

NOTICE OF DECISION

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



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

DECISION OF THE PLANNING ADMINISTRATOR

AIRPORT OVERLAY ZONE HEIGHT VARIANCE: AVAR22-01

APPLICATION NO.: 22-110970-ZO

NOTICE OF DECISION DATE: June 7, 2022

REQUEST: An airport overlay zone height variance associated with phase 2 of the McKenzie Heights complex

APPLICANT: MWSH Boone Road Property LLC

LOCATION: 3200 Block of Boone Road SE

CRITERIA: Salem Revised Code (SRC) Chapter 602.025.

FINDINGS: The findings are in the attached Decision dated June 7, 2022.

DECISION: The **Planning Administrator APPROVED** AVAR22-01 based upon the application materials and the findings as presented in this report.

Salem Revised Code does not provide an expiration period for approval of an Airport Overlay Zone Height Variance. However, the FAA Hazard Determination Letter does provide an expiration date. This decision is based on the validity of the FAA Hazard Determination Letter. Therefore, if the FAA determination expires, this decision is no longer valid. Per the FAA letter, the permit will expire on October 26, 2023.

This decision is final; there is no local appeal process. Any person with standing may appeal this decision by filing a "Notice of Intent to Appeal" with the Land Use Board of Appeals, 775 Summer St NE, Suite 330, Salem OR 97301-1283, not later than 21 days after the decision date. Anyone with questions regarding filing an appeal with the Oregon Land Use Board of Appeals should contact an attorney.

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: 22 110970.

Case Manager: Austin Ross, Planner I, aross@cityofsalem.net, 503-540-2431

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

BEFORE THE PLANNING ADMINISTRATOR OF THE CITY OF SALEM

DECISION

IN THE MATTER OF APPROVAL OF) FINDINGS & ORDER
AIRPORT OVERLAY ZONE HEIGHT VARIANCE)
CASE NO. AVAR22-01)
3230 BOONE ROAD SE) JUNE 7, 2022

In the matter of the application for an Airport Overlay Zone Height Variance, the Planning Administrator, having received and reviewed evidence and the application materials, makes the following findings and adopts the following order as set forth herein.

REQUEST

An Airport Overlay Zone Height Variance to allow buildings within the McKenzie Heights complex to be constructed to a maximum of 472 feet above mean sea level, exceeding the building height limit in the horizontal surface area of the Airport Overlay Zone by approximately 109 feet. The subject properties are approximately 74.76 acres in size, zoned IC (Industrial Commercial), and located at the 3200 Block of Boone Road SE – 97317 (Marion County Assessors Map and Tax Lot numbers: 083W13A / 100, 200, and 300). A location map identifying the subject property is included as **Attachment A**.

PROCEDURAL FINDINGS

1. On May 24, 2022, an application for an Airport Overlay Zone Height Variance was submitted for property located at 3230 Boone Road SE.

SUBSTANTIVE FINDINGS

1. Proposal

The applicant is requesting to construct buildings on lots within the McKenzie Heights complex, the proposed height of which encroaches into the horizontal surface area of the Airport Overlay Zone by approximately 109 feet, for property located at the 3200 Block of Boone Road SE – 97317. The applicant's written statement addressing the findings for the requested Airport Overlay Zone Height Variance are included as **Attachment B**.

2. City Department and Public Agency Comments

The Public Works Department has reviewed the proposal and indicated no concerns.

3. Applicability

SRC 602.025 Airport Overlay Zone Height Variance. No building, structure, or object shall be erected or increased in height, and no vegetation shall be allowed to grow, to a height in excess of the height limitations set forth in this chapter unless a variance has been granted pursuant to this section.

DECISION CRITERIA FINDINGS

4. Analysis of Airport Overlay Zone Height Variance Approval Criteria:

SRC 602.025(d) Criteria. An Airport Overlay Zone height variance shall be granted if the FAA has issued a determination that the proposed variance will not create a hazard to air navigation.

Finding: The FAA has conducted an aeronautical study of the proposed buildings within the McKenzie Heights complex. Findings from the FAA are included as **Attachment C**. The study revealed that the proposed structures would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities, therefore the criterion is met.

SRC 602.025(e) Conditions of approval. The Review Authority shall impose as conditions of approval on an Airport Overlay Zone height variance any condition imposed in the FAA determination.

Finding: This Airport Overlay Zone Height Variance approval is valid provided that the proposed development is in compliance with all conditions imposed in the FAA determination letters dated April 26, 2022, therefore the criterion is met.

CONCLUSION

Based upon the requirements of SRC 602.025, the proposed Airport Overlay Zone Height Variance has been reviewed for compliance with the applicable standards and criteria of the Unified Development Code (UDC). The Planning Administrator certifies that the proposed Airport Overlay Zone height variance is in conformance with the UDC, provided compliance occurs with any applicable items noted above.

ORDER

The proposed Airport Overlay Zone Height Variance is consistent with the provisions of SRC Chapter 602 and is hereby **APPROVED**.



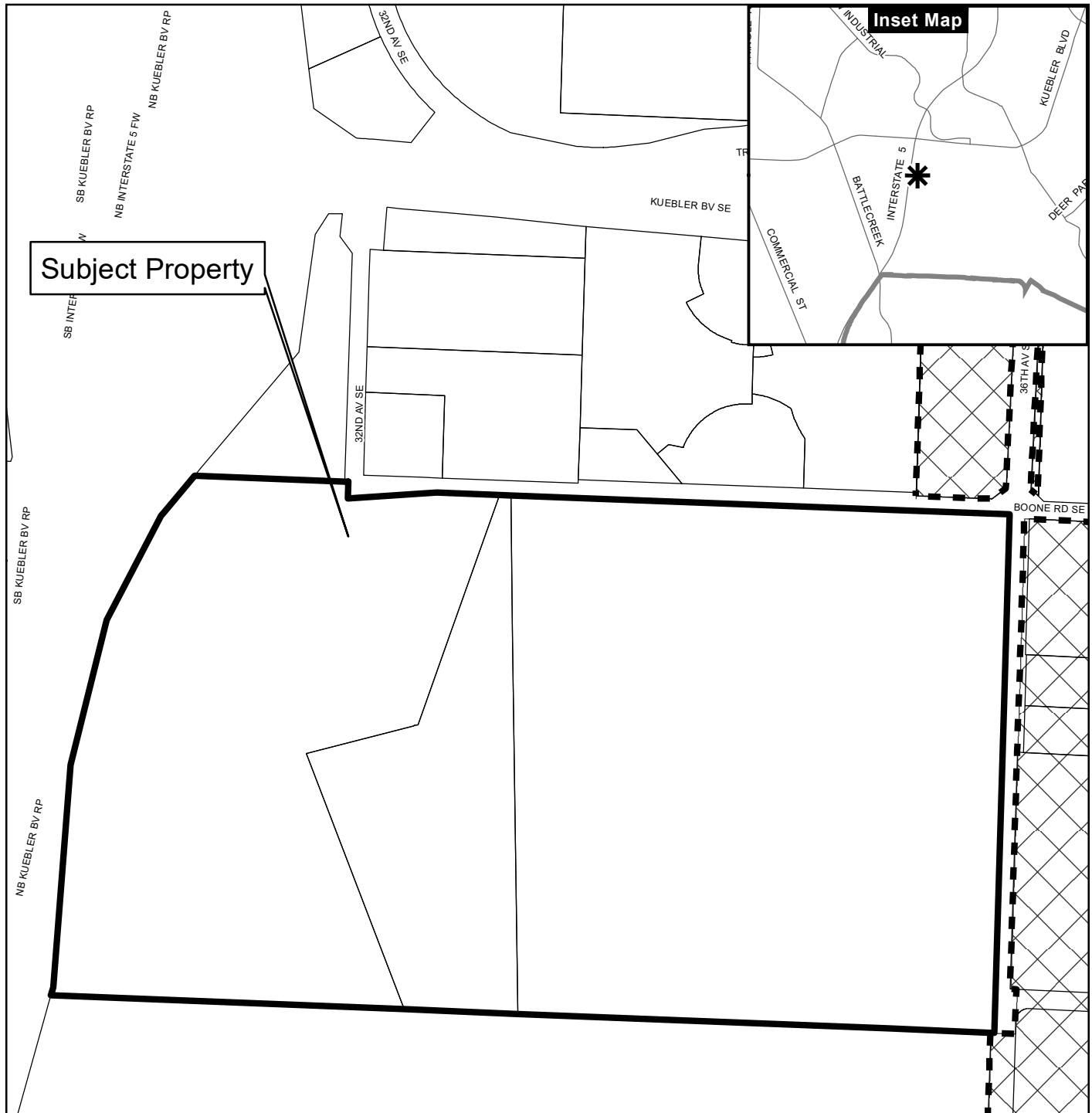
Austin Ross, Planner I,
on behalf of, Lisa Anderson-Ogilvie, AICP
Planning Administrator

Attachments:

- A. Vicinity Map
- B. Applicant's Written Statement
- C. FAA Findings

Vicinity Map

3200 Block of Boone Road 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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MWSH BOONE ROAD PROPERTY LLC

Salem, Oregon

A Land Use Application for:
Boone Road Industrial Park Subdivision

Airport Overlay Zone Height Variance
Type I – SRC 602.025(c):

Applicant:
MWSH Boone Road Property LLC

Submitted:
May 25, 2022

Prepared by:
MWSH Boone Road Property LLC

Applicant & Property Owner

MWSH Boone Road Property LLC

3425 Boone Road SE

Salem, OR 97317

Contact: Mark D. Lowen

503-480-3151 - o

503-586-4104 – c

MLowen@liveBSL.com

Contact: John Eld

503-373-3161 - o

jeld@liveBSL.com

Civil Engineering

Multi/Tech Engineering Services, Inc.

1155 SE 13th Street

Salem, Oregon 97302

Contact: Mark Grenz

503-363-9227

mgrenz@mtengineering.net

Tax Lot Information:

Tax Map: 083W13A-00100 / 083W13A-00200 / 083W13A-0300

Lot Area:

79.07 acres

Current Zoning District:

IC (Industrial Commercial)

**Current Comprehensive Plan
Designation**

IC (Industrial Commercial)

Attachments :

(50) Land Use Application – Type I – SRC 602.025(c)

(54) Application Narrative

(56) Email correspondence with the Salem Airport Manager

(66) Airport Overlay Map

(67) Site Coordinates

(75) FAA Hazard Determination Letter (2022-ANM-2645-OE)

Boone Road Industrial Park Airport Overlay Variance

Airport Overlay Zone Height Variance

SRC 602.025(c): Submittal Requirements:

(1) A statement of the specific height limitation for which the variance is requested, and the amount of the variance; and

Findings: The subject property appears to lay within the Horizontal Surface Area of the Salem Airport as referenced in the FAA Determination letter. The proposal is for a 12-lot Industrial / Commercial, Multi-unit residential housing subdivision / development.

Per Table 551-5, the maximum height allowed on the site is 70-feet. All proposed Flex Industrial, Self-Storage and Multi-family dwellings within this site will meet this height requirement. Height compliance will be reviewed at the time of building permit submittal. Therefore, the height of the dwellings will not have an impact on the Airport Overlay Height.

(2) A determination from the FAA that the proposed variance will not create a hazard to air navigation.

Findings: The FAA has been notified by the applicant of the proposal. FAA Determination is required for all new construction within the Airport Overlay Zone The FAA Determination letter (Aeronautical Study Number 2022-ANM-2645-OE) dated April 26, 2022 has been provided to the city. Prior to subdivision approval, the applicant also notified the Salem Airport Manager, John Paskell. John's email dated May 4, 2022, is attached.



Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177

Issued Date: 04/26/2022

Mark Lowen
BC Salem Property LLC
3425 Boone Rd SE
Salem, OR 97317

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Multi-unit Housing Multi - Family residential
Location:	Salem, OR
Latitude:	44-52-57.00N NAD 83
Longitude:	122-59-20.00W
Heights:	277 feet site elevation (SE) 40 feet above ground level (AGL) 317 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

____ At least 10 days prior to start of construction (7460-2, Part 1)
__X__ Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 M.

This determination expires on 10/26/2023 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

If we can be of further assistance, please contact our office at (816) 329-2525, or natalie.schmalbeck@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2022-ANM-2645-OE.

Signature Control No: 520956031-526165916

(DNE)

Natalie Schmalbeck

Technician

Attachment(s)

Map(s)

