property immediately across the creek (which is currently developed with a storage facility) were redeveloped as natural open areas, they could be valuable amenities to the residents of this development and the community. The Hearings Officer is not persuaded that isolated improvements only on the subject property behind the proposed building would enhance the livability of surrounding properties or provide amenities that residents would readily utilize. The Hearings Officer also notes that in weighing the applicant's concerns about resident safety and secure parking against the potential amenity, the Hearings Officer is not convinced that the potential amenities outweigh the concerns about crime and personal safety. Although it is a close call, the Hearings Officer declines to require a condition prohibiting off-street parking between the proposed building and Waln Creek.

Unlike most mixed-use buildings developed in the city, the subject property is not located within a zone which requires design review for the proposed building. While the Hearings Officer acknowledges that the subject property is not located in an area of the city which would necessitate or benefit from the usual mixed-use design standards in the same way that many of those buildings do, the Hearings Officer notes that the criteria require the proposed multiple family use to be reasonably compatible with surrounding property. As staff points out, the proposed building is part of an existing commercial development which incorporates some design features which are commonly required for mixed-use buildings around the city, including weather protection in the form of awnings or canopies along the ground floor of the building. Providing weather protection in a similar manner would ensure compatibility with the surrounding property. The Hearings Officer imposes the following condition:

Condition 5: Weather protection in the form of awnings or canopies shall be provided along the ground floor building façade for a minimum of 75 percent of the length of the building façade for any wall which includes entrances for non-residential uses. Awnings or canopies shall have a minimum clearance height above the sidewalk or ground surface of 8 feet.

DECISION

Based upon the Facts and Findings contained in this decision, the Hearings Officer **APPROVES** the request for a conditional use permit to allow the development of a new mixed-use building at an existing commercial development zoned CR (Retail Commercial), within the South Gateway Overlay Zone, and located at 5775 Commercial Street SE (Marion County Assessor map and tax lot number(s): 083W14CD / 300, 400, 700, and 1000) subject to the following five conditions of approval:

Condition 1: The multiple family use shall contain no more than 71 dwelling units.

Condition 2: Open space of 3,408 square feet, or 48 square feet times the number of dwelling units proposed, shall be provided in the following form(s):

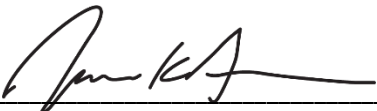
- a. Private balconies;
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Condition 5: Weather protection in the form of awnings or canopies shall be provided along the ground floor building façade for a minimum of 75 percent of the length of the building façade for any wall which includes entrances for non-residential uses. Awnings or canopies shall have a minimum clearance height above the sidewalk or ground surface of 8 feet.

DATED: December 4, 2020


James K. Brewer, Hearings Officer